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For similar murders, different sentences

Panel studies death penalty application

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Shortly after 8 p.m. on Oct. 6, 1993, Keith Donaghy, an attendant at a Gloucester County gas station, was killed with a shotgun blast to the head. Police had no leads until three weeks later when another gas station attendant, Ronald Pine, was murdered.

A friend who suspected Sean Kenney was responsible for both murders told a lawyer, who called police. Kenney was convicted of Donaghy's murder, sentenced to die and placed on death row on March 27, 1996. Five days later, he pleaded guilty to murdering Pine.

Others have murdered gas station attendants during robberies, including John Downie, David Mark Russo, Carl Culley, Dwight Hickson, Khalif James and Harold Rodriguez. All were spared death sentences.

Others, like Kenney, have murdered more than once without going to death row.

Roger Hoyte admitted the serial murders of three taxicab drivers. He got three consecutive life terms after his sentencing jury could not agree on whether he deserved death. Jihad Muhammad already had been convicted of a 1971 murder when, in 1983, he killed a man who refused to buy drugs from him. Muhammad entered a plea to felony murder that spared his life.

And Charles Cullen, a former nurse, admitted killing 29 patients with overdoses of medication. The most prolific serial killer in New Jersey history avoided a possible death sentence through a deal with prosecutors.

Today, a commission studying whether New Jersey's unused 1982 capital punishment law should remain on the books will ask this question: Are the nine men on death row really the worst of the worst?

The commission will attempt to determine if there is a "significant difference" between the death row inmates and 546 other killers who could have faced execution but were spared.

"I'm not moved personally by the argument that a defendant just as bad wound up with a life sentence," said Hudson County Prosecutor Edward DeFazio, who sits on the study commission.

Celeste Fitzgerald, executive director of New Jerseyans for Alternatives to the Death Penalty, said such an

argument is a reason to end capital punishment in the state.

"You can't get much more arbitrary than the nine death sentences that you see when there are people serving other sentences who committed very similar crimes," Fitzgerald added. "When you're talking about a punishment that's irreversible, the ultimate punishment, people and the courts rightly hold that to a higher standard."

Perhaps more than any other state, New Jersey has adopted procedures intended to ensure the death penalty is applied consistently.

The Attorney General's Office has guidelines to help county prosecutors decide when to seek the death penalty. A grand jury must determine that at least one of a dozen "aggravating factors" -- such as a prior murder -- is present. A sentencing jury must find that the aggravating factors outweigh any mitigating factors, such as the defendant's prior good record or troubled childhood.

The final safeguard is a proceeding before the New Jersey Supreme Court known as "proportionality review." Using a variety of statistical techniques, the justices compare the condemned inmate to others guilty of similar crimes and determine whether his death sentence is out of line.

Peter Pappasavvas robbed, sexually assaulted and strangled 64-year-old Mildred Place in her Woodbridge home. In 2002, the Supreme Court overturned Pappasavvas's death sentence after finding it was "disproportionate" to other sentences for equally brutal murders.

At an August meeting of the study commission, Assistant Attorney General Boris Moczula argued the Pappasavvas case shows "the system is working exactly like its supposed to."

Retired federal judge John Gibbons disagreed.

"Ask yourself: Can mere mortals do that?" he implored the commission. "Can they say, 'Even among the nine on death row, that one is more worthy of death than that one?' Can that be anything but arbitrary?"

Today's public hearing by the Death Penalty Study Commission, scheduled for 1 p.m. at the State House Annex in Trenton, is its third. Its recommendations to the legislature and governor are due by Nov. 15.

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