

A Fact and Statistic Heavy Exemplar Argument: "The Death Penalty Has A Gender Bias" – Amanda Oliver

At 12:21 a.m. ET on Wednesday, September 30, Kelly Gissendaner became the 16th woman executed in the United States since the U.S. Supreme Court reinstated the death penalty in 1976. The Georgia woman was sentenced to death in 1998 for convincing her boyfriend to shoot her husband and was the first woman in 70 years to be executed in that state. However, in these same 39 years, the United States has executed 1,399 men. Even death row shows a gender bias, where of the 3,035 people on death row, only 54 of them are women. Why is it so rare for a woman to be put to death?

One argument is that men commit more murders and death penalty-worthy crimes than women. The numbers back this theory, with men at fault for 90 percent of the 15,094 murders committed in 2010 (the most recent year for which the FBI has data). What the numbers do not take into account is the fact that not all murders are considered eligible to face the death penalty. Additionally, how the murder was committed (not to get too graphic) also plays a role in sentencing. The factors that go into how a person gets the death penalty tends to favour women (which I will explain more below). Even with these numbers, this argument is flawed. When the statistics are adjusted for the larger number of murders by men, women are still sentenced to death at a lower rate.

With the fact that we still need feminism to gain basic equality in the United States, there's no question that we still live in a very paternalistic society. But is this belief that men need to "protect" women impacting whether they receive the death penalty? Death Penalty Information Center Executive Director Richard Dieter told *Business Insider* that it's as simple as the fact that, when it comes to murderers, "[j]urors just see women differently than men." It's often the idea that women were acting under the influence of others or are emotionally fragile, and therefore shouldn't be held as accountable as men. *Business Insider* quotes Ohio Northern University Law Professor Victor Streib as saying, "It's just easier to convince a jury that women suffer from emotional distress or other emotional problems more than men."

Men are sentenced to death more than women because of how the statutes are written and how the circumstances around the crimes are weighed. I know, boring, right? But think about it - who was eligible to be elected to state legislatures for most of our country's history? Old (mostly white) men. Therefore, who likely wrote the statutes for murder? Old, white men. Who decided which factors would favor someone getting the death penalty (called "aggravating factors") and which would count towards them not getting it (called "mitigating factors")? Old, white men. So, it makes sense that the statutes are written with the male belief as to what crimes are worse and when factors should point towards the death penalty. Although the list of specific factors can vary by state, most states include as aggravating factors the potential future dangerousness of a defendant, their prior history of violence, whether the murder was during the commission of another felony, and their criminal record. Common mitigating factors can include whether the defendant was under extreme emotional or mental disturbance, whether they were under the control of someone else, their "good" character, and their family background. Since previous histories of violence and criminal records play heavily in favor of getting the death penalty, these factors also favor women. Women murderers generally do not have much (if any) history of violence or criminal records. Most states that still practice capital punishment also do not have the killing of an intimate partner or a child as an aggravating factor. Yet, these are exactly the types of murders that women are most likely to commit according to Professor Elizabeth Rappaport of the University of New Mexico Law School. According to a study by the NIH, 60 percent of the murders committed by women were against a family member or intimate partner, compared with only 20 percent of men. Look again at the case that started this article — Kelly Gissendaner had her then-boyfriend kill her husband. Further supporting this is the research that found that the types of murders that most often receive the death penalty (murder for gain, murder while resisting law enforcement or an especially cruel murder), do not include murdering someone the person knew or lived with.

The truth behind why so many women are not executed may not be terribly "sexy" or interesting, but it is still important. The United States is one of only a small number of nations that continues to practice the death penalty. Even worse, the *Washington Post* reported that the United States has five more executions over the next week. With all of this, plus the Pope's recent visit and remarks against the death penalty, now is the time to take a stand against capital punishment.

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