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Death Penalty Cases Impose Singular Burden

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Death penalty cases impose singular burden

BY JUDY RITTER
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Friday is Constitution Day, a national observance marking the signing of the Constitution on Sept. 17, 1787.



**your rights
on trial**

Widener University School of Law and The News Journal have collected essays to honor Constitution Day. This year's theme is "your rights under the Delaware criminal justice system."

Fairness, justice, equal protection – there is no context for which these ideals are more important than death penalty trials.

Our Constitution prohibits cruel and unusual punishment. A death sentence that is arbitrarily imposed or handed down without proper consideration of mitigating evidence

– evidence about the crime or the defendant that suggests the death penalty is inappropriate – is cruel and unusual and unconstitutional.

Can our criminal justice system ensure that a death sentence meets these constitutional standards?

The United States Supreme Court has required two key safeguards: a fair and impartial jury to decide if a defendant is eligible for the death penalty and a jury that is clearly instructed about the concept of mitigation.

Delaware, unlike most death penalty states, leaves the ultimate decision regarding a death sentence to the trial judge. The jury makes a non-binding recommendation to the judge.

Nevertheless, it is essential that capital jurors understand the court's instructions about how jurors are to fulfill their roles within constitutional parameters.

Throughout the past

year, Delawareans have been participating in an important research study regarding the role and function of capital juries. This study is part of the nationwide Capital Jury Project (CJP), funded by the National Science Foundation.

The purpose of the study is to investigate, through in-depth interviews with former capital jurors, the ways in which they make sentencing decisions.

Earlier phases of the CJP have yielded nearly 50 scholarly studies, many of which have been cited by the U.S. Supreme Court and other federal courts.

The first two phases of the CJP involved interviews of more than 1,500 jurors from nearly 25 states. These earlier phases studied the process of decision-making and the role of race in capital sentencing.

The primary focus of the

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current phase is mitigation.

The law requires jurors to make individualized sentencing decisions that consider all potential mitigating evidence.

By utilizing trial transcripts and juror interviews, researchers hope to gain insight regarding the impact of traditional forms of mitigating evidence and of the use of expert witnesses by both the defense and the prosecution.

The analyzed data may help legislative and judicial branches of government make more informed choices regarding the large outlay of resources on the death penalty.

We know that former jurors who have participated

in our study have found it to be rewarding. They tell us that their service left an indelible mark on their memories and it is cathartic to recall and recount the experience.

There are aspects of the system's use of the death penalty that are disturbing even to supporters of capital punishment.

Too often we read about a death row inmate who is released years after his conviction because new evidence proves he is innocent or that his trial was unfair.

Most of us have heard about the statistics that show that members of minority groups are disproportionately represented on our nation's death rows. The Capital Jury Project

provides one avenue for learning more about the reliability of life/death fact-finding.

On Constitution Day, while celebrating the wisdom contained in the document, we ought to pause to consider whether societal institutions do a good job of achieving constitutional ideals. It would be foolish to expect perfection.

However, when it comes to state-sanctioned executions, we should be tenacious in our monitoring of the system and have little tolerance for imperfection.

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