

# Issues in Race and the Death Penalty



Robert Brett Dunham  
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Director of Training  
Community Federal Defender Office  
for the Eastern District of Pennsylvania

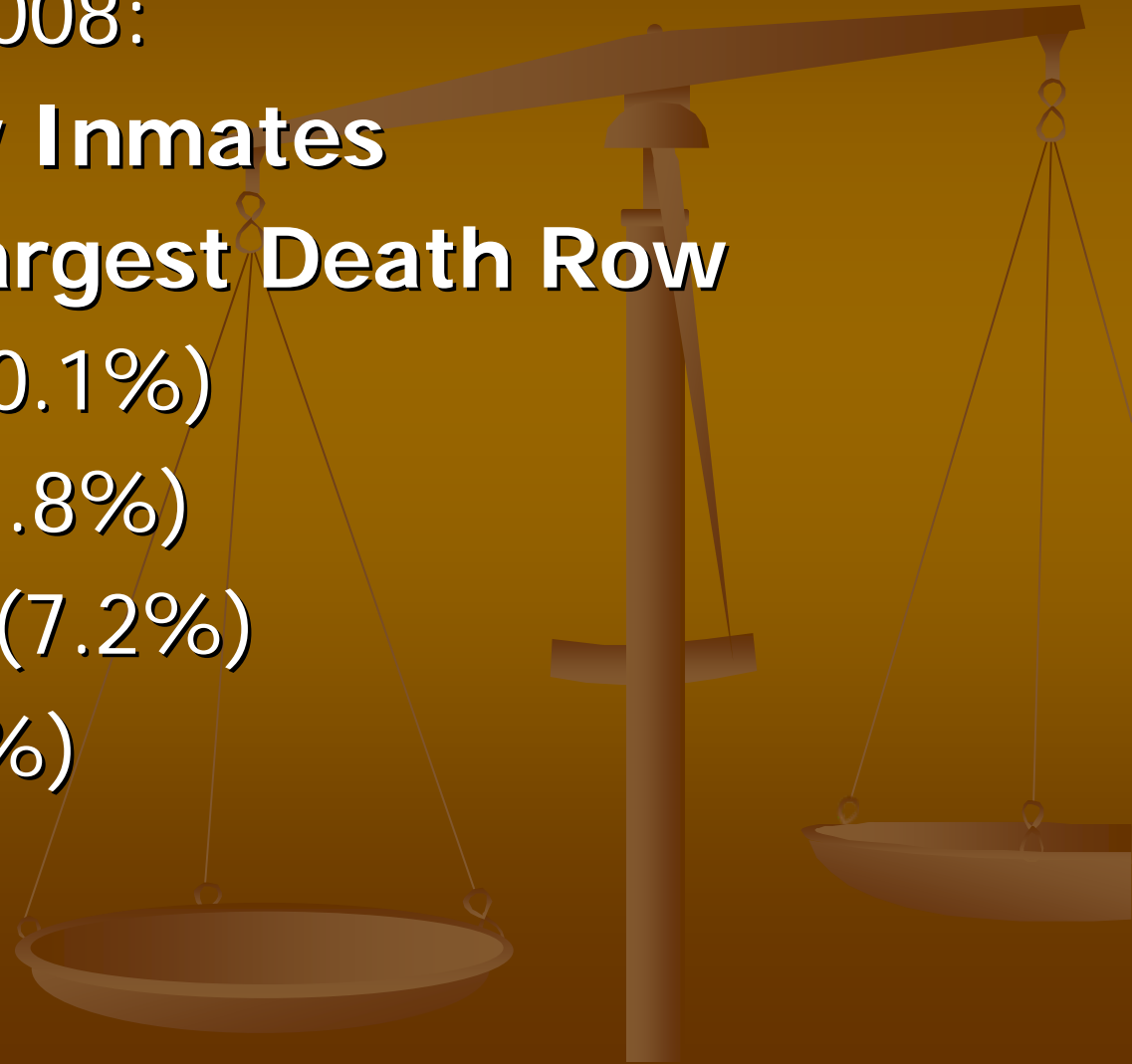
# Pennsylvania's Death Row

As of August 1, 2008:

**223 Death-Row Inmates**

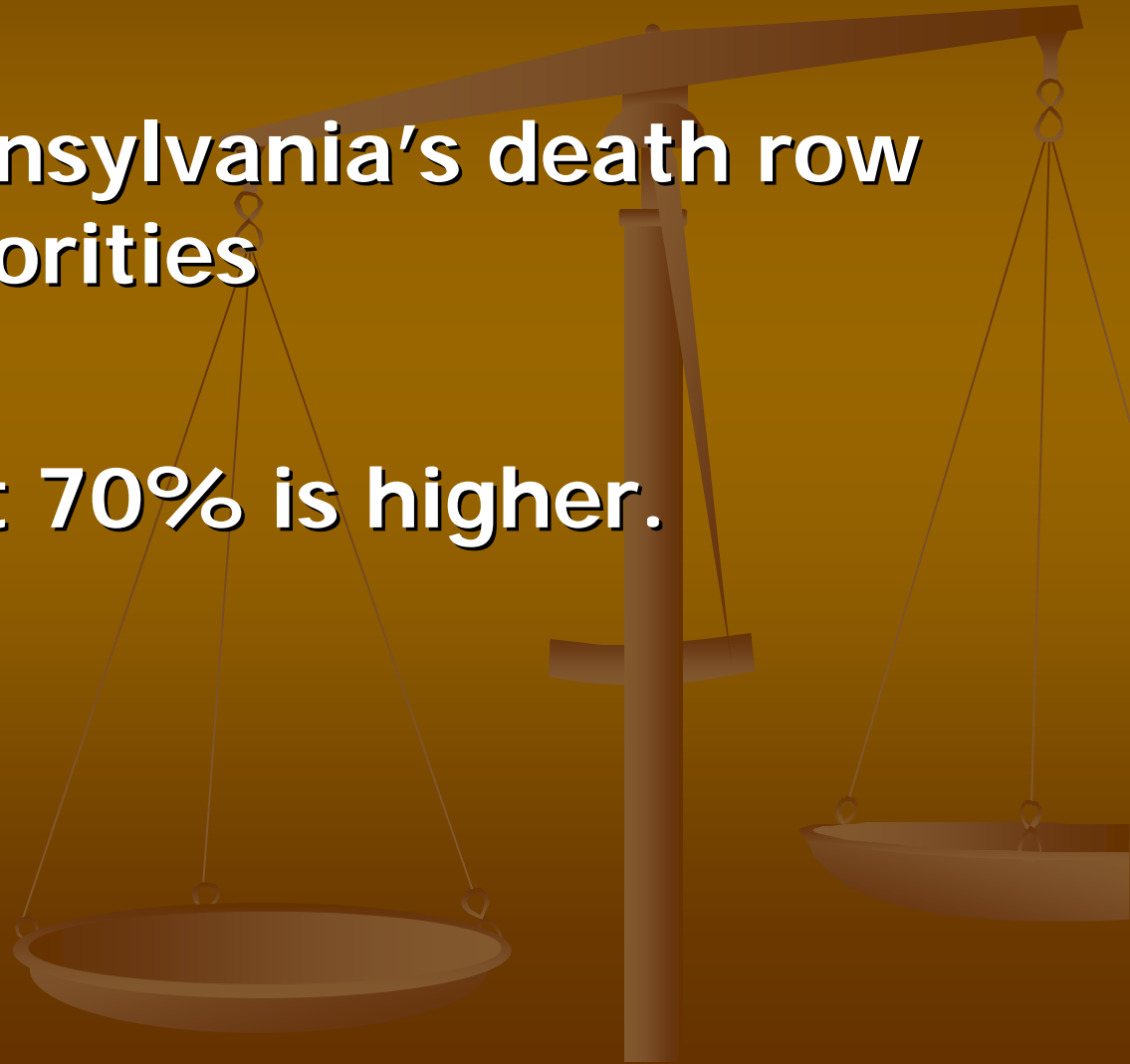
**America's 4<sup>th</sup> Largest Death Row**

- **Black** – 134 (60.1%)
- **White** – 71 (31.8%)
- **Hispanic** – 16 (7.2%)
- **Asian** – 2 (0.9%)



# The Majority are Minority

- 68.2% of Pennsylvania's death row are racial minorities
- Only Texas, at 70% is higher.



# Pennsylvania Death Sentence Rate by Race of Victim and Offender, 1977-2000

- **Black offender/  
white victim**

48.6 death sentences  
per 1,000 murders

- **Black offender/  
black victim**

17.7 death sentences  
per 1,000 murders

- **White offender/  
white victim**

22.2 death sentences  
per 1,000 murders

- **White offender/  
black victim**

11.9 death sentences  
per 1,000 murders



# Pennsylvania – Race/Place Pivotal in Death Penalty Decisions

- Greensburg Tribune-Review article
- No statewide study to date

GREENSBURG TRIBUNE-REVIEW

## Death penalties across the country

Twenty-four states have executed 254 people since the U.S. Supreme Court upheld the constitutionality of the death penalty in 1976. Pennsylvania is one of 13 states that has not used its death penalty.

Source: NAACP Legal Defense Fund

## Records: Race, place pivotal in state death penalty cases

**EDITOR'S NOTE:** Unlike 24 other states, Pennsylvania has not sent anyone to their death in more than three decades. In this two-part series, the Tribune-Review details the reasons behind the lengthy delays and how the 182 men and women on death row got there.

By Debra Endley  
TRIBUNE-REVIEW

In Pennsylvania, a ticket to death row may depend on where the murder occurred, the victim's gender and race, and whether the suspect opts for a judge or jury to hear the case.

That's what official state records show.

The Administrative Office of the Pennsylvania Courts maintains the records for the state Supreme Court, which reviews the numbers for each automatic appeal of a death sentence. The high court then determines whether the death sentence is proportional to similar crimes.

The Tribune Review conducted a computer-assisted analysis of the official records of 757 men and women who were prosecuted under Pennsylvania's death penalty statute between 1979 and August 1994. The analysis showed that:

- Three of four blacks who killed whites were sentenced to death, compared with one of four whites who killed blacks. When whites killed whites, 43 percent were sentenced to death, compared to 36 percent of blacks who killed blacks.
- Trial judges imposed the death penalty in 15 percent of all capital cases, while juries sentenced killers to death in 36 percent of the cases.
- Prosecutors in Allegheny and Philadelphia counties were successful in obtaining a death sentence in one out of four cases. In the rest of the state, prosecutors got such a sentence in one of three cases.
- Murderers were sentenced to death 45 percent of the time in capital cases involving female victims. Killers were sentenced to death in 30 percent of the cases involving male victims.
- In Pennsylvania, African-Americans make up about 9 percent of the population, but they account for 60 percent of the men and women on death row, state records show.
- Questions about race and the death penalty are not new. But some legal experts are troubled by the racial breakdown on Pennsylvania's death row.
- The role of racial bias in determining who was executed helped trigger a 1972 U.S. Supreme Court decision that overturned all death penalty laws. The late Justice William O. Douglas wrote that broad discretion permitted fact finders under state laws enabled selective application of the death penalty against the poor and minorities.
- In a concurring decision, the late Justice Potter Stewart likened the random nature of the death penalty under these statutes as being

**LIFE IN THE BALANCE**  
Is time running out on Pennsylvania's death row?  
**INSIDE**

■ Pennsylvania is one of only three states that has no provisions to parole killers serving life sentences. As a result, Pennsylvania boasts the largest number of inmates serving the sentences in the nation. Page A9.

■ Not everyone who kills in Pennsylvania or any other state is eligible for the death penalty. Under state law, prosecutors can seek the death penalty only against defendants convicted of first-degree murder — the willful, deliberate taking of human life. Page A8.

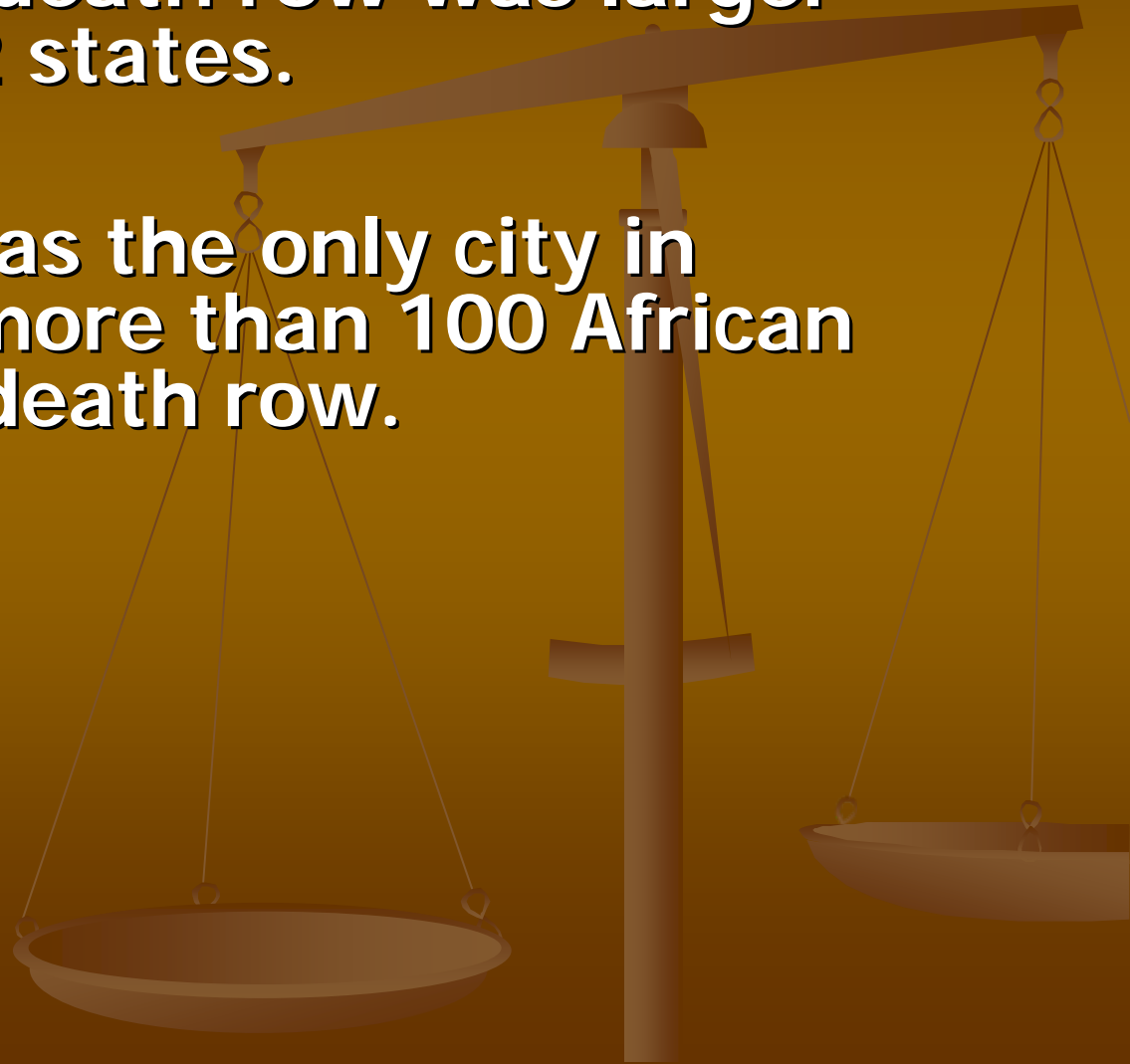
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# Philadelphia's Death Row

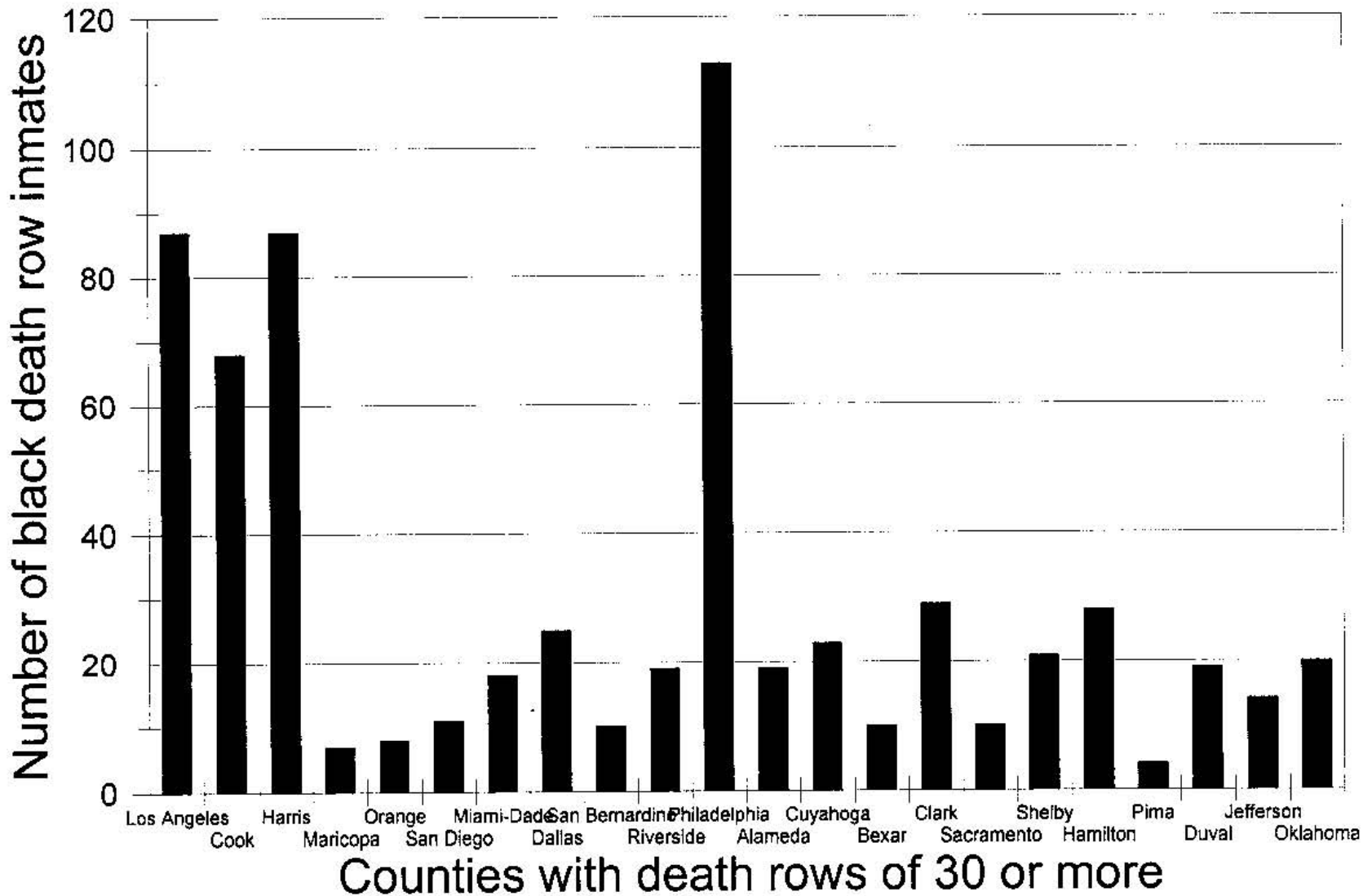
- As of December 31, 2001, 135 inmates were on Philadelphia's death row.
- 113 were black (83.7%);
- 13 were white (9.6%);
- 7 were Latino (5.2%); and
- 2 were Asian (1.5%).
- **91.4% were racial minorities**



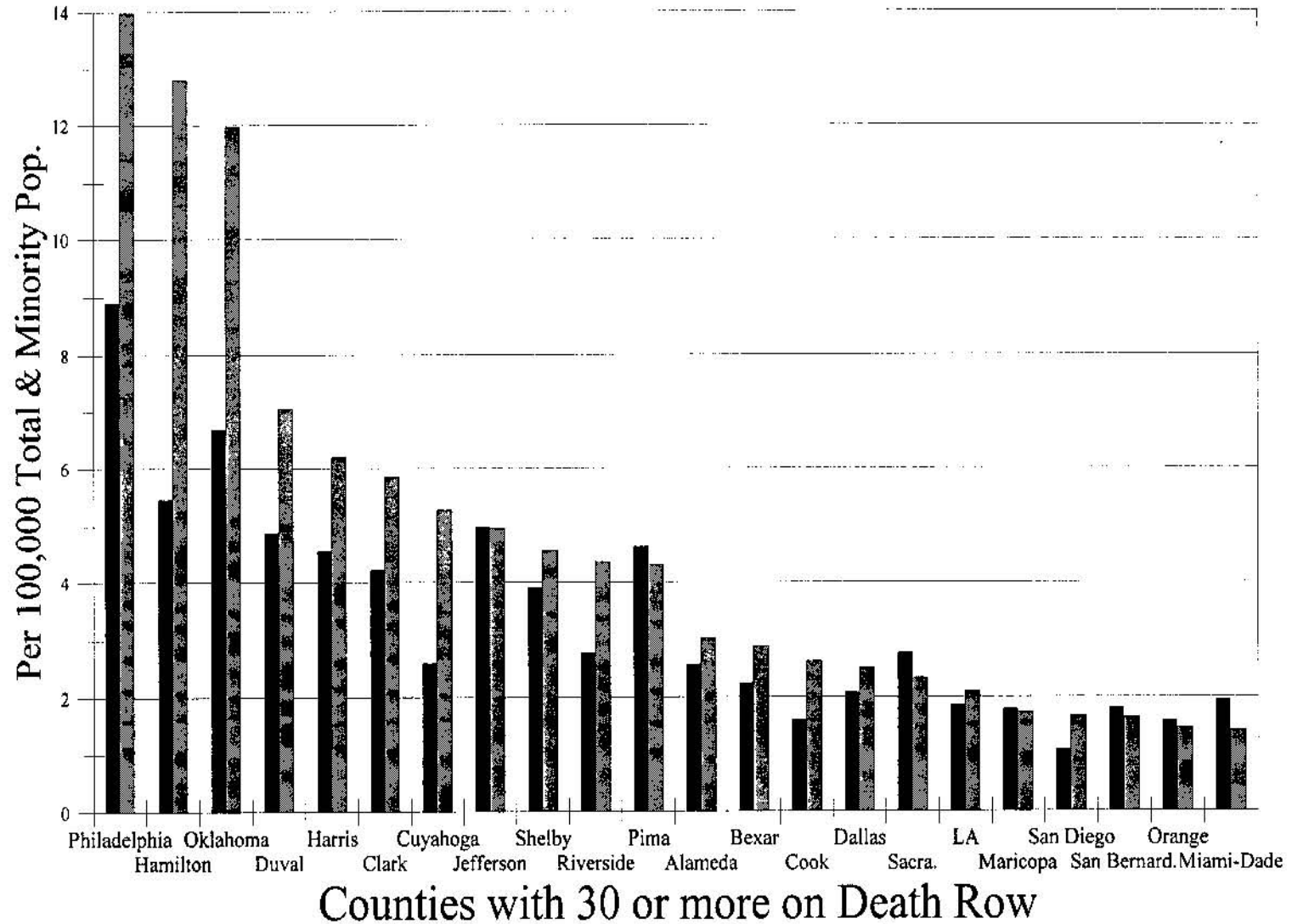
- Philadelphia's death row was larger than that of 42 states.
- Philadelphia was the only city in America with more than 100 African Americans on death row.



# African Americans on Death Row

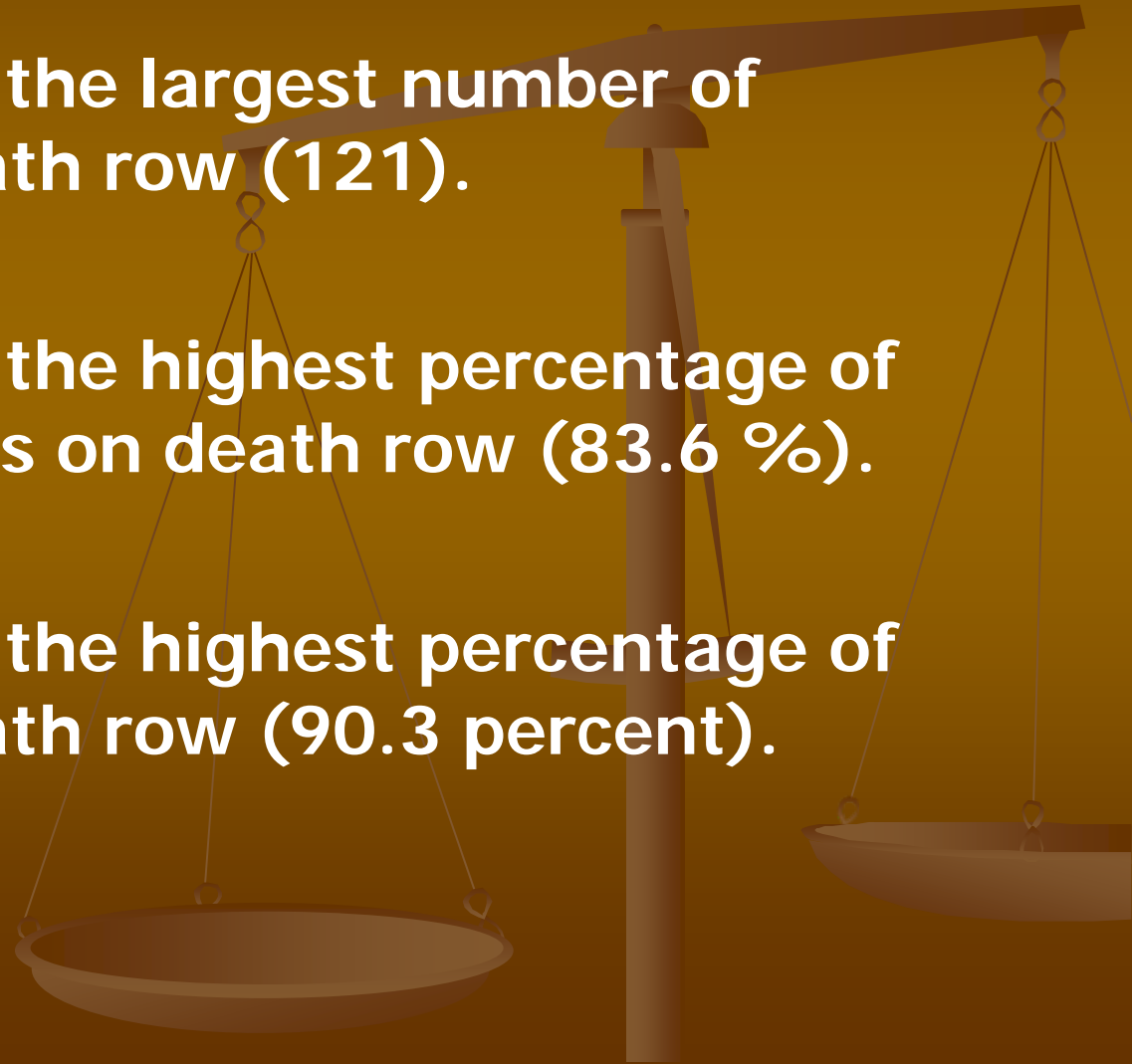


# Death Row: Total & Minority Per Capita



# Comparing Philadelphia to Other Urban Counties

- Philadelphia had the largest number of minorities on death row (121).
- Philadelphia had the highest percentage of African Americans on death row (83.6 %).
- 
- Philadelphia had the highest percentage of minorities on death row (90.3 percent).



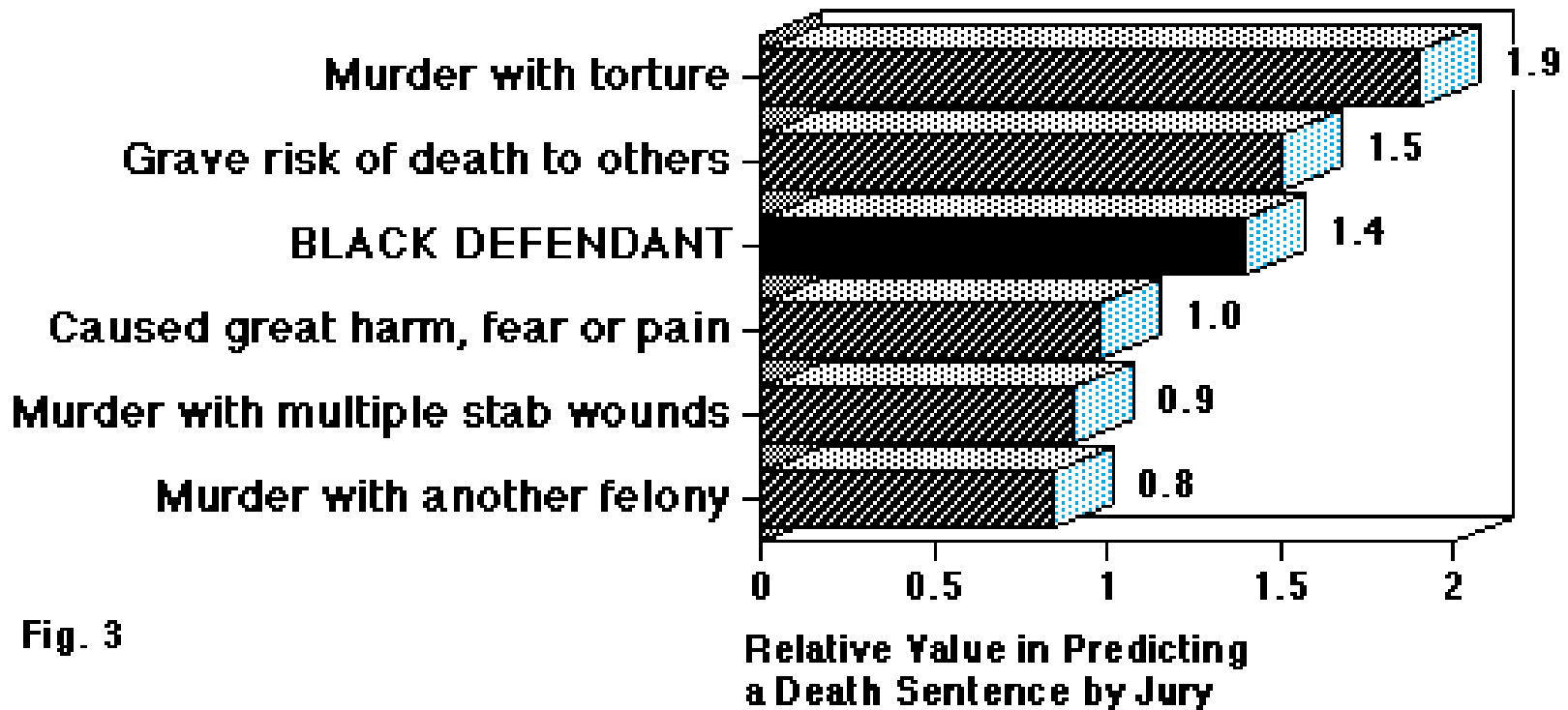
# Odds of Death in Philadelphia



- Among all death-eligible cases, increases by a factor of 3.1 if the defendant is black
- Among all penalty trials, increases by factor of 9.3
- Among all jury weighing decisions, increases by factor of 29.9
- “Excess death rate” of 30% — more than 30 black defendants

# What it Means to Be Black

## Being Black Can Act As An 'Aggravating Factor'

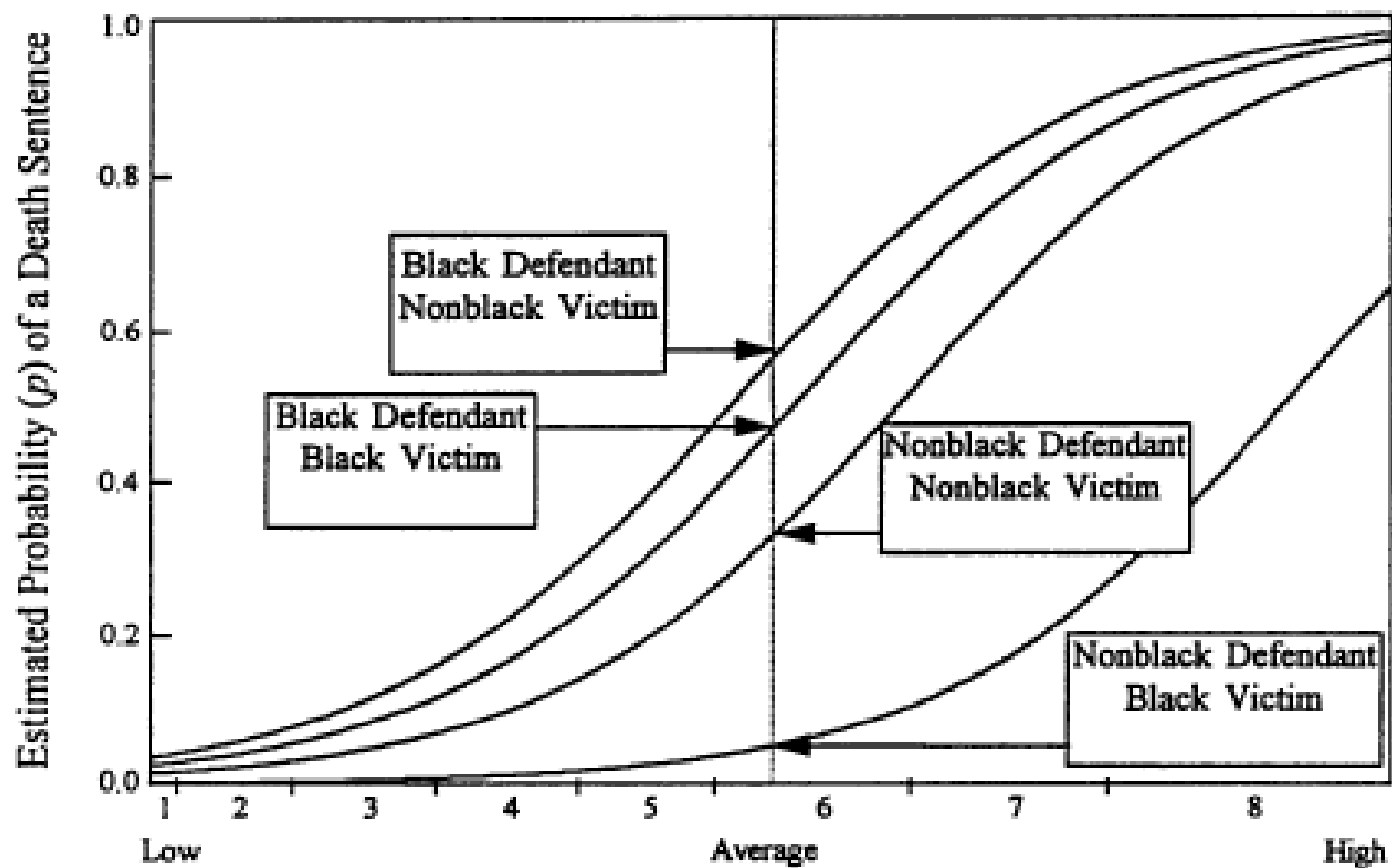


# Looking Deathworthy



- **White Victims** – In Philadelphia, defendants whose appearance was perceived as stereotypically black were more than twice as likely to be sentenced to death as defendants whose appearance was perceived as less stereotypically black
- **Black Victims** – No difference in death-sentencing rates

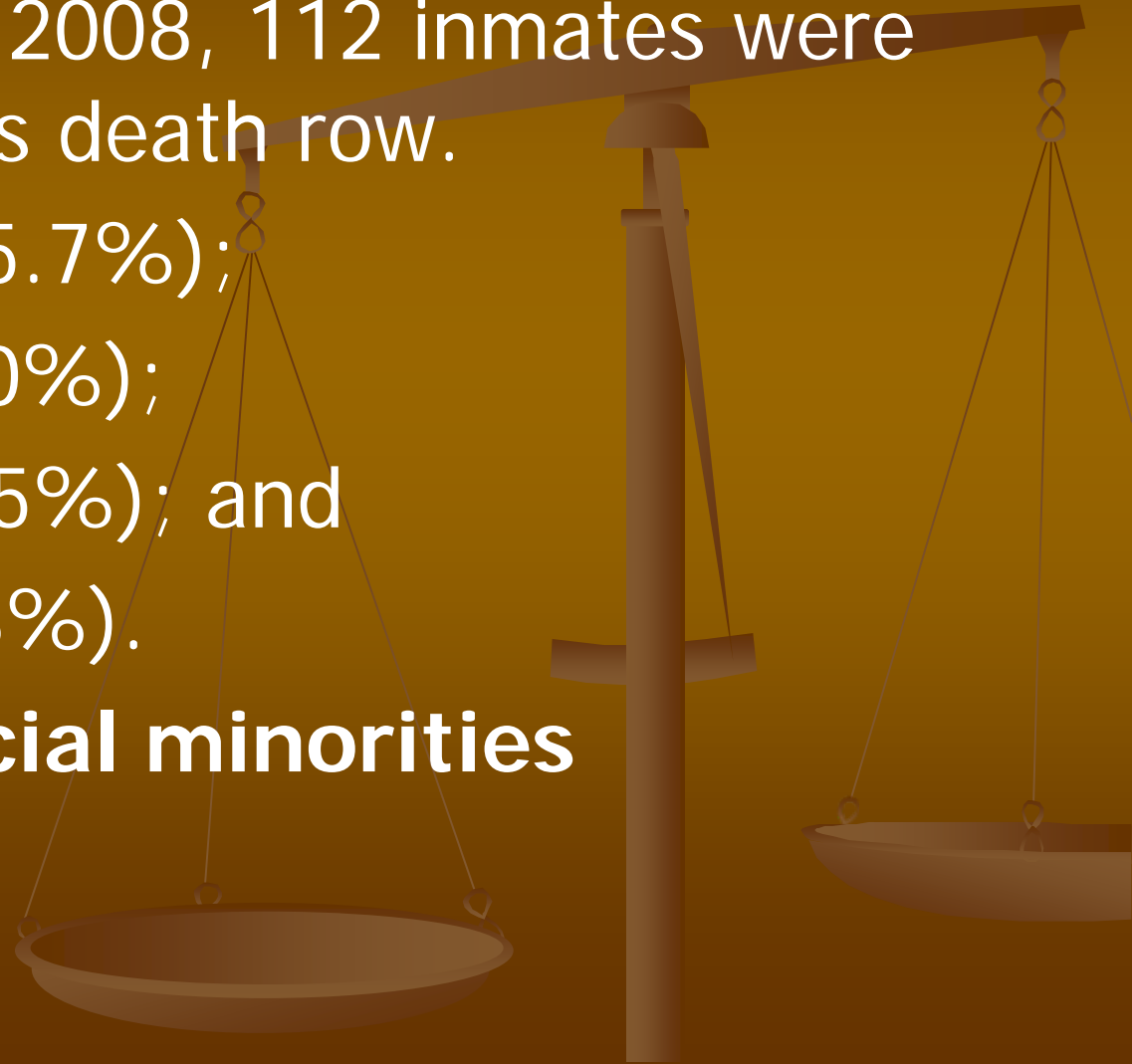
**Estimated Race of Defendant and Race of Victim Effects  
in Jury Death Sentencing Decisions Among All Death Eligible Cases  
Philadelphia 1983-93**



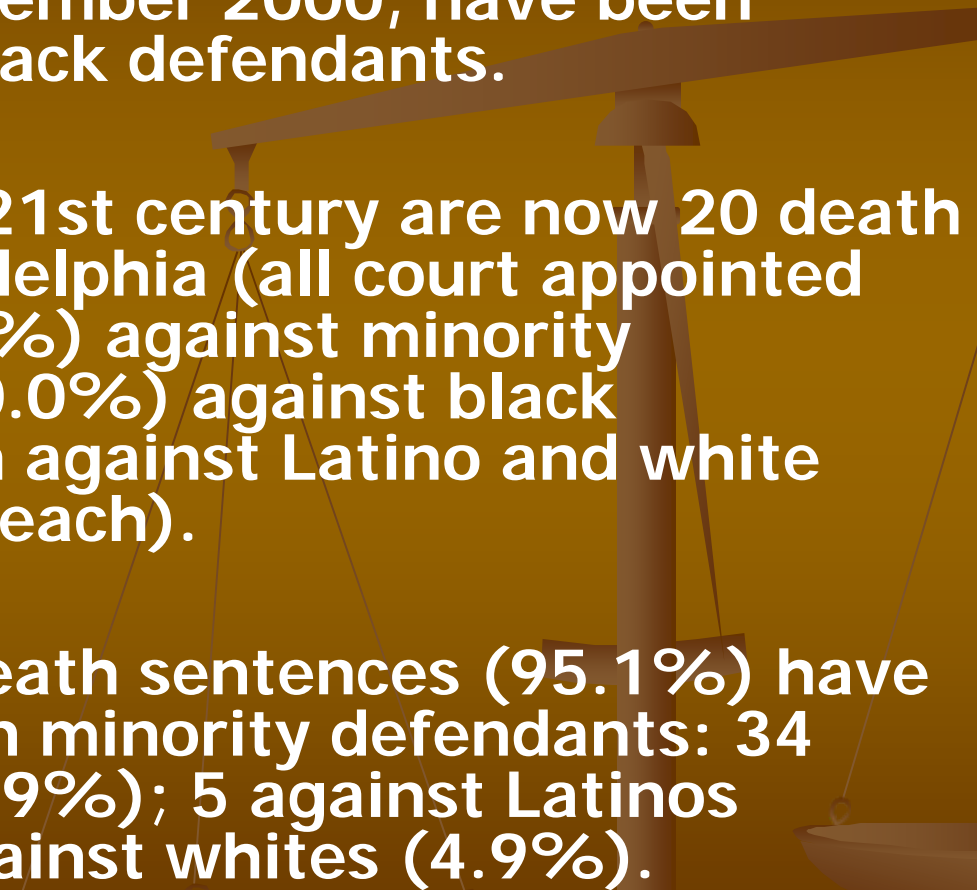
**Defendant Culpability Index and Scale Score  
Estimated in a Logistic Regression Analysis**

# Philadelphia's Death Row Today

- As of August 1, 2008, 112 inmates were on Philadelphia's death row.
- 96 are Black (85.7%);
- 9 are White (8.0%);
- 5 are Latino (4.5%); and
- 2 are Asian (1.8%).
- **92.0% are racial minorities**



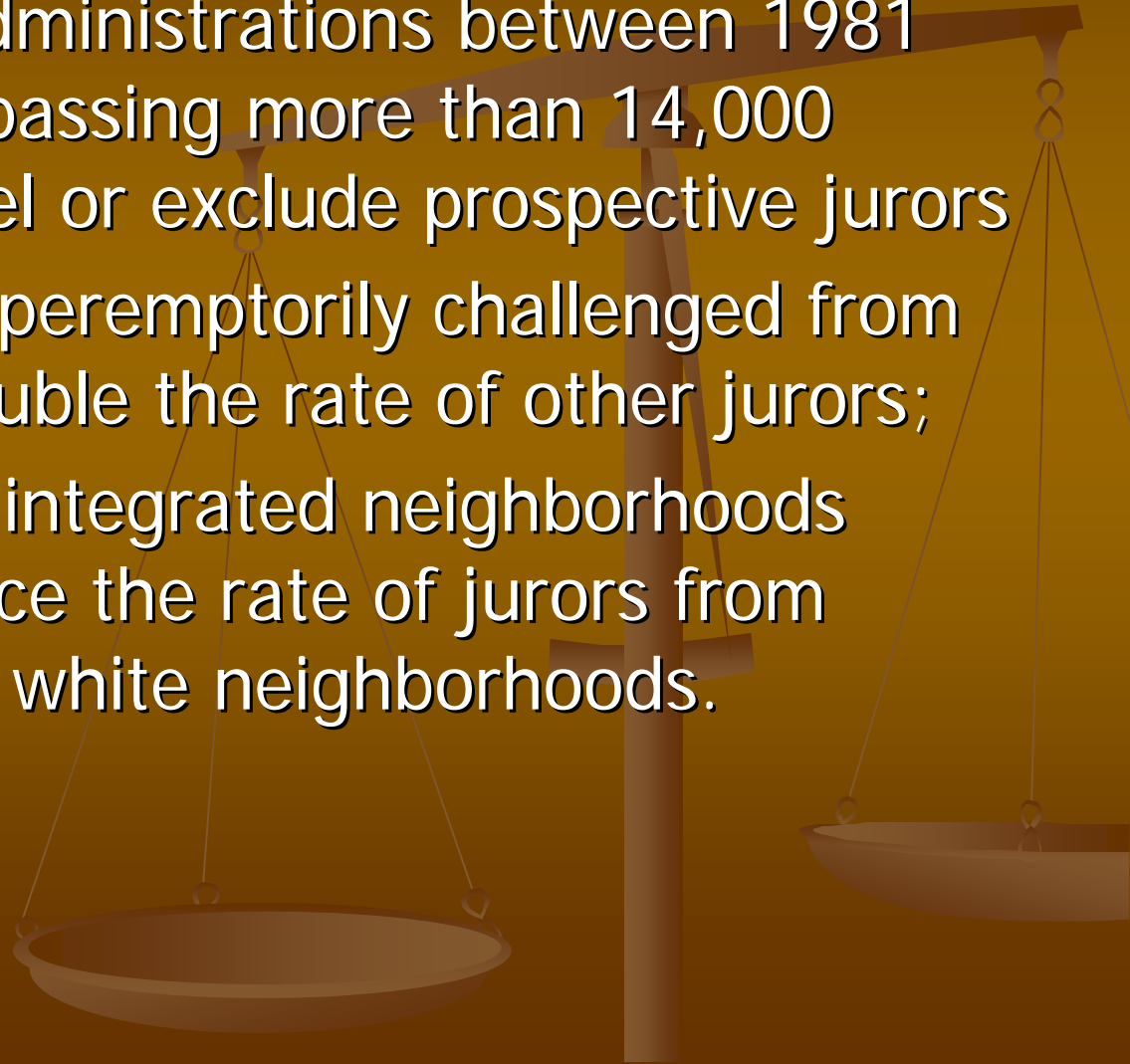
# Since the Year 2000

- The last 17 death sentences in Philadelphia, dating back to November 2000, have been imposed against black defendants.
  - The figures in the 21st century are now 20 death sentences in Philadelphia (all court appointed counsel): 19 (95.0%) against minority defendants; 18 (90.0%) against black defendants; 1 each against Latino and white defendants (5.0% each).
  - 39 of the last 41 death sentences (95.1%) have been imposed upon minority defendants: 34 against blacks (82.9%); 5 against Latinos (12.2%); and 2 against whites (4.9%).
- 

# Racial Profiling in Jury Selection

In 3 prosecutorial administrations between 1981 and 1997, encompassing more than 14,000 choices to empanel or exclude prospective jurors

- Black jurors were peremptorily challenged from capital trials at double the rate of other jurors;
- Other jurors from integrated neighborhoods were struck at twice the rate of jurors from highly segregated white neighborhoods.



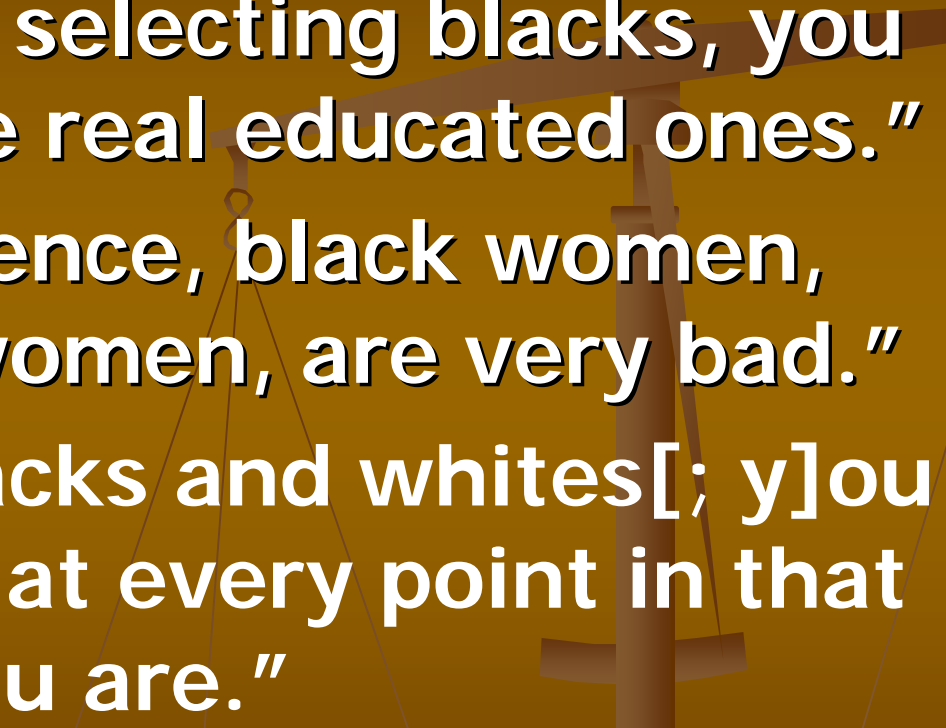
# The Philadelphia Story

- "Let's face it, ... there's the blacks from the low-income areas, [they're] less likely to convict. . . . There is a resentment for law enforcement, there's a resentment for authority and, as a result, you don't want those people on your jury.



- And it may appear as if you're being racist or whatnot, but, again, you are just being realistic. You're just trying to win the case."

# More McMahon

- “You know, in selecting blacks, you don't want the real educated ones.”
  - “In my experience, black women, young black women, are very bad.”
  - “Count the blacks and whites[; y]ou want to know at every point in that case where you are.”
- 



- “AVOID Batson, find an independent reason to strike them and keep a written record of it. (give it on the record)”

AVOID Batson, find an independent reason  
to strike them and keep a written  
record of it. (give it on the record)

Remedy is new trial NOT to strike panel.

- “Ideal jury = 12 Archie Bunkers, will convict on little evidence”

*Ideal jury = 12 Archie Bunkers, will  
convict on little evidence.*

■ "Wait outside to see panel make up."

"count # males females[;] # Black white"

Panel  
count

Wait outside to see panel make up  
count # males females  
# Black white

example 30 whites and 10 blacks  
If you wanted you could strike almost  
all blacks this gives you an advantage.

"If you wanted you could strike almost all blacks. This gives you an advantage."

Continually check who is left on  
your panel or who is coming in  
next.

# COMMUNITY Philadelphia Issues

## Defense

- |   |   |                |  |
|---|---|----------------|--|
| ③ Catholics<br>(Italian / Irish)<br>(educated young are)<br>POLISH / German | ① N. EAST<br>② Roxborough<br>③ Fishtown<br>④ S. Phila | EAST<br>AT ALL | ① N. Phila<br>② W. Phila<br>③ Lower City<br>ONE person<br>④ West MS Army |
|---|---|----------------|--|

Never put QUAKERS on THE JUNY, THEY demand too much of dance

Never put Teachers on, TOO Liberal

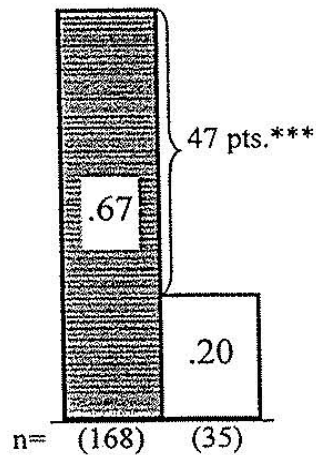
Some Blacks are helpful they know what's up  
he will bring the whites along (OLDER BLACKS)  
man are better (but it is unusually not the conservative)  
PROPERTY OWNERS

BATSON; never study because he is totally black alone

# Race Disparities in McMahon's Strikes – by Neighborhood Poverty Level

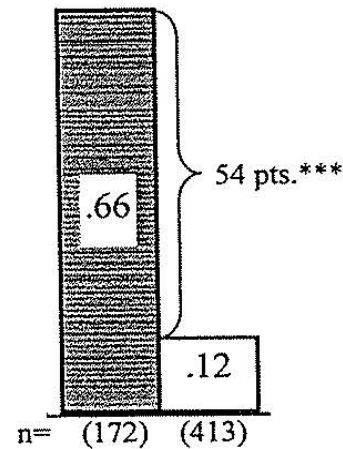
A  
20% or More of All Families  
in the Venire Member's  
Neighborhood With 1989  
Family Income Below the  
Poverty Line

(.59)

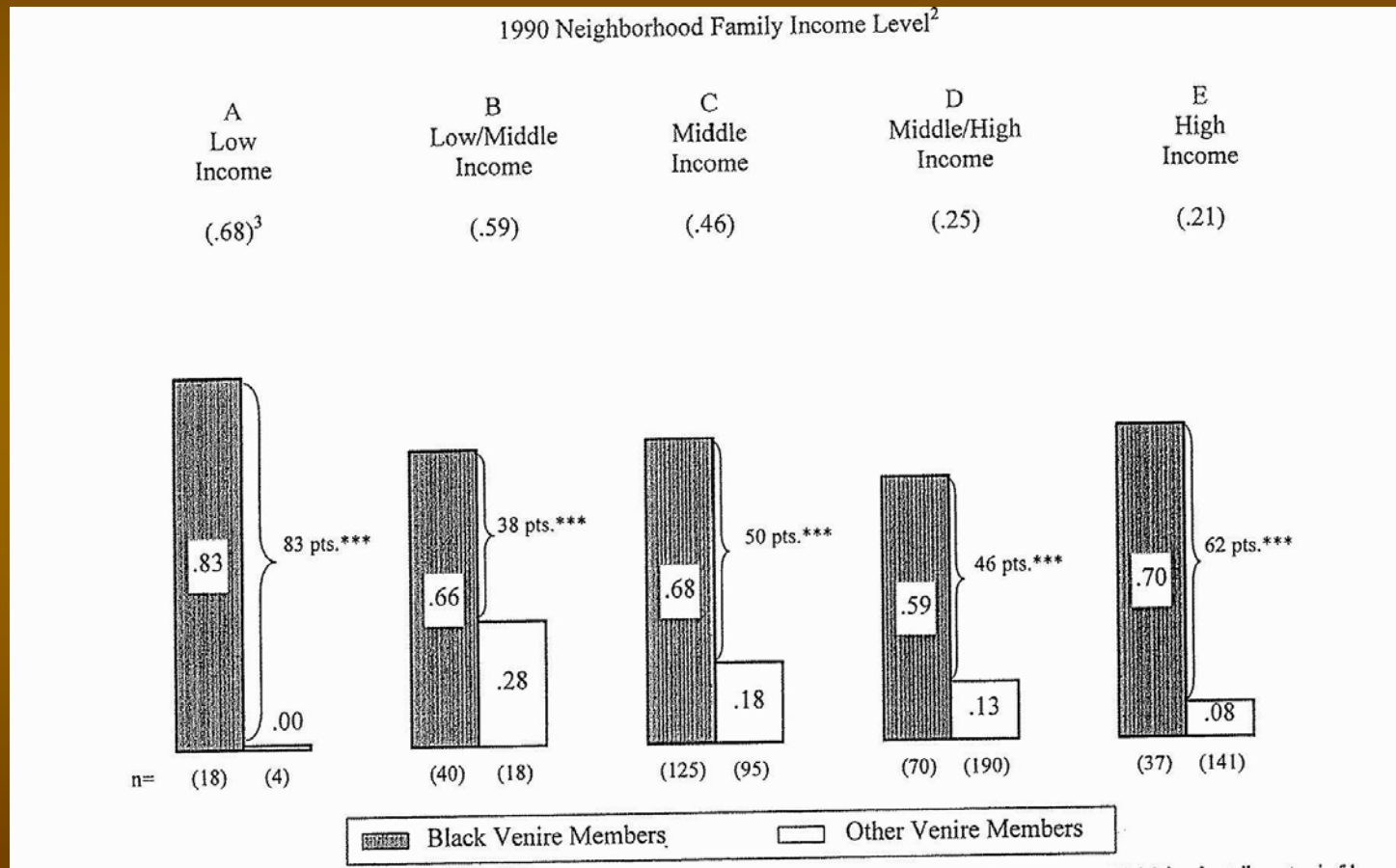


B  
Fewer Than 20% of Families  
in Venire Member's  
Neighborhood With 1989  
Family Income Below the  
Poverty Line

(.28)



# Race Disparities in McMahon's Strikes – by Neighborhood Median Family Income

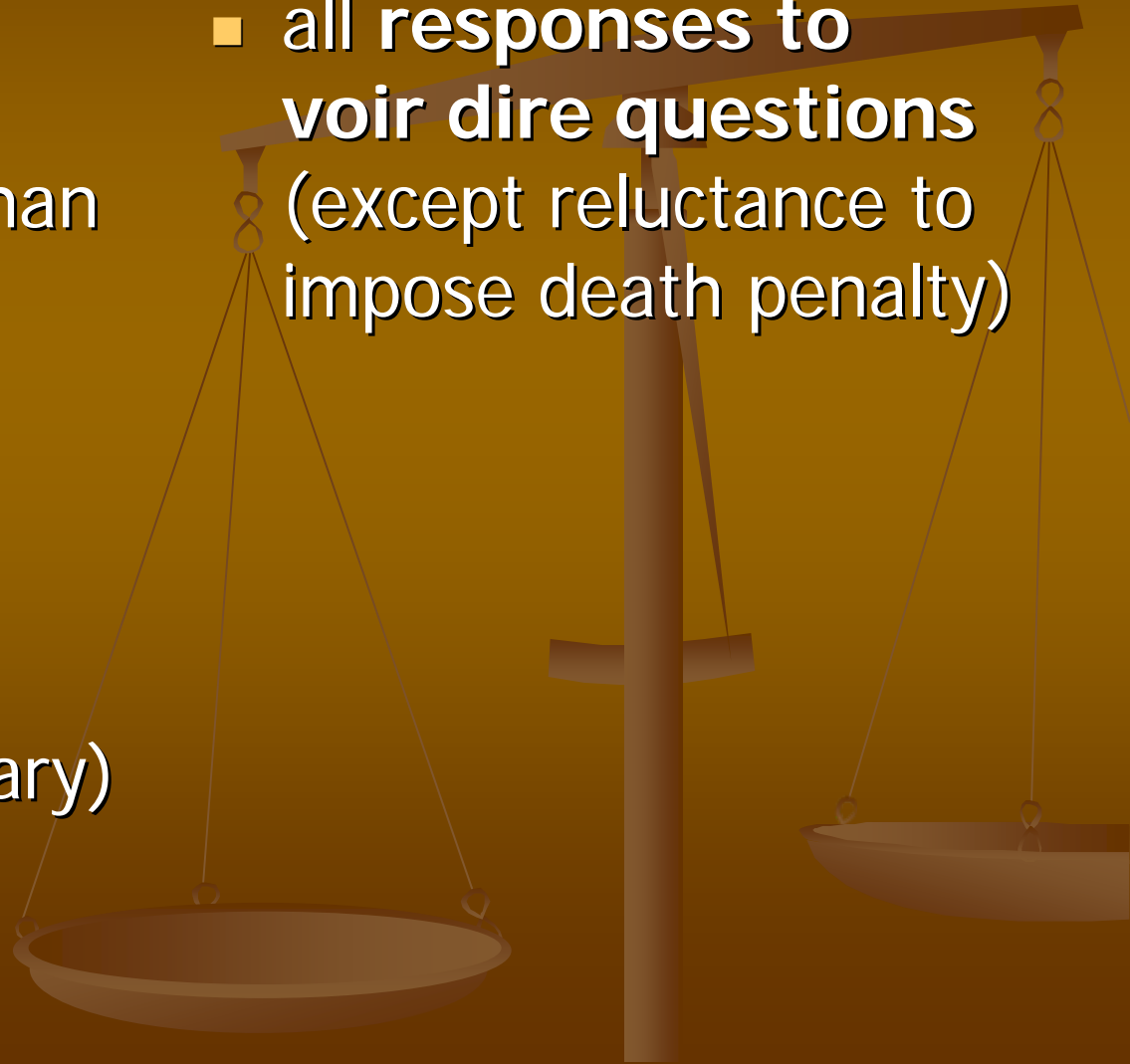


# Same Discriminatory Pattern

Blacks peremptorily challenged much more frequently than whites across

- all levels of **education**
- all **occupations** (except law enforcement/military)

- all responses to **voir dire questions** (except reluctance to impose death penalty)



# The Odds That This Occurred by Chance

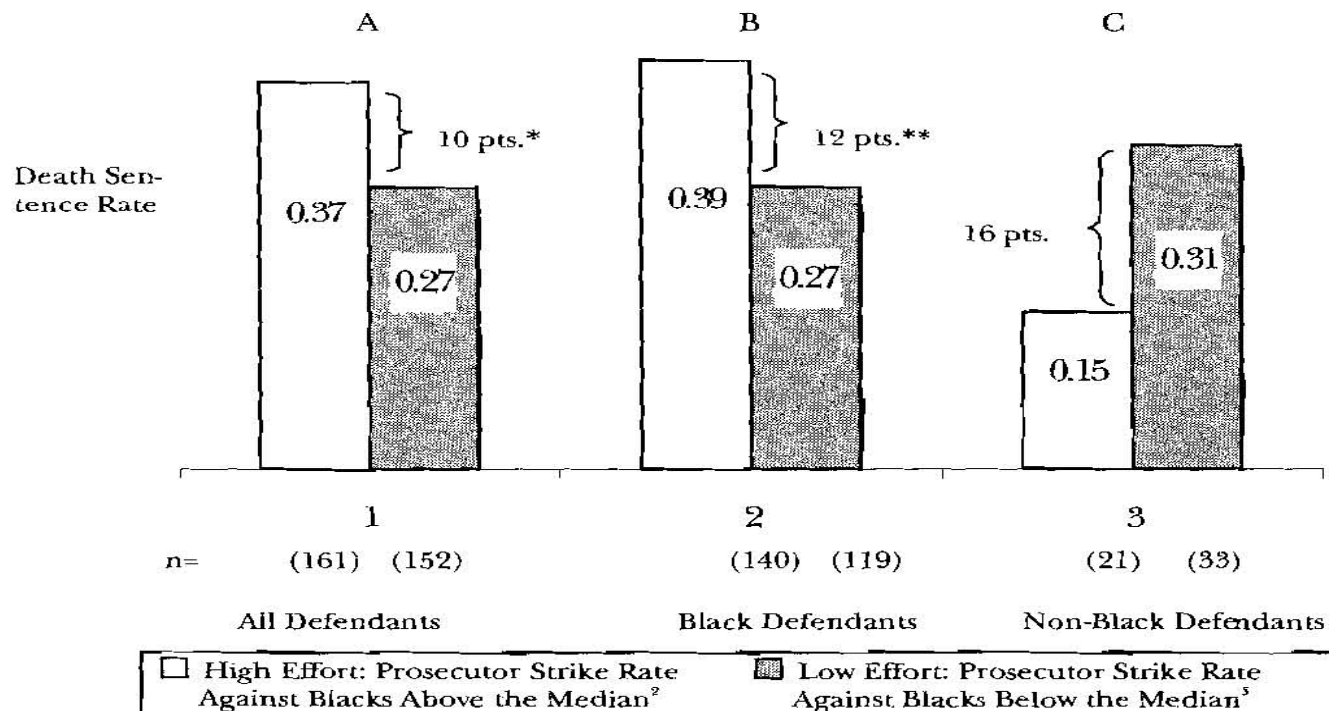
- **1 in a quadrillion**



# Does High Effort to Exclude Blacks Make a Difference?

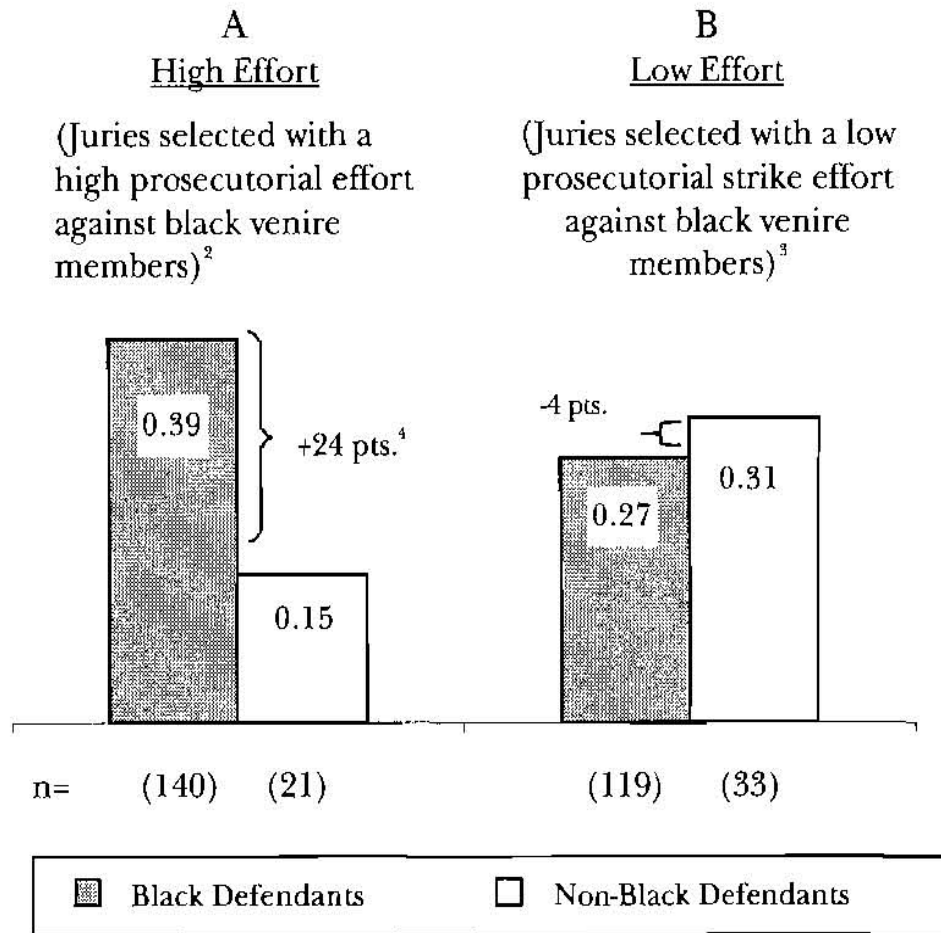
THE IMPACT OF PROSECUTORIAL STRIKE RATE EFFORT AGAINST BLACK VENIRE MEMBERS WITH EFFORT MEASURED IN TERMS OF STRIKE RATES ABOVE AND BELOW THE MEDIAN LEVEL FOR ALL CASES:  
PHILADELPHIA 1981-1997

(The bars indicate the death sentencing rate for each subgroup of cases after adjustment for defendant culpability.)<sup>1</sup>



RACE OF DEFENDANT DISPARITIES IN CAPITAL SENTENCING,  
CONTROLLING FOR THE PROSECUTOR'S EFFORT IN STRIKING BLACK  
VENIRE MEMBERS: PHILADELPHIA 1981-1997

(The bars indicate the average death sentence rate for each subgroup  
of cases after adjustment for defendant culpability.)<sup>1</sup>



# Other Neighboring States

- New York and New Jersey abolished the death penalty
  - Delaware and Ohio show race of victim discrimination
  - Maryland shows both race of victim and race of defendant discrimination
  - Pennsylvania needs comprehensive data collection and analysis
- 