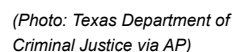


Supreme Court must stand against race bias: Column

The court has a chance to make clear we will not tolerate explicit racial bias in sentencing.



Under Texas law, a defendant can be sentenced to death only if the prosecutor is able to convince the jury that the defendant is likely to be a “future danger.” At his trial in Houston in 1997, Buck was represented by attorneys who inexplicably introduced “expert” testimony that Buck was more likely to be a “future danger” specifically because he is black.

Alberto Gonzales: Justice system wrongs too many

[\(http://www.usatoday.com/story/opinion/2016/02/10/exonerations-dna-convicted-forensic-criminal-justice-column/80056392/\)](http://www.usatoday.com/story/opinion/2016/02/10/exonerations-dna-convicted-forensic-criminal-justice-column/80056392/)

After repeatedly hearing this racist message, the jury agreed with the expert and Buck was promptly sentenced to death.

The Constitution guarantees all Americans a fair trial. By definition, that means a trial free of racial discrimination. This principle is especially important in a matter of life and death. Yet, despite our involvement in thousands of criminal cases, we have never seen such explicitly racist testimony admitted at trial. We have certainly never seen defense counsel introduce such wildly prejudicial, deeply inflammatory evidence. That the prosecution would then use the fact that Buck is black to support its argument that he should be sentenced to death is a grotesque abuse of power that simply cannot stand.

Unfortunately, Buck was not the only person sentenced to death in Texas after such racially biased testimony was admitted at trial. In fact, there were seven cases (<https://www.texasobserver.org/study-minorities-more-likely-to-get-death-sentence-in-harris-county/>) in which the same “expert” testimony was elicited. In 2000, the then-Texas attorney general admitted that testimony linking race to dangerousness was unconstitutional. At the time, he promised to admit error in all seven cases and allow each defendant a new sentencing hearing, free of racial bias.

Two African Americans and four Hispanics received new hearings and were sentenced again to death. Buck, the seventh defendant, was the only one who never got a new hearing.

In Scalia, criminal defendants have lost a great defender: Paul Clement

[\(http://www.usatoday.com/story/opinion/2016/02/19/scalia-funeral-constitution-defendants-jury-paul-clement-column/80575460/\)](http://www.usatoday.com/story/opinion/2016/02/19/scalia-funeral-constitution-defendants-jury-paul-clement-column/80575460/)

POLICING THE USA: A look at race, justice, media (/policing/)

No defense attorney should introduce such racially tinged evidence, no prosecutor should rely on it, and no judge – or justice – should allow an execution based upon it to stand.

Duane Buck was sentenced to death because he is black. His case is a perfect example of why so many Americans, especially people of color, lack faith in the criminal justice system. The racial disparity, poor lawyering and unfairness that infect Buck’s case and countless others contribute to the kind of distrust in the system that will ultimately end the death penalty.

GET THE NEWS

Duane Buck could face execution without ever receiving a fair sentencing hearing. The Supreme Court, his last stop in our court system, can correct this egregious error. We urge it to do so.

Mark Earley is the former Republican Attorney General of the Commonwealth of Virginia. Timothy K. Lewis was a judge on the U.S. Court of Appeals for the Third Circuit.

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