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The Death Penalty in Delaware: An  
Empirical Study

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# CORNELL LAW SCHOOL

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### **THE DEATH PENALTY IN DELAWARE: An Empirical Study**

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Cornell Law School research paper No. 08-025

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# THE DEATH PENALTY IN DELAWARE: An Empirical Study

John Blume, Theodore Eisenberg, Sheri Johnson, Valerie Hans

## I. Introduction.

We are currently engaged in an empirical study of the “modern” era of capital punishment in Delaware. By “modern” era, we refer to the time period after the Supreme Court’s 1972 decision in *Furman v. Georgia*,<sup>1</sup> which invalidated all then existing state death penalty regimes. Why Delaware? First, because it is small. Given the state’s size and population, we hope and anticipate being able to eventually examine all post-*Furman* homicide cases. Second, while small, Delaware has a high death sentencing rate. Prior studies revealed that in relation to the number of murders, Delaware has the third highest death sentencing rate in the United States.<sup>2</sup> Third, it is not a Southern state. Most (but not all) previous empirical studies have focused on Southern jurisdictions.<sup>3</sup> Fourth, Delaware has used jury sentencing as well as several different judge sentencing schemes. Fifth, there have been no previous systematic empirical studies of the death penalty conducted in Delaware. For these and other reasons, we determined that it would be an interesting state to systematically examine.

Our study will proceed in three phases. First, we will examine the death cases, i.e., those cases in which the defendant was in fact sentenced to death. We report the preliminary results of phase I in this draft. Phase II will involve an analysis of all cases in which the prosecution sought

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<sup>1</sup>408 U.S. 238 (1972).

<sup>2</sup>John Blume, Theodore Eisenberg and Martin Wells, *Explaining Death Row’s Population and Racial Composition*, 1 J. Emp. Leg. Stud. 165, 172 (2004).

<sup>3</sup>See, e.g., John H. Blume, *Twenty-Five Years of Death: A Report of the Cornell Death Penalty Project on the “Modern” Era of Capital Punishment in South Carolina*, 54 S.C. L. Rev. 285 (2002).

the death penalty. The third and final phase will involve an analysis of all death “eligible” homicide cases. Phases II and III are currently underway.

## **II. A Brief History of the Delaware Death Penalty.**

As noted above, in 1972, the Supreme Court effectively held in *Furman v. Georgia* that the death penalty, as then administered in the United States, violated the Eighth Amendment’s ban on cruel and unusual punishment. Like most jurisdictions, the death penalty statute in existence in Delaware at the time of *Furman* required the jury to decide the issues of guilt and punishment in the same unitary proceedings and provided no standards for the jury to utilize in making the life or death decision.<sup>4</sup> In 1973, in *State v. Dickerson*, the Delaware Supreme Court held that the Delaware scheme was invalid under *Furman*.<sup>5</sup>

The Delaware legislature quickly enacted a new capital punishment statute.<sup>6</sup> Since *Dickerson* interpreted *Furman* as forbidding “the uncontrolled discretion of juries and judges in imposing the death penalty”<sup>7</sup> the 1974 Delaware statute called for mandatory death sentences for anyone convicted of first degree murder.<sup>8</sup> The Delaware Supreme Court upheld the new law in *State*

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<sup>4</sup> DEL. CODE ANN. tit. 11, § 3901 (1972). In 1958, Delaware abolished capital punishment. It was the second state to do so. In 1961, however, the Delaware legislature reinstated capital punishment. Then Governor Elbert Carvel, vetoed the legislation, but the legislature overrode the veto. See [http://doc.delaware.gov/information/deathrow\\_history.shtml](http://doc.delaware.gov/information/deathrow_history.shtml).

<sup>5</sup>298 A.2d 761 (Del. 1973).

<sup>6</sup> DEL. CODE ANN. tit. 59, § 284 (1974).

<sup>7</sup> Loren C. Meyers & Gayle P. Lafferty, *Capital Punishment*, in *DELAWARE SUPREME COURT: GOLDEN ANNIVERSARY 1951-2001* 179 (Justice Randy J. Holland & Helen L. Winslow eds., 2001).

<sup>8</sup> DEL. CODE ANN. tit. 59, § 284 (1974).

*v. Sheppard*,<sup>9</sup> and the death penalty in Delaware was back in business. Over the next two years, nine individuals were sentenced to death under the mandatory regime.<sup>10</sup>

But, Delaware had backed the wrong constitutional horse. In 1976, the Supreme Court held in *Woodson v. North Carolina*<sup>11</sup> and *Roberts v. Louisiana*,<sup>12</sup> that mandatory capital sentencing schemes violated the Eighth Amendment. In *State v. Spence*, the Delaware Supreme Court concluded, as it had to, that the 1974 scheme did not pass constitutional muster and set aside all nine sentences imposed under that scheme.<sup>13</sup>

In May of 1977, the legislature enacted a new law modeled after the Georgia capital sentencing statute upheld by the Supreme Court in 1976 in *Gregg v. Georgia*.<sup>14</sup> This scheme provided for a bifurcated trial at which the defendant's guilt-or-innocence would be decided in the first phase, and if the defendant was convicted, the jury would then determine the appropriate punishment in a separate sentencing proceeding.<sup>15</sup> The new system allowed for the presentation of aggravating and mitigating evidence at the penalty phase.<sup>16</sup> The jury could only sentence the

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<sup>9</sup>331 A.2d 142 (Del. 1974).

<sup>10</sup> *State v. Spence*, 367 A.2d 983, 986 (Del. 1976).

<sup>11</sup>428 U.S. 280 (1976).

<sup>12</sup>428 U.S. 325 (1976).

<sup>13</sup>367 A.2d 983, 988 Del. 1976).

<sup>14</sup>428 U.S. 153 (1976).

<sup>15</sup> 395 A.2d 1082 (Del. 1978).

<sup>16</sup> Loren C. Meyers & Gayle P. Lafferty, *Capital Punishment, in DELAWARE SUPREME COURT: GOLDEN ANNIVERSARY 1951-2001* 181-82 (Justice Randy J. Holland & Helen L. Winslow eds., 2001).

defendant to death if it unanimously concluded that the prosecution had proven, beyond a reasonable doubt, the existence of at least one statutory aggravating circumstance.<sup>17</sup> The jury's decision to sentence the defendant to death had to be unanimous and the jury's sentence determination was binding on the judge.<sup>18</sup> The new scheme also provided for automatic appellate review by the Delaware Supreme Court to determine "whether the evidence supported the finding of a statutory aggravating circumstance, whether imposition of the death penalty was arbitrary or capricious and whether the death sentence was proportionate to the penalty imposed in similar cases."<sup>19</sup> Finally, the 1977 statute required preparation of the entire trial transcript, specific identification of the aggravating circumstances found by the jury, a complete report by the trial judge, and "administrative assistance in compiling information on the universe of cases to be reviewed by the Court in performing its proportionality review."<sup>20</sup> The Delaware Supreme Court concluded the new regime satisfied the Eighth Amendment in *State v. White*.<sup>21</sup>

In 1991, a jury failed to sentence the defendants to death in *Robertson v. State*.<sup>22</sup> In this highly publicized case, Kenneth Rodgers, James Llewellyn, Christopher Long, and Paul Robertson

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<sup>17</sup> Loren C. Meyers & Gayle P. Lafferty, *Capital Punishment, in DELAWARE SUPREME COURT: GOLDEN ANNIVERSARY 1951-2001* 182 (Justice Randy J. Holland & Helen L. Winslow eds., 2001).

<sup>18</sup>*Id.*

<sup>19</sup>*Id.*

<sup>20</sup>*Id.* (citing *State v. White*, 395 A.2d 1082, 1092-96 (1978)).

<sup>21</sup> 395 A.2d 1082, 1097 (Del. 1978) (holding that the 1977 statute was constitutional, "except for the aggravating circumstances identified as 'elderly' and 'defenseless' victims . . . which provisions are declared unconstitutional and are severed from the Statute").

<sup>22</sup> 630 A.2d 1084 (Del. 1993).

were sentenced to life in prison after being convicted of robbing an armored car and murdering two guards.<sup>23</sup> Responding to the public outcry, the Delaware legislature amended the death penalty statute in November of 1991 to eliminate jury sentencing. Under the new scheme, modeled after Florida's capital punishment system, the jury's recommendation of death was no longer binding on the trial judge; the court not the jury was vested with ultimate sentencing authority.<sup>24</sup> The new judge sentencing system was upheld by the Delaware Supreme Court in *State v. Cohen*, and finding the change merely procedural, the Court also held that the new regime could be used in pending capital trials, even in cases where the crime occurred prior to the enactment of the new law.<sup>25</sup>

Delaware's current capital punishment scheme was enacted in of 2002. Earlier that year, the United States Supreme Court decided *Ring v. Arizona*.<sup>26</sup> In *Ring*, the Court held that factors which made a defendant eligible for the death penalty, i.e., statutory aggravating circumstances, had to be found by a jury. Thus, in July 2002, the Delaware legislature again revised the method for determining how defendants are sentenced to death.<sup>27</sup> The current system retains the jury's advisory sentencing role as to whether aggravating circumstances outweigh mitigating circumstances, but requires that a jury must unanimously and beyond a reasonable doubt find at least one statutory

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<sup>23</sup>630 A.2d at 1086.

<sup>24</sup>DEL. CODE ANN. tit. 11, § 4209 (1991); see Loren C. Meyers & Gayle P. Lafferty, *Capital Punishment*, in DELAWARE SUPREME COURT: GOLDEN ANNIVERSARY 1951-2001 185 (Justice Randy J. Holland & Helen L. Winslow eds., 2001); *State v. Cohen*, 604 A.2d 846 (Del. 1992).

<sup>25</sup> In six of the seven cases combined in *Cohen*, the murders had occurred before the 1991 amendments were passed into legislation.

<sup>26</sup>536 U.S. 584 (2002).

<sup>27</sup> DEL. CODE ANN. tit. 11, § 4209 (2002).

aggravating circumstance.<sup>28</sup> While the ultimate sentencing power still resides with the judge,<sup>29</sup> the Delaware Supreme Court has determined that the trial judge must give “great weight”<sup>30</sup> to a jury’s recommendation of life imprisonment.<sup>31</sup>

### III. The Delaware Death Penalty by the Numbers:

There have been 52 death sentences imposed in the “modern” era of the Delaware death penalty.<sup>32</sup> Since 9 of those death sentences were imposed under the initial mandatory scheme, we will focus on the forty-three defendants sentenced to death using one of the three guided discretion statutes. Of those 43, 19 (44%) were white, 20 (47%) were black and 4 (9%) were Latino or Native American.<sup>33</sup> Thus the total percentage of non-white defendants sentenced to death is 56%. In 30 of the 43 cases (70%), there was one or more white victims.<sup>34</sup> The overall pattern is similar to that

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<sup>28</sup> DEL. CODE ANN. tit. 11, § 4209 (2002).

<sup>29</sup> *Id.*

<sup>30</sup> *Garden v. State*, 815 A.2d 327, 342 (Del. 2003).

<sup>31</sup> *Id.* (remanding where Superior Judge gave substantial consideration to the jury’s recommendation of life, but imposed a sentence of death); *Garden v. State*, 844 A.2d 311 (Del. 2004) (remanding where Superior Judge failed to give “great weight” to jury’s recommendation of life and where jury’s recommendation of life was supportable).

<sup>32</sup>This includes the nine individuals who were sentenced to death after Delaware’s post-*Furman* mandatory statute which was also found to be unconstitutional. Thus forty-two individuals have been sentenced to death under one of the three varying “guided discretion” regimes Delaware has used described in section II. A complete list of persons sentenced to death since 1972 can be found in Appendix A.

<sup>33</sup>One woman, Linda Charbonneau, has been sentenced to death in the modern era. Her convictions and sentence were reversed on direct appeal, and she was subsequently resentenced to life imprisonment.

<sup>34</sup>It should be noted that 7 of the 13 black victim cases involved multiple victims, while only 4 of the 30 (17%) white victim cases involved multiple victims.

observed nationally. Currently, there are more than three thousand death sentenced inmates: 45% are white, 42% are black, 11% are Hispanic and 2% fall into a general “other” category.<sup>35</sup>

*A. Race Effects.*

While a more thorough consideration of race effects will be undertaken in the second and third phases of our study, we report several preliminary observations in this draft. As we have found in our prior work in other jurisdictions,<sup>36</sup> and as other researchers have found,<sup>37</sup> there appear to be significant race of defendant and race of victim effects at work in the Delaware capital sentencing system. As noted above, 70% of the death sentences were imposed in white victim cases, although the majority of murder victims in Delaware are black. The death sentencing rate in black defendant and white victim cases is 17.8%. This is more than twice the death sentencing rate found in any other race of defendant-victim combination in Delaware.<sup>38</sup> Furthermore, the death sentencing rate in black defendant-white victim cases is significantly higher than in any other jurisdiction we have studied. A comparison of Delaware’s death sentencing rate by race of defendant and race of victim to the same rates in Georgia, Indiana, Maryland, Nevada, Pennsylvania, South Carolina and Virginia is found in Appendix B. The highest death sentencing rate in black defendant-white victim cases previously observed was 10.1%. Delaware’s death sentencing rate is almost twice as high.

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<sup>35</sup>See [www.deathpenalty.org/factsheet.pdf](http://www.deathpenalty.org/factsheet.pdf) (Death Penalty Information Center website).

<sup>36</sup>See, e.g., Blume, Eisenberg & Wells, *Explaining Death Row’s Size and Racial Composition*, *supra* n. 2.

<sup>37</sup>See, e.g., David Baldus, George Woodworth & Charles Pulaski, Jr. *Equal Justice and the Death Penalty: A Legal and Empirical Analysis* (1990); Samuel R. Gross & Robert Mauro, *Death and Discrimination: Racial Disparities in Capital Sentencing* (1989).

<sup>38</sup>The death sentencing rate in white defendant-white victim cases is 5.1%, the death sentencing rate in black defendant-black victim cases is 2.5%, and the rate in white defendant-black victim cases is 8.8%.

*B. Death Sentencing Rates and Judge Sentencing.*

While the overall numbers are relatively small, as noted previously, Delaware has a high death sentencing rate in relation to the number of homicides. The national mean death sentencing rate is 2.2%, and most states cluster around the mean.<sup>39</sup> Delaware, however, sentences almost 5% of murderer to death, more than twice the national mean, and after Nevada and Oklahoma, it has the highest death sentencing rate in the nation.<sup>40</sup> This is statistically significant.

The high death sentencing rate appears to be attributable to the shift judge sentencing. Between 1977 and 1991 only Delaware juries imposed the death penalty on 10 defendants.<sup>41</sup> In relation to the number of murders, the overall death sentencing rate in the jury sentencing era was 3%. However, after the change to judge sentencing, 28 defendants were sentenced to death between November of 1991 and June of 2002 when the statutory scheme was modified to require that the jury find aggravating circumstances. Five defendants have been sentenced to death under the current regime, which still leave the ultimate sentencing power with the trial judge. The overall death sentencing rate in Delaware when the court imposes sentence is 8%, which is more than four times the national mean death sentencing rate.<sup>42</sup> While several other judge sentencing jurisdictions had death sentencing rates substantially above the mean (e.g., Arizona (4.3%), Alabama (3.8%), Florida

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<sup>39</sup>Blume, Eisenberg & Wells, *supra*, 1 J. Emp. Leg. Stud. at 174, figure 2.

<sup>40</sup>*Id.*

<sup>41</sup> Joseph M. Bernstein, *Keeping the Death Penalty Alive*, 21 DEL. LAW. 9, 9 (2003); *see also Lawrie v. State*, 643 A.2d 1336, 1352 (1994).

<sup>42</sup>Five of the 10 defendants sentenced to death by juries were white and 5 were black. In the judge imposed death sentence cases, 14 defendants were white, 15 were black, 3 were Hispanic and 1 was Native American. A list of those sentenced to death by capital sentencing scheme is found in Appendix C.

(3.4%)),<sup>43</sup> the death sentencing rate in Delaware when the judge determines sentence is much higher than in any other jurisdiction.

*B. Locale.*

We have also observed a significant county effect. Only 2 persons have been sentenced to death for crimes which occurred in Sussex County. Twenty-eight persons (66%) were sentenced to death in New Castle, 12 (29%) were sentenced to death in Kent County, while only 2 (5%) of the persons sentenced to death in the modern era under the guided discretion statutes were sentenced to death in Sussex County. Given that: a) Sussex has more murders than Kent County (183 v. 148 in the relevant time period), and b) a smaller black population than Kent County (14.1% v. 22%), this is interesting and deserves further study. In short, Kent County has 16% of the state's murders, but produces 29% of the state's death sentences. New Castle County has 65% of the state's murders and 66% of the state's death sentences. Sussex County has 19% of the state's murders, but—as noted above, only 2 persons (5% of the death row population) were sentenced to death for crimes committed in Sussex County.

*C. Delaware's Current death row.*

There are currently 17 people on Delaware's death row. Seven (41%) are white, 7 (41%) are African-American and 3 (18%) are Hispanic for a total 59% current non-white death row population. Of those currently on death row, 11 (65%) were convicted of murdering whites and 6 (35.5%) were convicted of murdering African-Americans. Three of the 6 black victim cases involved multiple victims. All of the current white death sentenced inmates were sentenced to death for the murder of a single white victim. Thirteen of the 17 (76%) current death row inmates were

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<sup>43</sup>Blume, et al, *supra* n.2, 1 J. Emp. Leg. Stud. at 172, Table 1.

sentenced to death in New Castle County.<sup>44</sup>

*D. Executions.*

Of the 14 death row inmates who were executed, 7 (50%) were white, 6 (43%) were African-American and 1 was Native-American (7%). Ten (71%) of the executed inmates were sentenced to death for killing one or more white victims, and 4 (29%) were executed for the murder of one or more – usually more – black victims. Three of the 4 executions involved multiple victims. Seven of the 14 executed persons were sentenced to death in New Castle County and 7 were sentenced to death in Kent County. Four (29%) were “volunteers” who waived their appeals and agreed to be executed. Thirteen of the 14 executions were by lethal injection; one individual, Billy Bailey – elected hanging as the method of execution. The average time from imposition of the death penalty until the sentence was carried out was 10.3 years.<sup>45</sup>

*E. Appeals and Error Rates.*

As for error rates, the Delaware Supreme Court has decided 50 cases on direct appeal.<sup>46</sup> The Delaware Supreme Court has reversed the conviction (5 cases) or sentence (10 cases) in 15 cases on direct appeal, and the United Supreme Court ordered that one death sentenced inmate be resentenced after the judgment was affirmed by the Delaware Supreme Court. The overall error rate on direct appeal 32%. Thirteen of those 16 individuals (81%) were subsequently resentenced to life imprisonment, 1 was resentenced to death and ultimately executed and 2 were resentenced to death

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<sup>44</sup>A list of individuals currently on Delaware’s death row is found in Appendix D.

<sup>45</sup>A list of the death sentenced inmates executed in Delaware is found in Appendix E.

<sup>46</sup>The number of appeals is greater than the number of persons sentenced to death under the guided discretion statute (42) because some persons had their convictions or sentence reversed and then were resented to death and appealed again. A list of all cases decided on direct appeal is found in Appendix F.

and are currently appealing their convictions and sentence.

Four death sentenced inmates prevailed in state post-conviction proceedings, and 2 were successful in state post-conviction proceedings. This yields an overall error rate of 44%.<sup>47</sup> Of the 4 inmates who prevailed in state post-conviction, 3 of the 4 were resentenced to death; of the 2 inmates who prevailed in federal habeas corpus, 1 was resentenced to life imprisonment, 1 is pending a new trial.<sup>48</sup>

Some argue that a high error rate indicates the appellate review system is working. In Delaware, for example, error is found in almost half the cases. Others assert that a system charged with determining who should live and who should die should not make so many mistakes. This issue becomes more poignant when one considers what happens in cases where error is found; 68% of the individuals have been resentenced to life imprisonment in subsequent proceedings, and more than 1/3 of all individuals sentenced to death Delaware eventually were resentenced to life imprisonment.<sup>49</sup>

#### **IV. Conclusion.**

This draft sets forth the preliminary results of phase I of our study of the Delaware death

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<sup>47</sup>According to Professor James Liebman's Broken System Studies, nationally, error is found in capital cases at a rate of 68% . James S. Liebman et al., A BROKEN SYSTEM: ERROR RATES IN CAPITAL CASES, 1973-1995 (2000) [Broken System I]; James S. Liebman et al, WHY IS THE SO MUCH ERROR IN CAPITAL CASES, AND WHAT CAN BE DONE ABOUT IT (2002) [Broken System II].

<sup>48</sup>A chart establishing the types of errors found in Delaware cases is found in Appendix G. We would also note that two things of significance have not happened in Delaware. The Delaware Supreme Court has not found that any death sentence imposed by a jury or judge was disproportionate to the offense or to the sentence imposed in a similar case, and no Governor has granted executive clemency.

<sup>49</sup>Since most death sentenced inmates in Delaware still have appeals pending, the number who eventually leave death row exonerated or with lesser sentences will inevitably be higher.

penalty. We will be engaged in this study for the next several years, but these preliminary results raise provocative questions about how the state's capital sentencing scheme is working. The high death sentencing rate overall and the apparent race of defendant and face of victim effects are issues which especially deserve closer scrutiny. We intend to explore these and other issues in the next phases of our research.

**APPENDIX A**  
**Delaware Death Sentences**  
**Complete List of Those Sentenced to Death 1976-2007**

Name	Def.'s Race & Sex	Victim's Race & Sex	County of Conviction	Original Sentence Date	Final Result
Richardson, Roy	W/M				Resentenced to Life Imprisonment
Eaton, Phillip	W/M				Resentenced to Life Imprisonment
Shields, Linwood (Juvenile)	B/M				Resentenced to Life Imprisonment
Foraker, Franklin	W/M				Resentenced to Life Imprisonment
Carpenter, Allen	W/M				Resentenced to Life Imprisonment
Golson, Robert	B/M				Resentenced to Life Imprisonment
Hooks, Clarence	B/M				Resentenced to Life Imprisonment
Johnson, Wilbur	B/M				Resentenced to Life Imprisonment
Hobbs, Sterling (aka Raymond Vanderburg)	B/M				Resentenced to Life Imprisonment
Whalen, Frank	W/M	W/F	Kent	4/28/78	Resentenced to Life Imprisonment
Flamer, William	B/M	B/M B/F	Kent	2/15/80	Executed
Bailey, Billy	W/M	W/M W/F	Kent	3/10/80	Executed
Rush, David	W/M	W/M	New Castle		Resentenced to Life Imprisonment
Deputy, Andre	B/M	B/M B/F	Kent	4/1/80	Executed
Riley, James	B/M	W/M	Kent	12/20/82	Resentenced to Life Imprisonment
Deshields, Kenneth	B/M	W/F	Sussex	4/4/86	Executed
Sanders, Reginald	B/M	W/M	Kent	Oct-86	Resentenced to Life Imprisonment
Dawson, David	W/M	W/F	Kent	7/24/88	Executed
Pennell, Steven	W/M	2W/F	New Castle	Aug-91	Executed
Red Dog, James	NA/M	W/M	New Castle	4/16/92	Executed
Sullivan, Willie	B/M	W/M	Kent	10/30/92	Executed
Gattis, Robert	B/M	B/F	New Castle	10/29/92	Pending
Wright, Jermaine	B/M	W/M	New Castle	10/29/92	Pending
Hameen, Abdullah (AKA Cornelius Ferguson)	B/M	B/M	New Castle	12/7/92	Executed
Jackson, Robert	W/M	W/F	New Castle	4/28/93	Pending
Shelton, Nelson	W/M	W/M	New Castle	4/30/93	Executed

**APPENDIX A**  
**Delaware Death Sentences**  
**Complete List of Those Sentenced to Death 1976-2007**

Name	Def.'s Race & Sex	Victim's Race & Sex	County of Conviction	Original Sentence Date	Final Result
Shelton, Steven	W/M	W/M	New Castle	1/12/92	Pending
Outten, Jack	W/M	W/M	New Castle	4/30/93	Pending
Lawrie, David	W/M	W/M 2W/F	Kent	7/9/93	Executed
Weeks, Dwayne	B/M	B/M B/F	New Castle	7/9/93	Executed
Clark, James	W/M	W/M W/F	New Castle	1/5/95	Executed
Steckel, Brian	W/M	W/F	New Castle	1/8/97	Executed
Stevenson, David	B/M	W/M	New Castle	1/10/1997; 2/3/2006	Pending
Manley, Michael	B/M	W/M	New Castle	1/10/1997; 2/3/2006	Pending
Zebroski, Craig	W/M	B/M	New Castle	8/18/97	Pending
Barnett, Jermaine	B/M	W/M	New Castle	2/3/98	Resentenced to Life Imprisonment
Barrow, Hector	B/M	W/M	New Castle	2/3/98	Resentenced to Life Imprisonment
Ashley, Robert	W/M	B/M	New Castle	3/19/99	Resentenced to Life Imprisonment
Capano, Thomas J.	W/M	W/F	New Castle	3/16/99	Resentenced to Life Imprisonment
Flonnory, Freddie	B/M	2B/F	New Castle	2/19/2004; 7/22/2004	Resentenced to Life Imprisonment
Garden, Sadiki	B/M	W/F	New Castle	3/25/01	Resentenced to Life Imprisonment
Taylor, Milton	B/M	B/F	New Castle	7/6/01	Pending
Norcross, Adam	W/M	W/M	Kent	10/3/01	Pending
Swan, Ralph	W/M	W/M	Kent	10/3/01	Pending
Cabrera, Luis	L/M	2B/M	New Castle	3/14/02	Pending
Reyes, Luis	L/M	2B/M	New Castle	3/14/02	Pending
Williams, Joseph	B/M	B/F	New Castle	8/3/01	Resentenced to Life Imprisonment
Ortiz, Juan J.	L/M	W/F	Kent	9/26/03	Pending
Ploof, Gary	W/M	W/F	Kent	8/22/03	Pending
Charbonneau, Linda	W/F	2W/M	Sussex	6/4/04	Resentenced to Life Imprisonment
Starling, Chauncy	B/M	2B/M	New Castle	6/10/04	Pending
James E. Cooke, Jr.	B/M	W/F	New Castle	6/6/07	Pending

APPENDIX B  
DEATH SENTENCE RATE PER 1000 MURDERS

	<u>Black Offender-Black Victim</u>	<u>Black Offender-White Victim</u>	<u>White Offender-White Victim</u>	<u>White Offender-Black Victim</u>
Delaware	25.5	178.5	51.9	88.2
Georgia	4.5	99.2	41.7	21.4
Indiana	5.6	42.3	21.6	0
Maryland	2.4	52.2	14	7.3
Nevada	24.9	101.1	37	12.5
Pennsylvania	17.7	48.6	22.2	11.9
South Carolina	2.9	67.8	27.1	50.3
Virginia	3.6	64.5	18.3	23

**APPENDIX C**  
**#of Individuals Sentenced in Modern Era Categorized**  
**by Statutory Scheme**

<b>1997 Statute Jury Sentences:</b>	<b>1991 Amendment Judge Sentences; Jury Recommends:</b>	<b>2002 Amendment Judge Sentences; Jury Recommends; Jury Must Unanimously Agree on One Aggravating Factor:</b>
<b>1997- Nov. 1991</b>	<b>Nov. 1991-June 2002</b>	<b>June 2002-Present</b>
Whalen, Frank*	Red Dog, James	Ortiz, Juan J.
Flamer, William	Sullivan, Whillie	Ploof, Gary
Bailey, Billy	Gattis, Robert	Charbonneau, Linda**
Rush, David*	Wright, Jermaine	Starling, Chauncy
Deputy, Andre	Hameen, Abdullallah (AKA, Cornelius Ferguson)	Cooke, James E.
Riley, James*	Jackson, Robert	
Desields, Kenneth	Shelton, Nelson	
Sanders, Reginald*	Shelton, Steven	
Dawson, David	Outten, Jack	
Pennell, Steven***	Lawrie, David	
	Weeks, Dwayne	
	Clark, James	
	Steckel, Brian	
	Stevenson, David	
	Manley, Michael	
	Zebroski, Craig	
	Barnett, Jermaine*	
	Barrow, Hector*	
	Flonnory, Freddie*	
	Capano, Thomas J.*	
	Garden, Sadiki*	
	Taylor, Milton	
	Norcross, Adam	
	Swan, Ralph	
	Cabrera, Luis	
	Reyes, Luis	
	William, Joseph*	

\*Indicates resentenced to life in prison

\*\*Indicates pending new trial

\*\*\*While Pennell was sentenced before the 1991 amendment, his appeals came after the amendment

**APPENDIX D**  
**Delaware's Current Death Row**

<b>Name</b>	<b>Def.'s Race &amp; Sex</b>	<b>Victim's Race &amp; Sex</b>	<b>County of Conviction</b>	<b>Original Sentence Date</b>
Gattis, Robert	B/M	B/F	New Castle	10/29/92
Wright, Jermaine	B/M	W/M	New Castle	10/29/92
Jackson, Robert	W/M	W/F	New Castle	4/28/93
Shelton, Steven	W/M	W/M	New Castle	1/12/1992 (4/13/1993?)
Outten, Jack	W/M	W/M	New Castle	4/30/93
Stevenson, David	B/M	W/M	New Castle	1/10/1997; 2/3/2006
Manley, Michael	B/M	W/M	New Castle	1/10/1997; 2/3/2006
Zebrowski, Craig	W/M	B/M	New Castle	8/18/97
Taylor, Milton	B/M	B/F	New Castle	7/6/01
Norcross, Adam	W/M	W/M	Kent	10/3/01
Swan, Ralph	W/M	W/M	Kent	10/3/01
Cabrera, Luis	L/M	2B/M	New Castle	3/14/02
Reyes, Luis	L/M	2B/M	New Castle	3/14/02
Ortiz, Juan J.	L/M	W/F	Kent	9/26/03
Ploof, Gary	W/M	W/F	Kent	8/22/03
Starling, Chauncy	B/M	2B/M	New Castle	6/10/04
Cook, James E. Jr.	B/M	W/F	New Castle	6/6/07

**APPENDIX E**  
**Delaware Executions**  
**1976-2007**

Name	Def.'s Race & Sex	Victim's Race & Sex	County of Conviction	Sentence Date	Execution Date	Method of Execution	Other
Flamer, William	B/M	B/M&F	Kent	2/15/80	Executed 1/30/1996	Lethal Injection	
Bailey, Billy	W/M	W/M&F	Kent	3/10/80	Executed 1/25/1996	Hanging	
Deputy, Andre	B/M	B/M&F	Kent	4/1/80	Executed 6/23/1994	Lethal Injection	
Deshields, Kenneth	B/M	W/F	Kent	4/4/86	Executed 8/31/1993	Lethal Injection	
Dawson, David	W/M	W/F	Kent	7/24/88	Executed 4/26/2001	Lethal Injection	
Pennell, Steven	W/M	W/F&F	New Castle	Oct-91	Executed 3/14/1992	Lethal Injection	Volunteer
Red Dog, James	NA/M	W/M	New Castle	4/16/92	Executed 3/3/1993	Lethal Injection	Volunteer
Sullivan, Willie	B/M	W/M	Kent	10/30/92	Executed 9/24/1999	Lethal Injection	
Ferguson, Cornelius (AKA Abdullah Hameen)	B/M	B/M	New Castle	12/7/92	Executed 5/25/2001	Lethal Injection	
Shelton, Nelson	W/M	W/M	New Castle	4/30/93	Executed 3/17/1995	Lethal Injection	Volunteer
Lawrie, David	W/M	W/M&F&F	Kent	7/9/93	Executed 4/23/1999	Lethal Injection	
Weeks, Dwayne	B/M	B/M&F	New Castle	7/9/93	Executed 11/17/2000	Lethal Injection	
Clark, James	W/M	W/M&F	New Castle	1/5/95	Executed 4/19/1996	Lethal Injection	Volunteer
Steckel, Brian	W/M	W/F	New Castle	1/8/97	Executed 11/4/2005	Lethal Injection	

## APPENDIX F

### Delaware Direct Appeal Cases 1982-2007

CASE NAME	RESULT	CURRENT STATUS
<i>*Whalen v. State, 434 A.2d 1346 (Del. 1980), cert. denied, 455 U.S. 910 (1982).</i>	Reversed-S	Life in Prison
<i>Flamer v. State, 490 A.2d 104 (Del. 1983), cert. denied, 464 U.S.</i>	Affirmed	Executed
<i>Bailey v. State, 490 A.2d 158 (Del. 1983), cert. denied, 464 U.S. 867 (1983); Bailey v. State, 503 A.2d 1210 (De. 1984),</i>	Affirmed	Executed
<i>Rush v. State, 491 A.2d 439 (Del. 1985).</i>	Reversed-S	Life in Prison
<i>Riley v. State, 496 A.2d 997 (Del. 1985), cert. denied, 478 U.S. 1022 (1986).</i>	Affirmed	Life in Prison
<i>Deputy v. State, 500 A.2d 581 (Del. 1985), cert. denied, 480 U.S.</i>	Affirmed	Executed
<i>DeShields v. State, 534 A.2d 630 (Del. 1987), cert. denied, 486</i>	Affirmed	Executed
<i>*Dawson v. State, 581 A.2d 1078 (Del. 1990), rev'd and remanded, 503 U.S. 159 (1992), 608 A.2d 1201 (1992).</i>	Reversed-S	Executed
<i>Sanders v. State, 585 A.2d 117 (Del. 1990).</i>	Reversed-S	Life in Prison
<i>Pennell v. State, 604 A.2d 1368 (Del. 1992)</i>	Affirmed	Executed
<i>Red Dog v. State, 616 A.2d 298 (Del. 1992).</i>	Affirmed	Executed
<i>Sullivan v. State, 636 A.2d 931 (Del. 1994), cert. denied, 513 U.S. 833 (1994).</i>	Affirmed	Executed
<i>*Dawson v. State, 637 A.2d 57 (Del. 1994).</i>	Affirmed	Executed
<i>Gattis v. State, 637 A.2d 808 (Del. 1994), cert. denied, 513 U.S. 843 (1994).</i>	Affirmed	On Row
<i>*Wright v. State, 633 A.2d 329 (Del. 1993).</i>	Affirmed	On Row
<i>Ferguson v. State, 642 A.2d 772 (Del. 1994), cert. denied, 519 U.S. 1014 (1996).</i>	Affirmed	Executed
<i>Lawrie v. State, 643 A.2d 1336 (Del. 1994), cert. denied, 513 U.S.</i>	Affirmed	Executed
<i>*Jackson v. State, 643 A.2d 1360 (Del. 1994), cert. denied, 513 U.S. 1136 (1995).</i>	Reversed-S	On Row
<i>Outten v. State, 650 A.2d 1291 (Del. 1994), cert. denied, 515 U.S. 1145 (1995). (for Steven Shelton and Outten)</i>	Affirmed	On Row
<i>Shelton v. State,</i>	Affirmed	Executed
<i>Weeks v. State, 653 A.2d 266 (Del. 1995)</i>	Affirmed	Executed
<i>*Whalen v. State, 492 A.2d 552 (Del. 1985).</i>	Reversed-S	Life in Prison
<i>*Wright v. State, 671 A.2d 1353 (Del. 1996), cert. denied, 517 U.S. 1249 (1996).</i>	Affirmed	On Row
<i>Clark v. State, 672 A.2d 1004 (Del. 1996).</i>	Affirmed	Executed
<i>*Jackson v. State, 684 A.2d 745 (Del. 1996), cert. denied, 520 U.S.</i>	Affirmed	On Row
<i>*Manley v. State, 709 A.2d 643 (Del. 1998), cert. denied, 525 U.S.</i>	Affirmed	On Row
<i>Stevenson v. State, 709 A.2d 619 (Del. 1998), cert. denied, 525 U.S. 967 (1998).</i>	Affirmed	On Row
<i>Steckel v. State, 711 A.2d 5 (Del. 1998)</i>	Affirmed	Executed
<i>Zebroski v. State, 715 A.2d 75 (Del. 1998)</i>	Affirmed	On Row
<i>Barrow v. State, 749 A.2d 1230 (Del. 2000) (for Barnett and Barrow)</i>	Reversed-S	Life in Prison
<i>Capano v. State, 781 A.2d 556 (Del. 2001), cert. denied, 536 U.S. 958 (2002).</i>	Affirmed	Life in Prison

**APPENDIX F**  
**Delaware Direct Appeal Cases 1982-2007**

<b>CASE NAME</b>	<b>RESULT</b>	<b>CURRENT STATUS</b>
<i>Flonery v. State, 778 A.2d 1044 (Del. 2001).</i>	Reversed-NT	Life in Prison
<i>Ashley v. State, 798 A.2d 1019 (Del. 2002).</i>	Reversed-NT	Life in Prison
<i>Williams v. State, 818 A.2d 906 (Del. 2002).</i>	Reversed-S	Life in Prison
<i>*Garden v. State, 815 A.2d 327 (Del. 2003).</i>	Reversed-S	Life in Prison
<i>Norcross v. State, 816 A.2d 757 (Del. 2003), cert. denied, 540 U.S. 833 (2003).</i>	Affirmed	On Row
<i>Reyes v. State, 819 A.2d 305 (Del. 2003), cert. denied, 540 U.S. 862 (2003). (for Reyes and Cabrera)</i>	Affirmed	On Row
<i>Swan v. State, 820 A.2d 342 (Del. 2003), cert. denied, 540 U.S.</i>	Affirmed	On Row
<i>Taylor v. State, 822 A.2d 1052 (Del. 2003), cert. denied, 540 U.S. 931 (2003).</i>	Affirmed	On Row
<i>*Garden v. State, 844 A.2d 311 (Del. 2004).</i>	Reversed-S	Life in Prison
<i>Ploof v. State, 856 A.2d 539 (Del. 2004).</i>	Affirmed	On Row
<i>Ortiz v. State, 869 A.2d 285 (Del. 2005).</i>	Affirmed	On Row
<i>*Starling v. State, 882 A.2d 747 (Del. 2005).</i>	Reversed-S	On Row
<i>Charbonneau v. State, 904 A.2d 295 (Del. 2006).</i>	Reversed-NT	Life in Prison
<i>*Starling v. State, 903 A.2d 758 (Del. 2006).</i>	Affirmed	On Row
<i>*Manley v. State, 2007 WL 10363 (2007) (for Manley and Stevenson).</i>	Affirmed	On Row

