

CAPITAL PUNISHMENT IN CONNECTICUT, 1973-2007:

A COMPREHENSIVE EVALUATION FROM 4600 MURDERS TO ONE EXECUTION

Professor John J. Donohue III

**Yale Law School
National Bureau of Economic Research**

November 30, 2007

2007 DEC -4 P 2:44

STATE OF CONNECTICUT
SUPERIOR COURT
GAL.19

me the state adopted a post-*Furman* death penalty statute to the present. The objective is whether the system furthers rational and legitimate criminal justice goals while operating and reasonably, or is marred by arbitrariness, caprice, and/or discrimination. A massive assessment in the period from 1973-2007 of the process of winnowing from 4600 10 death sentences and one execution reveals a troubling picture. Overall, the state's handling death-eligible cases represents a chaotic and unsound criminal justice policy that neither deterrent nor retributive goals. Here we provide a brief summary of our findings. At the Supreme Court's 1972 indictment in Furman v. Georgia of arbitrary and capricious practices that lead to wantonly freakish and rare applications of the death penalty applies to the current death penalty system as practiced over the last 34 years. So far, the state has executed one defendant over a period during which there were in excess of 4600 murders. Efforts at refining the definition of death-eligible cases have not changed the basic fact that there is no principled basis to distinguish the few who receive sentences of death from the many capital-

EXECUTIVE SUMMARY

This report evaluates the overall application of the death penalty apparatus in Connecticut, from the time the state adopted a post-*Furman* death penalty statute to the present. The objective is to assess whether the system furthers rational and legitimate criminal justice goals while operating lawfully and reasonably, or is marred by arbitrariness, caprice, and/or discrimination. A comprehensive assessment in the period from 1973-2007 of the process of winnowing from 4600 murders to 10 death sentences and one execution reveals a troubling picture. Overall, the state's record of handling death-eligible cases represents a chaotic and unsound criminal justice policy that serves neither deterrent nor retributive goals. Here we provide a brief summary of our findings.


First, the Supreme Court's 1972 indictment in Furman v. Georgia of arbitrary and capricious processes that lead to wantonly freakish and rare applications of the death penalty applies to the Connecticut death penalty system as practiced over the last 34 years. So far, the state has executed one criminal defendant over a period during which there were in excess of 4600 murders. Efforts at sharpening the definition of death-eligible cases have not changed the basic fact that there is no meaningful basis to distinguish the few who receive sentences of death from the many capital-eligible murderers that do not.

Second, if one looks only at the population of capital-eligible murders that the state manages to solve, one is struck by the utter randomness of the process on the path to a capital sentence. The one individual who has been executed under this death penalty statute actually preferred execution to imprisonment. The cases that are charged with capital felonies are no worse on an egregiousness index than those that are not charged with capital felonies. The average egregiousness score for capital-eligible crimes *not* charged as capital felonies is actually *higher* than for those crimes that

were so charged. The cases that receive life imprisonment without parole are no worse than the cases that receive death sentences.

Third, this random pattern of sentencing in death-eligible cases reveals tremendous horizontal and vertical arbitrariness. Wide variations in the degree of egregiousness of a murder exist within any given sentence and any given level of egregiousness can generate an extremely wide range of sentences. In no sense can it be said that Connecticut has limited its use of the death penalty to the “worst of the worst” since many equally egregious or more egregious cases receive non-death sentences. Depending on the measure of egregiousness, either 10 or 11 of the 12 cases where the defendant received a death sentence were not among the highest-egregiousness cases. Indeed, for some cases resulting in a death sentence, literally scores of more egregious cases exist that did not get the death penalty. While this is of course what one would expect from a random or arbitrary and capricious process, it is not consistent with Eighth Amendment principles of consistency and rationality in capital sentencing.

Fourth, the focus in the previous point on death-eligible cases that end with a conviction actually under-states the degree of the horizontal and vertical arbitrariness. Just prior to the adoption of the state’s death penalty statute in 1973, only 7 percent of murder cases failed to be cleared by arrest or other means. In the 34 years since adoption of the death penalty, there has been steady erosion in the percent of murders that are solved. As a result, today, roughly 40 percent of all Connecticut murderers go completely free. This implies that, under current circumstances, for every defendant who receives a sentence of death, sixteen equally egregious murderers will essentially have a zero sentence.

 Fifth, black defendants have received a death sentence at three times the rate of white defendants in cases involving white victims, and in general nonwhite defendants have statistically

significantly higher rates of capital-charging and receipt of death sentences than white on white murderers.

Sixth, a careful examination of the probabilities of advancement from one stage in the death penalty pathway¹ provided further evidence of the arbitrariness of capital sentencing decisions at various points in the process, and the significance of victim's race, where killers of white victims are treated more severely than killers of nonwhite victims in charging decisions and nonwhite killers of white victims receive death sentences at higher rates than nonwhite killers of nonwhite victims. Numerous studies indicate that in death penalty jurisdictions throughout the country for decades, defendants who murder white victims are more likely to receive death sentences, and to be executed, than defendants who murder non-white victims. Since 1976, approximately half of all murder victims throughout the United States have been white and yet approximately 80% of all murder victims in cases resulting in an execution were white.² Recent studies of the application of the death penalty within states produce similar results: race of the victim continues to play a role in the administration of many death penalty regimes throughout the country.³

In sum, our findings do not support the statement that the death penalty is imposed only in the "worst of the worst" cases. Approximately 40 percent of the worst cases end up with zero

¹ Conceptually, there are six stages along the procedural pathway to a possible death sentence: 1) qualifies as a capital felony, 2) charged with a capital felony, 3) guilt trial (with death-qualified jury), 4) convicted of capital felony, 5) penalty trial, and 6) death sentence.

² "Facts About the Death Penalty," <http://www.deathpenaltyinfo.org/FactSheet.pdf>.

³ See, e.g. David C. Baldus and George Woodworth, Race Discrimination and the Legitimacy of Capital Punishment: Reflections on the Interaction of Fact and Perception, 53 DePaul L. Rev. 1411, 1425 (2004) (reviewing race of victim data within states and concluding that "[t]hese data strongly suggest that defendants with white victims are at a significantly higher risk of being sentenced to death and executed than are defendants whose victims are black, Asian, or Hispanic."); David C. Baldus and George Woodworth, Race Discrimination in the Administration of the Death Penalty: An Overview of the Empirical Evidence with Special Emphasis on the Post-1990 Research, 41 No. 2 Crim Law Bull 6 (2005) ("on the issue of race-of-victim discrimination, there is a consistent pattern of white-victim disparities across the systems for which we have data."); *McKleskey v. Kemp*, 481 U.S. 279 (1987).

punishment. After that, it is a roll of the dice as to what the sentence will be. Within the class of death-eligible murders, the discretion exercised throughout the post-arrest criminal justice system leads to arbitrary, irrational, or discriminatory outcomes. Indeed, consistent with a large body of evidence from around the country over an extended period of time, the evidence suggests that race of both defendant and victim play a significant role in determinations of whether or not the state pursues and achieves a death sentence for capital-eligible defendants.