



BROKEN PROMISES

How A History of Racial Violence and Bias Shaped Ohio's Death Penalty

I think it's a quarter of the...urban black American youth come up with antisocial personality disorder.... This isn't a situation you can treat. ... **You have to put him out of society until it runs its course." (1998)**

I wonder how much we paid for that n****r's suit? (2016)

The trial court questioned her individually and she defended her use of the n-word by saying, "It's not a racial thing. I am not prejudice in any way. There's white people and black people and white n****rs and black n****s and Hispanic. I don't mean that as in disrespect."

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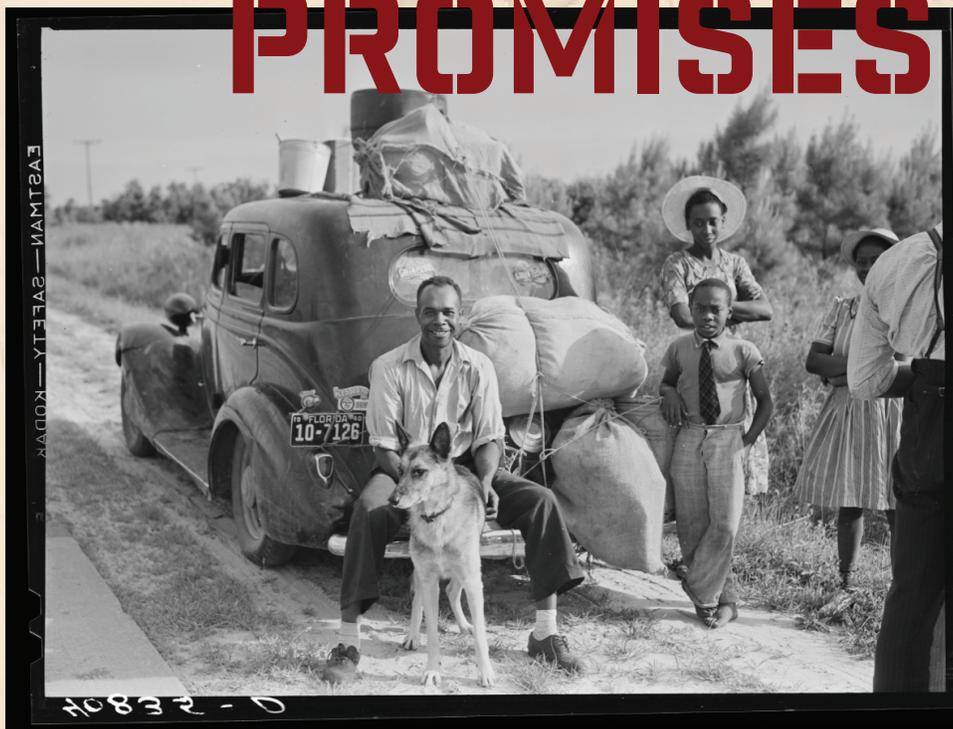
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BROKEN PROMISES



Before the Civil War, the Ohio River marked the borderland dividing the Southern slave states from the North. The Ohio was, in song and lore, the Jordan; across it lay the Promised Land.” **ROLL, JORDAN, ROLL.**

If we wish to break the promises that we made to the families of all these victims...then we owe it to our society and all those involved to own our decision to change our minds. ... The status quo is unacceptable.”

Attorney General David Yost

at a January 30, 2024 press conference about expanding methods to restart executions.



In 1803, Ohio became the first state carved out of the Northwestern Territory where slavery was not permitted. As such, Ohio held the promise of freedom and possibility in the minds of enslaved Black people in the South and later, after emancipation, during the Great Migration. While the state played an important role in movements such as the Underground Railroad, the absence of slavery in the state did not equate to an absence of racial biases.

Some of Ohio's earliest laws restricted the immigration of Black people into the state, made it illegal for businesses to hire them, and prevented Black people from serving on juries or testifying in court against white people, among other limitations. The Ohio Black Laws of 1804 and 1807 demonstrate that, from its inception, racial discrimination was baked into the state's very foundations.

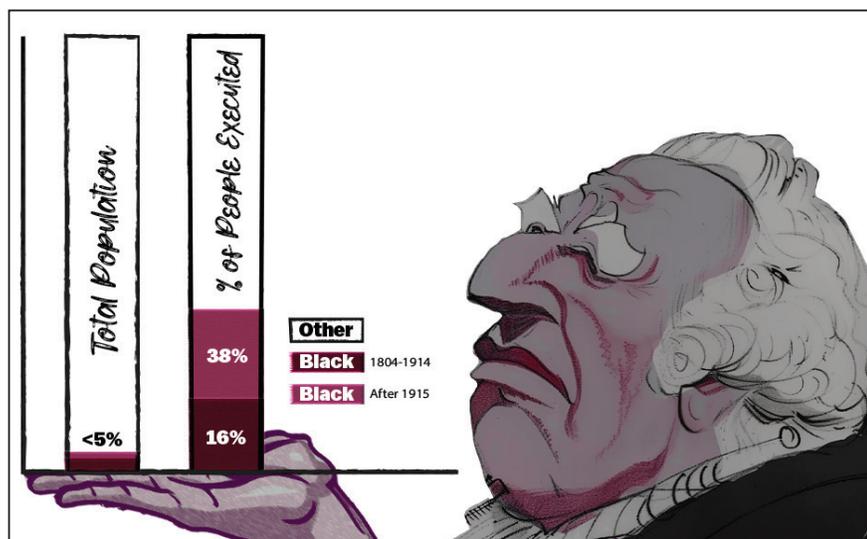
In January 2024, Ohio lawmakers announced plans to expand the use of the death penalty to permit executions with nitrogen gas, as Alabama had just done. At a press conference in support of the new legislation, Attorney General David Yost made several inaccurate statements about the use of the death penalty in Ohio, including the assertion that it is used primarily on people who killed multiple victims.² At the same time AG Yost advocates for executions to resume, a bipartisan group of state legislators has introduced a bill to abolish the death penalty based on “significant concerns on who is sentenced to death and how that sentence is carried out.”³ The competing narratives make it more important than ever for Ohioans to have a meaningful, accurate understanding

of how capital punishment is being used, including whether the state has progressed beyond the mistakes of its past.

One of the most profound consistencies between the historical use of the death penalty and the modern era is the overrepresentation of white victims in cases that result in death sentences. The data also demonstrate that race continues to play an important role in charging decisions, crime solving, and the handling of innocence claims. As Ohioans contemplate whether the death penalty will be part of its future, this report will provide critical context and analysis for that decision.



SINCE 1804



Black Ohioans Have Been Disproportionately Subject to the Death Penalty for Over a Century.

Ohio began executing people convicted of murder in 1804, the year after it gained statehood. The demographics of those executed in Ohio's early history shifted drastically in accordance with important changes in the state's Black population. Before the Great Migration—that is, the mass movement of Southern Black people to the North—whites comprised the majority of those executed. From 1804 to 1914, 27 of the 167 people executed in Ohio were Black (16%).⁴

The start of World War I increased the need for labor, thereby fueling a substantial increase in the number of Black people in the state. The proportion of Black people who were executed also increased greatly, with Black Ohioans comprising 38% of those executed after 1915.⁵ This increase is not solely explained by the increased population, however, as Black people

consistently made up less than 5% of the total state population.⁶

While the more troubling shift in execution demographics did not happen until the early 1900s, Ohio laid the groundwork for a racially disparate justice system over the course of the previous century.

Ohio's Black Laws made race a critical element of the criminal justice system.

Ohio was the first free state after the American Revolution to develop a code of laws specifically for Black people, and this racial approach became the prototype followed by other states in the Northwest Territory as they entered the Union.⁷ Early 19th century Ohio Black Laws imposed various legal restrictions on the rights of Black people in the state, not dissimilar to what would later become Black Codes in many Southern states. Constitutional historian Dr. Stephen Middleton writes, “Although the penal code of Ohio did not explicitly provide for a dual system for handling criminal cases, the Black Laws naturally made race an element in the criminal justice system.”⁸

There were three laws that cemented the defining role of race in criminal proceedings. Adopted in 1807, the “Negro Evidence Law” provided that “[n]o Negro or mulatto shall testify in a Court of Justice of Record, where the party in cause pending is white.” In other words, a white person could offer testimony against a Black defendant, but a Black person could

only testify in court against other Black people.⁹ Dr. Middleton accurately notes that “the statute thus offered a dual system of evidence because the state now shielded whites from prosecution based solely on [B]lack testimony.”¹⁰

The murder of Charles Scott in 1841 in Cincinnati provides an extreme example of how the Negro Evidence Law put Black people at severe disadvantage in criminal cases. Mr. Scott and his brother, both free Black men, were kidnapped by white men in Cincinnati and brought across the river to Covington, Kentucky where they were falsely arrested as fugitive slaves. Mr. Scott was incarcerated for six weeks until a white man from Cincinnati was able to vouch for his free status. He was later murdered by his kidnapers after he attempted to file a legal complaint against them. The primary witness to his murder was Mr. Scott's wife, who was also Black and therefore not legally permitted to testify against the white assailants. Luckily, and unusually, the trial judge was willing to disregard the letter of the law in this case and permitted

testimony from a mixed-race woman with a lighter complexion.¹¹ To be sure, though, African American newspapers often reported examples of Black people who were victims of crimes by white people that went legally unaddressed because there were no white witnesses willing to testify.¹²

The state also passed racial restrictions on juries in 1816 and 1831, officially barring Black people from jury service.¹³ Modern studies show that intentional race discrimination is still common¹⁴ and is a practice that has consequences beyond just denying Black people their right to serve as jurors. Non-diverse juries affect conviction and sentencing outcomes. Researchers who studied mock juries found that all-white juries are more likely to convict than racially diverse juries; when compared to actual jurors' sentencing patterns in capital cases, this pattern holds true.¹⁵ More specifically, studies have determined all-white juries are more likely to sentence Black defendants to death.¹⁶ Diverse juries also have been found to more thoroughly consider evidence and be more willing to address issues of race instead of ignoring them.¹⁷



I thought coming upon a free state like Ohio, that I would find every door thrown open to receive me, but from the treatment I received by the people generally, I found it little better than in Virginia. I found every door closed against the colored man in a free state, excepting the jails and penitentiaries.



John Malvin

a man formerly enslaved in Virginia, who traveled to Ohio for freedom in 1820¹⁸



Black men accused of raping white women were subject to extrajudicial killings, with mobs often attributing their actions to the absence of the death penalty for rape.

In many southern states, including neighboring Kentucky, Black men who were convicted of raping white women would often receive death sentences.¹⁹ In Ohio, however, there was no such penalty for rape.²⁰ Many Black men in Ohio were nonetheless fatally punished for these alleged crimes at the hands of a mob instead of a court.

William “Old Bill” Terry of Adams County is generally recognized as the first lynching victim in Ohio.²¹ Mr. Terry, a free Black man, was accused of raping a white woman in November 1856. Even though there was no evidence beyond the woman’s accusation, Mr. Terry was subject to multiple attempted lynchings in Ohio before he was ultimately hanged from a tree on the Ohio-Kentucky border. A *New York Times* article about the lynching wrote,

“The law of Ohio punishes rape by confinement in the penitentiary for twenty-one years. In Kentucky, rape by a negro upon a white woman is punishable with death. It is the opinion of some we have seen from the neighborhood, that if the law of Ohio had punished with death, the mob would not have taken the negro from jail to hang him the second time.”²²



While the article asserts that “some” people held this opinion, a review of other lynchings in the state demonstrates widespread support for this view among white Ohioans. Estimates of 1,500 to 5,000 people gathered outside the jail where Charles “Click” Mitchell, a 23-year-old Black man, was waiting to be transferred to the state penitentiary. Mr. Mitchell had pled guilty to raping a white woman in Champaign County in June 1897 and was sentenced to 20 years in prison. After the judge publicly lamented that Mr. Mitchell should have received the death penalty, the mob took him from jail to the public square where they brutally beat and hanged him.²³ The *New York Times* wrote that “[t]here has not and could not be a more inexcusable lynching”—not only because of the brutality involved, but also because it happened in Ohio instead of the

Deep South. The *Times* article concluded by drawing attention to the importance of location: “It would be disgraceful if it were told of a mining camp. But it is told of an old and settled town, fully equipped with schools and churches, which fairly represents the civilization of the Middle West of the United States. In that point of view it is extremely discouraging.”²⁴

Ignoring the photographs taken of the lynch mob in broad daylight, an all-white grand jury refused to indict anyone for Mr. Mitchell’s lynching, claiming a lack of evidence.²⁵ An article in *The Dayton Herald* wrote that “Urbana citizens have started a movement for a different punishment for rape in this State. An organization will be formed through the State, and a petition to the next Legislature circulated, making death the penalty for the crime.”²⁶



[It has always] been the policy of this state to exclude the Negroes and mulattos from her territory.

Cincinnati Post and Anti-abolitionist, January 22, 1842

Keeping Ohio “a white man’s republic”

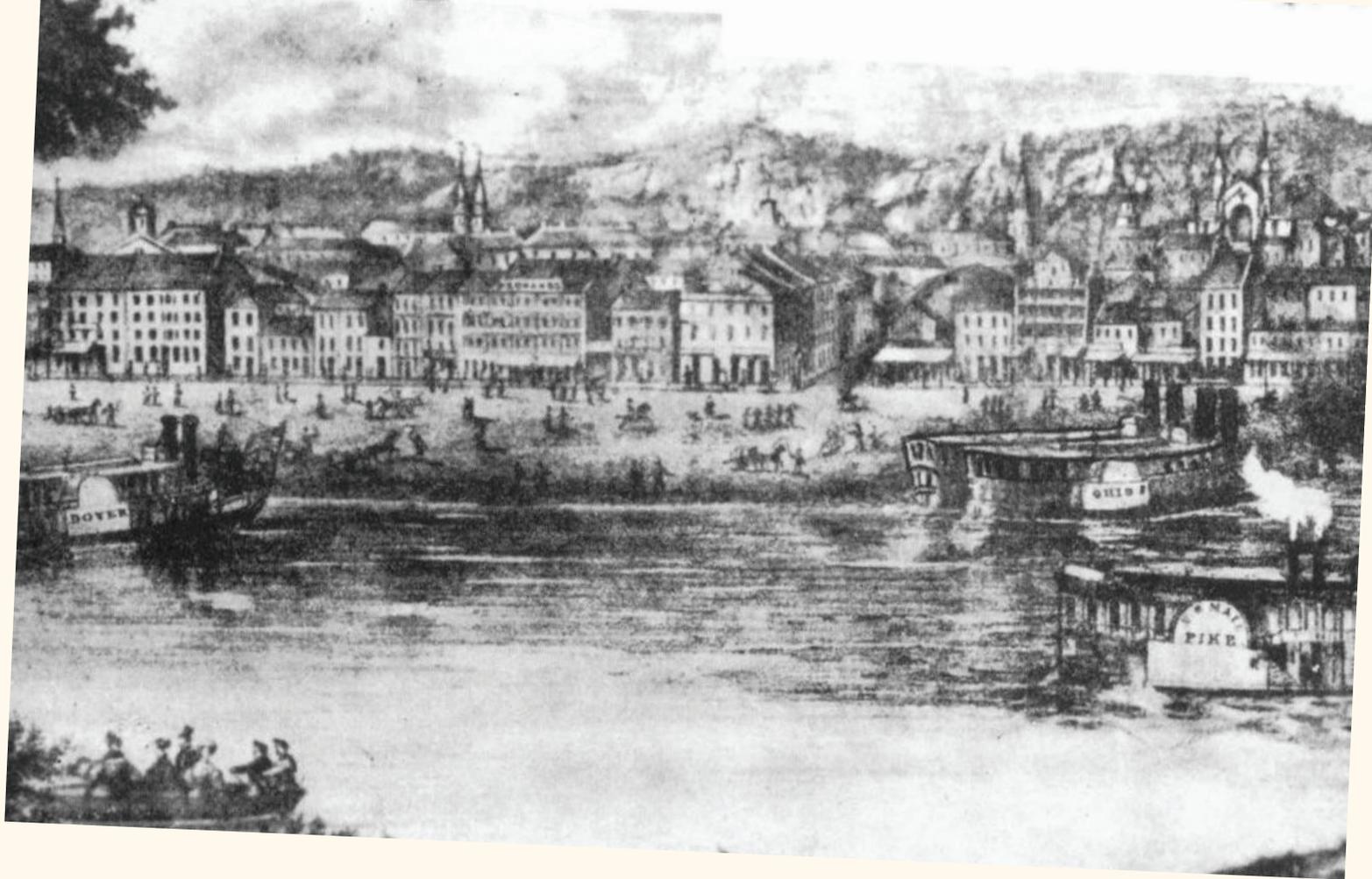
Lynchings were not the only method white people used to threaten and terrorize Black communities. The first documented incident of mob violence against Black communities took place in Hamilton County in 1829. Over the course of a century, mob violence became commonplace across the state. Since Ohio made its police officers “slave catchers,”²⁷ it is unsurprising that these attacks were often characterized by a lack of police protection.



Cincinnati Mob Violence — 1829

Historian Dr. Nikki M. Taylor has described the Cincinnati mob violence of 1829 as “one of the earliest examples in American history of a white effort forcibly to cleanse society of its Black population.”

MOB MENTALITY

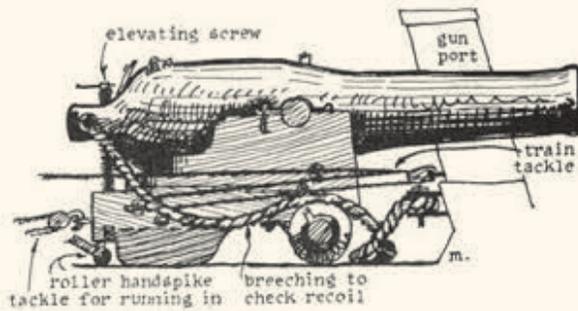


1829

The Black population in Cincinnati continued to grow in the early 1800s despite the state's strict immigration laws that were intended to keep Black people from moving to Ohio. Over the decade of the 1820s, the Black population in the city increased by more than 400 percent, and by 1829, Black people comprised nearly 10 percent of the city's population.²⁸ On June 30, 1829, white city leaders published a notice in the *Cincinnati Daily Gazette* informing Black residents that they had thirty days to post a \$500 bond as proof of their "respectability"—the equivalent of nearly \$16,600 in today's dollars. The notice stated, "The full cooperation of the public is expected in carrying these laws into full effect," effectively condoning, and perhaps even inviting, white violence against the Black community.²⁹ Local Black leaders responded by requesting a three-month extension to allow the Black community enough time to purchase

land and resettle in Canada. This request was ignored. Starting on August 15, 1829, a white mob began attacking Black homes, businesses, and properties for a full week of violence. Neither the police nor mayor took any action to stop the mob. By the end of the riot, 1,100 to 2,000 Black residents left Cincinnati as refugees, with many resettling in The Wilberforce Settlement in Ontario, Canada.³⁰ The Wilberforce Settlement was created with a vision to establish an organized colony where Black people could enjoy freedom, self-determination, and equality.³¹ Cincinnati's Black population would not rise to the same level as it was before this event for another decade.³²

MOB VIOLENCE VS. TRIAL BY LAW.



1841

Dayton Mob Violence — 1841

A determined group of white people in Dayton spent the first two months of 1841 fighting against the rising Black population in the city. The Black population in Dayton increased by more than 150 percent between 1829 and 1840, rising from 2,358 to 6,067. The series of attacks in Dayton in 1841 displayed three distinct types of antebellum mob violence. First, they mobbed an event headed by a noteworthy speaker who planned to discuss “the effects of slavery upon the morals, the policy, and finances of the country.” The abolitionists were unable to even begin their meeting because it was immediately taken over by the mob. Two days later, the mob shifted its focus from the abolitionist movement toward attacking the Black community directly. On January 25, 1841, a subset of the mob marched to “Africa,” a Black neighborhood in southeast Dayton. While the white

mob attempted to force its way into a Black man’s home, one of the white mob members was killed.³³ Four Black men were arrested, and the house was burned down. A week and a half later, another larger mob of around 100 men returned to the Black neighborhood and burned several cabins.³⁴ Law enforcement officers stood by and watched as the mob burned the homes, hoping “that the fury of the mob would be appeased.” Left without shelter in the middle of the night, some of the Black residents died from exposure in the sub-zero temperatures. Ultimately, sixty to seventy Black men, women, and children fled to Detroit for safety. None of the assailants were arrested even though their identities were known; three Black men were charged for the murder that occurred on January 25, and one was sentenced to life in prison.³⁵ Dayton’s Black population would not reach pre-“riot” levels until 1860.³⁶

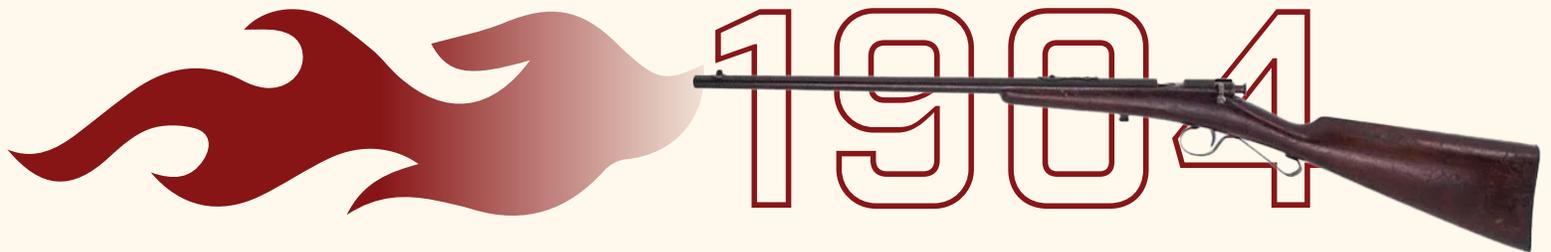
THOUSANDS OF MEN FORM THE MOB.

CLARK

Clark County Mob Violence — 1904

On March 7, 1904, a mob of more than 1,000 armed white men stormed the jail in Clark County to abduct and lynch a Black man named Richard Dickerson. After shooting and killing Mr. Dickerson, the mob carried his lifeless body to the most prominent intersection of the city and hung him from a telephone pole so members of the crowd could continue to shoot him. The *Lima Times Democrat* wrote of the lynching, “While the lynching is deplored, the community is almost a unit in believing the lawless element of the city has learned a wholesome lesson.” The mob’s thirst for blood was not yet quenched. The

next evening, another group convened to march on “the levee,” which was the Black district in Springfield. The crowd fired their revolvers and threw bricks into Black homes. A fire the mob set in a saloon quickly spread to the houses where Black families lived. In the early hours of the following morning, the mayor called on the militia to help restore peace since the 40 police officers present had simply watched the ensuing chaos and done nothing to stop the crowd. The militia was able to stop the mob from invading another Black settlement.³⁷

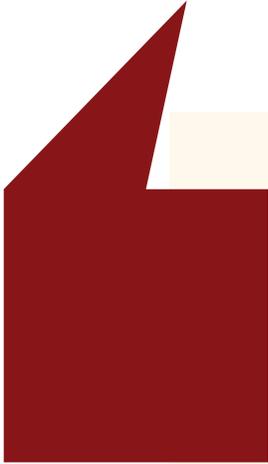


Race Affects the Modern Use of the Death Penalty in Ohio.

Since 1972, which is often considered the modern era of the death penalty, there have been 465 death sentences imposed in Ohio, with Cuyahoga, Hamilton, and Franklin counties responsible for 46% of all death sentences in the state.³⁸ Notably, these counties represent just 29% of the state's population,³⁹ demonstrating the geographic disparities in the use of capital punishment in Ohio. Over half of death sentences in the state have been imposed on Black defendants, though Black people comprise just over 13% of the state's population.⁴⁰

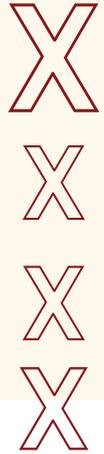
Over half of death sentences in the state have been imposed on Black defendants, though Black people comprise just over 13% of the state's population.





The death penalty is not applied fairly.
Race and place play an intolerable role
in deciding who lives and who dies.

**Former Governor Robert Taft, and former state
attorneys general Jim Petro and Lee Fisher**



Ohio’s current death penalty statute was implemented in 1981, shortly after the U.S. Supreme Court’s decision in *Lockett v. Ohio* (1978) overturned the state’s first capital punishment statute in the modern era. The Court’s holding in *Lockett* “opened a new era” of the death penalty by affirming a capital defendant’s right to have a wide range of mitigating evidence presented before the imposition of a death sentence.⁴¹ Many of the same people who helped create the 1981 death penalty statute and carry out death sentences in the years that followed have recently voiced their opposition to Ohio’s death penalty,

citing the absence of reforms to safeguard the rights of the accused. Former Ohio Supreme Court Justice Paul Pfeifer, former Governor Robert Taft, and former state attorneys general Jim Petro and Lee Fisher have all called for an end to the state’s death penalty. The latter three declared Ohio’s death-penalty system “broken, costly and unjust,” and further stated that the capital punishment law they helped to adopt and enforce “fails to protect or aid us in any way. It is time to retire Ohio’s death penalty.”⁴²

A bipartisan task force reviewed Ohio's administration of capital punishment and recommended several specific measures to reduce racial disparities. None have been adopted.

In 2011, the Chief Justice of the Supreme Court of Ohio and the President of the Ohio State Bar Association convened a joint task force to review the administration of Ohio's death penalty.⁴⁴

The bipartisan task force was specifically charged with reviewing the American Bar Association's Ohio Death Penalty Assessment Report and "determin[ing] if the administrative and procedural mechanisms for the administration of the death penalty are in proper form or need adjustment."⁴⁵ In 2014, the Joint Task Force to Review the Administration of Ohio's Death Penalty published a report with 56 recommendations that were designed to promote fairness in capital cases for both the state and the defendant.⁴⁶

In the 10 years since this report was released, just a handful of the recommendations have been adopted⁴⁷

and none of the specific recommendations to reduce racial disparities in death penalty cases have been adopted. These recommendations included mandatory specialized trainings for judges, prosecutors, and defense attorneys to recognize and protect against racial biases; mandating that judges report state actors acting on the basis of race; removing death penalty specifications that are disproportionately applied to Black defendants; creating a death penalty charging committee at the Ohio Attorney General's Office; and enacting legislation allowing for racial disparity claims to be raised and developed in state court through a Racial Justice Act.⁴⁸

Ohio did recently adopt a new law strengthening protections for vulnerable defendants with serious mental illnesses, which was one of the task force recommendations.⁴⁹ The serious mental illness bill was recommended after the earlier ABA report “noted that Ohio has a significant number of people with severe mental disabilities on death row, some of whom were disabled at the time of the offense and others whom became seriously ill after conviction and sentence.”⁵⁰ Ohio is just one of two states that exempts persons with severe mental illness from the death penalty.⁵¹

The law exempts from eligibility anyone with serious mental illnesses—such as bipolar disorder, schizophrenia, or PTSD—at the time of their crime. The law has important consequences for people of color as well. Research has found that

structural racism in the United States healthcare system⁵² negatively affects the ability of people of color to access and secure treatment for serious mental illnesses. White adults are more likely to be diagnosed with a serious mental illness and have higher mental health service utilization rates than Black and Hispanic adults, regardless of gender, poverty status, or age.⁵³ So far, at least eight people have been excluded from the death penalty or removed from death row as a result of this legislation.⁵⁴ In October 2023, a Hamilton County judge ruled that Alto Miles, a Black man, could not be tried capitally because of his schizoaffective disorder diagnosis. Mr. Miles’ plea hearing was rescheduled after he began yelling at people in the courtroom, at one point declaring, “I am God.”⁵⁵

Ohio's eight Black exonerees collectively spent nearly 200 years on death row for crimes they didn't commit.

Eight of Ohio's 11 death row exonerees are Black men. All eight of their cases were tainted by official misconduct, and all but one included witness perjury and/or false accusations. (In fact, 10 of Ohio's 11 wrongful convictions are at least partially attributed to official misconduct.) Ohio's Black exonerees collectively spent nearly 200 years on death row for crimes they did not commit.⁵⁶ The length of time between conviction and exoneration is also longer for Black exonerees than white exonerees, with Black death-row prisoners spending, on average, 4.3 years longer in prison before being exonerated.⁵⁷

A 2021 DPIC analysis of death-row exonerations found that defendants of color are disproportionately likely to have had their cases tainted by official misconduct—defined as misconduct by police, prosecutors, or other government officials. The same is true of perjury and false accusations, which very often occur in tandem with government misconduct. Official misconduct was a contributing

factor in the wrongful convictions of nearly 80% of Black death-row exonerees nationally. The likelihood that official misconduct contributed to a death-row exoneree's wrongful conviction is 2.7 times greater if the exoneree was Black than if they were white.⁵⁸

With 11 exonerations, Ohio is among the top 10 states with the most exonerations.⁵⁹ Six of the wrongful convictions originated in Cuyahoga County, which has produced more death-penalty exonerations than all but four other counties in the U.S.⁶⁰ According to the National Registry of Exonerations (NRE), 107 people have been exonerated in Ohio, 39 (36%) of whom were convicted of murder.⁶¹ While the NRE statistics are not limited to the death penalty, they demonstrate how pervasive wrongful convictions are in the state and suggest a culture of overzealous prosecutions and policing.

Ricky Jackson, Kwame Ajamu, and Wiley Bridgeman

Ricky Jackson and brothers Kwame Ajamu (tried as Ronnie Bridgeman) and Wiley Bridgeman were convicted and sentenced to death for the murder of an elderly white man in Cuyahoga County in 1975. They were convicted based solely on the false testimony of a 12-year-old Black child named Edward Vernon. No physical or forensic evidence linked them to the crime, and witnesses testified that they were all elsewhere when the crime occurred. In 2013, Mr. Vernon admitted that he had lied to the police when he said he witnessed the murder. An affidavit stated that “he tried to back out of the lie at the time of the line-up, but he was only a child and the police told him it was too late to change his story.” Mr. Vernon further testified in a 2014 hearing that when he tried to recant, the police told him he was too young to go to jail, but they would arrest his parents for perjury if he did so. This police pressure resulted in him agreeing to testify at the trials using crime scene details that the police fed to him. The police had never disclosed to the defense attorneys that Mr. Vernon attempted to recant his accusations prior to trial. All three men were exonerated in 2014 after having been incarcerated for more than 39 years. By the time he was released, Mr. Jackson had served 39 years, three months, and nine days—the longest time spent in prison of any exonerated defendant in U.S. history at the time.⁶² Cuyahoga County paid the trio a combined \$18 million dollars to settle lawsuits for their wrongful incarceration.⁶³

Over half of all Black people sentenced to death in Ohio were 25 years old or younger at the time of their crime.

The U.S. Supreme Court held in *Roper v. Simmons* (2005) that executing people under 18 years old is unconstitutional, relying in part on scientific evidence of juveniles' incomplete brain development.⁶⁴ The brain is not fully formed at 18 but instead continues developing until around 25. For males, brain maturation can take an additional two years⁶⁵; this delay does not factor in the deleterious effects that adverse childhood experiences can have on childhood brain development.⁶⁶ In August 2022, the American Psychological Association's Council of Representatives overwhelmingly voted in favor of a resolution opposing the death penalty for adolescents aged 18 to 20 because of this brain development timeline.⁶⁷



ROPER V. SIMMONS

The U.S. Supreme Court held in *Roper v. Simmons* (2005) that executing people under 18 years old is unconstitutional, relying in part on scientific evidence of juveniles' incomplete brain development.

A recent review of all death sentences imposed upon adolescents between 1972 and 2021 found that defendants of color were overrepresented among those sentenced to death for crimes they were charged with committing before turning 21 years old. Nationally, Black people account for 49% of people sentenced to death for crimes committed before turning 21.⁶⁸ The statistics are even more stark in Ohio: 66% of Ohio death-row prisoners aged 16–20 at the time of their crime were Black. Nearly a quarter of all Black people who have received death sentences in Ohio were 20 years old or younger at the time of their crime. Extending the analysis to late adolescents, aged 25 and under, reveals that 53% of all Black people sentenced to death in Ohio were 25 or under at the time of their crime.⁶⁹

There are significant racial implications for young Black capital defendants. Research has shown that Black youth are perceived as older and less innocent than white youth. These biases hold Black children to different standards than their white peers as it concerns guilt and punishment.⁷⁰ Young defendants—particularly those who have experienced significant childhood trauma, as many on death row have—are also susceptible to being coerced into giving false confessions given the unequal power dynamics between adolescent defendants and adult actors. Seven of Ohio’s 11 exonerees were age 25 or younger at the time of the crimes for which they were convicted.





Walter Raglin

A Hamilton County court sentenced Walter Raglin to death for the 1995 murder of a white man in Cincinnati's Over-the-Rhine neighborhood. Even though there had been nine other homicides in the same Cincinnati neighborhood that year, the prosecutor's office only charged Mr. Raglin, a Black man accused of killing a white man, with the death penalty; the victims in the other homicides were all Black.

He was 18 years old at the time of the crime,⁷¹ and 19 when he was sentenced to death.⁷² Like many people on death row, Mr. Raglin suffers from multiple vulnerabilities, including serious mental illness, brain damage, and chronic childhood trauma. In addition to scoring in the 10th percentile on an IQ test—meaning 90% of people his age scored higher—a neuropsychological examination revealed “some real impairment of his brain from repeated injuries and the repeated assaults of the substance abuse which impair his ability to thoughtfully and reasonably and adaptively plan and organize and conduct his behavior.”⁷³ The evaluation identified Mr. Raglin as having ADHD, personality disorders, coordination conditions, and depression; all indications of late-adolescence neurodiversity.⁷⁴

Mr. Raglin's sisters testified on his behalf during his sentencing hearing and explained the hardships their family faced after their parents' divorce. Growing up, Mr. Raglin's mother spent the family's money on crack cocaine and would disappear for days and weeks at a time. The family moved often, and their dwellings were usually infested with mice and insects. Mr. Raglin's mother permitted him to smoke cigarettes and drink alcohol starting at 9 years old, and by 10, she regularly ordered him to steal money from people to support her substance use. As a preteen, she had him accompany her to her drug deals, acting as her bodyguard.⁷⁵

While the jury heard some information about Mr. Raglin's traumatic childhood, the jury did not hear how this trauma impacted Mr. Raglin's brain development, including his actions and behaviors on the night of the offense. For example, his mother's alcohol use during her pregnancy with Mr. Raglin increases his risk of Fetal Alcohol Spectrum Disorder (FASD), a form of brain damage that impacts both cognitive and social functioning. The numerous traumatic brain injuries



Mr. Raglin incurred throughout his life may also contribute to the neuropsychological dysfunction revealed by subsequent testing.

The jury also did not hear that the State removed Mr. Raglin from his parents' custody and placed him in a group home where he was exposed to emotional, physical, and sexual abuse. During these early childhood placements, Mr. Raglin was noted to be "physically very mature for 12" and at one point, he was mistakenly placed in the adult jail.

In 2021, Mr. Raglin's attorneys filed a motion for a new trial arguing that his conviction and death sentence were the improper product of racial discrimination. The motion cited evidence from a recent study finding that he was five times more likely to be sentenced to death because of his race and the race of the victim in his case.⁷⁶

Mr. Raglin remains on death row.

Defendants are six times more likely to be executed for a case involving a white female victim than a Black male victim.

One of the most persistent forms of racial bias present in capital cases is the race-of-victim effect, whereby cases with at least one white victim are disproportionately likely to result in a death sentence.

The negative repercussions of the race-of-victim effect are disproportionately borne upon Black defendants. The race-of-victim effect also demonstrates one of the strongest ties between the historical application of the death penalty and its use in the modern day. Historically, people accused of harming white people—and white women especially—were more likely to receive some form of lethal punishment. Modern statistics reveal a similar bias exists in favor of white victims, and, again, white women in particular.

Professor Frank Baumgartner’s analysis of Ohio executions between 1976 and 2014 found that the race and gender of the crime victim play a substantial role in the state’s use of the death penalty. During that time frame, 65% of all executions were for crimes involving white victims, even though white victims only comprised

43% of all homicide victims. The disparity widens when factoring the gender of victims. Dr. Baumgartner’s analysis reveals that homicides involving white female victims are six times more likely to result in an execution than homicides involving Black male victims. He states that such “disparities are so great that they call in to question the equity of the application of the harshest penalty, adding to growing concerns that the death penalty is applied in an unfair, capricious, and arbitrary manner.”⁷⁷

Data show that the race of the victim also affects whether a crime will be solved in the first place. Nationally, Black males are simultaneously more likely to be victims of murder and the least likely to have their murder “cleared”—defined as an offense that results in an arrest and referral to prosecution. Thirty years of homicide data

In Ohio, 66% of homicide victims from 2013–2022 were Black. For comparison, 75% of death sentences in the state have been for cases that involved a white victim.

reveal that the racial disparity in homicide clearance rates has only widened with each decade since the 1990s.⁷⁸ In Ohio, 66% of homicide victims from 2013–2022 were Black.⁷⁹ For comparison, 75% of death sentences in the state have been for cases that involved a white victim.⁸⁰

Some of these racial disparities can be attributed to prosecutorial charging decisions. A review of all aggravated murder charges in Hamilton County from January 1992 through August 2017 revealed that prosecutors are 4.54 times more likely to charge a case with capital specifications if there is at least one white

victim, compared to similarly situated cases without white victims. The researchers found that, at multiple stages of their analysis, prosecutorial “charging decisions, rather than sentencing decisions, may be responsible” for the observed disparities between the race of victims and race of defendants. The authors concluded that, “even after accounting for strong predictors of charging decisions, race remained a powerful predictor of which cases received capital charges.”⁸¹ The concerns with unfettered prosecutorial discretion affect all defendants, regardless of race.

Ohio prosecutors are rarely held accountable for violating defendants' civil rights in criminal trials to secure convictions.

A joint investigation by Columbia Journalism Investigations, NPR and member station WVXU in Cincinnati, and The Ohio Newsroom analyzed prosecutorial misconduct and improper conduct claims in the state from 2018 to 2021. They found that over 100 prosecutors in Ohio have been found by courts to have violated standards meant to preserve a defendant's civil rights in criminal trials. About 1 in 4 claims of prosecutorial misconduct in the state ended in a finding of improper conduct, but nearly 80% of the errors were deemed legally “harmless” and therefore not sufficient to warrant a reversal.⁸²

At least 13 of the prosecutors found to have committed misconduct have had more than one finding of improper conduct, but none have been sanctioned by the Ohio Supreme Court. The rarity with which prosecutors are disciplined for misconduct allows prosecutors to act with near impunity and demonstrates a systemic failure to hold prosecutors accountable for their actions, according to experts.⁸³

DPIC has identified 20 exonerations or reversed capital convictions in Ohio that involved prosecutorial misconduct. More than half of the defendants in those cases were Black. The most common type

of misconduct found was withholding favorable evidence, particularly evidence that suggests another person was responsible for the crime.⁸⁴

The effects of prosecutorial misconduct are often profound but difficult to overcome on appeal. Defendants often find few avenues for relief because the legal hurdles after conviction are so high. A recent opinion from Sixth Circuit Court of Appeals Judge Helene N. White, concurring in the denial of relief for Kevin Keith underscores this point:

I concur in the judgment because I agree that Petitioner Kevin Keith fails



At least 13 of the prosecutors found to have committed misconduct have had more than one finding of improper conduct, but none has been sanctioned by the Ohio Supreme Court.

to clear the exceedingly high bar of [the statute]. There is no question that Keith would have had a better chance of acquittal had the Brady material been known to his defense team. But that is not the test. Rather, Keith must show that the withheld evidence, “if proven and viewed in light of the evidence as a whole,” would establish “by clear and convincing evidence” that, had the evidence been disclosed, “no reasonable factfinder would have found [him] guilty of the underlying offense.” ... I cannot say that it is more likely than not that no reasonable juror who completely discounted Yezzo’s expert testimony, and had the benefit of the police call logs and the information in the Ohio Pharmacy Board’s files incriminating the Melton brothers, would have found Keith guilty beyond a reasonable doubt....

However, I base my conclusion solely on the evidence at trial and the new evidence produced by Keith post-trial. I do not factor into my decision the additional information in the 1994 police reports because the State itself chose not to present it at trial....⁸⁵

Kevin Keith

Kevin Keith was sentenced to death for a triple homicide in Crawford County in February 1994. Mr. Keith has continuously filed appeals in state and federal courts, arguing the prosecution's use of eyewitness testimonies and forensic evidence was improper.⁸⁶ Mr. Keith argues that the police pursued him as a suspect from the start, using circumstantial evidence and false eyewitnesses testimony to identify Mr. Keith as the perpetrator. Police ignored a surviving victim's identification of an alternate suspect and a failed identification of Mr. Keith.⁸⁷ Experts stated that despite the vague description of a "large Black man," eyewitnesses routinely identified Mr. Keith due to the obstruction of his facial features and the accompanying options in the lineup. The defense also alleges a Brady violation, in which the prosecution withheld information that diminishes the credibility of the State's forensic analyst, Michelle Yezzo. Ms. Yezzo's personnel files indicate that she had been known to "stretch the truth to satisfy a department" and she had referred to her Black coworker as "a n*gger in the woodpile" and "n*gger b*tch."⁸⁸ Since his conviction, numerous people have called for Mr. Keith to be pardoned, for his sentence to be commuted, or for a new trial. In 2010, Mr. Keith was granted clemency by then-Governor Ted Strickland thirteen days before his scheduled execution, citing questionable evidence in the case.⁸⁹ Mr. Keith continues to serve a life sentence in Ohio.



Some Ohio capital defendants' trials were tainted by overt racial biases that went uncontested during trial.

While many Black capital defendants face structural and covert forms of racism, even some overt displays of racial bias have gone uncontested in capital trials. Malik Allah-U-Akbar, tried as Odraye Jones, was convicted and sentenced to death in Ashtabula County in 1998. Defense expert Dr. James Eisenberg diagnosed Mr. Akbar with antisocial personality disorder. Dr. Eisenberg falsely stated that this disorder affects “one to three percent of the general population” but was present in “15 to 25 percent, maybe even 30 percent [of] urban African American males.” Dr. Eisenberg further stated that “the best treatment for the antisocial, if the violations are severe, is to throw them away, lock them up.” Mr. Akbar’s attorney reiterated this prejudicial sentiment in his closing statement to the jury, saying “I think it’s a quarter of the... urban [B]lack American youth come up with antisocial personality disorder.... This isn’t a situation you can treat. ... You have to put him out of society until it runs its course.” The U.S. Court of Appeals for the Sixth Circuit overturned Mr. Akbar’s death

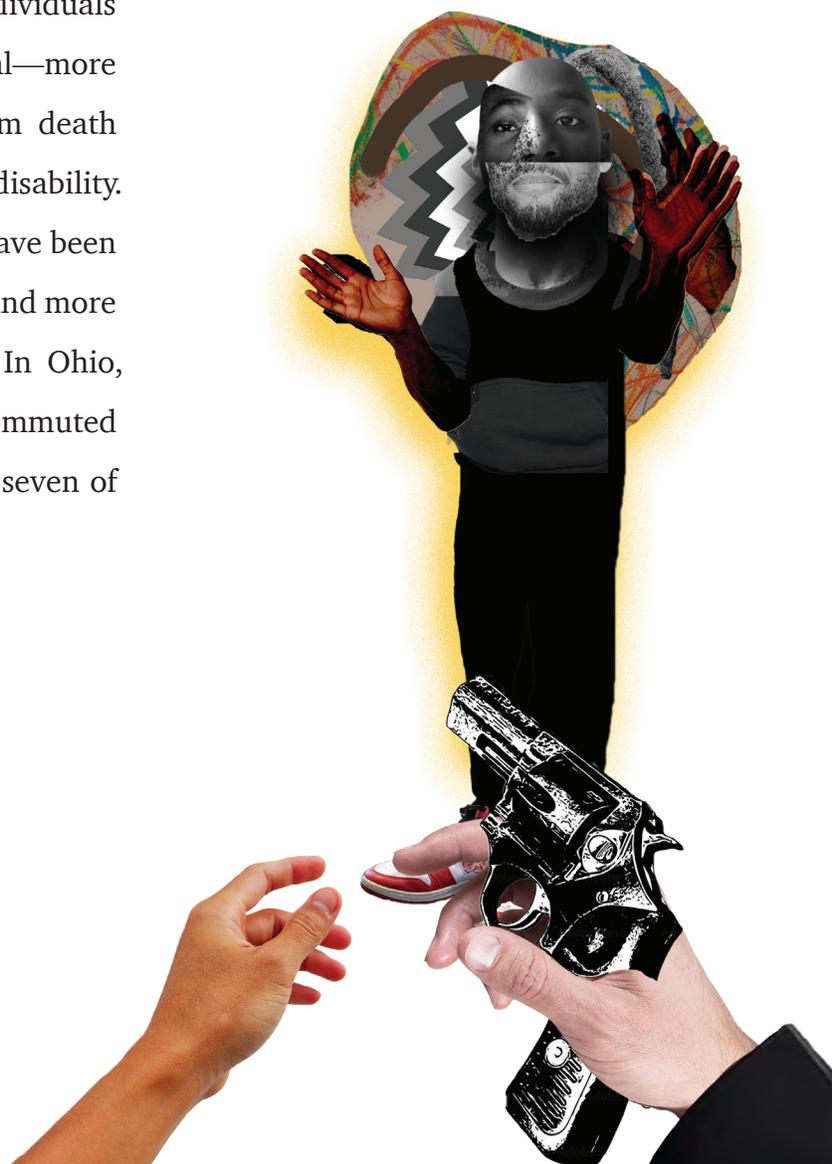
sentence in August 2022, holding that Dr. Eisenberg’s “racialized testimony...offends the Constitution on its face.”⁹⁰ Mr. Akbar is currently awaiting a new sentencing trial in which he has said he will represent himself.⁹¹

Ohio prosecutors have also presented expert witness testimony that “ethnic adjustments” should be applied to IQ tests and tests of adaptive functioning for people of color to make Black defendants with intellectual disability eligible for the death penalty. These “ethnic adjustments” take one of two forms typically: (1) adding additional points to an IQ test to compensate for perceived racial bias in IQ testing or (2) having an expert subjectively testify that any impairments in day-to-day functioning that would be rare for white defendants are not as rare for a person with the defendant’s racial, ethnic, and socio-economic background. The result is that courts find some Black people with intellectual disability ‘not impaired enough’ to be excluded from the death penalty.⁹² Namir Abdul Mateen (tried as James Were),

I think it's a quarter of the...urban black American youth come up with antisocial personality disorder.... This isn't a situation you can treat. ... You have to put him out of society until it runs its course." (1998)

a Black man sentenced to death in Scioto County, is currently on death row despite having an IQ score of 69, which is generally considered indicative of intellectual disability.⁹³

Since the U.S. Supreme Court's ruling in *Atkins v. Virginia* (2002)—holding that executing individuals with intellectual disability is unconstitutional—more than 140 people have been removed from death rows nationally because of intellectual disability. More than 80% of those whose sentences have been vacated for this reason are people of color, and more than two-thirds (69%) have been Black. In Ohio, nine men have had their death sentences commuted because of their intellectual disability, and seven of them were Black.⁹⁴



Lucasville Prison Riot

The 11-day riot at the Southern Ohio Correctional Facility (SOCF) started on Easter Sunday, April 11, 1993, and would become **the longest and deadliest prison riot in the state's history**. Falsely portrayed by the media as a “race riot,” the violence broke out when over 400 prisoners overpowered guards, took control of one of the three prison blocks, and held eight guards hostage. By the time peace was restored, one guard and nine prisoners were dead.

In the years leading up to the riot, activists, lawyers, and people incarcerated at SOCF had continuously made complaints about worsening conditions at the overcrowded facility that were ignored. In 1978, “horrendous conditions” at SOCF prompted three incarcerated people to cut off one or more of their own fingers and mail them to various federal departments in protest.⁹⁵ Later, a petition addressed to Amnesty International detailed various ways in which conditions violated the United Nations Minimum Standards for Treatment of Prisoners by subjecting prisoners to chemical mace, brutal beatings,⁹⁶ and chaining people in their cells. (The petition was confiscated as contraband and the authors were punished.⁹⁷) The warden's demand that all prisoners be tested for tuberculosis is widely considered the triggering event of the riot.⁹⁸ The TB test the warden chose to administer contained alcohol, which violated the religious beliefs of the Sunni Muslim prisoners. There were other ways to test for TB that did



not involve alcohol, but the warden ultimately planned to move forward with forcibly injecting them.

The hostages were freed after 11 days of back-and-forth negotiations, when prison administrators finally agreed to 21 demands from the prisoners to address prison conditions. Forty-eight prisoners were later convicted of violent crimes. Five were charged as the leaders of the riot and sentenced to death; they became known as the Lucasville Five. Three of them are Black (two are Sunni Muslims), and two are White former members of the Aryan Brotherhood. This unlikely group remained strongly unified at trial with at least one of the Aryan members sentenced to death in part because he would not testify against his Black co-defendants.⁹⁹ All five have maintained their innocence.

1. NO REP AGAINST ANY INMATES
2. NO SELECTIONS OF SUPPOSED LEADERS!
3. MEDICAL PERSONNEL FOR THE INJURED.
4. REASONABLE PAY PER WORK ASSIGNMENTS.
5. LEADERS: RELIGIOUS & MEDIA TO OVERSEE THE I.E., NEWSPAPERS, T.V. STATIONS, ...!
6. ABOLISH UNIT-MANAGEMENT, ALSO SECURITY STATUS RATING, (MAX 3 & 4).
7. NO MORE FORCED INTEGRATED CELLING.
8. LOW SECURITY INMATES SHOULD-NOT BE IN S.O.C.F.
9. BAN THE USE OF UNSUBSTANTIATED CRIMINAL RECORDS, DISMISSED R.I.B. & COURT CASES, USED BY ... AT PAROLE HEARING.
10. REDUCE THE OVERCROWDING PRISON CONDITIONS IN OHIO.
11. FOOD PREPARATION AND VARIETY NEEDS TO BE SERIOUSLY UPGRADED.

The concerns raised by advocates for the Lucasville Five about their prosecutions are similar to concerns raised in other Ohio capital prosecutions. For example, several prisoners stated under oath that they were threatened with capital prosecution if they did not act as a witness for the state.¹⁰⁰ Interview transcripts also suggest that some of the informants were given deals in exchange for their testimony.¹⁰¹ Further, there was no physical evidence tying the Lucasville Five to the prison guard's murder. The state's case rested almost entirely on witness testimony and several "tunnel tapes," which were audio recordings secretly captured by the FBI during the riot.¹⁰²

At least one of the men sentenced to death, Namir Abdul Mateen (tried as James Were), may be intellectually disabled. A prison teacher with a special-education background testified that Mr. Mateen tested in the lowest of three classifications and functioned at a second- or third-grade level. She also stated that he would have been considered developmentally handicapped.¹⁰³ Mr. Mateen has consistently scored a 69 on IQ tests since his first test at 7 years old. His childhood scores were also inflated because of "ethnic adjustments."¹⁰⁴

“I WONDER HOW MUCH WE PAID FOR THAT N****R’S SUIT.”



Black capital defendants have been sentenced to death by jurors who believed Black people are inherently more violent than people of other races.

Ohio is one of just a few states that limits potential jurors to those who are registered to vote. Individual counties have the authority to expand their lists beyond voter rolls, but major death sentencing counties like Hamilton have not done so.¹⁰⁵

Multiple Black capital defendants have raised claims that their jury pools were tainted by people with significant racial biases. In 2020, the Ohio Supreme Court granted a new trial to Glen Bates, a Black man sentenced to death in Hamilton County in 2015, because his attorney had not objected to allowing a racially biased juror to serve on his jury. Before voir dire, several potential jurors agreed with the statement on a questionnaire that “[s]

ome races and/or ethnic groups tend to be more violent than others.” One white juror indicated that she “strongly agree[d]” with this statement and further specified that “Blacks” were more violent than other races. The same juror indicated that she “sometimes” did not feel comfortable being around Black people. Mr. Bates’ attorney failed to question this juror about her answers or her racial bias, challenge her for cause, or exercise one of his remaining discretionary strikes to prevent her from serving on the jury. The Ohio Supreme Court ruled 5-2 to reverse Mr. Bates’ conviction and death sentence and granted him a new trial. The majority opinion stated that the participation of this juror created

MONSIEUR

A decorative graphic at the top of the page. It features the word "MONSIEUR" in a large, bold, dark blue serif font. Below the letters, there are four dark blue asterisks of varying sizes, arranged in a row. The background is white.

a constitutionally unacceptable risk that a “powerful racial stereotype—that of black men as ‘violence prone’—infected the jury’s deliberations.”¹⁰⁶

Three potential jurors in Damantae Graham’s jury pool made racially biased remarks before and during voir dire. In response to the question “Do you have any specific health problems of a serious nature that might make it difficult or uncomfortable for you to sit as a juror in this case?” one prospective juror wrote, “Do not like n*ggers.” A second prospective juror said, “I wonder how much we paid for that n*gger’s suit.” This juror was later excused for bias in favor of the death penalty, not because of his racist comments. Finally, when asked whether the imposition of the death penalty was automatic in his mind, a third prospective juror answered, “No, you

can’t just go out and lynch somebody like, you know, in 1835 or something.” Graham was sentenced to death in 2016, though his sentence has since been overturned.¹⁰⁷

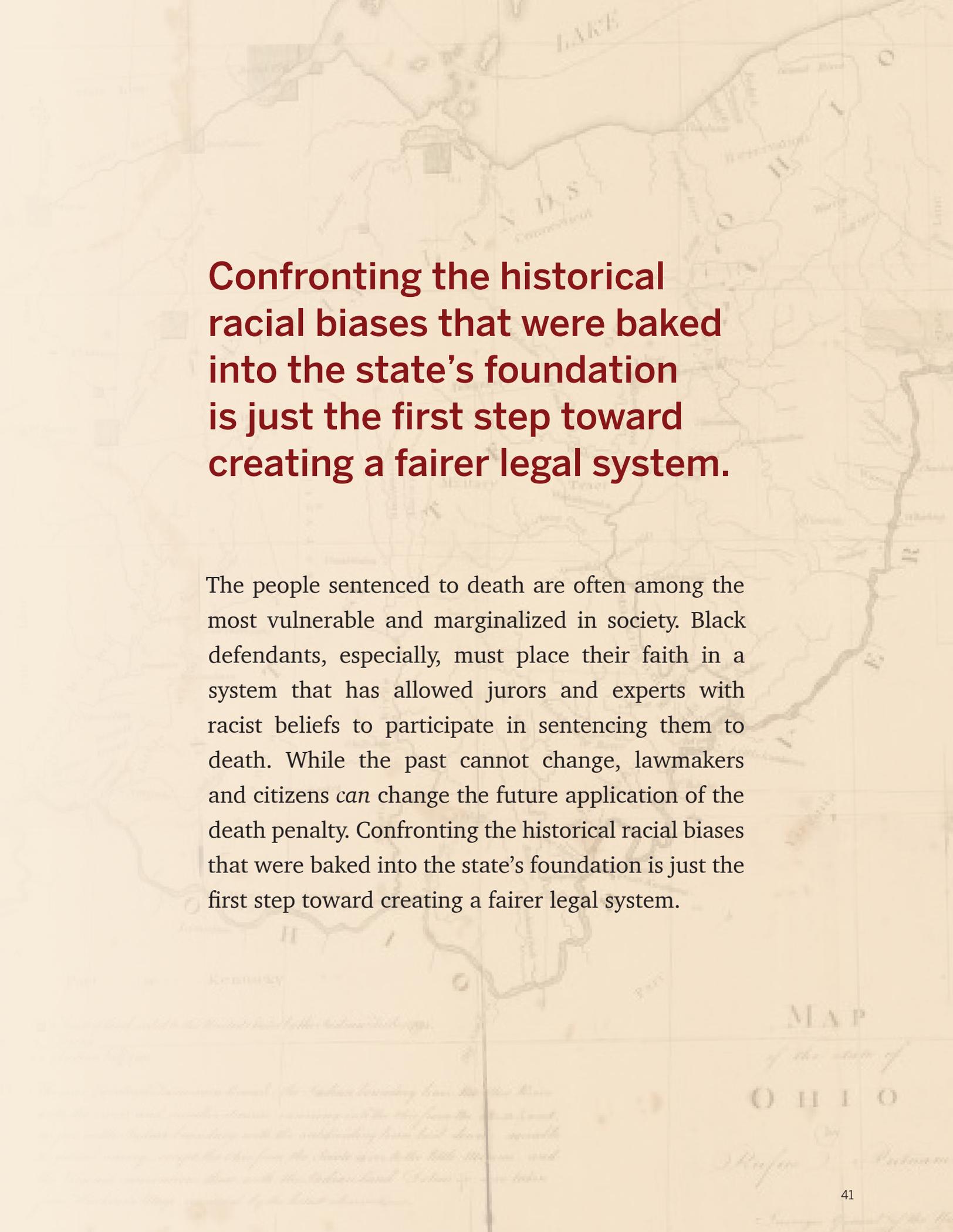
Four seated jurors in Terry Lee Froman’s 2014 capital trial marked “agree” (3) or “strongly agree” (1) with the statement “[s]ome races and/or ethnic groups tend to be more violent than others.” Mr. Froman’s attorney failed to challenge the seating of these jurors. The Ohio Supreme Court admitted that at least one of the jurors’ “questionnaire responses indicated that she had racially biased views,” but held that the prosecutor had properly rehabilitated her, and she had assured the trial court that she could be impartial.¹⁰⁸



Mural by Katie Golonka Columbus, Ohio

Conclusion

As the current debate over the use of the death penalty in Ohio continues, this report provides historical information, context, and data to inform the critical decisions that will follow. Many modern death sentencing trends demonstrate that race continues to cast a shadow over capital punishment. The race of a defendant's victim still plays an outsized role in charging decisions and crime solving rates.



Confronting the historical racial biases that were baked into the state's foundation is just the first step toward creating a fairer legal system.

The people sentenced to death are often among the most vulnerable and marginalized in society. Black defendants, especially, must place their faith in a system that has allowed jurors and experts with racist beliefs to participate in sentencing them to death. While the past cannot change, lawmakers and citizens *can* change the future application of the death penalty. Confronting the historical racial biases that were baked into the state's foundation is just the first step toward creating a fairer legal system.

Endnotes

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12. Stephen Middleton, *The Black Laws: Race and the Legal Process in Early Ohio*, 52 (2005); [*On This Day — Apr. 01, 1807: Ohio Prohibits Any Black Person from Testifying Against a White Person*](#), Equal Justice Initiative (last visited March 10, 2024).
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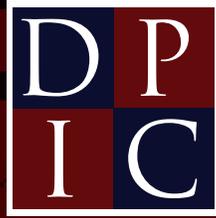
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 91. Shelley Terry, [*Odraye Jones moved to Ashtabula County*](#)

- [jail in preparation for re-sentencing trial](#), Star Beacon (Mar. 6, 2024).
92. [Is Racially Biased Testimony Wrongly Subjecting Intellectually Disabled Defendants to the Death Penalty?](#), Death Penalty Info. Ctr. (Feb. 16, 2018). See also Robert Sanger, [IQ, Intelligence Tests, 'Ethnic Adjustments' and Atkins](#), 65 Am. Univ. L. Rev. 87 (2015).
 93. Robert Sanger, [IQ, Intelligence Tests, 'Ethnic Adjustments' and Atkins](#), 65 Am. Univ. L. Rev. 87, 111 (2015).
 94. [Reversals Under Atkins](#), Death Penalty Info. Ctr. (last visited Mar. 10, 2024).
 95. [Two Inmates Sever Fingertips To Protest Prison Conditions](#), The Wash. Post (Jan. 11, 1978); Staughton Lynd, [Lucasville: The Untold Story of a Prison Uprising](#), 17 (2011).
 96. Some of these brutal beatings resulted in death. For example, 12 white guards participated in Jimmy Haynes' death in 1983. Mr. Haynes was a Black man who was described as "mentally disturbed." He died after one guard jumped on Mr. Haynes' neck while another held his nightstick under it. During a civil trial, a nurse testified that two days before his murder, Mr. Haynes had pulled her aside and said, "Miss Ma Bell...you just don't understand. They're [the guards] going to kill me." In another instance, two Black men accused of touching white nurses were found dead in solitary confinement after being beaten by guards, none of whom were criminally charged. John Perotti, [Justice for Jimmy Haynes?](#), Prison Legal News (Aug. 15, 1991); Staughton Lynd, [Lucasville: The Untold Story of a Prison Uprising](#), 17 (2011).
 97. Staughton Lynd, [Lucasville: The Untold Story of a Prison Uprising](#), 16 (2011); Kamala Kelkar, [Man on death row punished after appearing in Netflix show 'Captive'](#), PBS (Mar. 5, 2017).
 98. Jo Ingles, Daniel Konik, and Karen Kasler, [Lucasville Legacy: A historic, deadly prison riot prompted changes in Ohio's lockups](#), Statehouse News Bureau (Apr. 28, 2023); Staughton Lynd, [Lucasville: The Untold Story of a Prison Uprising](#), 24 (2011).
 99. The prosecutor who tried George Skatzes told the jury, "Mr. Skatzes had his opportunity and he chose not to take it. Had Mr. Skatzes taken it, ... Mr. Skatzes would be up there on the witness stand testifying..." Staughton Lynd, [Lucasville: The Untold Story of a Prison Uprising](#), 2 (2011).
 100. Staughton Lynd, [Lucasville: The Untold Story of a Prison Uprising](#), 99-100 (2011).
 101. In one interview, Ohio State Highway Patrol troopers bargained with a prisoner with an upcoming parole hearing, saying "But now, look, you've talked to us. ... Are we going to go to the prosecutor and say, 'Hey, think we ought to fry this guy.' I can tell you right now—no. ... I'm not here to make deals but I will... go to bat, says 'Look, he's told us all this information. Good information.' ..." Staughton Lynd, [Lucasville: The Untold Story of a Prison Uprising](#), 101-103 (2011). The author of this report is grateful for Dr. Staughton and Alice Lynd's work investigating and documenting the Lucasville Prison Riot. Including the perspectives of those directly involved in the uprising is essential for having an informed conversation about this event. The author would also like to thank Alice for permitting DPIC to reproduce an image from the cited book.
 102. The tunnel tapes were extremely unclear. An officer working with the prosecution—who claimed to know the voices of each party—and a court reporter worked

together to create transcripts. The reporter testified that these transcripts did not “meet the standard that I’m used to as a court reporter,” but they were still used. *State v. Were*, 2005-Ohio-376, 5–7.

103. *State v. Were*, 2005-Ohio-376, 17.
104. *State v. Were*, 2005-Ohio-376, 18–19.
105. Mark Curnutte, *Not registered to vote? You won't be a juror*, The Enquirer (Oct. 30, 2016); Mark Curnette, *Judge, civil rights groups want Hamilton County to expand jury pool*, The Enquirer (May 25, 2017).
106. *Ohio Death-Row Prisoner Granted New Trial After Lawyer Allowed Racially Biased Juror to Sit on Jury*, Death Penalty Info. Ctr. (Mar. 19, 2020).
107. *State v. Graham*, 164 Ohio St.3d 187 (Ohio 2020).
108. *State v. Froman*, 162 Ohio St.3d 435 (Ohio 2020).



BROKEN PROMISES

How A History of Racial Violence and Bias Shaped Ohio's Death Penalty.

The Death Penalty Information Center is a national non-profit organization serving the media and the public with analysis and information on issues concerning capital punishment. Founded in 1990, DPIC promotes informed discussion of the death penalty by preparing in-depth reports, conducting briefings for journalists, and serving as a resource to those working on this issue. DPIC is funded through the generosity of individual donors and foundations, including the Roderick MacArthur Justice Center; the Open Society Foundations; the Fund for Nonviolence; the Tides Foundation; M. Quinn Delaney; and the Vital Projects Fund.

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Report Design By : African American Graphic Designers / AAGD.co

I think it's a quarter of the...urban black American youth come up with antisocial personality disorder.... This isn't a situation you can treat... You have to put him out of society until it runs its course" (1998)

I wonder how much we paid for that n****r's suit? (2016)

The trial court questioned her individually and she defended her use of the n-word by saying, "It's not a racial thing. I am not prejudice in any way. There's white people and black people and white n****rs and black n****s and Hispanic. I don't mean that as in disrespect.