

**EXECUTIVE SUMMARY:  
FINDINGS AND RECOMMENDATIONS**

**The Connecticut Study of Capital Case Charging, Advancement, and Sentencing:  
The Role of Race, Ethnicity, Gender, Age, Socioeconomic Status, and  
Judicial District  
(1973-1998)**

**Report Submitted to the**

**Office of the Chief Public Defender for the State of Connecticut  
Capital Defense and Trial Services Unit  
Hartford, CT**

**by**

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**MAY 2003**

## Findings

The study findings point in the following directions:

- *Arbitrariness*: Insofar as the legally relevant variables examined did not appear to be consistently and strongly related to case advancement, arbitrariness may have been operating in Connecticut's capital-case processing system;
- *Unfair Disparity—Crosstabular Approach*: There were signs that legal unfairness might have been operating at the points of capital-felony charging (prosecutorial decision making) and advancing to a penalty trial (a combination of juror and prosecutorial decision making):
  - *Judicial District*: Of all the legally suspect variables examined, judicial district had the most consistent and strongest relationship to case advancement. Defendants processed in judicial districts with the fewest death-qualified cases were charged with capital felonies, advanced to penalty trial after conviction for a capital felony, and received death sentences at higher rates than defendants processed in judicial districts with the most death-qualified cases.
  - *Defendants' and Victim(s) Race/Ethnicity*: There was some evidence that the victim(s) race/ethnicity was related to procedural and sentencing advancement: cases involving white victims were more likely to be charged as capital felonies and, later on, to advance to penalty trial than cases involving other victim(s) races/ethnicities.

There was no evidence that the defendant's race was related to procedural and sentencing advancement.
  - *Defendant's and Victim(s) Gender, Age and Socioeconomic Status*: The analyses provided very little evidence that gender, age, or socioeconomic status of the defendant or victim(s) was related to procedural and sentencing advancement.
  - *Defendant's and Victim(s) Religion and Sexual Orientation*: The data collected for this report did not include information about religion and sexual orientation. For this reason, we could not address these issues.
- *Unfair Disparity—Frequency Approach*: Analyses that examined death sentencing among both similarly and dissimilarly situated defendants—consistency and selectivity in death sentencing, respectively—showed patterns that were consistent with decision making that was either arbitrary or unfair.

## **Recommendations**

The findings suggest the following recommendations:

- continue quantitatively analyzing capital case processing in the State using the present data employing statistical techniques and analysis strategies suitable to samples of small to modest sizes like the present one;
- continue analyzing the present data, focusing on variables that have not been examined in the present report but that might help explain procedural and sentencing outcomes;
- consider updating these data to include more recent death-qualified cases, thereby expanding the analytical pool of cases; and
- review and assess information gaps that need to be filled (e.g., religion, sexual orientation), thereby, expanding the pool of analytical variables.

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## I. INTRODUCTION AND BACKGROUND: THE STUDY'S MANDATE

***The Origin and Compass of the Study Mandate.*** In 1998, the Office of the Chief Public Defender for the State of Connecticut commissioned a study of all homicide cases prosecuted in Connecticut since 1973, the year in which the death penalty was reinstated in the aftermath of the United States Supreme Court decision in Furman v. Georgia, 408 U.S. 238, 92 S. Ct. 2726 (1972). The purpose of the study was to gather data on each homicide prosecution and to submit these data to rigorous statistical analysis, controlling, to the extent possible, for neutral variables, in order to discern whether any systemic or individual racial or other bias existed in the selection of cases for prosecution as capital felonies. The study would examine key decision-making points in the prosecution of homicide cases, focusing in particular on the prosecuting attorney's use of discretion in charging a defendant with a homicide offense, and on the decision of the jury or other sentencing body to impose or not to impose a death sentence following a conviction for capital felony.

In July 2001, the Connecticut legislature enacted *Public Act No. 01-151 for Substitute Senate Bill No. 1161* (hereafter the *Death Penalty Act*). The *Death Penalty Act* established, among other things, "a Commission on the Death Penalty to study the imposition of the death penalty in this state" (Sec. 4.) (hereafter the *Commission*). The *Death Penalty Act* directed that the *Commission's* study would encompass but not be limited to:

- "(3)[a]n examination of whether there is any disparity in the decision to charge, prosecute and sentence a person for a capital felony based on the race, ethnicity, gender, religion, sexual orientation, age, or socioeconomic status of the defendant or the victim;
- (4)[a]n examination of whether there is any disparity in the decision to charge, prosecute and sentence a person for a capital felony based on the judicial district in which the offense occurred."

(See Section.4.Subsection.(c)(3)(4).) To date, no study has been conducted in the State that has addressed these issues with the requisite scientific rigor and comprehensiveness.<sup>1</sup>

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<sup>1</sup> Preliminary data, unadjusted for the influence of factors legally relevant to prosecutorial, juror, or others' decision making, was presented to the Connecticut Supreme Court in 1995. These data suggested that the death penalty had been disproportionately applied to defendants who were black as well as to defendants whose victims were white. The data presented were calculated by counsel for Sedrick Cobb, a death-

The question of whether disparity exists in the administration of the death penalty at the points of charging, prosecution, and sentencing has been at the heart of death-penalty research nationwide both before and after the Supreme Court's decision in *Furman* voided state death-penalty statutes nationwide. In the post-*Furman* world of death penalty administration, it was anticipated that each statute would be applied in an evenhanded and uniform way because every statute was required to incorporate language and procedures that were both sufficiently specific and stringent enough to reign in the unfettered use of discretion. Evenhanded and uniform administration was thought to insure, in turn, evenhanded and uniform judicial outcomes.

Unfortunately, it is not always easy to detect disparity and its sources. There are several reasons for this. First, one needs to look for detectable, legally relevant patterns *within and across* the sequential procedural points at which capital case decisions are made. Data must be available, accurate, and comprehensive in order to conduct competent analyses. Second, one needs to determine whom the decision maker or set of decision makers is at each procedural step and understand how their separate or combined decision making might result in disparate outcomes. Third, procedural disparities in capital case processing can occur in different kinds and degrees. Perhaps most central in this regard is that some kinds of disparity are legally benign. Some, unfortunately, are not, and these are the ones that most need to be spotlighted.

The aforementioned considerations combine to present potentially formidable hurdles that must be capably negotiated if one is to detect with confidence procedural and sentencing disparities, whether legally benign or otherwise. We believe that this research possesses strengths that reduce the impact of these hurdles for reasons spelled out below.

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sentenced inmate, based on data supplied by the Criminal Justice Information Services Division of the Federal Bureau of Investigation and the Uniform Crime Reporting Program of the State of Connecticut. Three of the Connecticut Supreme Court justices reviewing the *Cobb* case expressed "alarm" at these preliminary, unadjusted, data. Justice Berdon reiterated an opinion he articulated in *State v. Ross*, 230 Conn. 183, 306-307 (1994), that "the available statistics 'compel the conclusion that prosecutorial discretion has resulted in the arbitrary imposition of the death penalty'". The three prevailing justices in *State v. Cobb*, *supra*, noted that the data had not been "subjected to a rigorous statistical analysis to determine the accuracy of the data, to account for the racially neutral variables, and to determine the statistical significance of the data," and that "to the extent that [Cobb's] statutory interpretation claim...resembles the federal constitutional challenge made by McCleskey, some sort of statistical evidence and fact-finding, similar to that presented and undertaken in *McCleskey (v. Kemp)*, 481 U.S. 279 (1987)) will be necessary." *Cobb*, *supra*, 234 Conn. at 738, n.4. The purpose of the present study is to undertake precisely the most rigorous statistical analyses possible as contemplated by the prevailing justices in the *Cobb* case.

**Identifying Decision Making Pathways and Points.** In order to detect disparities that may have legal relevance, it is important to chart clearly the procedural pathway that each capital case has followed. Each procedural point in the pathway needs to be clearly marked and separately examined. The purpose of such scrutiny at each procedural point is to determine whether there are indications of disparities in the processing of homicide cases that are legally objectionable.

**Disparity, Arbitrariness, and Discrimination.** Decisions that involve disparate outcomes in charging, prosecution, and, ultimately, sentencing are legally rational and acceptable if such outcomes have been predicated on *legally relevant* factors that related to the incident's aggravation level and the defendant's degree of personal culpability with regard to that incident. In short, cases and defendants characterized by *unequal* levels of aggravation and culpability are expected to sustain different outcomes. These outcomes are considered legally benign. Cases and defendants that have had greater levels of aggravation and personal culpability are expected to have proceeded further into the capital case processing system and, further, to have entailed harsher outcomes, such as death sentences, than cases with lower levels of aggravation and personal culpability. The mere presence of a raw disparity in procedural and sentencing outcomes—that is, one that has not been adjusted for the influence of other, legally relevant factors—does not in and of itself show that the observed difference is legally unacceptable.

Disparity in outcomes becomes legally problematical when cases or defendants of *equal* aggravation or culpability level display *unequal* outcomes. There are basically two ways that this can occur. First, although a disparity is observed, it *cannot* be explained by factors related to the participants, the judicial district of occurrence or prosecution, or by the incident. In this instance, the disparity is *arbitrary*. Second, a disparity might be observed, and it *can* be explained. The disparity might (1) flow from the discriminatory use of discretion or (2) be the discriminatory result of a system that is discretionary. Both patterns in disparity comprise *discrimination*. In the first instance, the discrimination follows from the express deliberation of *individual* decision makers because each individual intentionally renders an arbitrary or discriminatory decision. In the second case, the discrimination flows from the decisions of *many* decision makers that, for one or another reason, which may or may not be understood, has as its overall outcome a disparate result. In this instance, unfair disparity can occur because of the *cumulative impact* of the decisions made by *many individual* decision makers, none of which necessarily resulted from an intentional act of arbitrariness or discrimination. Despite the absence of discernible individual discriminatory intent, the combined impact of the individual decisions nonetheless results in an aggregate pattern of one or

the other type (i.e., discriminatory use of discretion or the discriminatory result of a system that is discretionary).

The present research investigates whether there is any basis supporting the conclusion that the Connecticut death penalty statute has operated disparately. The data collected for studying this issue focused on whether disparity resulted from the decisions of *many* decision makers. The data did *not* lend itself to the analysis of the express intent of individual decision makers. We studied, therefore, to the extent the data permitted, whether, in the aggregate, capital felony cases of *equal or near equal* aggravation level or capital felony defendants of *equal or near equal* culpability displayed, *on average, unequal outcomes*—arbitrary or discriminatory—at one or more of the three broadly enumerated procedural points—charging, prosecution, and sentencing. Toward this end, we focused on *systemic* patterns.

***The Guilt and Trial Procedural and Sentencing Pathways.*** In order to examine whether one or the other type of procedural and sentencing unfairness existed, we have divided the procedural flow of capital-felony cases into two pathways: (1) the *guilty plea* pathway and (2) the *trial* pathway. Figure 1 depicts these divergent pathways, highlighting the trial procedural pathway to a death sentence by using bold directional and box-encasement lines. Among cases that qualified as capital felonies (procedural Point 1), one portion was charged with capital felonies (procedural Point 2), thereby rendering them death-penalty eligible. Among those that were charged with capital felonies, a portion resulted in a guilty plea (procedural Point 3a), which, as the figure shows, diverted and, in practice, effectively *removed the vast majority* of those cases from the death-flow pathway.<sup>2</sup>

(for p. 45)

Also, among those cases that were charged as capital felonies (procedural Point 2), another portion resulted in a guilt trial (procedural Point 3b). Among those cases that resulted in guilt trials, a portion remained along the death-flow trial pathway by virtue of the prosecutor filing a notice of aggravating factors (procedural Point 4), while the other portion, although they involved guilt trials, did not stay on the death-flow pathway. Those cases that proceeded to a death-penalty guilt trial, and, which, thereby, remained along the death-flow pathway, either resulted in a capital felony conviction (procedural Point 5), or did not, because of withdrawals, dismissals, and acquittals. The convicted portion then either (a) received a sentence less than death because the State never intended to seek the death penalty in the case,

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<sup>2</sup> Among the defendants in the data set, only one pled guilty to capital felony, advanced to penalty trial, and received a death sentence. This defendant was placed on the trial pathway because, even though a plea was negotiated, and the guilt trial was bypassed, the penalty trial was nonetheless held. This case involved the murder of a police officer.

(b) received a sentence less than death because the prosecutor declined to proceed to a penalty trial following a conviction for capital felony, or (c) went to penalty trial (procedural Point 6). Some cases that proceeded to penalty trial then received a death sentence (sentencing Point 7).

Each procedural and sentencing point along one of the two capital felony pathways involved one or more decision makers. The *lightly shaded* points along the two pathways (points 1, 2, 3a, and 3b) represent nodes at which prosecutorial decision making operated. As such, any finding of arbitrary or discriminatory unfairness at these points potentially points to improper use of prosecutorial discretion. Alternatively, the *more deeply shaded* points in the two pathways (points 4, 5, 6, and 7) represent nodes at which juror decision making operated. As such, any finding of arbitrary or discriminatory unfairness at these procedural points would suggest unfairness on the part of jurors. It is also possible to find unfairness in the decision making of both decision makers. This report was designed to examine, to the greatest extent possible, whether arbitrariness and discrimination operated at the sequential capital felony case processing points falling along the two procedural pathways.

In order to provide information that is responsive to the questions posed by the *Death Penalty Act*—determining whether selected *personal characteristics* of the *defendant or victim* and the *judicial district* were related to disparity, we tracked cases across the procedural and sentencing points just specified. At each procedural point, we asked whether those defendants who advanced to the *next* procedural point, thereby placing them in progressively greater jeopardy of eventually receiving a death sentence, differed in the personal and jurisdictional ways identified by the *Death Penalty Act*.

We now turn our attention to the study methodology: (a) universe of cases for study, (b) data collection and entry, (c) variables (measures used), and (d) statistical analyses. This discussion is followed by the presentation of the findings.

## II. METHODOLOGY

The methodology for the analyses reported here is set forth in detail in the Research Design: Connecticut Study of Homicide Prosecutions (April 28, 1999) (see Appendix A).

### A. Universe of Cases for Study

***The Role of Capital Felonies and Statutory Aggravating Factors.***  
The cases examined in the report were selected from a much larger universe in

the following way. The researchers, in collaboration with legal and research staff of the Office of the Chief Public Defender, Capital Defense and Trial Services Unit, first identified and examined all arrests for capital murder, intentional murder, felony murder, and manslaughter in the first degree that occurred since 1973, when the death penalty was reenacted in the State, and that had a sentence determination by December 31, 1998.<sup>3</sup> All in all, approximately 2,500 cases in which homicide was charged were identified. All 2,500 cases were reviewed for "death eligibility," that is, for the presence of strong, undisputed evidence that the defendant committed an act that fit into one of the nine categories of capital felony, which, because of this, could have resulted in a charge of capital felony under Conn. Gen. Stat. §53a-54b.<sup>4</sup>

Pursuant to Connecticut law, prosecutors may seek the death penalty only in homicide cases that meet the statutory criteria to be charged with one or more of *nine capital felonies*. The nine capital felonies are:

1. murder of a law enforcement officer;
2. murder for hire or pecuniary gain;
3. murder by one who has previously been convicted of intentional or felony murder;
4. murder by someone under a sentence of life imprisonment;
5. murder of a kidnap victim during the course of the kidnapping;
6. illegal sale of cocaine, heroin or methadone to a person who dies as a direct result of the use of those drugs;
7. murder during the course of a first degree sexual assault (added 1980);
8. murder of two or more persons in the same transaction (added 1980); and
9. murder of a person under sixteen years of age (added 1995).

In order for a case to have been included in the study, the defendant must have been formally charged by the State with a homicide, the facts of which could have supported a capital felony charge, *whether or not the defendant was so charged*. One purpose of the study, then, was to examine the decision making of prosecutors and sentencing bodies with respect to their assessment of the death-worthiness, or overall aggravation and culpability levels attributable to cases and defendants. In order to examine this issue, all

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<sup>3</sup> The cutoff date was imposed in order to permit sufficient time for trials to have undergone post-trial review and retrials by the time the analytical dataset was made final. As it turned out, the few retrials in the present dataset overwhelmingly affirmed the sentences of the initial trials. Nonetheless, analyses like those reported here need to impose such a cutoff-date case-selection rule in order to review cases for possible changes in sentencing outcomes. Analyses need to be designed to take into account sentencing changes that may have occurred often enough that they might alter findings. In the present set of cases, there were virtually no changes in sentences from the initial ones imposed.

<sup>4</sup> Cases were also removed if they were not actually eligible to be sentenced to death (e.g., under age 18).

"death-eligible" cases—those in which the underlying facts *could* have warranted a capital felony charge—were selected, regardless of whether the defendant ultimately proceeded to a guilt or death penalty trial. Among the identified arrests for capital murder, intentional murder, felony murder, and manslaughter in the first degree that occurred since 1973, 100 cases, excluding corresponding retrials, were found whose facts supported a capital felony charge, *whether or not the defendant was so charged*.

The State can have proceeded to a penalty trial, following the defendant's *conviction* of one or more of the nine enumerated capital felonies, only when one or more of the following *seven statutory aggravating factors* was first alleged and then presented by the prosecutor:

1. defendant committed the offense during the commission of a felony of which he had previously been convicted (h)(1);
2. defendant committed the offense after having been convicted of two or more independent state and/or federal offenses that involved the infliction of serious bodily injury upon another person (h)(2);
3. defendant knowingly created a grave risk of death to another person in addition to the victim (h)(3);
4. defendant committed the offense in an especially heinous, cruel or depraved manner (h)(4);
5. defendant procured the commission of the offense by payment, or promise of payment; of anything of pecuniary value (h)(5);
6. defendant committed the offense as consideration for the receipt or expectation of the receipt, of anything of pecuniary value (h)(6); and
7. defendant committed the offense with an assault weapon (h)(7).

In order for a defendant to have been considered for a death sentence, the penalty trial jurors must have been *unanimous* in their finding of *at least one of the seven statutory aggravating factors*.

***The Role of Statutory Mitigating Factors.*** If the jurors were unanimous with respect to finding the presence of at least one of the nine statutory aggravating factors, they then were permitted to consider *whether* to find one or more of the five statutory mitigators or one or more of the many nonstatutory mitigators. The *five statutory mitigating factors* considered were:

1. defendant was under age 18 (g)(1);
2. defendant's mental capacity was significantly impaired or his ability to conform his conduct to the requirements of law was significantly impaired but not so impaired as to constitute a defense to prosecution (g)(2);

3. defendant was under unusual and substantial duress, although not such duress as to constitute a defense to prosecution (g)(3);
4. defendant was criminally liable for the offense, which was committed by another but his participation in such offense was relatively minor, although not so minor as to constitute a defense to prosecution (g)(4); and
5. defendant could not reasonably have foreseen that his conduct in the course of commission of the offense of which he was convicted would cause, or would create a grave risk of causing, death to another person (g)(5).

If a death sentence was imposed, the jurors must have been *unanimous* in their rejection of any and all mitigation. Among the defendants studied here, six received death sentences. These defendants represented more than 6% of the study universe.

***The Unit of Analysis—The Defendant.*** The unit of analysis adopted in this report was the *defendant*. *Defendant* was used in the *legal* sense. A defendant was someone who was subjected to a capital felony *prosecution* (*i.e., proceeding*). A defendant was synonymous, then, with a *prosecuted case* (hereafter, *case*). For example, if one person committed a capital felony on five different occasions, as a serial murderer does, then this one person was treated in the analyses as *five* legally defined defendants, or synonymously, *cases*. A defendant was *not*, therefore, identical to a unique *person*. In contrast to a defendant, an *incident* was a homicide *event* that could have involved one or more defendants (and, hence, cases).

In the present dataset, there were only two instances where one individual was included as a defendant in more than one case, due to the fact that the individual was involved in more than one homicide *incident*. As in the example sketched above, one person was involved in five capital felony murders that occurred on separate occasions. Three of the five cases were tried together and resulted in death sentences. The two others were included in a plea that effectively removed the defendant from the death penalty pathway for those cases. In the other instance, one person was involved in two separate murders, neither of which resulted in a death sentence.

The fact that one person was involved in five capital felonies and another in two separate homicides posed a methodological problem. If we had included all seven cases in the analyses, we would have been including substantially *repetitive* information, in particular, about the defendant. From a statistical standpoint, the multiple cases relating to a single defendant were not independent of one another. The repetition would have biased the results in

