

Supreme failures (reviewing Most Deserving of Death? An Analysis of the Supreme Court's Death Penalty Jurisprudence, by Kenneth Williams (Ashgate 2012))

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Problems with capital punishment in the United States are legion, and the bill of particulars is familiar. Incompetent lawyers represent some capital defendants. Some capital trials are infected with racial bias, and race continues to shape the selection of which capital defendants receive death sentences and which do not. Despite efforts by the United States Supreme Court to shield mentally ill and retarded individuals from execution, procedural protections have fallen short. As a result, mentally disabled people continue to be executed in death chambers across the country. Recent headlines also call into question the criminal justice system's ability to accurately sort the innocent from the guilty. We are now aware of scores of wrongful convictions, often thanks solely to D.N.A. testing, about which we never would have learned otherwise. Capital trials in particular, for whatever reason, have proven to be especially fertile grounds for exonerations.¹ We consistently discover error in capital cases at higher rates than in non-capital cases.² Numerous innocents on death row have been exonerated of the crimes that put them there.³

Surveying these problems, one might think that lawmakers would put the brakes on executions and permit the appellate and post-conviction review process greater time and opportunity to ensure that capital sentences are carried out in appropriate cases, but just the opposite has occurred. Instead of investing resources in the investigation, litigation, and review of capital convictions, Congress and many state legislatures have stripped

¹See Liebman et al. [1] (concluding based on extensive empirical study that capital convictions are "persistently and systematically fraught with alarming amounts of error").

²See Gross [2] (arguing that it is not coincidental that error rates in capital cases are higher than in non-capital cases because "the nature of capital cases multiplies the likelihood of error").

³To date, 18 people have been exonerated through DNA testing after having been sentenced to death. See Innocence Project website, available at <http://www.innocenceproject.org/know/> (last visited on January 24, 2013). See generally BRANDON L. GARRETT, CONVICTING THE INNOCENT (2011).

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