

PHILIP RUSSELL, L.L.C. • ATTORNEYS AT LAW
20 FIELD POINT ROAD • P.O. BOX 1437 • GREENWICH, CT 06836 • (203) 961-4210 • JURIS #05738

I am Harold Dean. I served as a Connecticut judge for 30 years before retiring in 1999. I served in the U.S. Air Force as a fighter pilot and later in the Air Force Reserves as a Judge Advocate, retiring as a Lt. Colonel. Since retirement I have been of counsel to the Philip Russell's law firm in Greenwich.

Ninety per cent of my judicial career was spent in the criminal courts where I presided over dozens of homicide cases.

I distributed to your committee a copy of a letter to the editor published in The Connecticut Post expressing my concern with the use of the "beyond a reasonable doubt" burden of proof to convict in capital cases. Ten years ago, I wrote a similar letter, which, I recall was published in The Connecticut Law Tribune.

I have always been troubled by the approved jury instruction that a jury does not have to be "absolutely certain" to convict in a capital case.

During the past ten years, DNA science has exonerated numerous people who were wrongly convicted of crimes they did not commit, many after serving more than twenty years in prison. Other convicted men were exonerated when witnesses recanted or new evidence was discovered—sometimes decades after they were sent to prison. This is proof that the existing burden of proof of guilt beyond a reasonable doubt to convict in criminal cases is not infallible. There is little doubt that many have been executed for crimes they did not commit. Since exoneration of an innocent person after he has been executed is meaningless, the burden of proof to convict in a capital case should be as close to infallible as possible.

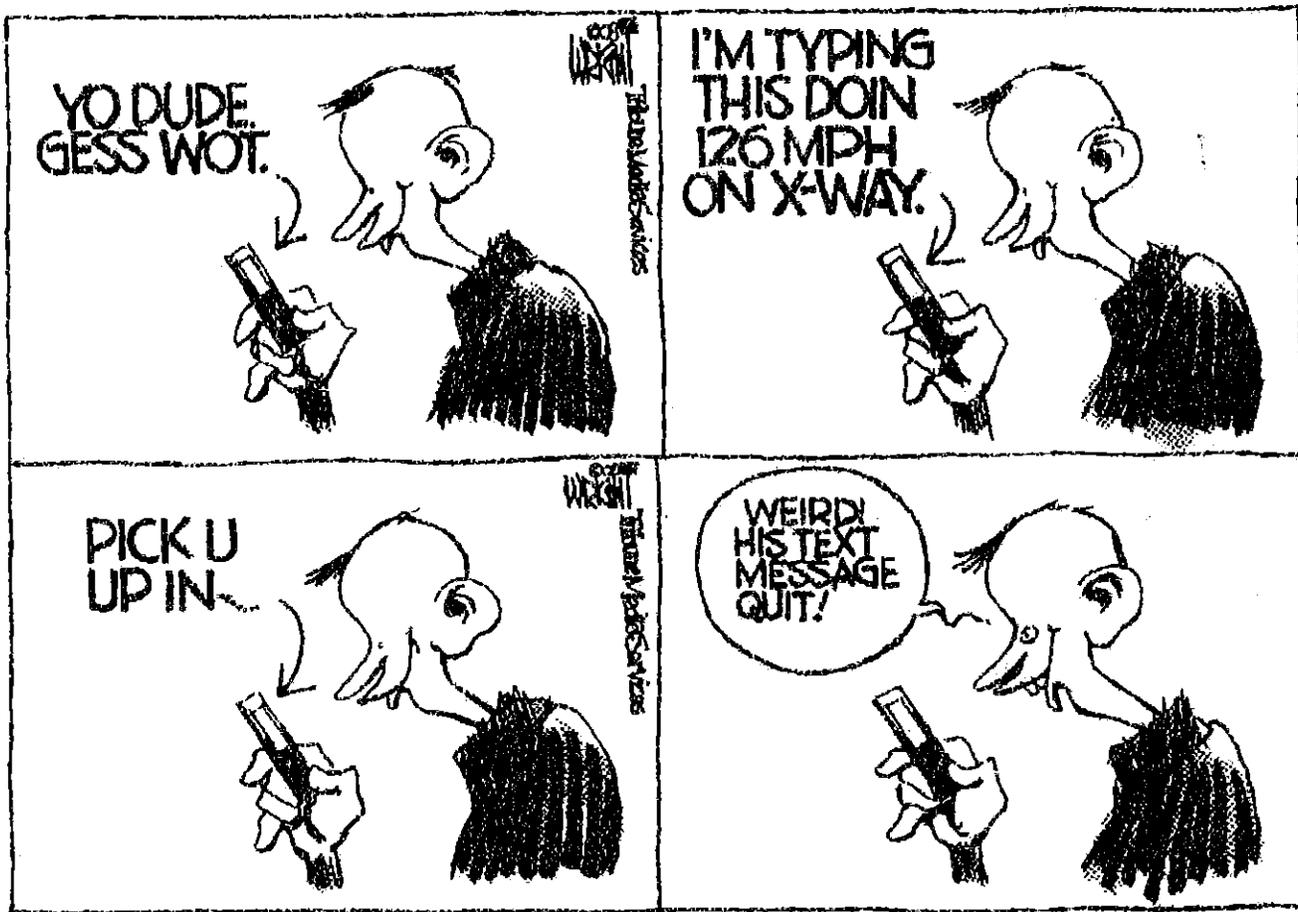
This bill, if enacted, would avoid the controversy of eliminating the death penalty altogether, as occasions remain where a death sentence is appropriate such as in the cases of killings for hire, terrorist killings, as well as in the cases of those who kill with no conscience or remorse. Even in these cases, no one should be executed unless his guilt has been proven with absolute certainty.

I urge you to raise the burden of proof in capital cases from beyond a reasonable doubt to absolute certainty.

I note that State's Attorney John Connolly in opposition to raising the burden of proof stated that he would not pursue the death penalty unless he was "absolutely certain" the person committed the crime. Raising the burden to absolute certainty codifies his statement and insures that a jury applies the same standard. Mr. Connolly's statement has no binding effect on other prosecutors nor would it have any effect on a capital case jury properly instructed to apply the existing "beyond a reasonable doubt" standard.


Harold H. Dean
Superior Court Judge, retired

COMMENTARY



LETTERS FROM OUR READERS

Death penalty must be re-evaluated

After years of DNA evidence leading to the exoneration of persons wrongly convicted and imprisoned, it is time to re-evaluate the death penalty.

There is little doubt that hundreds of innocent people have been executed and will continue to be executed, as DNA is not always available.

Recently a Connecticut man and two Florida men were exonerated by DNA evidence after serving lengthy sentences. Clearly, the required burden of "proof of guilt beyond a reasonable doubt" to convict in criminal cases is not infallible.

Since abolition of the death penalty is not politically feasible in most states, I would recommend raising the burden of proof to convict in capital cases from "beyond a reasonable doubt" to "absolute

Have your say

The Letters Editor
Connecticut Post
410 State St.
Bridgeport, CT 06604

Fax:
(203) 333-3887
E-mail:
edl@ctpost.com

certainty." I have tried many murder cases in my 30 years as a Connecticut judge, using the Connecticut-approved jury charges that define "beyond a reasonable doubt" as specifically not requiring "absolute certainty to convict." Why not "absolute certainty" to execute?

As we know from the Duke rape case, politics and publicity drive many cases, which can lead to wrongful convictions.

Raising the burden of proof in capital cases would result in those few prosecutors who are more concerned with publicity and winning than justice to be reluctant to charge a capital offense unless they themselves were absolutely certain of guilt.

Life without parole is not a walk in the park, but would leave a defendant the opportunity to correct an injustice. Those recently exonerated men in Florida and Connecticut would be dead if they were convicted of a capital offense some 20 years ago.

How can anyone oppose being "absolutely certain of guilt" before putting someone to death?

Harold H. Dean
Norwalk