

Now That I Have Been Condemned by the State,

What Are My Chances of Execution?

Rates of Reversal in the Capital Punishment System, 1973-2011

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A Thesis submitted to the faculty
of the University of North Carolina
in partial fulfillment of the require-
ments of a degree with Honors in
Political Science.

2014

Approved by

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Introduction

Since 1976, Americans have answered Gallup's question, "Are you in favor of the death penalty for a person convicted of murder?" with support ranging from 61 to 80 percent.¹ Additional polls trend comparably around similarly high levels of support, contributing to the narrative that Americans believe death should be punished with death.² They see capital punishment as a vehicle for the delivery of retribution and incapacitation for the nation's most heinous murderers and deterrence for future criminals. Demanding "hard on crime" stances from lawmakers, their consensus exerts political pressure that manifests itself at many levels of government.³

Pervasive in the study of capital punishment is Justice Thurgood Marshall's concurring opinion in *Furman v. Georgia*, which questioned the reliability of public opinion polls as a signal of public support "because whether or not a punishment is cruel and unusual depends not on whether its mere mention 'shocks the conscience and sense of justice of the people,' but on whether people who were fully informed as to the purposes of the penalty and its liabilities would find the penalty shocking, unjust and unacceptable."⁴ Essentially, he suggested that the American public is so uninformed about the death penalty in terms of its actual, rather than theoretical, use, that their

1 Lydia Saad. 2013. "U.S. Death Penalty Support Stable at 63%." January 9. <http://www.gallup.com/poll/159770/death-penalty-support-stable.aspx> (February 5, 2014).

2 Frank Baumgartner, Suzanna De Boef and Amber Boydstun. 2008. *The Decline of the Death Penalty and the Discovery of Innocence*. New York: Cambridge University Press, 166-199.

3 James Liebman, Jeffrey Fagan and Valerie West. 2000. "A Broken System: Error Rates in Capital Cases, 1972-1995."

4 408 U.S. 238 (1972), 361

opinion about its value is meaningless. The more the public would know about the facts related to the death penalty, he argued, the less they would support it. According to Justice Marshall, the very subject of overwhelming public support is an error-ridden system, driven by low probabilities and high variability across time and geographic region. If people were aware of these facts, they would not support it.

This thesis explores one aspect about the actual use of the death penalty, which, if known to all Americans, would certainly surprise them. The contents of this paper uncover rates of reversal in capital cases that average 73.3 percent over the modern history of the punishment. In these 73.3 percent of cases in which a final decision has been reached, a state or federal judge found error so consequential that it could only be corrected with a new trial, even with the knowledge that the public supports the death penalty. Since 1976, only 19.7 percent of condemned inmates that are no longer on death row have actually been put to death. This finding has implications that persist over differing opinions about the usefulness of capital punishment. Whether one's reaction to this is that "frivolous appeals" need to be curtailed so that the punishment can more commonly be carried out, or if one believes the high rates of reversal slow a rickety system that's prone to troubling error and mistakes, both sides can agree that the rate of reversal is surprisingly high.

High rates of reversal make state capital punishment systems extraordinarily costly. This finding also cripples the many arguments that lie behind overwhelming public support for the death penalty as a deterrent for future murders, an important retributive tool, and a vehicle for bringing closure to the families of victims. Furthermore, the uncertainty of reversals burden death row inmates in a way that is akin to torture. It is

for these reasons that the statistical rarity of execution given a death sentence is not just surprising, but shocking from perspectives of public policy and human rights. Following variation in executions over time and jurisdiction before parsing its implications, this thesis will make clear that the reality of America's capital punishment system falls short of effectiveness as a predictable, justly administered punishment for the nation's most heinous criminals.

In 2011, there were 14,610 homicides nationwide—about 4.7 for every 100,000 persons.⁵ In that same year, only 80 inmates were sentenced to death.⁶ Based on these statistics, there are less than 5.5 death sentences handed down yearly for every 1,000 homicides, an indication in itself that the death penalty is not applied equitably for all eligible offenders. The disconnect between murders and executions is even more pronounced with 43 executions in 2011, which measures at less than 3 executions per 1,000 murders. In the period from 1976 to 1995, this gap was even wider, with about 15 death sentences and only .68 executions per 1,000 murders.⁷

Such low probabilities occur at each step in the process. From the prosecutor's decision to pursue the death penalty, to the jury's decision to impose it, the capital punishment system has long been associated with a degree of chance. Statistical rarity even accompanies the procession from a death sentence to an execution. The result is that a sanction intended to be a useful tool of the criminal justice system is increasingly rare, begging questions about the extent to which it can be equally and justly applied.

Investigating that question, Joseph Liebman's comprehensive study of the

5 Erica Smith and Alexa Cooper. 2013. "Homicide in the U.S. Known to Law Enforcement, 2011." Bureau of Justice Statistics.

6 The 80 death sentences are not necessarily associated with the 13,913 homicides committed in 2011 due to the lag between crime and sentencing.

7 Liebman, Fagan and West, "A Broken System," 45.

reliability of the capital punishment system uncovered a high frequency of mistakes and miscarriages of justice that led him to conclude that the system is largely broken.⁸

Looking at every capital sentence and appeal from 1973 through 1995, Liebman found that 68 percent of cases were seriously flawed, overturned as a result of a “serious error” made in the initial trial. Such errors include incompetent defense counsels and prosecutorial misconduct that led to a suppression of evidence that would have acquitted the defendant or altered his or her sentence in some way. According to the study, these errors persist all levels of the appeals process, confirming doubts that the appeals process is not a catchall check on the uncertainty of a verdict rendered by jury.⁹

The eight states and the District of Columbia that have struck capital punishment from their statutes shared the concerns that the Liebman study raised. Since 1981, Massachusetts, Rhode Island, New Jersey, New York, New Mexico, Illinois, Connecticut and Maryland have joined the ranks of 10 others who abolished it before what is considered the modern era of death sentencing.¹⁰ Available press releases from the governors’ office of each moratorium state cite corruption, bias and error in the system as the rationale for abolition. The criticism of arbitrary implementation of the death penalty is not a novel one. The 1972 majority opinion of *Furman v. Georgia* cited insufficient safeguards for the accused as the basis for striking the “arbitrary and capricious” punishment as unconstitutional. In the four years following *Furman*, states revised their death penalty statutes to accommodate expanded rights for the accused, and capital punishment was reinstated in most jurisdictions.

⁸ Liebman, Fagan and West, “A Broken System.”

⁹ Ibid.

¹⁰ “States With and Without the Death Penalty.” 2013. Death Penalty Information Center. [Deathpenaltyinfo.org](http://deathpenaltyinfo.org) (February 10, 2014).

Since the reinstatement of America's death penalty and the initiation of what is now called the "modern era" of capital punishment, jurisdictions have taken on its use at disparate rates. Because the administration of the death penalty is mostly a state function, prosecutors pursue death at entirely uneven frequencies across state lines. Texas, for instance, has executed nearly 500 people since 1976, whereas California, an even more populous state, has executed only 13. Texas is home to 9 of the 14 counties in the country that have carried out ten or more executions.¹¹ In fact, only 15 percent of all counties have even carried out a single execution, despite the fact that 32 states have the death penalty at present and 41 have had it on their books in the time since 1973.¹² These disparities illustrate that punishment is used very unevenly, even in those states that have it on the book.

Using data from the Bureau of Justice Statistics annual Capital Punishment Report, this study shows that arbitrariness in the capital punishment system extends beyond when a death sentence is handed down. Of the 8,300 death sentences rendered from 1973 to 2011, 54 percent resulted in an inmate being removed from death row through a judicial channel other than execution. These alternate routes off death row include: a judge overturning a condemned inmate's sentence while their guilty verdict stands; a judge overturning their conviction, including the ruling of guilt; the governor of their state commuting the death sentence; and a state legislature striking the death penalty completely from their state's books. The remainder of the 8,300 inmates were executed, died in prison, or remain on death row. Presented with this puzzling lack of finality in the capital system, this thesis explores variation over time and jurisdiction, producing

¹¹ Frank Baumgartner. 2010. "The Geography of the Death Penalty."

¹² "States With and Without the Death Penalty"

staggering findings that *the odds of execution for an individual already sentenced to die is only about 25 percent*. In other words, three quarters of the nation's condemned, most heinous murderers do not receive the sentence that the jury delivers. Further, this national average is inflated by the finality of Virginia's capital punishment system, which executes nearly 80 percent of those it sentences to death.

These findings are preceded by studies that examine the geographic distribution of executions, their effect on murder rates and their cost to the states, and overall error in the system. They have found that the capital punishment system is geographically arbitrary, ineffectively deterrent, prohibitively costly, and ridden with error and corruption. The findings of this thesis contribute to the forceful existing narrative that the American capital punishment is largely broken. This study, however, is uniquely specific in its approach and novel in its focus on what happens to death row inmates *after* they are condemned to die. Looking at the conditional probability of being executed after being given a death sentence, its findings amplify those of existing research.

The fact that sentenced inmates face a diversity of dispositions and only a statistically rare chance of execution has meaningful consequences from legal, public policy, and human rights standpoints. The marginal probability of execution given a death sentence calls into question the value of the death penalty as a deterrent for future homicides, a guarantee of closure for the families of victims, an equitable deliverer of retribution to murders, and a cost-efficient, useful public policy. Given the wide-ranging implications of a malfunctioning capital system, it is the purpose of this thesis to elucidate the shocking statistical rarity with which an inmate sentenced to die actually dies at the hand of the state.

Data Collection and Methods

BJS Capital Punishment Report

Data for this study were extracted from the Bureau of Justice Statistics (BJS) Capital Punishment Report for 2011. As a part of the National Prisoner Statistics program, the BJS conducts a yearly investigation of inmates received and removed under the sentence of death. Reports compile data collected directly from state corrections departments and the Federal Bureau of Prisons. Included in the report of results is information about the inmates' race, gender, education and criminal background, in addition to broader trends in the national administration of capital punishment. These results are presented in a number of statistical charts and tables, each based off of a total of 8,300 death sentences handed down from 1973 to 2011.

I synthesized the contents of the charts and tables of the BJS report to create two datasets—one organized by year and a second organized by jurisdiction. Most relevant to the creation of the temporal dataset was Table 16 (Appendix A), which detailed a profile for inmates who received a death sentence in each year since 1973, after the Supreme Court's 1972 ruling on *Furman v. Georgia* that created a moratorium on the death penalty. Among the dispositions detailed are executions, natural death or suicide, commutation, overturn of the death penalty statute, overturn of the inmate's conviction, overturn of the inmate's sentence, other or unknown reasons, and those still under the sentence of death as of the end of 2011. The BJS report indicates that for individuals

sentenced to death more than once (i.e. granted rehearing and subsequently re-sentenced to death), the charts only include their most recent death sentence. It is for this reason that the terminology “inmates” may be used interchangeably with the sentences under which they served.

Dispositions associated with each year entry reflect the outcomes of cases that were sentenced in that particular year. For example, for all persons sentenced to death in 1973, 2 were executed, 14 saw the death penalty statute overturned in their state, 9 had their convictions overturned, 8 had their sentences overturned, 9 sentences were commuted by the governor of their state, and none remain on death row. Figure 1 shows the total number of death sentences handed down each year in the dataset, from 1973 to 2011. Figure 2 shows the number death sentences rendered in a given year for which the inmate remains on death row. For instance, over 150 individuals sentenced in 1999 were still on death row in 2011. Figure 3 presents two metrics to track executions over time. The conventional way to track executions over time is to look at the number of executions carried out in each year. The dotted line in Figure 3 presents this metric, which peaks in 1999 when 98 executions were carried out. This paper, however, will focus on the metric presented as the solid line, which indicates the number of death sentences handed down each year that resulted in an execution. It details how many inmates who received death sentences in a given year were executed by 2011. This figure peaks in 1985, when nearly 75 death sentences handed down that year resulted in an execution.

(Insert Figure 1 about here)

(Insert Figure 2 about here)

(Insert Figure 3 about here)

I utilized Table 17 (Appendix B) to create the jurisdictional dataset, which lists the dispositions associated with all death sentences handed down by the federal government and the 40 states with the death penalty since 1973. The table associates the total number sentenced to death in each jurisdiction with the same outcomes as mentioned above, with the exception of the overturn of the death penalty statute. The categories for statute, sentence, and conviction overturns are combined into a single category, rather than separated into three as in the dataset organized by year. In the jurisdictional set, data can be read as follows: of the 429 individuals sentenced to death in Alabama from 1973 to 2011, 55 were executed, 34 died on death row, 142 had the statute, sentence or conviction overturned, 2 had their sentences commuted by the governor, and 196 remain on death row.

The methodology discussion of the BJS report explains reasons why the NPS-gathered data may differ from other reports of individuals under a sentence of death. Among them, the program adds sentenced inmates to the count of death sentences only after they are admitted to state or federal prison. Additionally, because the counts are for the last day of the year, in this case December 31, 2011, they may differ from other records for which data is added on a rolling basis. For the purpose of Tables 16 and 17, the report also notes that figures do not include individuals sentenced before 1973 that remained on death row afterwards. The tables apply strictly to the dispositions associated with individuals sentenced after 1973. Further, as mentioned above, many inmates see their death sentence overturned, only to be sentenced again. In the BJS dataset, they are not listed twice, but only with reference to their most recent death sentence. Some other

sources, such as those reporting the total number of death sentences, may list such cases multiple times. For reasons that this thesis makes clear, such reversals are more common than one might initially imagine. Regardless of the slight differences in definition that cause some variation in precise numbers reported, the BJS data are the most comprehensive available, and none of the trends reported in this thesis would appear substantially different if alternate sources were used.¹³

Methods

Upon creation of the datasets from the BJS report, I conducted a series of manipulations to calculate the percentage of death sentences that resulted in each disposition, both by year and by jurisdiction. One set of percentages is taken as proportion of all 8,300 death sentences, including those with unfinalized dispositions; a second set of calculations reports percentages taken from the pool of the 5,218 death sentences for which final decisions have been reached. Death sentences considered “finalized” are those associated with the following dispositions: execution; natural death or suicide; statute, conviction and sentence overturns; commutations; and other removals. Unfinalized death sentences include inmates who remain on death row. Because many current death row inmates have appeals that are still pending, it cannot be said with certainty that they will or will not be executed. Among the 5,218 former death row inmates, however, what is certain is the final outcome associated with their case. For the most part, the statistics presented here refer only to these “finalized” cases. The pool of sentences from which percentages are drawn is noted on the figures with which they correspond.

¹³ This statement does not apply to the analysis in Figures 5 and 6 below where I demonstrate that the data used here are substantially more accurate than a simple comparison of “finality” of state death penalty systems based on executions / number of current death row inmates. The number of inmates currently on death row, at any given time, is not strongly related to the number who have ever served, because the jurisdictions differ so greatly in the rates at which they reverse death sentences.

From the percentages of each disposition, I created a three-year moving average to eliminate year-to-year noise in the data from the temporal dataset. Averages for a given year are calculated from the year before, the year of, and the year after the sentencing. Figure 4 exemplifies the way in which the three-year average in the percent of reversals (commutation and statute, conviction and sentence overturn) follows the yearly trend in reversals. Two sets of moving averages were taken—one for percentages of each disposition as a product of finalized sentences, and the other for disposition percentages calculated from all sentences, finalized and unfinalized.

(Insert Figure 4 about here)

Using the original data from the BJS report along with the percentages and three-year averages calculated from them, I used STATA to generate a series of graphs that depict the overall share of death sentences that result in each disposition. Graphs present data on death sentences at a summary level, by year, and by jurisdiction, which will be analyzed in chapters to follow.

Justification of Method

The purpose of this study is to examine the conditional probability of being executed, given a sentence of death. This examination naturally evokes language of “finality” as an evaluation of how often death sentences are actually carried out. Existing scholarship, however, does not agree upon a single way to measure this construct in the capital punishment system. Among the measures put forward to quantify the risk of execution given a death sentence, a construct I call “finality,” are those that compare death sentences to executions in a given year or at a lagged interval, those that compare the population on death row to executions in a given year or at a lagged interval, and those

that compare homicides to executions in a given year or at a lagged interval. These measures are hotly contested yet none has an overwhelming advantage over the others in validity or reliability.¹⁴

This paper proposes a method that improves upon existing calculations in a way that most accurately captures the finality of the death penalty as a function of death sentences with conclusive outcomes. The distinction between finalized and unfinalized sentences then becomes a critical pivot around which the discussion of finality must be framed. This framing is important because finality in the system is outcome-driven. Under this definition, a state would have a system associated with the highest degree finality if everyone that had been sentenced to death and is no longer on death row were put to death, even if other inmates remain on death row. Along the same vein, a state would have the lowest finality rating if none of the sentenced individuals removed from under that sentence were executed. Any non-execution removals from death row, except by natural death or a governor's commutation, represent cases where the initial sentence of death was overturned. A perfectly "final" system, where the original death sentences survived all appellate review, would have no such removals. Because the appeals process can take many years, and there is no way to know which inmates still on death row will have success with future appeals, it is best to eliminate all these cases from the analysis. For all those with final dispositions, then, we can calculate a firm number which represents the "finality" of each state's death penalty, and that is exactly what I do here.

The inclusion of the current death row population in that calculation would dilute the impact of executions as the driving mechanism of finality and of reversals as its

14 Committee on Deterrence and the Death Penalty. 2012. *Deterrence and the Death Penalty*, Daniel Nagin and John Pepper, eds. Washington, D.C.: National Academies Press, 55-57.

counterforce. Because there is no predictive indicator of the fate of those currently on death row and because death row populations can be highly variable across time even within a jurisdiction, a measure that captures only the proportion of executions among all finalized death sentences can be reliably compared across time and jurisdiction. The measure can be considered valid insofar as it captures finality as an indicator that state capital punishment systems are accomplishing what it is that they are designed to accomplish—executing the condemned.

In contrast to the measure justified above, existing research discusses the success of a state's capital system in executing its condemned by comparing the current death row population in a state to the total number executed. This measure is deficient because it does not account for the disparate rate at which states execute and remove inmates from death row. It therefore has the capacity to produce misleading inflations and deflations of what we call “finality” based on administrative, process-based criterion or mere fluctuations in political climate. Figures 5 and 6 compare these two approaches by state. The two measures are loosely correlated, but the graphs shows that there are certain states that rank high on the finality measure calculated from the 2013 death row population that actually only have a small proportion of executions to finalized death sentences. There are also states that have higher finality calculated from finalized death sentences than from the current death row population.

(Insert Figure 5 about here)

(Insert Figure 6 about here)

The difference in these measures that Figure 5 elucidates is driven by the fact that current death row is not entirely correlated with the total number of death sentences

handed down in that state, as shown in Figure 6. Because the total number of death sentences is resistant to year-to-year fluctuations, it trumps the current death row population as a reliable measure of finality. The availability of data on the total number of death sentences, as well as a breakdown of the final dispositions for each of those sentences therefore facilitates an improvement upon existing understandings of finality in the capital punishment system. One contribution of this thesis is that I present a more complete and accurate assessment of what I call the “finality” measure, compared to the more simple approach that is often used in the literature. Comparing the current size of death row with the cumulative number of executions is not an accurate measure of the finality of the capital punishment system. Rather, the measure used here compares the total number of death sentences, even those where the inmate is no longer on death row, to the accumulated number of executions. This reduces substantially the perceived finality of the system and is based on all available data.

3

Dispositions of Death

It is taken for granted that individuals condemned to death by the state are executed. The reality is that a variety of final dispositions follow death sentences, of which executions are not the most common. In fact, it is becoming less and less common that an individual convicted of death-eligible murder and handed down a sentence of death will actually be executed. The growing disconnect between the number of death sentences and the number of executions challenges traditional conceptions of capital punishment as a vehicle for effectively administering final justice for the nation's most heinous criminals. The decreasing finality of the capital punishment system—that is, the diminishing proportion of death sentences to executions—is a story that features a diversity of non-execution outcomes that are increasing in frequency. Figure 7 depicts this divergence in outcome between reversals and executions for those death sentences with finalized dispositions.

(Insert Figure 7 about here)

The description of variation in these outcomes as a proportion of sentences across time and geographic region first requires a summary understanding of the dispositions of death during the modern era of the death penalty since the Supreme Court ruled on *Furman* in 1972. Figure 8 presents a summary of all outcomes associated with the 8,300 death sentences rendered since 1973.

(Insert Figure 8 about here)

Unfinalized dispositions

The largest portion of death sentence dispositions are those associated with an unfinalized disposition, with 3,082 inmates still on death row—37 percent of all that were sentenced to death in the modern era. This figure is largely a function of the length of time between sentencing and execution, the average of which the BJS reports at just over 11 years. It is affected partly by variation across geographic regions but is also exacerbated by the increasing number of legal protections and appeals offered to death row inmates nationwide. The result is that individuals executed in 2011 were likely sentenced before 2000. However, there is a great deal of deviation from the mean of 11 years. Figure 9 shows that, as of 2011, there were still individuals under a sentence of death that was handed down as early as 1974. As of 2011, there were 5 inmates who had been on death row for 30 years, and 29 more that were awaiting the imposition of a 20-year-old sentence.

(Insert Figure 9 about here)

Finalized dispositions

Dispositions considered final individually comprise smaller segments than unfinalized sentences, but together they depict the ways in which an inmate exits death row—by execution, by natural death or suicide in prison, by the overturn of the sentence or conviction, by the invalidation of the death penalty statute, or by what the BJS considers “unknown or other reasons.” The remaining 5,218 death sentences, 63 percent of the total, are associated with these outcomes.

Non-Execution Death Row Exits

Most prominent is the twenty percent of death sentences rendered from 1973-2011 that have been overturned. Sentences are handed down in the penalty phase of a hearing, after an inmate is found guilty of a death-eligible crime. Among the reforms installed after *Gregg v. Georgia* (1976) is the bifurcated trial for death-eligible murders, which separates the hearing that decides the guilt of the defendant from that which decides the penalty the defendant receives. Individuals whose death sentences are overturned receive either life in prison without parole or a lesser sentence, but the decision made in the guilt phase of their hearing is unchanged. Individuals who saw their death sentences overturned numbered 1,674 in the 38 years from 1973 to 2011.

About half the number of inmates whose death sentences were overturned on appeal had their conviction overturned—863 sentences, or 10 percent of the total. The conviction is issued in the guilt phase of the hearing, and its overturn changes the verdict for death-eligible murder from guilty to not guilty. Though not all charges associated with the case are necessarily dropped, individuals whose guilt has been rescinded are removed from death row. Included in this number are the 139 individuals who were completely exonerated—meaning that they were acquitted on retrial, that all charges against them have been dropped, and that they have been completely pardoned—in the years from 1973 to 2011.¹⁵ Exonerations comprise sixteen percent of all conviction overturns and nearly three and one half percent of all non-execution death row exits. For the vast majority of individuals whose convictions have been overturned, errors in the initial trial earn them a new trial and some may be sentenced again to death. In that case,

¹⁵ “Innocence: List of Those Freed from Death Row.” 2014. Death Penalty Information Center. [Deathpenaltyinfo.org](http://deathpenaltyinfo.org) (March 22, 2014); Since 2011, five more individuals have been completely exonerated, elevating the total number of exonerations nationwide to 144.

the BJS database includes only that more recent decision. Therefore, the data analyzed here under-report, rather than inflate, reversal rates.

Six percent of individuals sentenced to death since 1973, totaling 522, have seen the death penalty statute overturned in their state during their tenure on death row. Since *Furman v. Georgia* was decided in 1972 ruling the death penalty unconstitutional, many states have eliminated the death penalty from their books. In the period from 1973 to 2011, they include North Dakota, Massachusetts, the District of Columbia, Rhode Island, New Jersey, New York, New Mexico and Illinois. Individuals once on death row in states with newly overturned capital punishment statutes are put in life in prison without parole, with the exception of New Mexico, whose overturn was not retroactive, leaving two individuals on death row. As we will see below, most of those removed from death row because the underlying statute was overturned were in the first years after 1973, before their state revised their death statute. These cases today are extremely rare. Most recently, Maryland struck its capital punishment statute in 2013, but this repeal was not retroactive, which left five inmates on its death row. Fifty two percent of the states that reversed their statutes did so before 1978; after this date the laws were more settled.

Because of the aforementioned lag between sentencing and execution, it is not uncommon for an inmate to die on death row, either by natural causes or by suicide. Five and one-half (5.5) percent of individuals who received death sentences died in prison, or 460 inmates. An equally small portion of death sentences result in a sentence commutation by the governor of an inmate's state, changing their sentence from death to life in prison. Reasons for commutations are generally political and occur close to the scheduled execution date. They comprise less than five percent of dispositions, at only

386. The remaining 36 cases have been labeled by the BJS as having “other or unknown removal”. At 0.4 percent of all death sentence outcomes, Figures 8 and 9 present it combined with commutations.

Executions

Of the 8,300 inmates sentenced to death since 1973, only 1,277 have actually been executed. As a share of all sentences, it falls behind overturned sentences at 15.4 percent. As a share of finalized sentences, Figure 10 shows that executions comprise nearly 20 percent of outcomes. Compared to the total share of reversal, 73 percent, an inmate is four times as likely to die on death row or be removed from it than he is to actually be executed.

(Insert Figure 10 about here)

The fact that an execution is not the most likely outcome of a death sentence begs questions about how *final* a death sentence is, and how that persists over the capital punishment system as a whole. It motivates the exploration of the variation that produces the gap between this historic tool of the justice system and its desired outcome. Is it consistent over time? Does it vary by region? It can be expected that historic trends in the overall use, as well as local legal culture in a given state drive this trend. The following analysis will address these questions in the language of finality rates in order to complete the narrative that this summary chapter has introduced.

Trends Over Time

A Legal History: “Evolving Standards of Decency”

The historic administration of the death penalty is punctuated by several Supreme Court rulings that have shaped and reshaped the legal framework for the capital punishment system. In 1972, *Furman v. Georgia* decided that the death penalty, as it was then administered, was constitutionally unsound under the 5th, 8th, and 14th Amendments and under the legal doctrine of “evolving standards of decency.” The majority opinion called the punishment “arbitrary and capricious,” citing insufficient safeguards to ensure that it be handed down fairly. This decision set off a wave of reforms in states with the death penalty. It also led some states to overturn their death statutes. North Dakota, Massachusetts and the District of Columbia struck death from their books in the five years following *Furman*. For the remaining death states, the Court’s 1976 *Gregg v. Georgia* decision approved changes made to statutes, and allowed for the reinstatement of capital punishment. It required a bifurcated trial and required proportionality review by the state supreme court to ensure that death was reserved for only the most heinous criminals.

Cases that followed conformed to a progression of increasing legal protections for those accused of death-eligible crimes. In 1986, *Batson v. Kentucky* addressed the issue of bleaching the jury in capital trials, ruling that a prosecutor must give a reason other than race to be able to strike someone from the jury venire without cause. The Supreme

Court decided in 2002 that individuals who are mentally retarded cannot be executed, though it left the definition of mental retardation to the discretion of the state.

Subsequently, *Roper v. Simmons*, decided in 2005, prohibited the sentencing to death of an individual on trial for a crime committed under the age of 18, which overturned statutes in 25 states in which the age requirement for death row admittance was lower.

Both *Atkins* and *Roper* were decided on the Constitutional grounds of the 8th

Amendment, which prohibits cruel and unusual punishment. These decisions collectively produce a narrative of greater legal stringency in the administration of capital punishment as the courts pursue “evolving standards of decency.”

Trends in Individual Dispositions

Sentencing

Atop the developing legal framework of the capital punishment system, the number of death sentences handed down by year loosely reflects the improving legal protections granted to death-eligible defendants. Figure 1 shows the number of death sentences increasing dramatically after the *Furman v. Georgia* ruling in anticipation of the reinstatement of the death penalty after statutory improvements were made in the states. Aside from year to year fluctuations in the total number of sentences rendered, this number stays somewhat constant through the nineties when death sentences peaked at 315 in 1994 and remained high through 1999. A dramatic decline is apparent in the 2000s, arguably after *Atkins v. Virginia* and *Roper v. Simmons* overturned the death penalty statute for mentally handicapped inmates and for minors, respectively. After *Roper*, all minors were removed from death row; however, the same cannot be said for *Atkins* because mental capacity is much more subjective a criterion than age. The dip in

the 2000s is also attributable to an increase in the recognition of innocence as a problem with the capital punishment system, as well as other reforms instituted on a state level that increased protections for death row inmates.

Executions

The trend in death sentencing from 1973 to 2011 differs from that of executions in the same period. Figure 11 presents the trend in the percent of all death sentences handed down resulting in an execution. It features a peak in the early 1980s at 26 percent, which reveals that inmates sentenced in the early eighties are most likely to have been executed, while those sentenced in the period after have become increasingly less likely to have been executed. In turn, they are more likely to remain on death row or to have exited under an alternate disposition. The fact that the execution percentage diminishes rapidly after 2000 and is near zero from 2005 through the period is a direct reflection of the lag between sentencing and execution, a lag that averages at about 11 years. If the inmates sentenced in 2009 to 2011 are executed at all, the execution will likely take place from 2020 to 2022. The fact that there are individuals sentenced after 2000 that have been executed is likely due to the fact that such individuals were volunteers, meaning that they waived some or all of their rights to appeal, therefore expediting their execution. While some volunteers waive their appeals after spending ten or more years on death row, others do so nearly immediately. Over the period from 1976 to 2011, 137 individuals have volunteered themselves for execution.¹⁶

(Insert Figure 11 about here)

¹⁶ “Information on Defendants Who Were Executed Since 1976 and Designated as “Volunteers.” 2013. Death Penalty Information Center. [Deathpenaltyinfo.org](http://deathpenaltyinfo.org) (March 22, 2014).

(Insert Figure 12 about here)

Figure 12 removes the individuals who remain on death row from the equation and accounts only for those death sentences for which final decisions have been reached. Based off the 5,218 finalized sentences, the graph depicts a period of somewhat sustained execution around 30 percent, preceded and followed by tails of sizable incline and decline. Death sentences rendered in the mid 1970s to early 1980s were overturned at a higher rate than the following two decades, likely because there was a degree of confusion about the requirements set by the *Gregg* ruling that were put into law in a staggered fashion from state to state. The graph's depiction of the decline in executions in the 2000s could be linked to a very small n value, as most of the individuals sentenced in that period remain on death row.

Reversals

Figure 7 shows that the rate at which death sentences result in a reversal is essentially the inverse of the rate at which they result in an execution. Over time, the lines mirror one another, with reversals exceeding executions by a minimum of approximately 20 percentage points in the mid 1990s and a maximum of 85 percentage points towards the late 2000s. Evident in Figure 13, the percentage of finalized death sentences that have been reversed ranges from 55 to 95 percent, with the higher reversal rates associated with the earliest and latest bounds of the time period. Expanding the denominator to all death sentences, finalized and unfinalized as in Figure 14, the percent of reversals trends steadily downward one from 95 percent to 0, which is a function of the steadily increasing death row population.

(Insert Figure 13 about here)

(Insert Figure 14 about here)

The trends in subcategories of reversal taken as percentages of finalized death sentences mirror the overall trend in reversals, with a sustained level in the middle two decades of the analysis, and increasing and decreasing tails at the beginning and the end of the period, respectively. Evident in Figure 15, there are two notable divergences. Beginning in 1973 and extending approximately five years after, a disproportionate percentage of finalized death sentences were met with overturned death statutes. This accounts for the uncertainty associated with the death penalty in the 1970s, before the legal ramifications of the *Furman* and *Gregg* decisions were certain. *Furman* overturned the death statutes for all individuals then on death row, but these individuals would have been sentenced prior to 1972. The rate of overturn was markedly high in 1972 because the statutes of many states failed to meet the standards set in *Gregg v. Georgia*. The second notable trend is the bulge in conviction overturns in the late-2000s. This is likely associated not with one historic event, but with the increasing evidence of errors in the capital punishment. Baumgartner, Boydston, and De Boef (2008) discuss the “social cascade” that discoveries of innocence initiate, which ultimately perpetuate further discoveries of innocence.

(Insert Figure 15 about here)

Collective Trends in Dispositions

Taken together, the trends in individual dispositions produce a narrative of decline of the death penalty. Figure 16 shows the overall number of death sentences decreasing steadily since its peak in the late 1990s. In 2011, the number of death sentences rendered was 80, which is just a fourth of the figure from 15 years earlier. Non-death removals have taken

a similar trend, however, the decline in number is due to the fact that not many of the later death sentences have been finalized.

(Insert Figure 16 about here)

Figures 17, 18 and 19 show dispositions over time as a proportion of total death sentences. Because of the lag time associated with an execution, a linearly increasing number of death-sentenced inmates remain on death row. Reversals and executions, too, are a function of time. What persists across time is the likelihood that a death-sentenced inmate is executed. Since 1980, the chance of a death sentence actually resulting in an execution decreased from its maximum of just under 30 percent. Though the percentage reversed decreases over the same period in a parallel fashion, reversals continue to occupy a much greater proportion of decisions than do executions.

(Insert Figure 17 about here)

(Insert Figure 18 about here)

(Insert Figure 19 about here)

Removing entirely unfinalized death dispositions from the temporal analysis, as in Figure 7, it is clear that reversals together are a more common outcome of a death sentence than death itself. Figure 15 shows that although dispositions like the death statute being overturned and commutation comprise small percentages of the total, they contribute to an overarching narrative in which rare political outcomes combined with a high number of judicial mistakes associated with sentence and conviction overturn pose a meaningful threat to the finality of an age-old deliverer of final justice. Despite the degree of variation over time, high levels of reversal have been associated with capital

punishment since the onset of the modern era of the death penalty. In the next chapter, I show how these same variables differ by jurisdiction.

5

Variation by Jurisdiction

Sentencing

Forty states and the federal government have legally held the right to execute their citizens since *Gregg v. Georgia* initiated the modern era of the death penalty. The preceding chapter depicted the overall decline in the issuance of death sentences since then; but variation in sentencing over time is less stark than variation in sentencing by geographic jurisdiction. Between jurisdictions, the average number of sentences handed down from 1973 to 2011 is 202, but the presence of outliers like California (962), Florida (1,005) and Texas (1,057) likely inflates the mean. The median number of death sentences rendered during this time period is 83, a figure resistant to distortion from outliers. Sentences range in number from 1 issued in New Hampshire to 1,057 in Texas. This difference cannot be attributed the fact that Texas has 1,057 times more heinous murderers than New Hampshire. It is likely associated with the fact that when only one murderer is sentenced to death, the standard for heinousness required for the prosecutor to seek death is high and all cases are compared to the one; however, when many have been sentenced to death, the prosecutor has a lower standard to meet, since the many cases will inevitably vary in their heinousness. Overall the number of death sentences issued is not sensitive to the population size of each state or to its murder rates. A more telling description of geographic variation in the administration of capital punishment then lies in a comparison of the rates of executions and reversals.

(Insert Figure 20 about here)

Executions

Of the 8,300 individuals sentenced to death, 1,277 were executed. Spread between the states, this averaged 31 executions per jurisdiction, again inflated from the median of 6. Execution numbers range from 0 in Kansas, Massachusetts, Rhode Island, New Hampshire, New Jersey, New York and Rhode Island to 477 in Texas (Figure 21). However, in the evaluation of the administration of capital punishment, execution rates are more important than execution numbers because they signal the functionality of the punishment rather than just its magnitude.

(Insert Figure 21 about here)

(Insert Figure 22 about here)

(Insert Figure 23 about here)

Figures 22 and 23 present the percent of death sentences resulting in an execution. Figure 22, specifically, shows the percent of *finalized* death sentences resulting in an execution, which can be operationally deemed the “finality rate” of capital administration in that jurisdiction. States with no executions have a finality rate of zero, up to Virginia whose finality rate is 76 percent. The average rate across jurisdictions is 24.47 percent. This translates to an average of 1 in 4 odds that a death-sentenced inmate will actually be executed; but these odds range from 0 to nearly 4 in 5, dependent upon jurisdiction. Taken as a percentage of all death sentences, finalized and unfinalized, the average is slightly lower, at 15.38 percent (Figure 23). While the temporal lag from sentencing to execution that affects the death sentences issued in the last ten years of the dataset that makes execution appear less likely, this lag is also an important signal of finality. Such is

the case in California, where the 705 of the 962 ever sentenced to death remain on death row (Figure 24).

(Insert Figure 24 about here)

(Insert Figure 25 about here)

Figure 25 presents a scatter of finality rates calculated from finalized decisions over the total number of sentences. It shows that the finality of a death system is not strongly correlated with the number of death sentences the state hands down. Virginia, for example, issued only 152 death sentences in the modern era—a figure well below the mean—yet, of those 152, 109 were executed and only 9 remain on death row. With a rate of 76 percent, Virginia is not a leader in sentencing, but its aggressiveness in executing its condemned makes it a leader in finality. In the inverse, California is a leading producer of death sentences, with 962, the third highest in the time period. But of the 962 decisions, only 257 have been finalized, and only 13 have been executed, producing an finality rate of 5.02. An finality rate of 5.02 signals a 1 in 20 chance that an individual sentenced to death would see that sentence carried out. Florida is a similar case, with 1005 death sentences, 393 of which are finalized, and only 53 of which resulted in executions. The Florida finality rate is just greater than California's at 11 percent. Texas is a more predictable case. With 1,057 death sentences and 756 final decisions, Texas executed 477 inmates, producing a high finality rate of 63 percent.

Reversals

Compared to the 1,277 executions that took place in states from 1973 to 2011, 3,481 death sentences of the 8,300 were reversed. Taken as a percentage of finalized decisions, Figure 26 shows the reversal rates by jurisdiction, the average of which is 66.71 percent.

The median is higher, at 76.92 percent. New Hampshire and South Dakota have never reversed a death sentence. Both states have only executed one inmate. In Kansas, Massachusetts, New York and Rhode Island, all death sentences issued in the modern era have been reversed. Including all death sentences, even those with unfinalized dispositions, the U.S. average is 41.94 percent (Figure 27). The combined findings of disparate finality rates across jurisdictions and a national average of 67 percent of death sentences reversed support the conception of the capital punishment system as a leaky pipeline.

(Insert Figure 26 about here)

(Insert Figure 27 about here)

Variation by Judicial District

Because the last appeal guaranteed to a death row inmate is to the Federal Appeals Court, it could be hypothesized that a circuit court actively and consistently granting final reprieve to the condemned would uniformly affect finality rates across their judicial district. Figure 28 shows a great amount of variability both between districts and within them. Table 1 depicts that states with 0 percent finality are often in the same judicial district as states with rates higher than the national average. Such is the case in the 2nd Circuit, the 3rd Circuit, and the 10th Circuit. It could be considered surprising that judicial districts have no noticeable bearing on finality rates. There is a consensus that the 9th District is a relatively liberal and activist court. It might follow, then, that this court would overturn death sentences at high rates, producing lower than usual finality rates. However, there is no evidence that this is the case, as the mean for the district is 13.1 percent, which ranks 8th of 13 in finality.

(Insert Figure 28 about here)

(Insert Table 1 about here)

Without convincing evidence that judicial districts drive the difference in finality between jurisdictions, it must be concluded that idiosyncratic factors unique to the individual state must account for differences in the likelihood of executions given a death sentence. Because each state has its own laws on the death penalty, it might be “reasonable” or “expected” that there is a great deal of state variation, even under due process and equal protection. However, federal habeas appeals must relate to the inmate’s rights under the United States Constitution, rather than an individual state’s constitution. It follows then, that in exercising the final interpretive authority on whether a sentence or conviction should stand under the rights guaranteed to death row inmates under federal standards, United States Courts of Appeals would grant uniformity to an otherwise decentralized policy. Instead, the reality is that federal review offers no consistency. This reality calls into question the extent to which the American capital punishment system offers its inmates equal protection under the law.

6

Conclusion

The power to put its citizens to death is arguably the greatest power any government can wield. The U.S. government, through the states, retains this power because the American people think that it serves a crucial function in the American justice system by incapacitating heinous murderers, deterring others, and delivering closure to the families of the victims. The results of this study produce a powerful challenge to this perception. Across the nation, the odds of being executed given a death sentence average only 1 in 4, which means that 3 in 4 death row inmates die awaiting execution, are moved from death row to the general prison population, or are exonerated and removed from incarceration entirely. Highly variable across time and geographic region, the marginal frequency with which death sentences are imposed brings to light that the realities of America's capital punishment system fall short of the public's expectations. There are wide-ranging implications of these findings.

How can a death sentence deter other murderers if reversal occurs more often than not? How can the victims' families find closure in a death sentence when a decades-long appeal process most often leads to a disposition other than death? How can decades spent preparing for a false promise of death not equate to cruel and unusual punishment for the sentenced? How can states justify the costs of iterated trials and exhaustive legal resources spent on an ultimately futile outcome? These are the questions that these

findings evoke. Their answers lie in exhaustive research from a diversity of lenses through which scholars view capital punishment.

The National Academy of Sciences Study on the deterrent effect of the death penalty acknowledges that an integral part of calculating deterrence is examining the perceptions of the risk of execution.¹⁷ It notes that high rates of reversal and low probabilities of execution complicate the calculation of this risk and diminish the effectiveness of the statute as a deterrent tool.¹⁸ If it were true that the death penalty had a deterrent effect as the American people perceive it does, an individual contemplating a capital crime would consider how likely it is that he or she is to be executed if arrested. Assuming rational expectations, the near marginal probability of execution even if granted a death sentence would then play only a near marginal role in the future criminal's calculus.

This study has implications for issues of cost that the death penalty incurs on state governments. The maintenance of a capital punishment system is incredibly costly because death-eligible offenders are granted more legal support and have access to greater numbers of appeals than other inmates. Additionally, because death sentenced inmates are guaranteed a more extensive set of automatic appeals, the costs of paying experts, selecting qualified juries, and of the time of presiding officers trump those of cases where death is not on the table. There is also an opportunity cost related to additional time spent on capital cases.

A study on the cost of North Carolina's capital punishment system quantifies an extra 26,680 hours spent on capital cases that could have been directed to other casework.

¹⁷ Committee on Deterrence and the Death Penalty. *Deterrence and the Death Penalty*, 105-106.

¹⁸ *Ibid.*

Cook's detailed accounting of extra costs incurred by North Carolina's death penalty revealed that the state spends approximately 11 million dollars per year.¹⁹ Accumulating 11 million per year over the scope of this study (1973-2011), it can be estimated that the state spent around 418 million dollars on its capital punishment system. Per each of 43 executions during that time period, it cost the state an extra 9.7 million dollars more than if the executed were to remain in prison for life without parole. A similar calculation was done in an intensive study of California's death penalty. Its central findings were that from 1978 to 2000, California spent 4 billion dollars on a capital punishment system that executed only 13 of its 714 condemned, averaging nearly 308 million dollars for each execution.²⁰

A common counter to the argument that the death penalty is exorbitantly costly as a public policy is the idea that closure for the victims' families cannot be quantified. Scott Burns, executive director of the National District Attorneys Association posed the question, "How do you tell the family of a victim that it is not worth the money under our system of justice to seek the death penalty when the voters of a particular state have decided the death penalty is an option?"²¹ Dr. William Petit was the sole survivor of a heinous home invasion and attack that left his wife and two children murdered while he was tied to a chair in his own living room in New Haven, Connecticut. He noted on live television that when Steven Hayes, his family's murderer, was sentenced to death, he

19 Philip Cook. 2009. "Potential Savings from Abolition of the Death Penalty in North Carolina." *American Law and Economics Review*. 11.2 (498-529).

20 Arthur Alarcon and Paula Mitchell. 2011. "Executing the Will of the Voters?: A Roadmap to Mend or End the California Legislature's Multi-Billion-Dollar Death Penalty Debacle." *Loyola of Los Angeles Law Review*. 44(S41-S224).

21 Kenneth Jost. 2010. "Death Penalty Debates: Is the Capital Punishment System Working?" *CQ Researcher*. 20.41(972).

believed that the realization of that sentence would bring him closure.²² Sentenced in 2010, Steven Hayes will likely remain on death row for the next decade, and even so has only a 1 in 4 chance of execution.²³ The capital punishment system as it exists today delays and deprives closure for the families of victims in cases like that of the Petits and families of homicide victims nationwide. A death sentence provides only a 1 in 4 chance of closure for these families.

The traumatic experience of uncertainty is shared with condemned, who spend years preparing for an execution that may or may not be carried out. In her eyewitness account of the death penalty, *Dead Man Walking*, Sister Helen Prejean equated incarceration on death row to torture for the inmate. She describes that an inmate “agonized emotionally and psychologically—preparing to die, anticipating it, dreaming about it,” connecting their suffering to Amnesty International’s definition of torture, specifically “extreme mental assault on a person who has been rendered defenseless.”²⁴ Evidence of this distress is the number of individuals who commit suicide awaiting their fate. Speaking on behalf of an inmate who volunteered himself for execution after three failed attempts at suicide, Dr. Stuart Grassian indicated, “The conditions of confinement are so oppressive, the helplessness endured in the roller coaster of hope and despair so wrenching and exhausting that ultimately the inmate can no longer bear it.”²⁵ These

22 Ibid, 967.

23 As of 2010, the average lapse between receiving a death sentence and being executed is 178 months—nearly fifteen years.

Connecticut, where Steven Hayes was sentenced to death has since abolished the death penalty for future offenders but maintains a current death row of 10. Over the period from 1973-2011, the odds of execution given a death sentence were exactly 1 in 4.

24 Helen Prejean. 1994. *Dead Man Walking: An Eyewitness Account of the Death Penalty in the United States*. New York: Random House, LLC (105).

25 “Time on Death Row.” Death Penalty Information Center. Accessed 10 February 2014. < <http://www.deathpenaltyinfo.org/time-death-row>>.

heinous murderers become victims of broken promises and unmet expectations from the justice system.

The torturous uncertainty that a low finality rate brings to death row inmates is illustrated in the case of Troy Davis. After being sentenced to death for the 1989 murder of a Savannah police officer, Davis's execution was scheduled on three separate occasions. In 2007, he was hours from death when a state parole board granted a stay of execution. In 2008, he was just 90 minutes away from execution when the United States Supreme Court issued another stay. It was not until 2011 that the state of Georgia put him to death by lethal injection.²⁶

A system that repeatedly fails to follow through with its single most important threat is a system guilty of grave injustice not just to its criminals, but also to the families of victims, and the society it seeks to protect. As it stands and as the results of this study show, capital punishment in the United States is an ineffective deterrent, a financial burden, a black box for families in need of closure, and torture to those who spend years awaiting only a tentative disposition. While future scholarship might explore the reasons why rates of reversal are so high and so variable, this study is novel in its introduction of the inconsistencies that plague the mechanism of death. Radelet and Borg describe the changing narrative about the death penalty that social science research helps to propel.²⁷ Their contention is that scholarly examination of the many dimensions of the capital punishment system discussed here has drawn increased scrutiny of not only other scholars, but also the American public at large.²⁸ This thesis contributes to the force of

26 Kim Severson. 2011. "Davis is Executed in Georgia." *New York Times*, September 21.

27 Michael Radelet and Marian Borg. 2000. "The Changing Nature of Death Penalty Debates." *Annual Review of Sociology*. 26: 57.

28 Ibid.

this narrative, adding considerations of reversal rates and likelihoods of execution to discourse about the fairness of the death penalty as a vehicle for the delivery of final justice.

This analysis goes as far as to elucidate rates of reversal in the capital punishment system and explore what high incidences of reversal mean for the effectiveness and justness of the system as a whole. It leaves unanswered a normative question about what the rate of reversal should be and how that should compare to rates of reversal for a lesser crime, like burglary. There are two possible interpretations. The first is that rates of reversal for a lesser crime should be higher because mistakes are not as consequential as when a life is on the line. In this view, prosecutors in capital cases should use the utmost care to ensure that no mistakes are made and that all relevant evidence is admitted for consideration and that all proper legal protections are afforded to the defendant. Reversals should therefore not be common. A second interpretation is that a higher rate of reversal should accompany cases with higher legal stakes. The reality of prosecutorial tunnel vision occupies this alternative narrative, in which capital cases raise the stakes for prosecutors to get a conviction and death sentence for an individual accused of first-degree murder. This pressure on the prosecutor leads to the omission of important evidence that could have acquitted the defendant or a rush to discount mitigating circumstances that would have lowered the defendant's chance of being condemned to die. In this view, reversals should be commonplace to correct for the injustice afforded to defendants in their initial trials.

By uncovering a seventy-three percent rate of reversal of death sentences, this study challenges the first interpretation, as it presents a statistical reality that is divergent

from public expectations. It aligns instead with the latter narrative, in which egregious error is entrenched in a system that is used to deprive citizens of their lives. Returning to the prescription of Justice Marshall, an American public tuned into this reality would be reluctant to support the maintenance of the capital punishment system as it exists today.

Tables and Figures

Figure 1

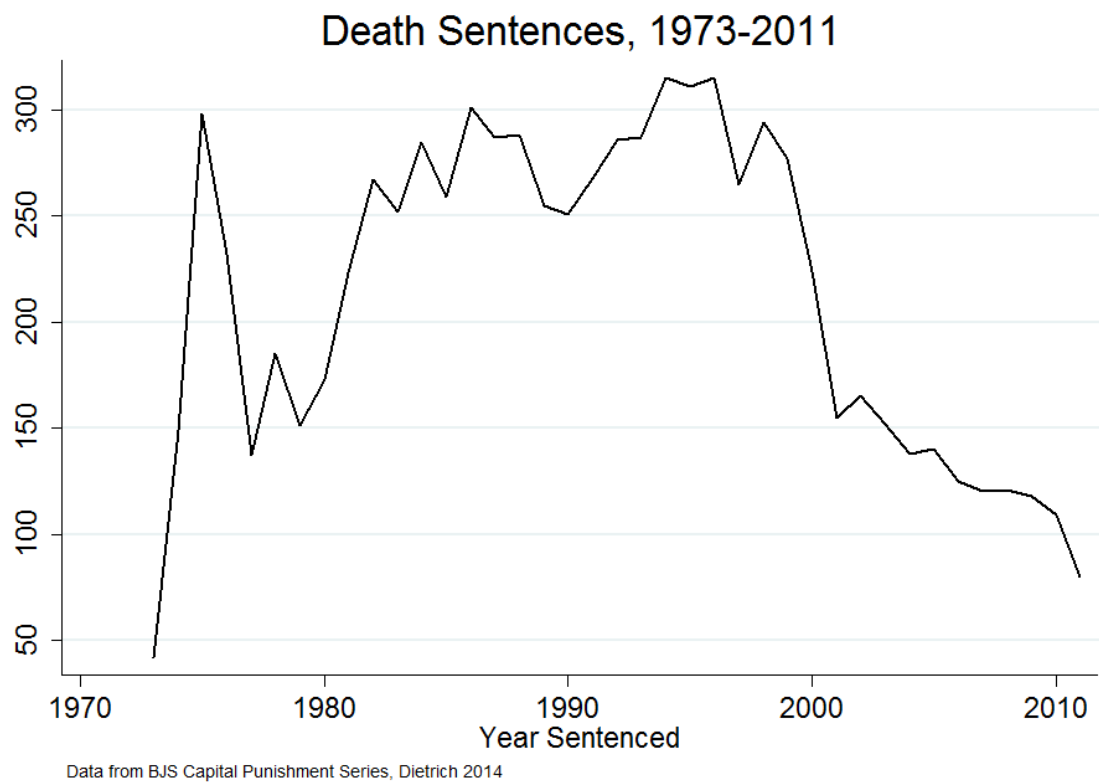


Figure 2

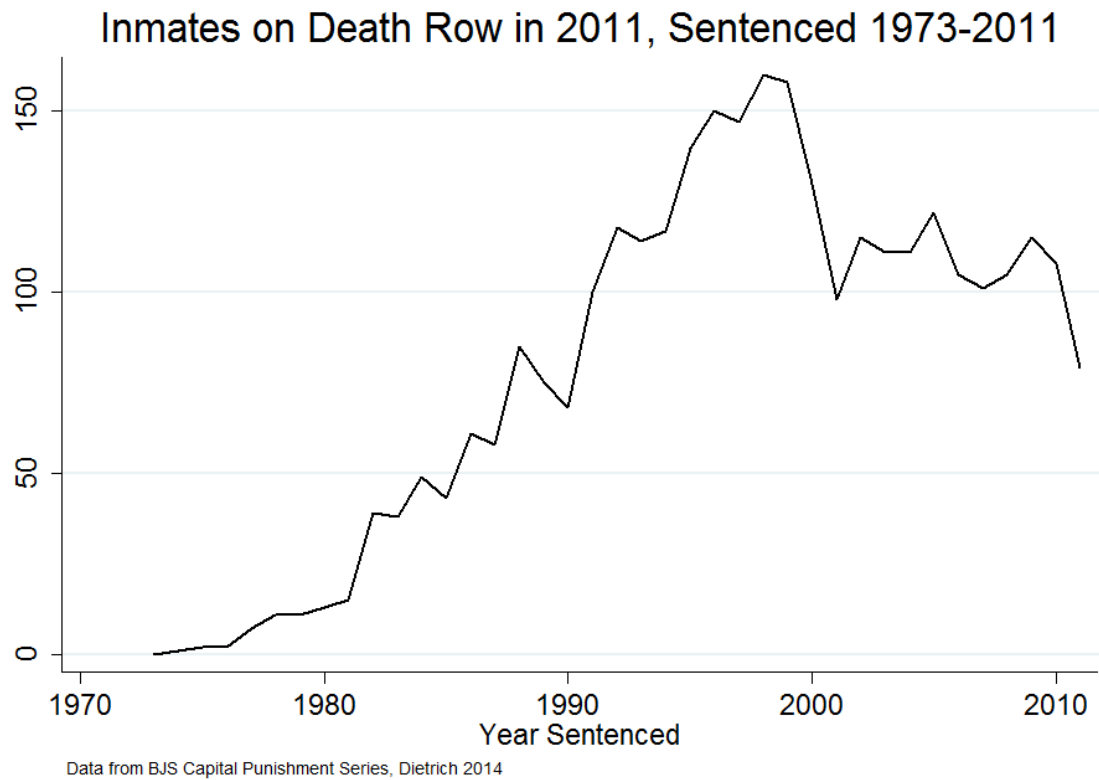
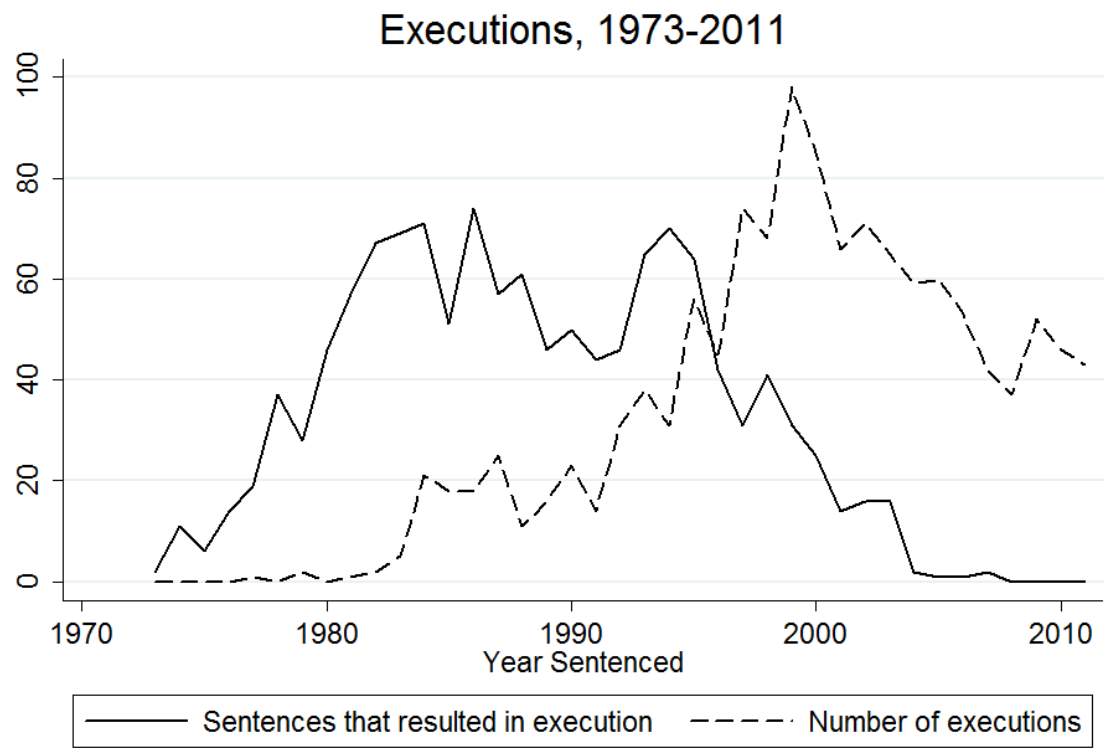
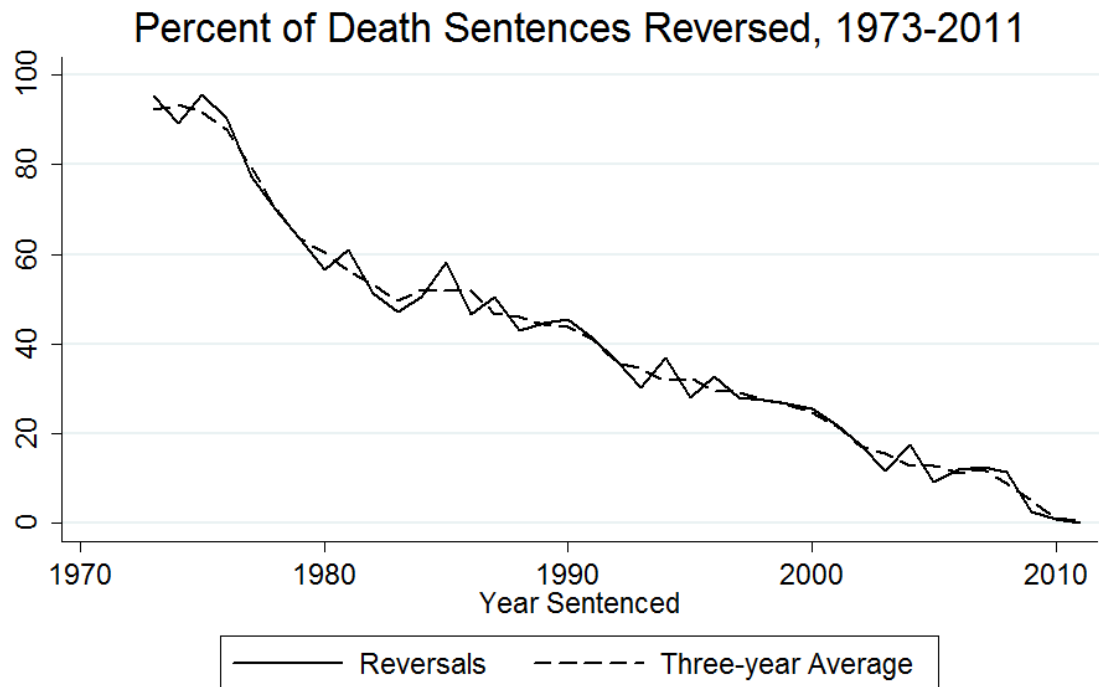


Figure 3



Data from BJS Capital Punishment Series, Dietrich 2014

Figure 4



Reversals taken as a percentage of all death sentences, including those for which the inmate remains on death row.

Data from BJS Capital Punishment Series, Dietrich 2014

Figure 5

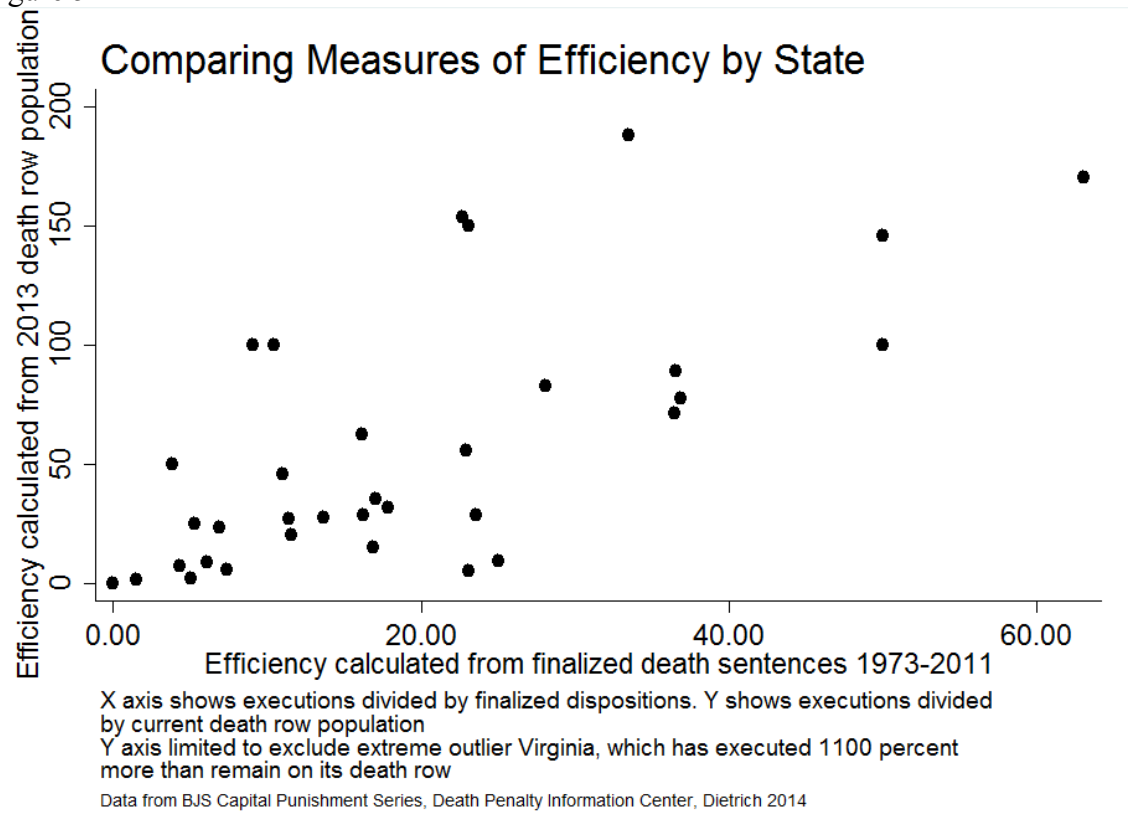


Figure 6

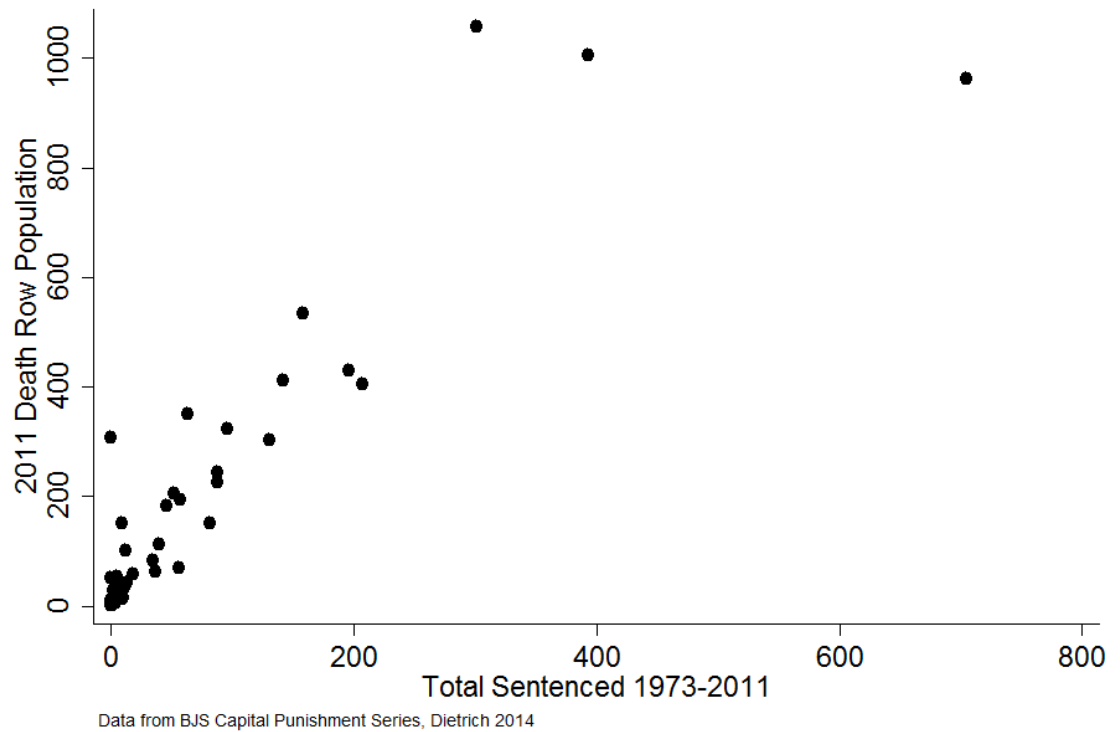
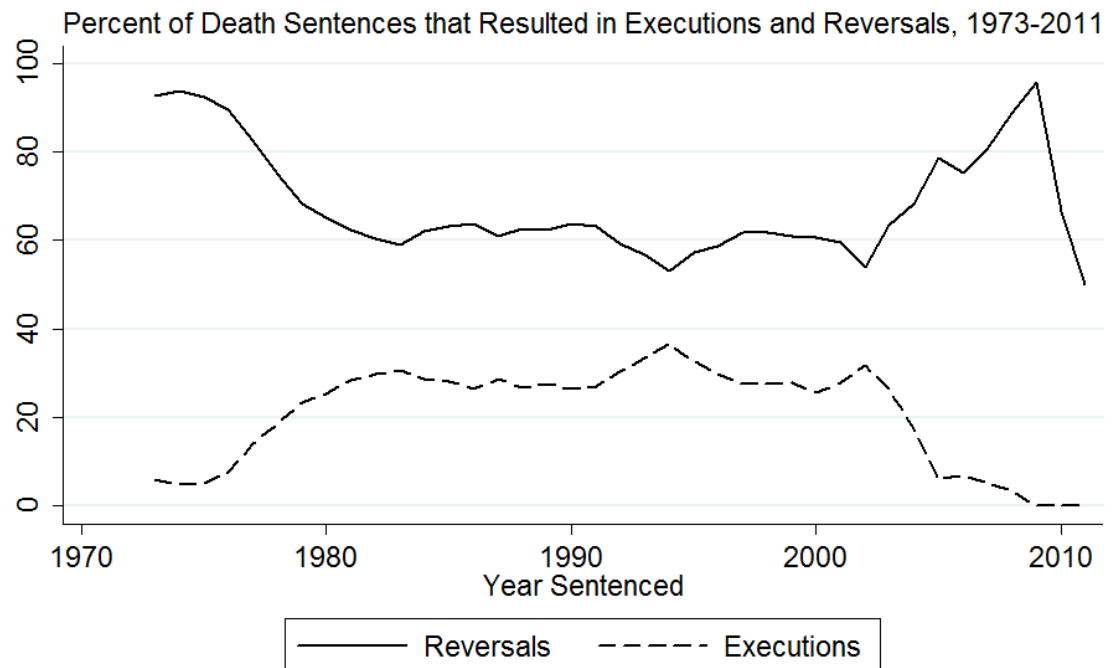


Figure 7

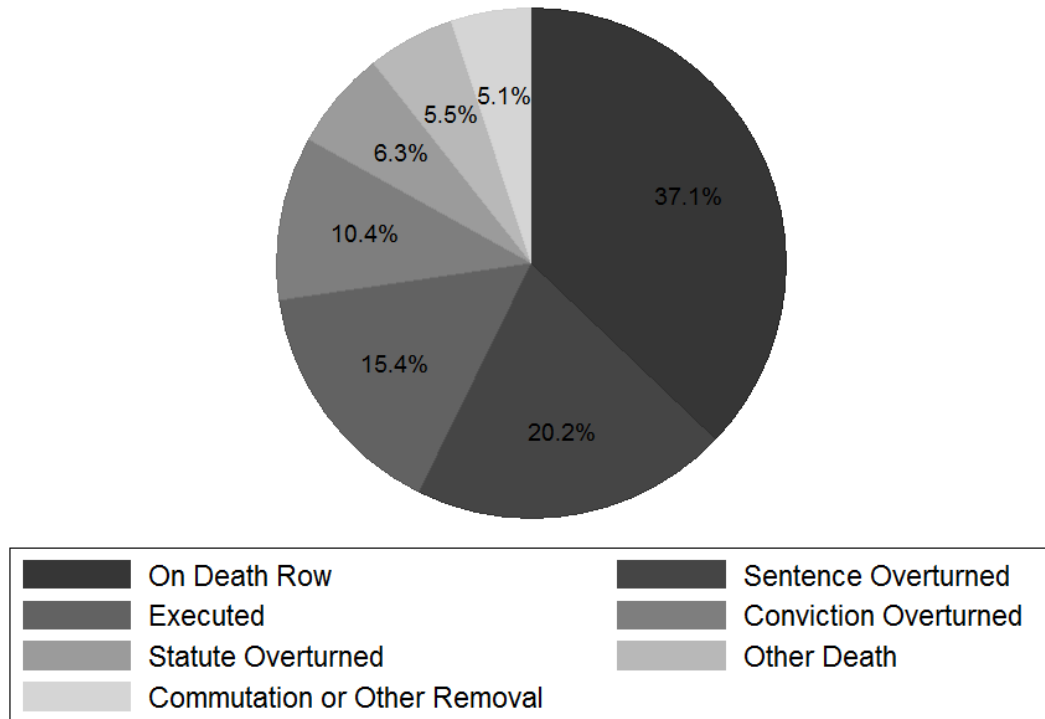


Reversals and executions taken as percentages of all death sentences for which final decisions have been reached.

Data from BJS Capital Punishment Series, Dietrich 2014
3 year moving average shown.

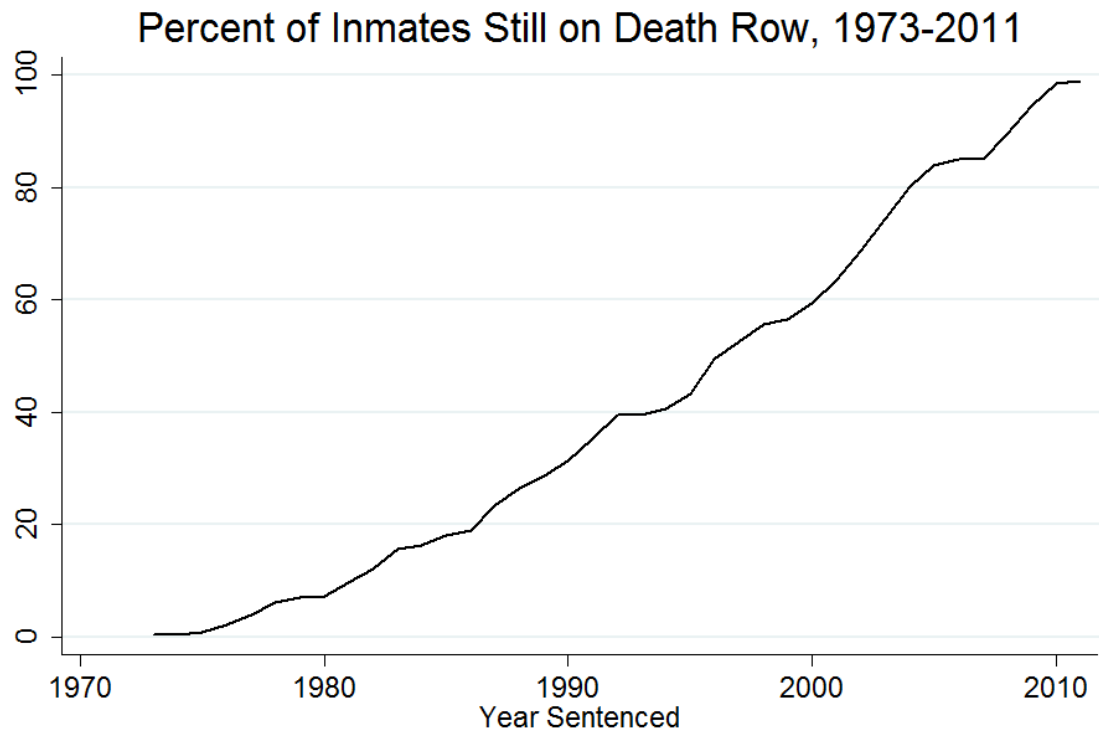
Figure 8

Death Sentence Dispositions, 1973-2011



Data from BJS Capital Punishment Series, Dietrich 2014

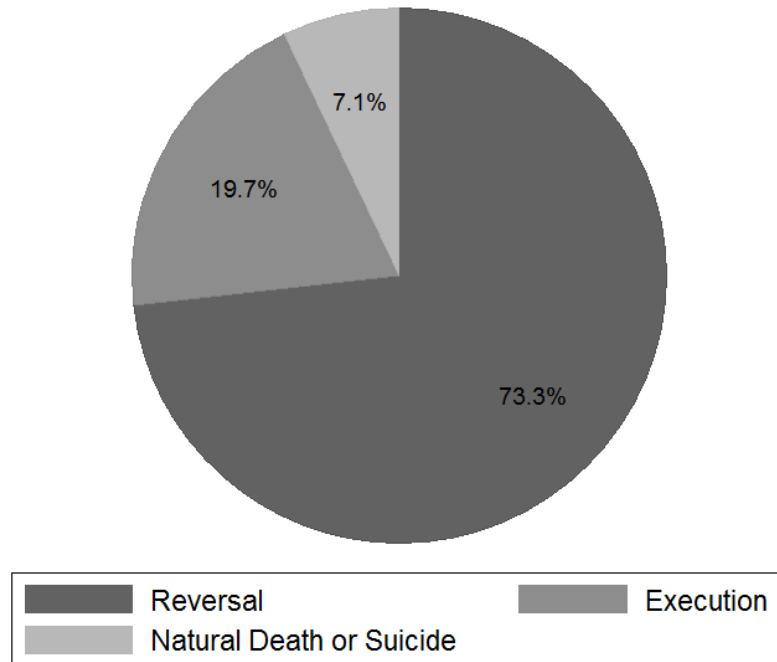
Figure 9



Data from BJS Capital Punishment Series, Dietrich 2014
3 year moving average shown.

Figure 10

Final Death Sentence Dispositions, 1973-2011



Reversals include the overturn of a death sentence, statute and conviction, in addition to commutation and other removal

Data from BJS Capital Punishment Series, Dietrich 2013

Figure 11

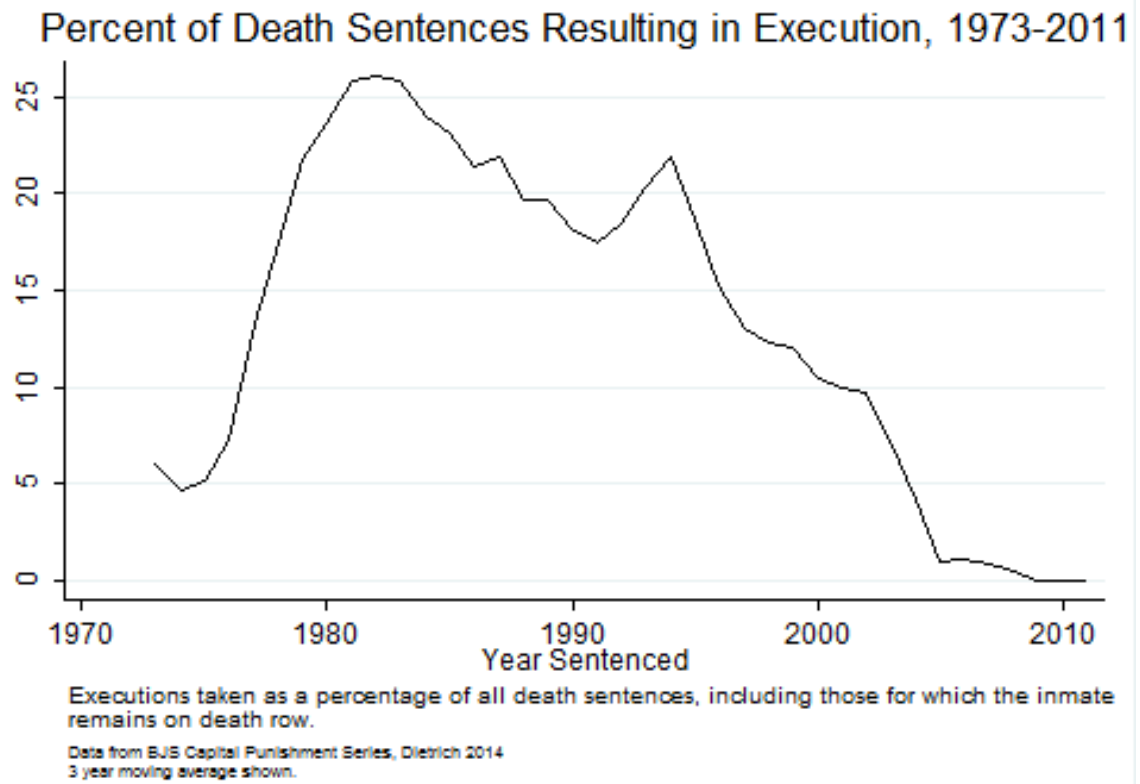
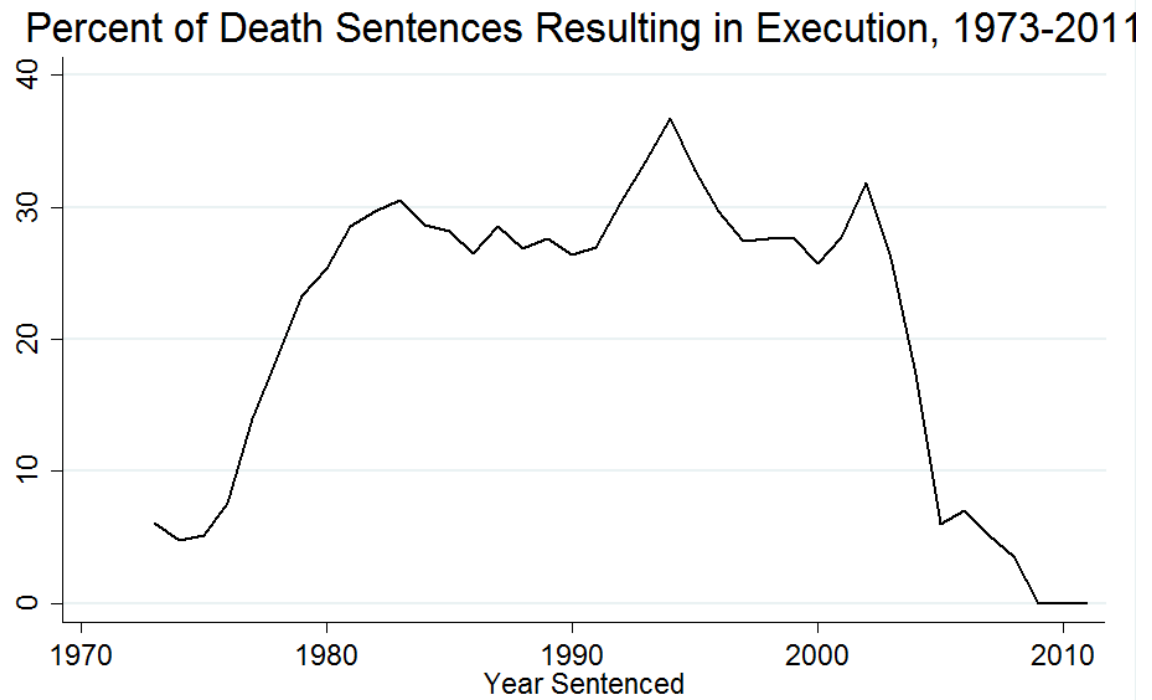


Figure 12



Executions taken as a percentage of all death sentences for which final decisions have been reached.

Data from BJS Capital Punishment Series, Dietrich 2013
3 year moving average shown.

Figure 13

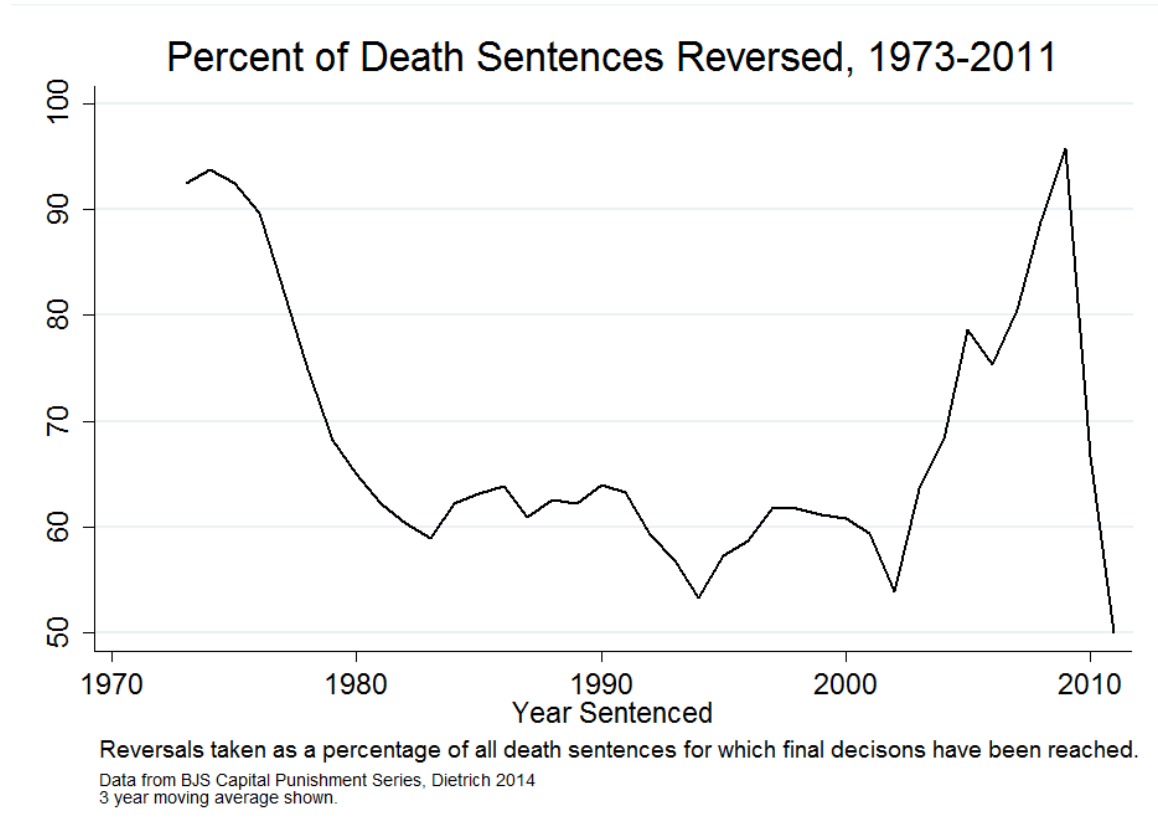
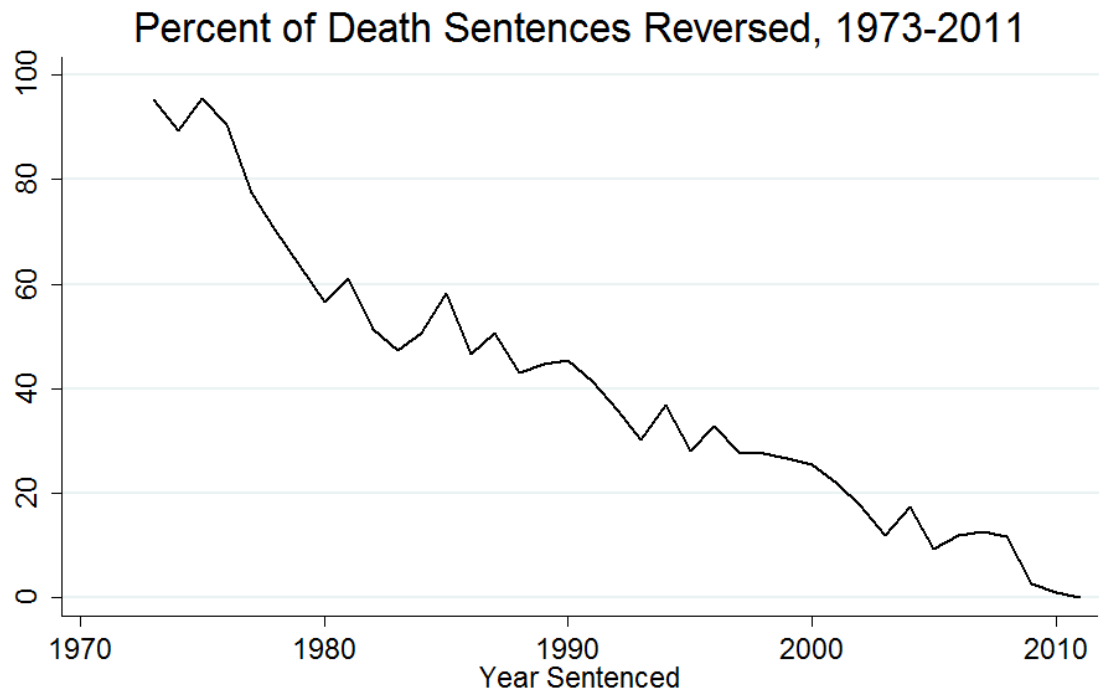


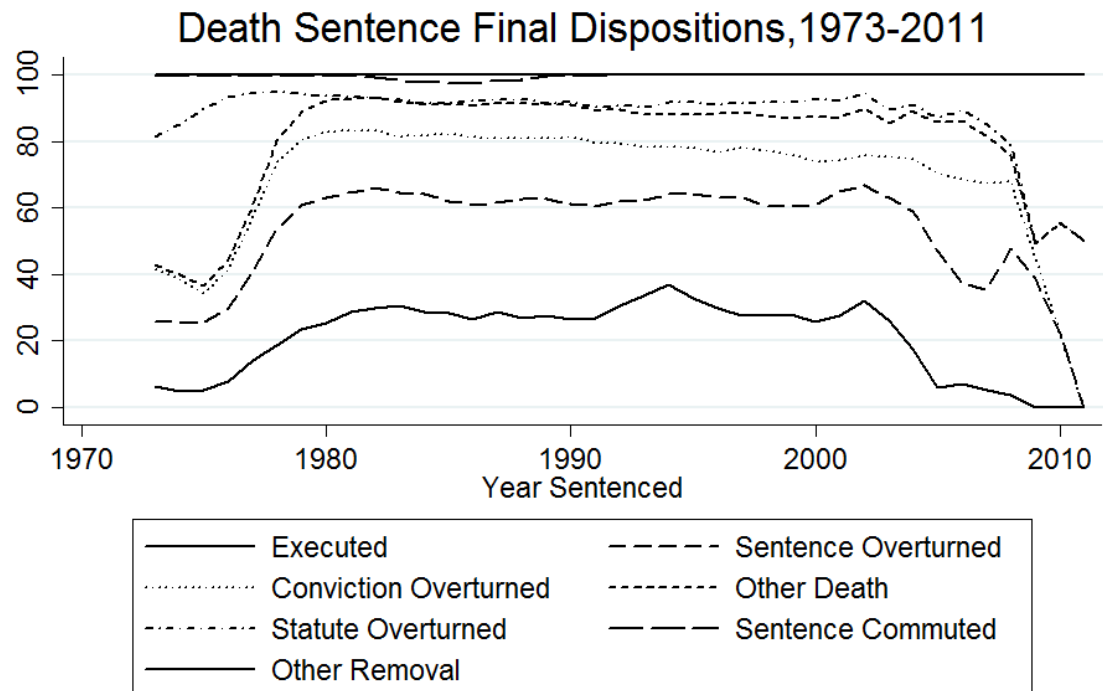
Figure 14



Reversals taken as a percentage of all death sentences, including those for which the inmate remains on death row.

Data from BJS Capital Punishment Series, Dietrich 2014

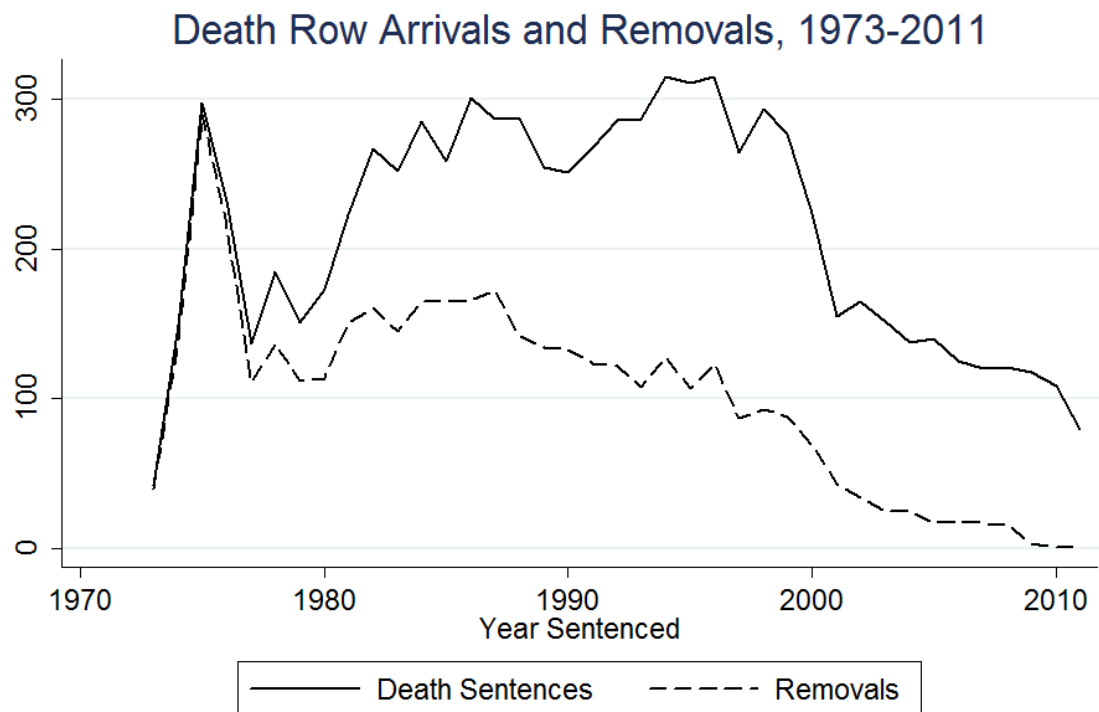
Figure 15



Dispositions taken as percentages of all death sentences for which final decisions have been reached.

Data from BJS Capital Punishment Series, Dietrich 2014
3 year moving averages shown.

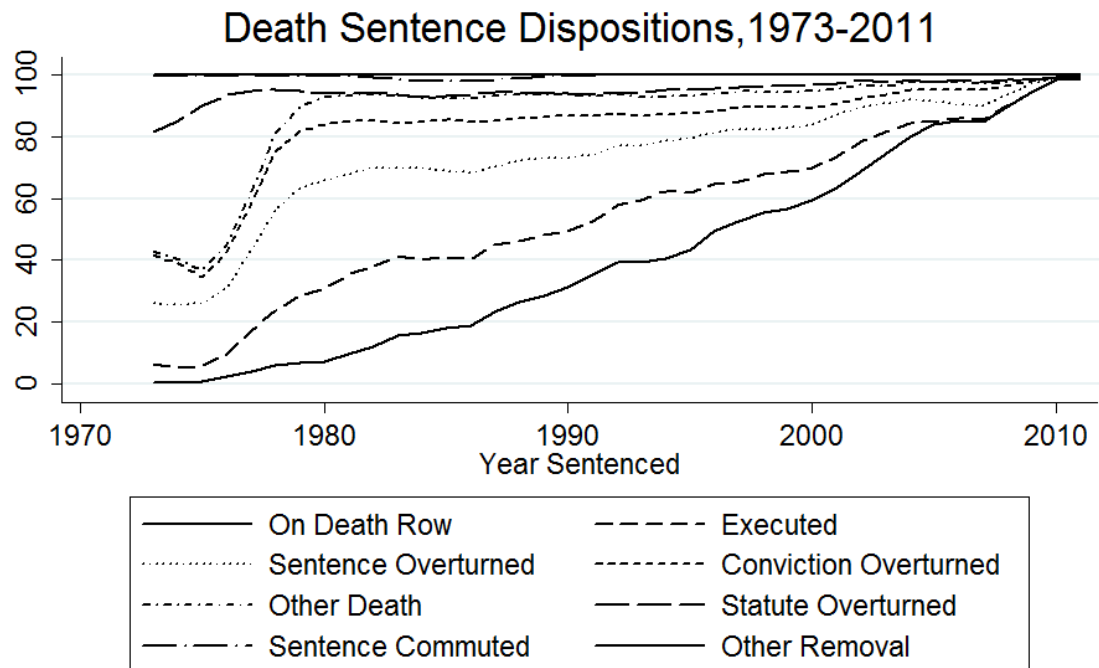
Figure 16



Removals calculated as a sum of all non-execution final dispositions

Data from BJS Capital Punishment Series, Dietrich 2013

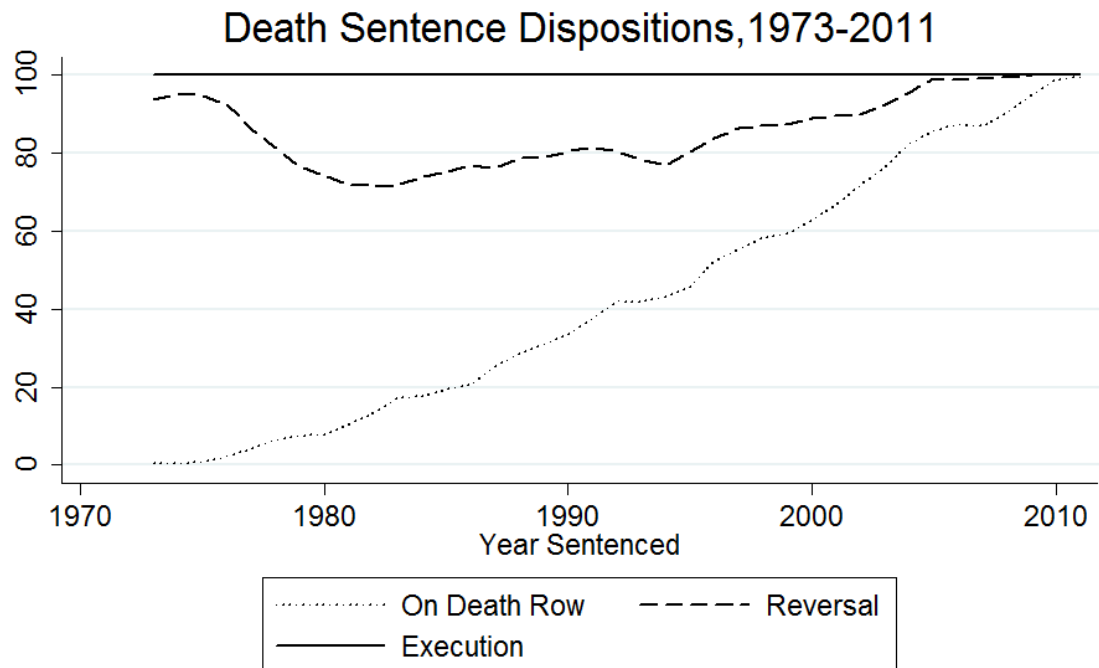
Figure 17



Reversals and executions taken as percentages of all death sentences, including those for which the inmate remains on death row.

Data from BJS Capital Punishment Series, Dietrich 2014
3 year moving averages shown.

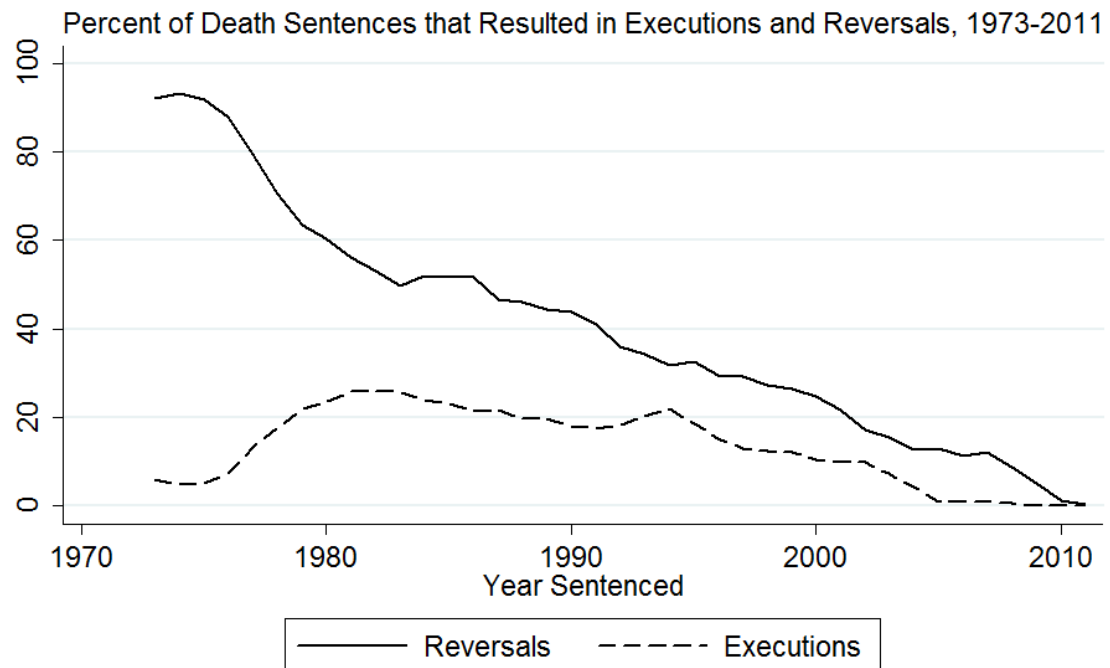
Figure 18



Reversals and executions taken as percentages of all death sentences, including those for which the inmate remains on death row.

Data from BJS Capital Punishment Series, Dietrich 2014
3 year moving averages shown.

Figure 19



Reversals and executions taken as percentages of all death sentences, including those for which the inmate remains on death row.

Data from BJS Capital Punishment Series, Dietrich 2014
3 year moving averages shown.

Figure 20

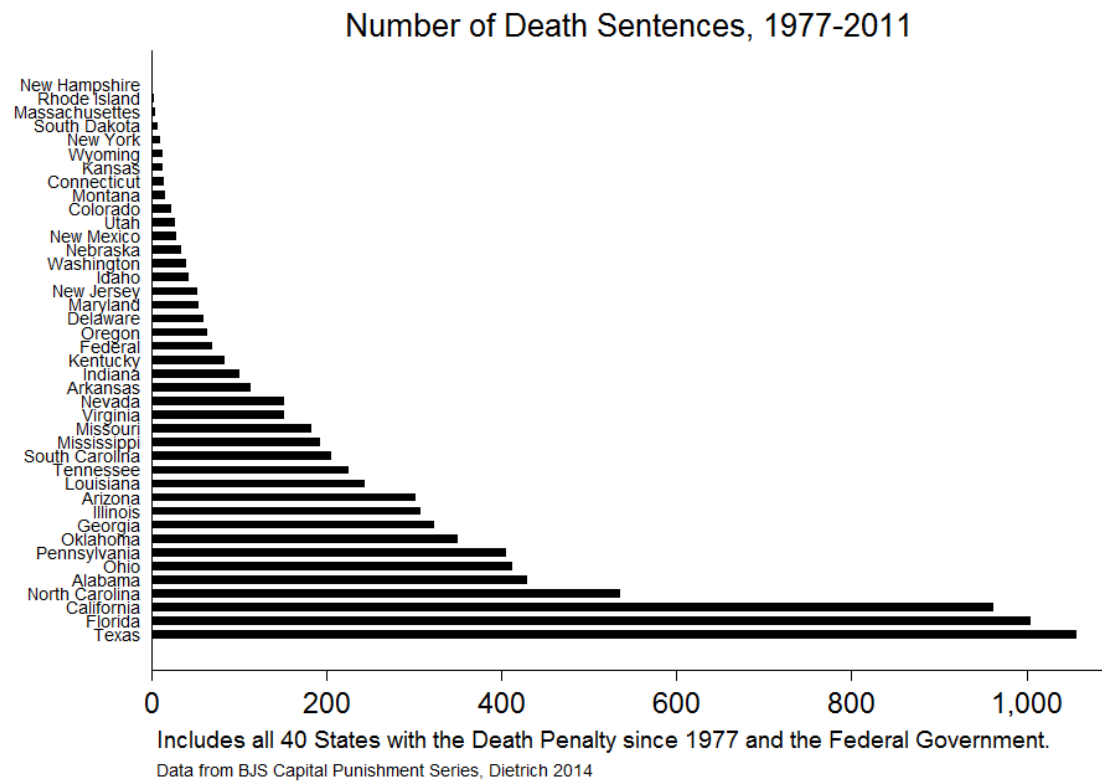


Figure 21

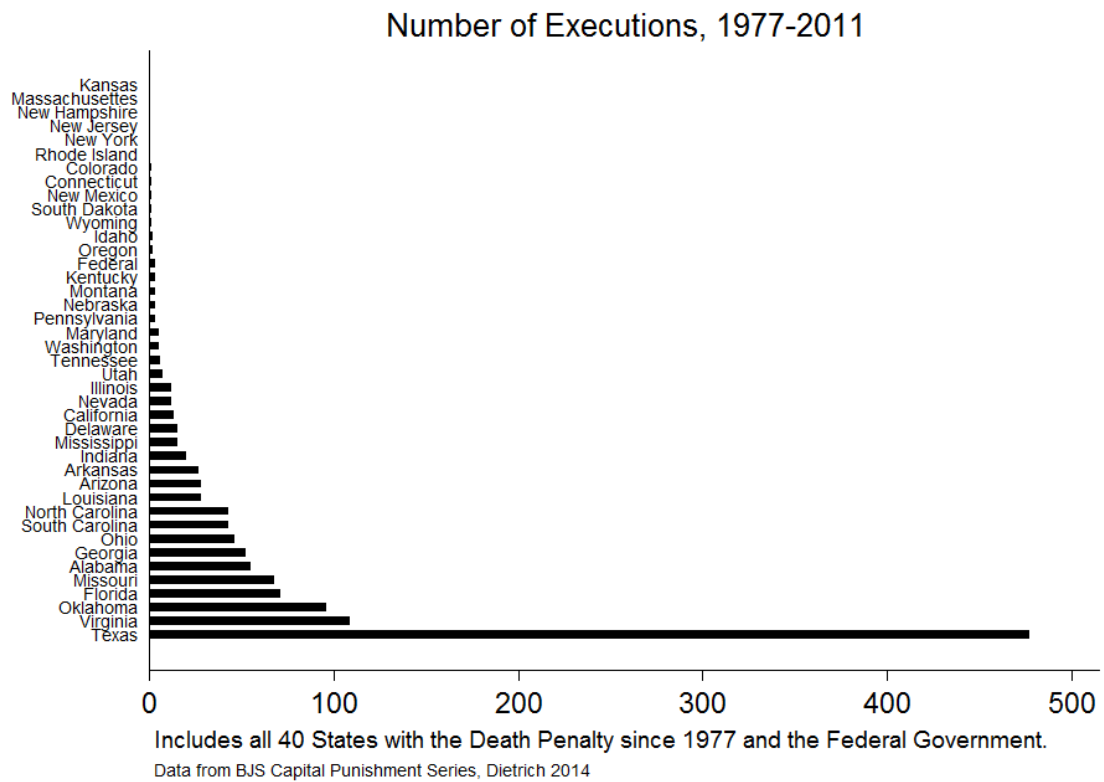
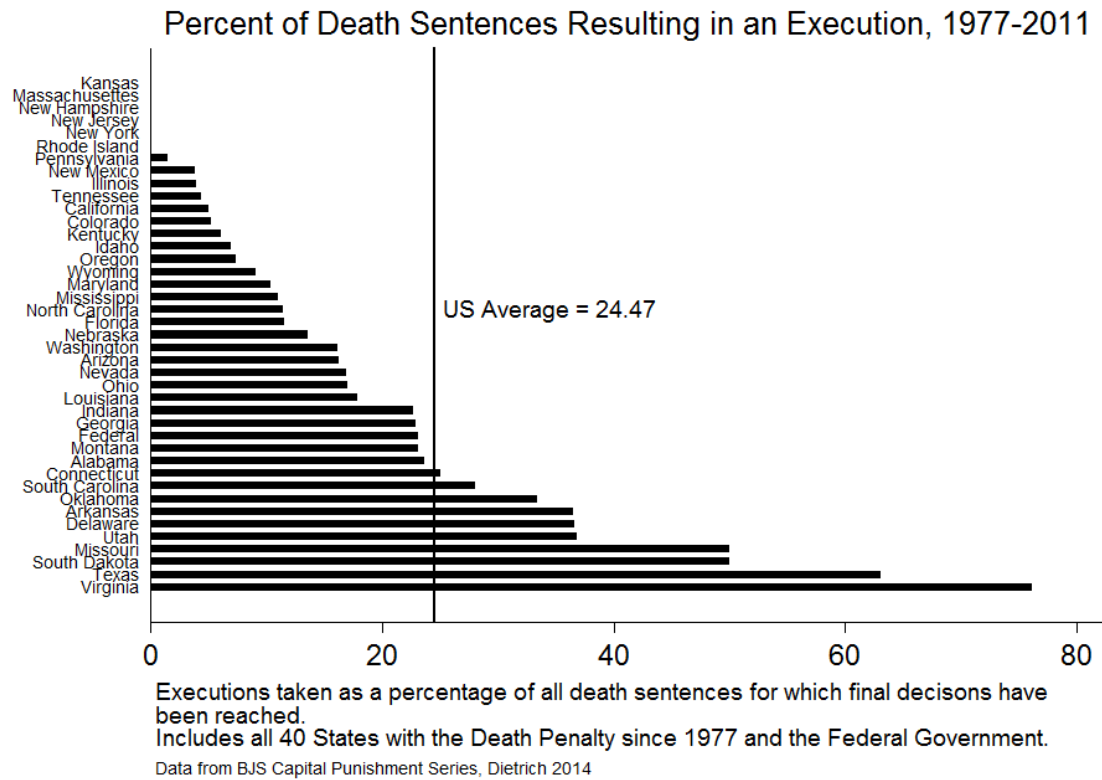
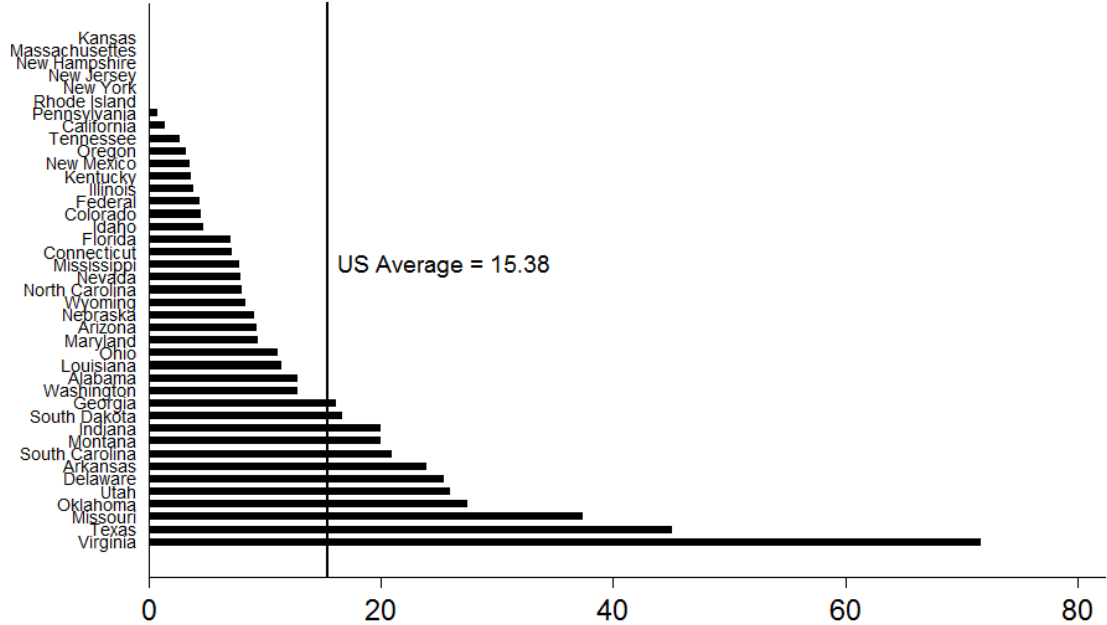


Figure 22



Percent of Death Sentences Resulting in an Execution, 1977-2011



Executions taken as a percentage of all death sentences, including those for which the inmate remains on death row.

Includes all 40 States with the Death Penalty since 1977 and the Federal Government.

Data from BJS Capital Punishment Series, Dietrich 2014

Figure 24

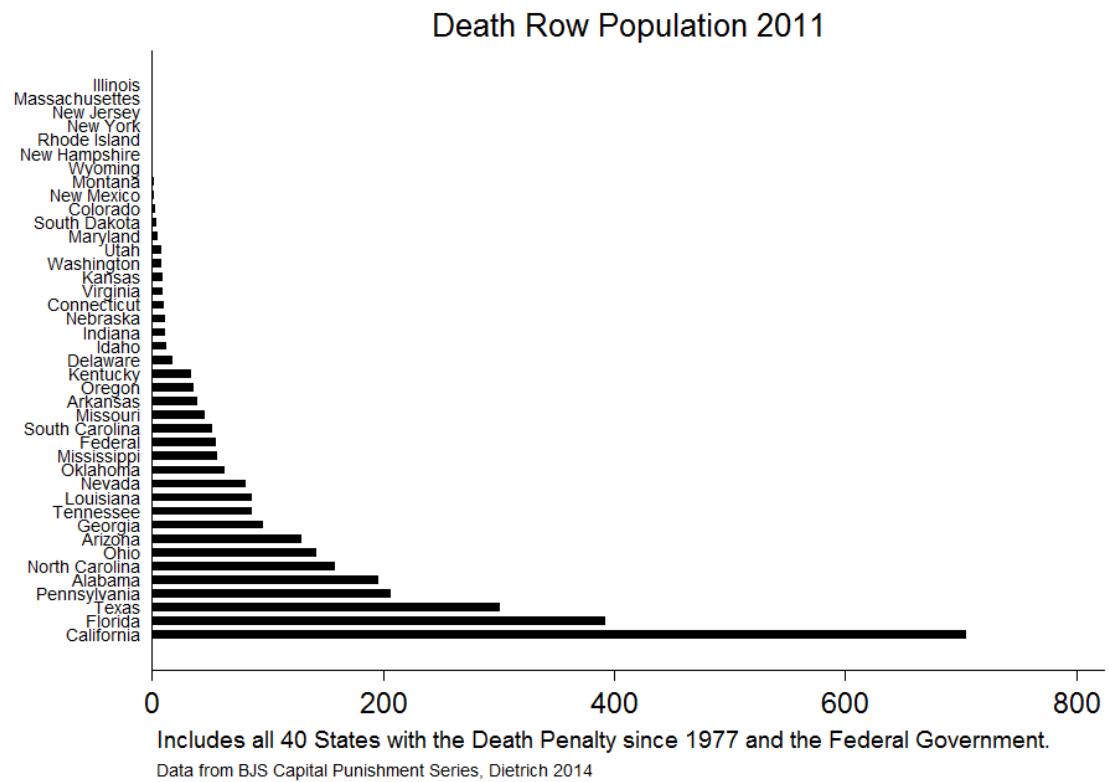


Figure 25

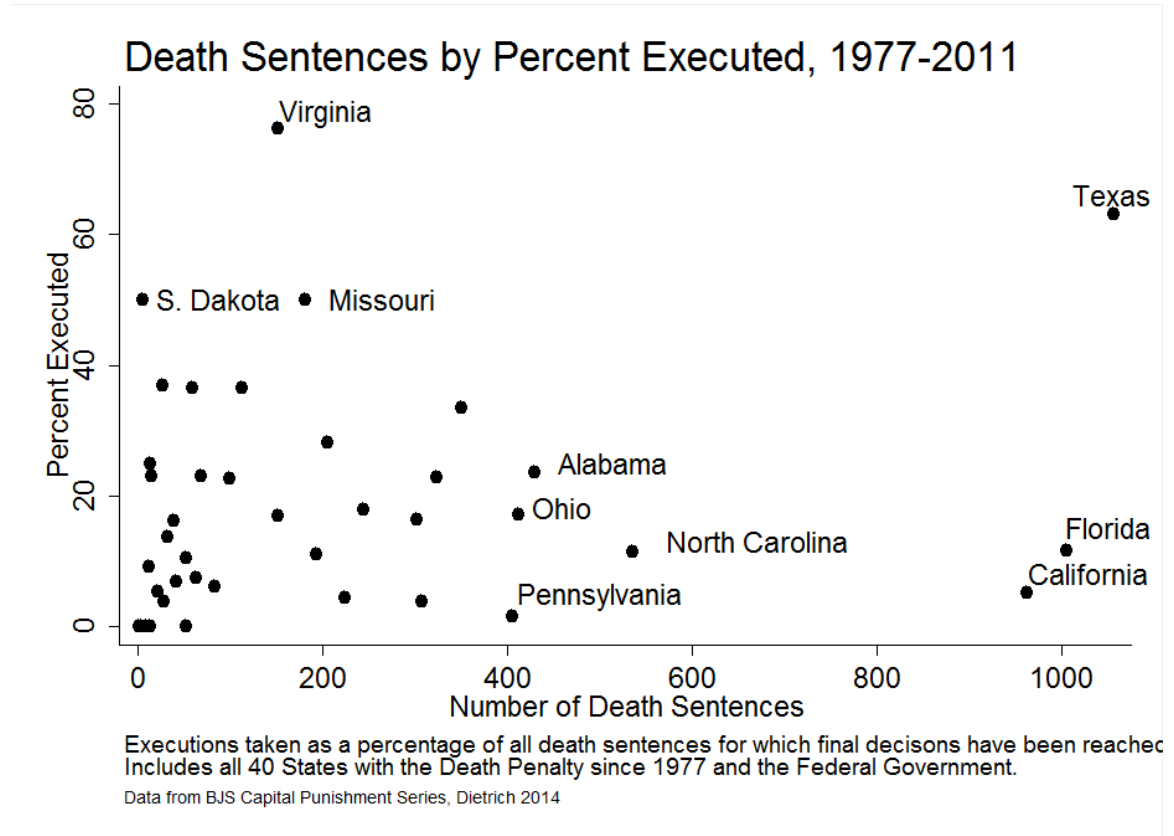


Figure 26

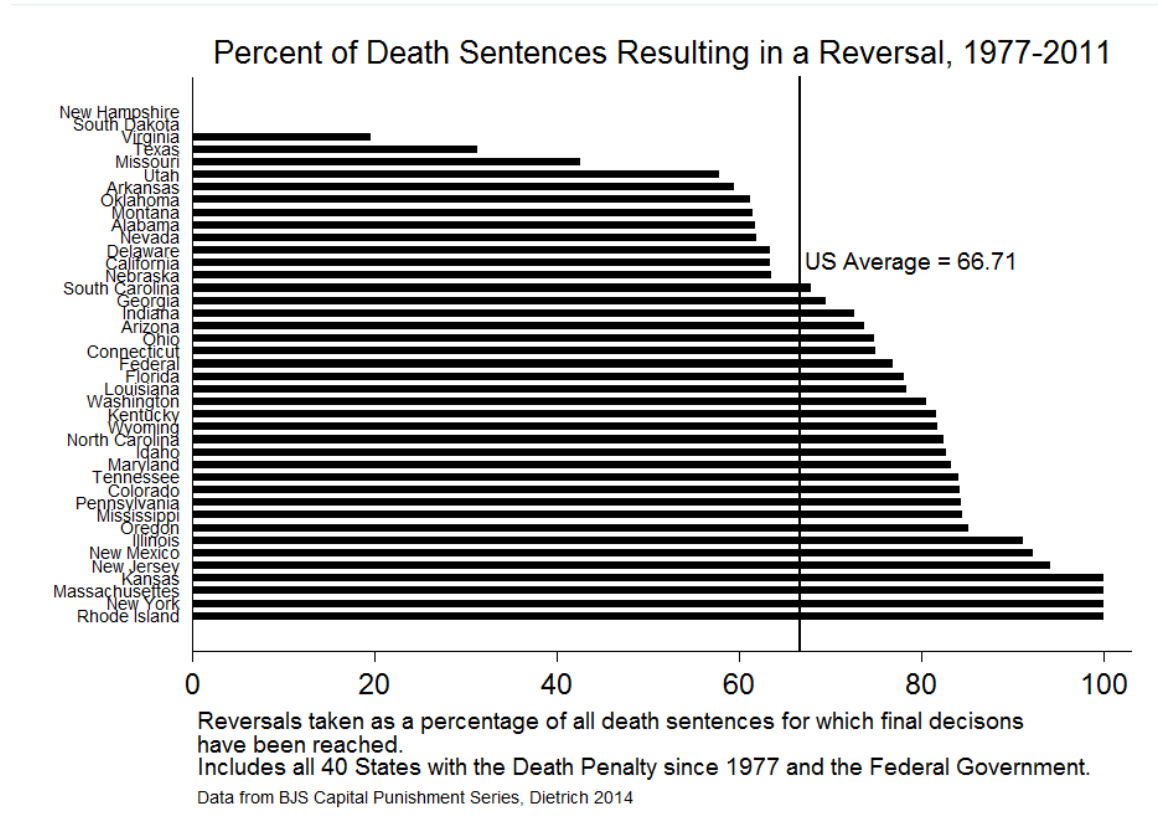


Figure 27

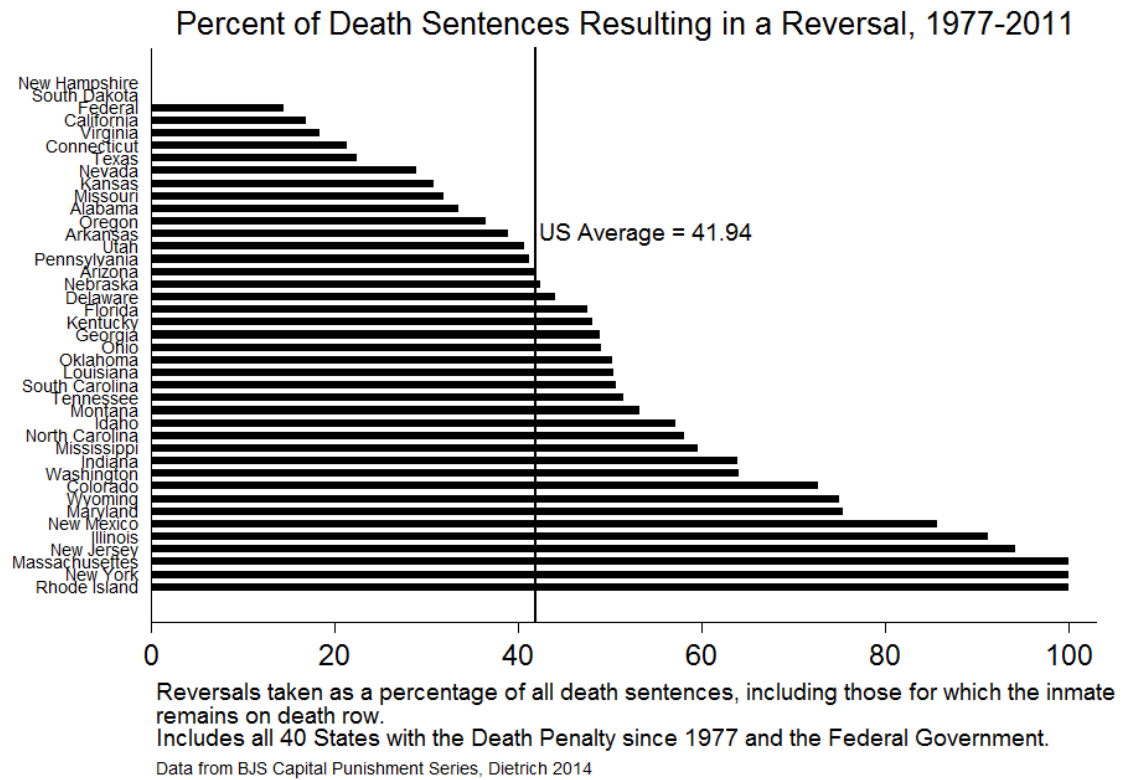


Figure 28

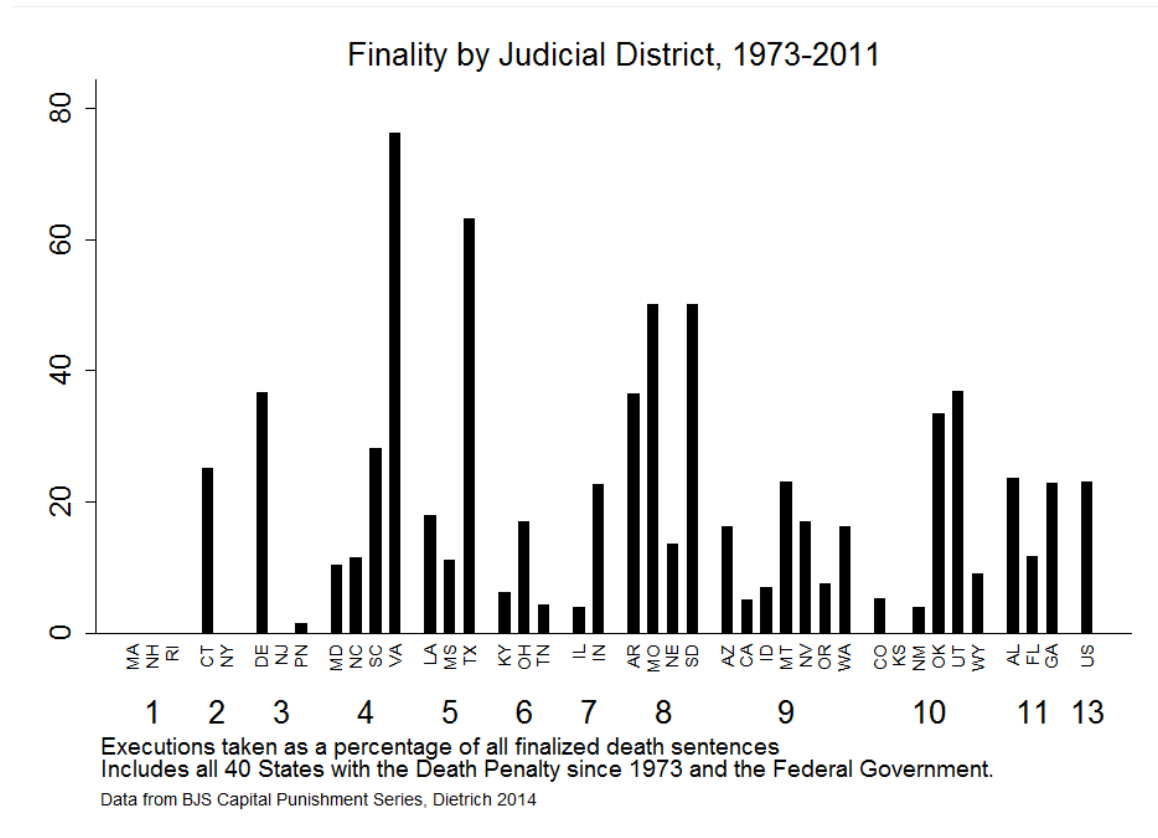


Table 1

Judicial District	State	Mean
1 st Circuit		0
	MA	0
	NH	0
	RI	0
2 nd Circuit		12.5
	NY	0
	CT	25
3 rd Circuit		12.7
	NJ	0
	PN	1.5
	DE	36.6
4 th Circuit		31.5
	MD	10.4
	NC	11.4
	SC	28.1
	VA	76.2
5 th Circuit		30.7
	MS	11.0
	LA	17.8
	TX	63.1
6 th Circuit		9.2
	TN	4.4
	KY	6.1
	OH	17.0
7 th Circuit		13.3
	IL	3.9
	IN	22.7
8 th Circuit		37.5
	NE	13.6
	AR	36.5
	MO	50.0
	SD	50.0
9 th Circuit		13.1
	CA	5.1
	ID	6.9
	OR	7.4
	WA	16.1
	AZ	16.3
	NV	16.9
	MT	23.1
10 th Circuit		14.7
	KS	0
	NM	3.9
	CO	5.3
	WY	9.1
	OK	33.5
	UT	36.8
11 th Circuit		19.4
	FL	11.6
	GA	22.9
	AL	23.6
Federal Circuit		23.1

Appendix A. BJS Capital Punishment 2011, Table 16

TABLE 16
Prisoners sentenced to death and the outcome of sentence, by year of sentencing, 1973-2011

Year of sentence	Number sentenced to death	Number of prisoners removed from under sentence of death							Number under sentence of death, 12/31/2011
		Execution	Other death	Appeal or higher courts overturned—			Sentence commuted	Other or unknown reasons	
				Death penalty statute	Conviction	Sentence			
Total, 1973–2011	8,300	1,277	460	522	863	1,674	388	34	3,082
1973	42	2	0	14	9	8	9	0	0
1974	149	11	4	65	15	30	22	1	1
1975	298	6	5	171	24	67	21	2	2
1976	232	14	6	136	17	42	15	0	2
1977	137	19	5	40	26	33	7	0	7
1978	185	37	7	21	36	65	8	0	11
1979	151	28	16	2	28	59	6	1	11
1980	173	46	16	4	30	52	12	0	13
1981	223	57	15	0	42	81	12	1	15
1982	267	67	24	0	40	84	12	1	39
1983	252	69	26	1	30	71	15	2	38
1984	285	71	21	2	46	75	13	8	49
1985	259	51	14	1	43	89	14	4	43
1986	301	74	26	1	51	69	14	5	61
1987	287	57	27	7	45	77	9	7	58
1988	288	61	18	1	35	74	14	0	85
1989	255	46	20	0	33	67	13	1	75
1990	251	50	19	2	36	57	18	1	68
1991	268	44	13	2	37	61	11	0	100
1992	286	46	19	0	27	55	21	0	118
1993	287	65	21	3	24	45	15	0	114
1994	315	70	12	10	35	56	15	0	117
1995	311	64	20	6	20	47	14	0	140
1996	315	42	20	4	21	63	15	0	150
1997	265	31	13	3	19	41	11	0	147
1998	294	41	12	4	22	46	9	0	160
1999	277	31	14	8	21	35	10	0	158
2000	224	25	12	4	12	32	9	0	130
2001	155	14	9	3	5	24	2	0	98
2002	165	16	5	3	3	18	5	0	115
2003	152	16	7	1	5	11	1	0	111
2004	138	2	1	1	5	13	5	0	111
2005	140	1	4	0	3	9	1	0	122
2006	125	1	4	0	7	5	3	0	105
2007	120	2	2	2	8	3	2	0	101
2008	121	0	2	0	3	8	3	0	105
2009	118	0	0	0	0	2	1	0	115
2010	109	0	0	0	0	0	1	0	108
2011	80	0	1	0	0	0	0	0	79

Note: In 1972, the U.S. Supreme Court invalidated capital punishment statutes in several states (*Furman v. Georgia*, 408 U.S. 238 (1972)), effecting a moratorium on executions. Executions resumed in 1977 when the Supreme Court found that revisions to several state statutes had effectively addressed the issues previously held unconstitutional (*Gregg v. Georgia*, 428 U.S. 153 (1976) and its companion cases). Some inmates executed since 1977 or currently under sentence of death were sentenced prior to 1977. For persons sentenced to death more than once, the numbers are based on the most recent death sentence.

Source: Bureau of Justice Statistics, National Prisoner Statistics Program (NPS-8), 2011.

Appendix B. BJS Capital Punishment 2011, Table 17

TABLE 17
Number sentenced to death and number of removals, by jurisdiction and reason for removal, 1973–2011

Jurisdiction	Total sentenced to death, 1973–2011	Number of removals, 1973–2011					Under sentence of death, 12/31/11
		Executed	Died	Sentence or conviction overturned	Sentence commuted	Other removals	
U.S. Total	8,300	1,277	460	3,059	388	34	3,082
Federal	69	3	0	9	1	0	56
Alabama	429	55	34	142	2	0	196
Arizona	302	28	17	119	7	1	130
Arkansas	113	27	3	42	2	0	39
California	962	13	81	148	15	0	705
Colorado	22	1	2	15	1	0	3
Connecticut	14	1	0	3	0	0	10
Delaware	59	15	0	26	0	0	18
Florida	1,005	71	63	458	18	2	393
Georgia	323	52	17	148	9	1	96
Idaho	42	2	3	21	3	0	13
Illinois	307	12	15	97	171	12	0
Indiana	100	20	4	56	6	2	12
Kansas	13	0	0	4	0	0	9
Kentucky	83	3	6	38	2	0	34
Louisiana	244	28	6	115	7	1	87
Maryland	53	5	3	36	4	0	5
Massachusetts	4	0	0	2	2	0	0
Mississippi	193	15	6	112	0	3	57
Missouri	182	68	10	55	3	0	46
Montana	15	3	2	6	2	0	2
Nebraska	33	3	5	12	2	0	11
Nevada	152	12	15	40	4	0	81
New Hampshire	1	0	0	0	0	0	1
New Jersey	52	0	3	33	8	8	0
New Mexico	28	1	1	19	5	0	2
New York	10	0	0	10	0	0	0
North Carolina	535	43	23	303	8	0	158
Ohio	412	46	22	182	20	0	142
Oklahoma	350	96	15	172	4	0	63
Oregon	63	2	2	23	0	0	36
Pennsylvania	405	3	28	161	6	0	207
Rhode Island	2	0	0	2	0	0	0
South Carolina	205	43	6	101	3	0	52
South Dakota	6	1	1	0	0	0	4
Tennessee	225	6	16	108	6	2	87
Texas	1,057	477	42	181	55	1	301
Utah	27	7	1	10	1	0	8
Virginia	152	109	6	16	11	1	9
Washington	39	5	1	25	0	0	8
Wyoming	12	1	1	9	0	0	1
Percent of inmates sentenced to death, 1973–2011	100%	15.4%	5.5%	36.9%	4.7%	0.4%	37.1%

Note: In 1972, the U.S. Supreme Court invalidated capital punishment statutes in several states (*Furman v. Georgia*, 408 U.S. 238 (1972)), effecting a moratorium on executions. Executions resumed in 1977 when the Supreme Court found that revisions to several state statutes had effectively addressed the issues previously held unconstitutional (*Gregg v. Georgia*, 428 U.S. 153 (1976) and its companion cases). Some inmates executed since 1977 or currently under sentence of death were sentenced prior to 1977. For persons sentenced to death more than once, the numbers are based on the most recent death sentence.

Source: Bureau of Justice Statistics, National Prisoner Statistics Program (NPS-8), 2011.