

---

Winter 2005

## The Psychology of Capital Punishment

Shelia M. Murphy  
*Cook County Circuit Court*

Follow this and additional works at: <https://www.repository.law.indiana.edu/ilj>



Part of the [Courts Commons](#), [Criminal Law Commons](#), [Judges Commons](#), and the [State and Local Government Law Commons](#)

---

### Recommended Citation

Murphy, Shelia M. (2005) "The Psychology of Capital Punishment," *Indiana Law Journal*: Vol. 80 : Iss. 1 , Article 8.

Available at: <https://www.repository.law.indiana.edu/ilj/vol80/iss1/8>

This Symposium is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Law Journal* by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact [rvaughan@indiana.edu](mailto:rvaughan@indiana.edu).



**JEROME HALL LAW LIBRARY**

INDIANA UNIVERSITY  
Maurer School of Law  
Bloomington

## THE PSYCHOLOGY OF CAPITAL PUNISHMENT

*The Honorable Sheila M. Murphy*

The work in Massachusetts is very interesting and important. However, I hope that the death penalty will not be enacted in Massachusetts. I hope that Massachusetts remains free of the death penalty for a number of reasons. First, to do any death penalty, and give it just a modicum level of fairness, would require a great amount of money. It costs almost as much money for the factual investigation as for attorneys. This fact is largely neglected.

Yesterday I received a copy of the police notes of a lineup, as a result of repeated freedom of information requests to Houston on the capital case involving Dominique Green, who faces execution on October 26th. The witness to the lineup said, "I can't identify the person. It's either two or four in the lineup. The man who had the gun and stuck me up had a hood. Would you have either number two or number four put on the hood?" And so they had Dominique Green put on the hood. Guess who was charged with the capital crime?

I can't stress enough the importance of the factual investigation. The attorneys who have been involved in this case for years told me there is no question about his guilt. Just like the prosecutors in Cook County told me about Verneal Jimerson. They told me there is no reason to order DNA testing because this man is absolutely guilty of heinous murder; a white woman raped and murdered along with her husband. No reason. So I just say to you, Massachusetts, think before you act. But you have already done a great service to the country because for states like Texas the work that you have done on this Report is very important.

Now, on the topic of fairness, in terms of who should be chosen for the death penalty, if you look outside of Massachusetts to see who is actually on death row in America, it's the poor and vulnerable. So, if you want to give some balance, you would say that only the rich should be executed. Justice Ruth Bader Ginsburg has observed that the poor are the only inhabitants of death row. Dominique Green, for example, was the youngest and his parents didn't care about him. His mother was mentally ill and his father was addicted to something. So if you're going to have some balance in the death penalty, then we should start death qualifying the privileged people of our society, the people we usually send to the penitentiary.

It's not just in America that we have these considerations. I was in Assisi, Italy, and some locals I met there told me that they would like to have a death penalty, but the Italian Constitution prohibits it. But they also said, "We don't think we could have the death penalty here because we would probably do it in the same way as the United States." I asked, "What do you mean, the same way we're doing it? How are we doing it?" He said, "You just put to death the people you don't like." And he said, "Here, we would put to death the immigrants. We'd get rid of them."

So I say to you, psychologically we have to recognize that we're not just doing this from the ears up, we're doing this emotionally. The scientific endeavors that you have included in your Report are good. But how do you know when somebody is being tortured? Certainly Michael Sullivan and Patrick Fitzgerald in Chicago, would never approve of people being tortured and then putting on a case that is the result of coercion against the defendant. And yet, in Cook County we have a plentitude of people who were put on trial for murder, condemned to death, and now we have evidence of horrific torture that was used against the defendants. So when you're thinking about these things you have to think about the dark side of our nature.

I couldn't agree more with the idea that mitigation specialists are necessary. But the mitigation specialists are not foolproof. You have to get mitigation specialists who are going to go outside the box, rather than just going to the people who knew the defendant while he was in detention. They need to go to a school or someone who knew the defendant prior to his conviction. But many defense attorneys don't want to do that. This is especially true in a culture where you have lots of death penalties, like in Texas, where you have to do the mitigation for one case and immediately move on to the next.

Another glaring omission in the Report is in the area of sanctions. Judges need to be able to give sanctions. The trial lawyer on the Dominique Green case told me: "Nothing happens to us. I was appointed by the judge on this case, but I shouldn't have been because I'd never tried a capital case before. But I had been on the McFarland case." McFarland was one of the sleeping lawyer cases in Texas. And he said: "I wasn't appointed to represent McFarland, but I was supposed to keep the lawyer awake. And so, I was appointed on this case. I know I could have done things better, but you know there's no sanction. There's no disciplinary commission that's ever going

to come after me. We don't do that in Texas. If there is a Brady violation, as clearly there was in this case, nobody is going to come after those prosecutors and say you're going to have to come before the Board of Discipline."

And what about the judge? What about judges who allow people to sleep? Has anybody gone after that judge and said, "Should we have a recall?" Was there even an impaneling of a judicial inquiry board? Not at all. He retired with great plaudits. So, if we're going to consider the death penalty, there has to be some sanctions for misbehavior by the police, prosecutors, defense lawyers, judges, everyone. Otherwise, we are saying it's alright.

The elected District Attorneys—I, commend you for saying that we should have a statewide review. One case I'm helping on is in Harris County, and if Harris County were a state, it would be the third most populous state for the death penalty in America. The rest of the country with a death penalty should emulate what you've done in your fine Report. But let us again go back to the psychological. State review board or not, if there is a death penalty, there is a status issue. Let me give you an example: Former prosecutors put down how many cases they've prosecuted and won on their resumes. I was asked to help get a position for someone in Ireland. That individual sent his resume without showing it to me, and on the resume it said how many cases he'd prosecuted and won. I got a call from Dublin that said don't ever send anyone like that to us again. "Your people view practicing law as a football game." They were horrified. They thought it was unethical and outrageous. I'm still trying to make it up to this Dean for this atrocity. And he talks about it wherever he goes, and I don't blame him. So think about the difference in our system from the Irish system, or the Scottish, or the English system.

For example, we took students to the Old Bailey. One of our judges went down right after the verdict came in and the verdict was a not guilty. And this judge asked the Queen's Counsel, "How do you feel? Are you terribly disappointed? Do you wish you'd done something different?" This Queen's Counsel leaped back away from him like he was a leper and said, "I am responsible for putting on the case. I am not responsible for the outcome." This is an example of the horror they have for what we consider ordinary conduct. If you were to go into the courthouse where I was the presiding judge, and go into the State's Attorneys Office, you would see a wall of half-cut neckties and scarves cut up for the prosecutors who won their cases. So I ask you, if you're considering doing the death penalty, be very careful of the psychological ramifications.

I just want to say, in closing, that the model death penalty, in my view, is an oxymoron. I don't think it can happen. But I commend every single person who worked on it, and I think the rest of the country should emulate many of your ideas.