Study Shows Scales Of Justice Askew When It Comes To Death Penalty

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'The Worst Killers Very Frequently Do Not Get It'

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Now that the Cheshire killers are headed to death row, we can all breathe easy, knowing that Connecticut sparingly, but justly, gives the worst of the worst the death penalty.

If only that were the case.

A former Yale Law School professor's long-running study now concludes that while extremely rare, the death penalty is a largely random punishment that often hangs on the accused's race and where in Connecticut the crime took place. John Donohue, now at Stanford University, looked at the application of the death penalty between 1973 and 2007, examining and rating 205 cases during a period when 4,686 murders occurred in the state.

The ugly, arbitrary and discriminatory reality should make even capital punishment advocates pause and reflect.

"There is no way to distinguish the few that are singled out for death from the many death-eligible defendants that receive lesser sentences," Donohue concludes. "Some judicial districts in the state punish identical crimes drastically differently from those in other parts of the state. The defendant's and victim's races play a crucial role in deciding who is charged with a capital felony and who receives a death sentence."

Donohue, who was paid by the office of the state's chief public defender to begin his study five years ago, used law students from the University of Connecticut and Yale University to separately analyze and rank the 205 crimes on "egregiousness," considering severity and other factors. A regression analysis to model how the death penalty works found that race and geography "substantially influence" capital punishment in Connecticut.

Indeed, our judicial system isn't just saying that some lives are more significant than others. It's also just dumb luck. If you happen to live in a particular region and you happen not to be white, justice is a variable, arbitrary thing.

Blacks and Hispanics are more likely to face the death penalty, particularly if the victim is white. This might best be seen in Fairfield County, where white defendants faced capital felony charges
40 percent of the time in death-eligible cases but minority defendants were charged 82 percent of the time.

"Killers of minority victims are not treated as harshly as killers of white victims," Donohue writes in his 450-page report. Under this perverse irony, minorities who kill each other get off more leniently.

The system, however, won't tolerate it when a minority kills a white person. The study estimates that minority defendants accused of killing a white victim are charged with capital felony at a rate one-third higher than when charged with killing another minority.

And if you are arrested in Hartford in a death-eligible case, you are far more likely to face a capital felony charge than in New Haven or New Britain. In Waterbury, Donohue finds that death-eligible cases receive the death sentence at 14 times the rate anywhere else in Connecticut.

Equally distressing is that Donohue argues that lawyers for the state understand the geographic and racial disparities in administration of the death penalty. Citing a report from the state's own death penalty expert in a long-running court case, Donohue notes that the state is quite aware of what is happening.

"It does appear that black defendants with white victims are charged with capital felonies more easily than anyone else," Stephan Michelson, the state's expert, writes in a 2010 report.

Donohue's report should be required reading for state legislators, who will again take up death penalty legislation this year. There are 10 inmates — soon to be 11 — on death row in Connecticut.

"If people want the worst killers to get [the death penalty], they would be surprised to see the worst killers very frequently do not get it," Donohue told me. "Until I did this study no one had carefully analyzed what was going on."

Yes, I'll agree that creeps like serial killer Michael Ross and the two Cheshire murderers deserve to die. But what do we do when we learn that in dozens of examples that Donohue classified as highly egregious, the death penalty was not applied?

How do you justify the death penalty, when it is both arbitrary and biased? You can't.