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The Death Penalty: Recent trends in exonerations and recommendations for further improvements

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ABSTRACT

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The death penalty has had many regulations placed since its first use in America to make the process more equitable, but people are still being wrongfully sentenced to die. Using a data set of 139 exonerations over a period from 1980 to 2021, the current study examined some prominent factors in wrongful death penalty convictions and how these factors have changed or endured over time. The major findings revealed that racial disparity still exists in the legal process, but it is declining. Exonerees are more likely to have three or more contributing factors (perjury or false accusation, official misconduct, false or misleading forensic evidence, et cetera) in their wrongful death penalty convictions. Official misconduct and perjury or false accusation are by far the most common reasons for a wrongful conviction. The current study also found that often, DNA is not available to test or is simply not being tested, and there is a downward trend overall in the amount of DNA testing being done. Recommendations for further improvements are discussed.

Table of Contents

Chapter 1. Introduction

History

The death penalty is a long-established practice of the justice system, which has evolved significantly over the years regarding the execution methods as well as which crimes are eligible for this punishment. In America, the death penalty has been carried out by hangings, shootings, electrocution, poison gas, and lethal injection. Currently, states who still use the death penalty use primarily lethal injection, as it is considered the most humane form of execution. However, some states have laws that permit the other methods as possible options for execution, such as death by firing squad. In America, the death penalty has been in practice as far back as 1608, when America was a simple group of colonies. Originally, it could be imposed for trivial crimes, such as stealing. Over time, the magnitude of a crime warranting capital punishment became more serious than a simple pickpocketing. Today, the death penalty is imposed mainly for first-degree murder convictions with aggravating circumstances. The death penalty currently is permitted in twenty-seven states, along with the U.S. Federal Government and the U.S. Military (Death Penalty Information Center, n.d.).

Many limitations and regulations have been placed on the death penalty in America since its first use in 1608. Public support for the death penalty often waxes and wanes. In the 1950s and 1960s, public protests over the death penalty increased, and as a result, the number of executions in America decreased gradually (Constitutional Rights Foundation, 2012). In fact, no executions were carried out in the United States from 1968 through 1976. Following these protests, in *Furman v. Georgia*, a landmark US Supreme Court case decided in 1972, the court declared capital punishment unconstitutional due to discrepancies regarding who was given the death penalty and who was not, and they placed a national moratorium on the death penalty until reforms could be applied. In response to this, 35 states wrote new capital punishment laws

between 1972 and 1976 (Constitutional Rights Foundation, 2012). The first group of laws established which specific crimes would warrant a death sentence, such as first-degree murder. These laws also required a mandatory penalty trial to follow the main trial, in which aggravating and mitigating circumstances would be considered in sentencing. The death penalty could only be applied if the aggravating circumstances outweighed the mitigating circumstances. A second group of laws mandated a death penalty conviction for anyone convicted of a capital crime. Due to these new laws and regulations, in 1976, the US Supreme Court case *Gregg v. Georgia* lifted the national moratorium on the death penalty. The court upheld the first set of laws, but declared the second set unconstitutional, as it made no allowance for special or mitigating circumstances in capital cases. Executions resumed in 1977, though whether the death penalty was being applied equally was still a question many states sought to answer.

Notable Court Cases

The answer to the aforementioned question came in the 1987 Georgia case of *McCleskey v. Kemp*. In this case, a study by the University of Iowa found that blacks who had killed whites were seven times more likely to be sentenced to death than whites who had killed blacks. Even when other variables were considered, such as aggravating circumstances, blacks had been sentenced to death more than four times as often as their white counterparts (Constitutional Rights Foundation, 2012). While the Supreme Court recognized there was a clear presence of statistical discrimination, they ruled in a 5-4 decision that statistical variation was not sufficient to declare the death penalty invalid or unconstitutional. To declare the death penalty invalid, it must be proven that the state of Georgia had encouraged such a result, or that there was a clear presence of discrimination.

Many other Supreme Court cases have placed limitations on the death penalty. In *Coker v. Georgia* (1977), the U.S, Supreme Court created the proportionality requirement. This requires

that in order to avoid violating the Eighth Amendment's Cruel and Unusual Punishment Clause, the punishment or penalty must be proportionate to the crime. In their analysis, the Supreme Court established three factors to consider: an evaluation of the aggravating circumstances surrounding the crime and the strictness of the penalty, an evaluation of how the jurisdiction punishes other criminals, and an evaluation of how other jurisdictions punish the same crime. In *Kennedy v. Louisiana* (2008), the Supreme Court further ruled on proportionality when they decided that the death penalty cannot be given in cases of child rape in which the victim survives.

Regulations regarding the individualized sentencing process have also been established by the U.S. Supreme Court. In *Ring v. Arizona* (2002), the U.S. Supreme Court ruled that it is unconstitutional for a sentencing judge to find the aggravating circumstances required to impose the death penalty without a jury. The court further elaborated on this in *Brown v. Sanders* (2006). This case established that when an appellate court finds a sentencing factor to be invalid, the sentence imposed, "...becomes unconstitutional unless the jury found some other aggravating factor that encompasses the same facts and circumstances as the invalid factor" (Legal Information Institute, paragraph 8). In *Kansas v. Marsh* (2006), it was established that states are permitted to impose the death penalty when equally balanced aggravating and mitigating factors are found. In other words, the aggravating circumstances need not necessarily outweigh the mitigating circumstances for the death penalty to be given to someone.

The constitutionality of the method of execution has also come into question in recent years. In *Baze v. Rees* (2008), the Supreme Court ruled that Kentucky's three-drug protocol for carrying out lethal injections does not violate the Eighth Amendment's Cruel and Unusual Punishment Clause. They also established a test to determine this, deemed the "objectively

intolerable" test. This means that in order to be considered violative of the Eighth Amendment, the three-drug cocktail employed in executions must cause an intolerable risk of harm to the person injected. The constitutionality of lethal injection was further upheld in *Glossip v. Gross* (2015) (Legal Information Institute, 2021).

The Supreme Court has also ruled on types of people who are ineligible for the death penalty. In *Atkins v. Virginia* (2002), it was determined that executing intellectually disabled people violates the Eighth Amendment's Cruel and Unusual Punishment Clause. This is because they are less capable of understanding the severity of their crimes, so the death penalty is too severe of a punishment for such individuals. Intellectually disabled individuals are also less likely to be able to aid in their own defense. In *Roper v. Simmons* (2005), the Supreme Court held that the death penalty is unconstitutional for all juvenile offenders, as their brains are not fully developed, they have less control of their impulses, and are less able to understand the severity of their actions and the consequences.

The US Supreme Court has also addressed claims of innocence as it relates to the death penalty. In *Herrera v. Collins*, while the court did not rule on whether the Constitution prohibits the execution of someone who decisively demonstrates their innocence, they did note that such cases were very rare. They ruled that new evidence of innocence is not sufficient reason for federal courts to order a new trial. They further noted that a historic fail safe regarding the death penalty has been the clemency process. Following the Herrera ruling, concern regarding the possibility of executing innocent people has increased substantially (Death Penalty Information Center, n.d.).

More recent U.S. Supreme Court cases have also placed limitations on the death penalty. In *Madison v. Alabama* (2019), the court determined that executing someone who is unable to

remember committing the crime they are convicted of does not violate the Eighth Amendment's Cruel and Unusual Punishment Clause. However, executing someone who is unable to understand the reasons for their execution does violate this clause (Oyez, 2019). As recently as 2017, *Moore v. Texas* determined that, "the use of outdated medical standards regarding intellectual disability to determine whether a person is exempt from execution" violates the Eighth Amendment's Cruel and Unusual Punishment Clause (Oyez, 2017).

Current Study

There have been many more cases that place similar limitations on the death penalty. These limitations attempt to make the imposition of death penalty fair, equal, and accurate. However, have they succeeded in doing so? Recent reports by the Death Penalty Information Center exhibit some troubling findings. Based on a data set of 185 exonerations, they found that for every 8.3 executions carried out in the United States, a death row prisoner is exonerated due to wrongful conviction (Death Penalty Information Center, n.d.). This is a problem which has continued to fester since 1973 and has cost some of the wrongly convicted their entire lifetimes. The data also exhibits that these wrongful convictions are not simply accidental, but overwhelmingly the result of official misconduct or knowingly false testimony (Death Penalty Information Center, n.d.).

These wrongful convictions also happen all over the United States, exhibiting that this problem is not an isolated incident in a state or county, but instead a cause for national concern. There is also an overwhelming number of black people wrongly sentenced to death, and these exonerations take significantly longer compared to their white counterparts. In fact, black Americans account for 12 of the 14 wrongful convictions since the *Furman* ruling that have taken 30 years or longer to prove (Death Penalty Information Center, n.d.). It has already been established that a lack of mental intelligence and culpability make it more difficult to understand

the seriousness of one's actions, as well as aid in your own defense. Unfortunately, black Americans with mental disabilities are more likely to be sentenced to death compared to their white counterparts. In fact, two-thirds of intellectually disabled defendants given the death penalty are black (Death Penalty Information Center, n.d.). This study will examine the developments and trends in these issues over time, beginning in the 1980's and extending to 2020's.

Chapter 2. Literature Review

Introduction

The current study explored the history of the death penalty in America, as well as prominent factors in wrongful death penalty convictions. The first section outlined a brief history of the death penalty and the historical prominence of racial discrimination in its application. The second section discusses the prominent reasons for exonerations: perjury or false accusation and mistaken witness identification; official misconduct, false or misleading forensic evidence, and false confession; inadequate legal defense; and insufficient evidence. This section also discusses the role DNA has played in exonerations. The third section discussed wrongful convictions and the difficulties in proving innocence. The fourth section discussed intellectual disabilities and some of the flaws in determining the presence of intellectual disability in death penalty defendants. A review of the existing literature of these concepts is important to understand the reasons behind wrongful convictions, and the presence of systemic flaws in the current application of the death penalty.

History

The first recorded use of the death penalty in America was the 1608 execution of Captain George Kendall in the Jamestown colony of Virginia, who was executed for treason. The death penalty has had many alterations since that time, with restrictions and regulations being established to ensure it is being carried out justly and humanely. The Supreme Court of the United States has placed restrictions on the death penalty when it comes the method of execution, the age of the defendant, the presence of intellectual disability, and the seriousness of the crime, among others. As of 2021, the death penalty was permitted in twenty-seven states, along with the U.S. Federal Government and the U.S. Military (Death Penalty Information Center, n.d.). In the modern era, with few exceptions such as espionage and treason, capital

punishment can only be imposed in the case of murder with the presence of aggravating circumstances (Acker, 2003).

Dating back to the era of slavery, the death penalty has been wielded disproportionately against African Americans. Historically, black people, regardless of whether they were slaves or not, faced the death penalty for crimes that white people were not liable to be sentenced to death for committing (Steiker & Steiker, 2015). In seventeenth century, colonial America, the rate of execution of black people per capita far exceeded the rate of execution of white people, though more white people were still executed overall (Allen & Clubb, 2008; Steiker & Steiker, 2015). Most whites were executed for murder, but black people were more frequently executed for non-homicidal crimes, such as slave revolt, rape, attempted rape, and attempted murder. Black people also were subject to more inhumane forms of execution, such as being burned at the stake. Their bodies were also desecrated more often than whites, with gibbeting (displaying the body publicly by hanging in a cage or in chains), dismemberment, and decapitation being practiced. The more harrowing forms of execution were rare, but when they were employed, it was disproportionately in the execution of black people, especially if the crime was against a white person (Steiker & Steiker, 2015).

At the time of America's founding, many of the Founders and important thinkers of the time had begun to question the practice of the death penalty. Initiatives to restrict the death penalty escalated in America, though these reforms were mostly concentrated in North. In contrast, the South restricted the death penalty only for white people (Allen & Clubb, 2008). Even black, non-slaves were still subject to executions for lesser crimes, provided the victim was white, such as rape, attempted rape, kidnapping a woman, and aggravated assault (Blume & Steiker, 2009; Steiker & Steiker, 2015). With the end of the Civil War, the Fourteenth Amendment was passed,

and explicitly racial capital codes were no longer legally sanctioned. However, race continued to influence capital statues through prosecutorial discretion, all-white juries, and the practice of lynching (Allen & Clubb, 2008; Steiker & Steiker, 2015). Additionally, few serious efforts were employed by the South to limit the death penalty, and many crimes remained punishable by death for both blacks and whites. Though, in practice, these laws were almost exclusively solicited against black people (Acker, 2003). In contrast, the use of the death penalty for nonlethal offenses in the North decreased substantially from the end of the eighteenth century to the beginning of the nineteenth century. By 1860, Northern states authorized capital punishments only for murder or treason (Banner, 2003; Steiker & Steiker, 2015). The practice of lynching was extremely common in the South, reaching its peak in the late nineteenth and early twentieth centuries. Essentially, it was an unofficial form of capital punishment that at its peak was even more common than official execution. Even when one considers only legal executions, most executions that took place in the late nineteenth century were in the South, and more than 75% percent of those executed were black (Allen & Clubb, 2008; Steiker & Steiker, 2015).

Even during the Progressive Era at the beginning of the twentieth century, race still played a substantial role in the death penalty. Although ten states abolished the death penalty for murder, eight of them ultimately reinstated the death penalty, citing arguments with potential racial overtones, such as the need to retain the death penalty to prevent lynching and to promote a program of eugenics (Steiker & Steiker, 2015). Indeed, these arguments reveal how integral debates about race were to debates about the death penalty, and how much the death penalty itself, as it was practiced, was racially inflicted (Steiker & Steiker, 2015). Even though lynching declined substantially in the first half of the twentieth century, the death penalty continued to serve as a means of racial subjugation, and official executions became more common. For

instance, southern states expedited the criminal process by allowing for an immediate trial followed by instant executions, a practice referred to as “legal lynching” (Steiker & Steiker, 2015). As the example above exhibits, the struggle to maintain racial subjugation considering death penalty reforms not only impacted the substance of capital statutes, but also the procedure of capital trials (Steiker & Steiker, 2015).

In the 1960’s, despite the Supreme Court recognizing and expanding many more constitutional protections for criminal defendants, the issue of race still persisted. The lack of an adequate legal process in capital trials in the South disproportionately impacted black men, especially in cases involving the rape of a white woman. The NAACP and other civil rights organizations flocked to the South to aid such defendants. One such case involved four young boys, known as the Groveland Boys, who were accused of raping a white woman. In a Pulitzer Prize-winning book about the case, *Devil in the Grove*, the author suggested that the case became the driving force behind the NAACP's capital punishment program, which eventually led to the Supreme Court ruling in Furman v Georgia that capital punishment was unconstitutional (Acker, 2003; King, 2018; Steiker & Steiker, 2015). This claim is supported by statistics on the racial use of rape prosecutions in the South, where the majority of those executed for rape in the twentieth century were black (Foerster, 2012; Steiker & Steiker, 2015). The death penalty was also wielded disproportionately in the South among poor people with inadequate legal representation (Bright, 2015). In response to *Furman v. Georgia*, most states revised their death penalty statutes to focus almost exclusively on murder, with a handful of exceptions (Acker, 2003). Though racial disparities in capital murder cases were less prevalent, they were still present, particularly in the South, as well as also all over the United States (Allen & Clubb, 2008; Steiker & Steiker, 2015). However, approval of the death penalty began to wane. In 1966, a Gallup poll reported

that forty-seven percent of Americans did not support the death penalty. By the end of the 1960's, fourteen states had either entirely abolished the death penalty, or limited it to serious crimes like the murder with aggravating circumstances. All these states were located outside of the South (Acker, 2003; Banner, 2002; Bowers et al., 1984).

In 1976, the Supreme Court ruling in *Gregg v. Georgia* reinstated the death penalty after states revised their death penalty statutes to be less arbitrary. However, racial discrimination in capital punishment continues to be a pressing issue. In 1987, the Supreme Court ruled on the case of *McCleskey v. Kemp*. In this case, McCleskey argued that a study found that black defendants who kill white victims are most likely to receive the death penalty in Georgia. However, the Supreme Court ruled that purposeful discrimination could not be proven, and that statistics were not enough to prove an individual's death sentence was unconstitutional.

Today, there have been significant improvements concerning racial bias in death penalty sentencings, however, the issue of racial bias persists through other means. Despite the ruling in *McCleskey v. Kemp*, data proves that the race of the victim and defendant has a significant impact on the outcome of a death penalty case. In contemporary America, 47% of all murder victims are black. However, for death penalty cases that end in an execution, only 17% of murder victims are black. When a defendant commits a crime against a white victim, especially if the defendant is non-white, they are much more likely to be sentenced to death than when they commit a crime against a black victim (Baldus et al., 1998; Baumgartner, et al., 2015; Paternoster & Brame, 2003; Pierce & Radelet, 2002; Sorensen, et al., 2001). According to the FBI's Homicide Database, blacks and whites commit murder at roughly the same rates and are roughly equally likely to be victims of homicide (Federal Bureau of Investigation, 2019). Thus,

this data exhibits that there remains a clear racial disparity on who receives a death sentence in a capital murder trial.

Though there are many reasons why racial disparities are a significant problem, one of these is the possibility of a wrongful conviction. Since 1973, 185 death penalty cases have been determined to be wrongful, with many more suspected cases (Death Penalty Information Center, n.d.). Thus, there is a possibility that blacks have been wrongfully convicted at disproportionate rates. For instance, the most common reasons for wrongful convictions, official misconduct, and perjury, occur far more frequently in cases where the defendant is a person of color (Death Penalty Information Center, n.d.).

Causes of Wrongful Convictions

Wrongful death convictions are rarely the product of a single, isolated error. There are often many different causes present in any given wrongful conviction, with official misconduct and perjury being the most common reasons for exoneration. A wrongful conviction means that an innocent person has been found guilty of a crime. An exoneration refers to the procedure that exhibited the defendant's conviction was wrongful. The Death Penalty Information Center's analysis of wrongful convictions found that only 21.6% of exonerations since 1973 were due to a single error. A lot of the time (40.5%), three or more of the following factors contributed to wrongful death convictions (Death Penalty Information Center, n.d.).

Official misconduct was present in 69.2% of death-row exonerations since 1973, and it is the most common cause of wrongful convictions (Death Penalty Information Center, n.d.). Official misconduct is most exhibited through unjust actions by the prosecution or law enforcement. The prosecution may engage in overly suggestive witness coaching (Gershman, 2002; Gould & Leo, 2010). They may also offer closing arguments that are unjustly provoking or inappropriate (Elliot & Weiser, 2004; Gould & Leo, 2010; Plantania & Moran, 1999). Another

common form of prosecutorial misconduct is that they may fail to disclose vital evidence to the defense (Gould & Leo, 2010). Misconduct by law enforcement usually occurs before the trial. Police misconduct can take form in overly suggestive eyewitness identification procedures, such as providing subtle cues to the witness or making the suspect stand out in the photo array or line-up (Gould & Leo, 2010). Police may use several tactics to render a false confession, such as threatening a suspect. In fact, coercive interrogation techniques are the most common reason for false confessions, which were present in 16.2% of death-row exonerations since 1973 (Death Penalty Information Center, n.d.). Police-induced confessions can often contribute to false confessions, and researchers agree that significant risk factors are present in the way in which many of these interviews are currently conducted (Kassin et al., 2010; Morehouse, 2019). False confessions can taint other evidence (Dror et al., 2006; Elaad et al., 1994; Hasel & Kassin, 2009; Vick et al., 2021). They can also impact relationships with defense lawyers and increase the risk of misconduct by prosecutors (Findley & Scott, 2006; Kassin et al., 2013; Vick et al., 2021). Vick et al. also points out that, “death-eligible murder cases are at a much higher risk for producing wrongful convictions compared to non-death eligible cases (Pg. 3)” a finding shared by many other researchers (Gould et al., 2014; Gross, 1996; Haney, 2006). Official misconduct overall was mostly commonly exhibited in wrongful death convictions through the withholding of vital or exculpatory evidence (Death Penalty Information Center, n.d.). Official misconduct also disproportionately impacts black exonerees (78.8%) when compared to their white counterparts (58.2%) (Death Penalty Information Center, n.d.).

Perjury or false accusation is also extremely prominent in cases of wrongful convictions, with it being a contributing factor in 67.6% of death row exonerations since 1973 (Death Penalty Information Center, n.d.). Perjury can often take form in the testimony of police informants, who

are often unreliable and may lie for personal gain (Gould & Leo, 2010). Researchers note that these informants are often rewarded without ensuring the accuracy and reliability of the information (Gould & Leo, 2010; Zimmerman, 2001). In fact, as many as 20% of wrongful convictions were the result of informants who lied (Gould & Leo, 2010; Natapoff, 2006). Furthermore, a study conducted by Neuschatz, et al. found that juror conviction rates were unaffected by the fact that cooperating witnesses received incentives in exchange for their testimony, "despite the fact that participants perceived the witnesses who received incentives as less interested in serving justice and more interested in serving self-interests" (Neuschatz et al., 2007, p. 10). They also found that a secondary confession provided by such a witness had a strong influence on conviction rates (Neuschatz et al., 2007).

These results are consistent with the fundamental attribution error, which is a hypothesis that states that, "perceivers overly cite internal motivation for behaviors without considering factors in the external environment" (Neuschatz et al., 2007, p. 10; Kassin & Gudjonsson 2005; Ross, 1977). In other words, jurors mostly considered personal characteristics in the witness's testimony, such as guilt or feeling sorry for the family, instead of considering situational factors like reward or a reduced sentence. Thus, even though the witness had external motivations to fabricate evidence, jurors mostly ignored this and voted guilty nonetheless (Neuschatz et al., 2007). This highlights the need for further study related to the impacts of witness perjury and the potential impact on wrongful conviction.

False or misleading forensic evidence was present in 31.9% of death-row exonerations since 1973 (Death Penalty Information Center, n.d.). Unfortunately, this data exhibits that although there is a lot of trust placed in the field of forensic science, inaccuracies may be more likely than one thinks. Martire et al. (2019) points out that data suggests that "…jury-eligible

participants and practitioners consider forensic evidence highly reliable. When compared to best or plausible estimates of reliability and error in the forensic sciences these views appear to overestimate reliability and underestimate the frequency of false positive errors" (p. 1). Indeed, in a report released in 2009, the United States' National Academy of Sciences stated that apart from DNA analysis, no forensic science method has been rigorously exhibited to demonstrate a connection between evidence and a specific individual with a high degree of consistency and certainty (Hamirani, et al., 2018; Martire et al., 2019). In 2016, the President's Council of Advisors on Science and Technology suggested that forensic science evidence reported without error rate information "poses unique dangers of misleading jurors" and "may result in the overestimation of its reliability and value" (Martire et al., 2019, p. 1). There also exists contextual bias in expert testimony by forensic lab analysts, as they are often closely intertwined with the police departments responsible for identifying the alleged perpetrator of a crime (Zakirova, 2018). This can sometimes lead to withholding or diminishing forensic evidence that in some cases could have exculpated the wrongly convicted defendant (LaPorte, 2017). Forensic scientists can also sometimes use ambiguous terminology in their expert testimony that misleads jurors (LaPorte, 2017). Overall, more research into the reliability and credibility of forensic science should be done to accurately portray the error rates of the science.

Inadequate legal defense was present in 25.4% of death-row exonerations since 1973 (Death Penalty Information Center, n.d.). In *Gideon v. Wainwright* (1963), the Supreme Court ruled that regardless of their ability to pay for an attorney, all defendants facing serious criminal charges were entitled to the assistance of counsel (Lucas, 2018). Almost all defendants in death penalty cases cannot afford to pay for a lawyer. States also vary substantially on the standards for death penalty representation (Death Penalty Information Center, n.d.). This creates rampant

problems and can be the difference between life and death for defendants in capital trials. Indeed, the Death Penalty Information Center reports that certain problems are prominent throughout the history of the death penalty, such as "accounts of lawyers sleeping or drinking alcohol during the trial, lawyers with racial bias toward their client, lawyers who conduct no investigation or fail to obtain necessary experts, or lawyers simply having no experience with capital cases..." (Death Penalty Information Center, n.d., para. 1).

The most common problems associated with inadequate legal representation stem from the fact that the public defense system is severely underfunded. This can cause many issues, including:

> "...the chronic appointment of 'incompetent or inexperienced' counsel; delays in the appointment of counsel and discontinuity of attorney representation; a lack of training and oversight for counsel representing indigent defendants; excessive public defender caseloads and understaffing of public defender offices; inadequate or nonexistent expert and investigative resources for defense counsel; and a lack of meaningful attorney-client contact" (Lucas, 2018, para. 1).

All these issues create substantial issues regarding death penalty defense. Inadequate legal defense contributes to the likelihood that an innocent defendant will be found guilty and sentenced to death. This can occur even when there is insufficient evidence to find a defendant guilty in the first place, particularly if the defense attorney does not have the experience, time, or the expertise to point to insufficiencies in the prosecution's argument. Insufficient evidence was present in 9.2% of death-row exonerations since 1973 (Death Penalty Information Center, n.d.). Mistaken witness identification was present in 20% of death-row exonerations since 1973 (Death Penalty Information Center, n.d.). Norris et al. identifies two categories that influence this error: system variables and estimator variables. System variables are variables which are under the

direct control of the criminal justice system (Norris et al., 2019). This encompasses the identification procedures used, such as the instructions or the type of lineup. Estimator variables include the characteristics of the witness or the situation, such as the age, race, and eyesight of the witness, or the lighting, distance, and presence or absence of a weapon at the situation (Norris et al., 2019). Gould and Leo also point out that this misidentification is caused by psychological errors in human judgement, and it can also be influenced by systematic error. For instance, when confronted with a weapon, the victim tends to focus more on the weapon and cannot remember the perpetrator as well (Gould & Leo, 2010; Wells & Murray, 1983). This effect can also become more prominent when the victim and perpetrator are of different races (Gould & Leo, 2010; Meissner & Brigham, 2001). Most researchers also agree that law enforcement officers may influence this process through subtle confirmations or by either unknowingly or knowingly employing suggestive identification procedures that make their preferred suspect stand out (Edlund & Skowronski, 2008; Gould & Leo, 2010; Norris et al., 2019; Rossmo & Pollock, 2019; Shell, 2013).

As previously noted, DNA is one of the few fields of forensic science that has been rigorously established with a high degree of consistency and certainty. In 1984, British Geneticist Alec Jeffreys was the first person to use DNA profiles to solve crimes (Innocence Project, 2018). DNA testing accounts for 15.1% of exonerations since 1973 (Death Penalty Information Center, n.d.). DNA has played an important role in revealing that factually innocent people can be found guilty, as it provides irrefutable evidence of innocence (LaPorte, 2017). However, limitations exist regarding the amount of DNA testing that can be done. One limitation that exists is the extensive backlog of DNA samples. The Bureau of Justice Statistics states that although there was a statistically significant decrease in the number of requests for analysis of

convicted offender and arrestee samples from 2009 to 2014, the difference in processed samples is not statistically significant (Durose & Burch, 2016). This exhibits that there remains a significant backlog in the number of DNA samples waiting to be tested. Testing can also be limited by if DNA is available at the crime scene, or if those wrongfully convicted are permitted to have the DNA be tested. The Death Penalty Information Center found that:

> "a new examination of exonerations involving DNA evidence suggests that many more innocence cases remain undetected because DNA evidence was unavailable, or courts refused to permit testing. Because the presence or absence of DNA evidence in a case should have no effect on what factors cause a wrongful capital conviction, large differences between the causes of wrongful convictions in the DNA cases and in the cases with no DNA are red flags of where courts may have unjustly denied or erroneously credited false evidence that could have been disproven by DNA" (Death Penalty Information Center, n.d., para. 6).

Overall, it is suggested that when it is available, more DNA testing should be done to help exonerate those who are innocent yet remain on death row.

Proving Innocence

There are approximately sixty innocent projects committed to documenting wrongful convictions, such as the Innocence Project, the National Registry of Exonerations, and the Death Penalty Information Center. However, these projects face significant challenges in their work to exonerate wrongfully convicted individuals, such as a lack of adequate funding (Krieger, 2011). A wrongful conviction refers to someone found guilty of a crime who is factually innocent, meaning their exoneration was not the result of simple procedural error. The actual number of wrongful convictions is difficult to estimate. For instance, some of the cases vacated only on procedural grounds have likely involved factually innocent defendants (Acker, 2017). In 2014,

S.R. Gross, O'Brien, Hu, and Kennedy calculated that, "if all death sentenced defendants [post *Furman v. Georgia*, 1972] remained under sentence of death indefinitely at least 4.1% would be exonerated" (Acker, 2017; S.R. Gross, et al., 2014, p. 7230). However, one cannot truly estimate the true number of those wrongfully convicted, as there are undoubtedly some that are not currently known. One solution to lessen this gap in our knowledge could be to increase efforts by courts, or state and federal justice agencies, to better record and track exoneration data, as they currently do not routinely do so (Acker, 2017). However, despite the most diligent efforts, the true number of wrongful convictions will likely never be brought to light. Since 1973, 185 of those formerly on death-row have been exonerated due to wrongful conviction (Death Penalty Information Center, n.d.). Unfortunately, there is ample cause to believe the United States has already executed innocent individuals. In fact, four men have been executed despite significant doubts about their guilt: Troy A. Davis of Georgia, Carlos DeLuna of Texas, Gary Graham of Texas, and Cameron Todd Willingham of Texas (Bright, 2015; Givens, 2017).

The most common reasons for a wrongful conviction are perjury or false accusation, mistaken witness identification, official misconduct, false or misleading forensic evidence, false confession, inadequate legal defense, and insufficient evidence. The two most common reasons are official misconduct and perjury or false accusation (Death Penalty Information Center, n.d.). Undoing a wrongful conviction is a monumental task. As Warden and Seasly exhibit in their twenty-four profiles of condemned men and women seeking to prove their innocence, the standard of proof required to establish a convicted defendant's innocence is much higher than the standard required to originally convict them (Warden & Seasly, 2019). To establish one's innocence, a convicted defendant must submit new, reliable evidence, and this evidence must demonstrate, "it is more likely than not that no reasonable juror would have found the petitioner

guilty beyond a reasonable doubt. If a petitioner can clear this extraordinary hurdle, he is not entitled to relief; he is merely entitled to federal court consideration of his defaulted constitutional claims" (Givens, 2017, p. 258). And, as already stated, the innocence projects working to exonerate these individuals are often lacking adequate resources, as well as juggling multiple cases simultaneously (Krieger, 2011).

There are also significant racial disparities concerning wrongful convictions. Parker et al. (2003) reviewed the existing data available concerning these disparities. Overall, the data exhibited that blacks were more likely than whites to be wrongfully convicted of capital crimes, and that this occurs disproportionately to their representation in the overall population (Bedau & Radelet, 1987; Huff, et al., 1996; Parker, et al., 2003; Radelet, et al., 1992; Scheck, et al., 2000). Gross et al. (2017) reached a similar conclusion, noting that blacks who are convicted of murder are about 50% more likely to be innocent than other convicted murderers (Gross, et al., 2017). They also found that the convictions that led to murder exonerations for black defendants were 22% more likely to include police misconduct compared to those with white defendants, and that innocent black defendants sentenced to death spent an average of four years longer in prison compared to their white counterparts (Gross et al., 2017).

Intellectual Disability

In 2002, the U.S. Supreme Court ruled in *Atkins v. Virginia* (2002) that the death penalty was unconstitutional for defendants who have intellectual disability. This decision overturned *Penry v. Lynaugh* (1989), in which they ruled that intellectual disability is a potentially important mitigating factor, but it is not grounds for absolute exemption from capital punishment (Haydt, et al., 2014). However, determining whether an individual meets the requirements for this exemption is no easy task. Many states diagnose intellectual disability based on IQ scores. However, the threshold of determining intellectual disability based on these tests can vary

considerably depending on the state, leading to somewhat arbitrary IQ ceilings with no clear consensus (Haydt, et al., 2014; LaParade & Worrall, 2020). This can cause significant issues for intellectually disabled defendants, who may not meet the strict threshold required in a certain state despite other evidence of intellectual disability.

Although IQ tests are not the only evidence used in determining intellectual disability, the way states do so vary considerably. Indeed, LaParade and Worrall (2020) found that very little consensus exists between states regarding how intellectual disability is determined in capital trials (LaParade & Worrall, 2020). This is contrary to the requirement that the death penalty should be applied fairly and equally in the United States. For instance, a defendant could be declared not intellectually disabled in one state but meet the requirements for intellectual disability in another. The current methods by which states determine intellectual disability are arbitrary and vary substantially, and most researchers agree that more consensuses should exist among states (Bright, 2015; Cheung, 2013; Haydt, et al., 2014; Holler, 2018; LaParade & Worrall, 2020).

Along with issues of consensus among states, there is also the issue of race in determining intellectual disability. Defendants of color are disadvantaged when it comes to determining the presence of intellectual disability in a death penalty trial, and they are more likely than their white counterparts to be sentenced to death despite the presence of intellectual disability (Johnson, et al., 2019; Perlin, 2016). In fact, some prosecutors have even used “ethnic adjustments” to artificially raise minority defendant’s IQ scores in capital trials (Perlin, 2016; Sanger, 2015). In a review of more than 130 cases, the Death Penalty Information Center found that more than 80% of intellectually disabled defendants sentenced to death are persons of color. 66.4% of these defendants are African American (Death Penalty Information Center, n.d.).

Conclusion

The current knowledge of the death penalty and wrongful convictions has certainly improved over time, mostly through the developments of innocence projects that extensively research and document such issues. However, further research is still necessary to examine the causes of wrongful convictions and their prevalence in death penalty cases. Further research is also necessary to examine the risk factors that heighten the frequency of such causes, and the systemic reforms that can be implemented to lessen this frequency. The current study seeks to add to the existing literature by examining how these trends have changed over time, examining the role race plays in wrongful convictions, and by suggesting reforms that can be implemented to lessen the prevalence of wrongful death penalty convictions.

Chapter 3. Methodology

Introduction

The purpose of this study is to examine the developing trends in 139 death row exonerations in America over the course of 41 years, from 1980 to 2021. The factors examined were the amount of time spent wrongly incarcerated, the role of DNA in the exonerations, and the contributing factors in the wrongful conviction, such as evidence of perjury or false accusation, official misconduct, false or misleading forensic evidence, false confession, inadequate legal defense, insufficient evidence, and mistaken witness identification. The number of contributing factors per individual case of exoneration is also described. In some cases, the data was further examined by race to examine the presence of any racial disparity in the aforementioned factors.

Sample

This study used data compiled from the Death Penalty Information Center's Innocence Database. The DPIC utilizes several resources in compiling their data, including court opinions, media coverage, and interviews with those directly involved in the cases. The Death Penalty Information Center is a national non-profit organization founded in 1990, which focuses their efforts on data analysis and information on issues concerning the death penalty. The DPIC has significant experience in researching and discussing these issues, as they are involved in the preparation of in-depth reports, conducting briefings for journalists, and they also serve as a resource to those working on issues concerning the death penalty, such as aiding in cases of wrongful conviction. They seek to lessen or eliminate the number of wrongful convictions in the United States

Analysis

The analysis of the data gathered from the Death Penalty Information Center's Innocence Database focuses on those wrongfully convicted, and how the factors for their wrongful

convictions have changed or endured in amount over time. The data was examined through comparing the frequency of the different factors between different decades. The compiled data was examined for notable trends concerning wrongful death penalty convictions by decade, and the trends examined included the number of those wrongfully convicted, the average amount of time spent wrongfully incarcerated, the major reasons for the exonerations, the number of reasons for exoneration per individual case, and whether DNA contributed to the exoneration.

Chapter 4. Results

Introduction

The data was examined using a secondary dataset of 139 wrongfully incarcerated people convicted between 1980 to 2014 and exonerated between 1985 to 2021. Table one describes the year convicted with the race of the exoneree. Tables two and three describe the average number of years spent wrongly incarcerated. Tables four and five describe the reason for exoneration, with table five being further described using the race of the exoneree. Table six describes whether DNA was a contributing factor in the exoneration. Table seven and eight describe the number of reasons for exoneration present per individual case, with table eight being further described using the exoneree's race.

Number of Exonerees and Year Convicted

Tables one demonstrates the numbers of death row inmates exonerated over time. As shown, a higher number of exonerations occurred in the 1980's compared to subsequent decades. The frequency of exonerations began to decrease in the 1990's and have decreased substantially over the past three decades (see table one). While this trend occurred among all races, the data shows that black inmates are exonerated more often than other racial groups. Specifically, black inmates account for 49.64% of those exonerated, compared to 37.41% for white inmates, 11.51% for Latino inmates, and 0.01% for inmates of other races. It is important to note that this racial disparity is only present in the 1980's – there is basically no disparity in the 1990's, 2000's, and 2010's, as shown in table one.

Table 1 - Year Convicted with Race of Exoneree by Decade

Year Convicted	1980's	1990's	2000's	2010's	Totals
Race					
Black	40	23	3	3	69
White	26	20	4	2	52
Latino	10	4	2	0	16
Other Race	1	1	0	0	2

Average Number of Years Spent Wrongfully Incarcerated

Tables two and three describe the average number of years spent wrongly incarcerated. Table three further describes this data by the race of the exoneree. The data exhibits a downward trend between the two samples beginning in the 1990's. On average, wrongfully convicted death-row inmates are spending less time in prison before their subsequent exoneration. However, black inmates spend longer times wrongfully incarcerated compared to other racial groups (see table three). Additionally, they remain in prison for longer than the overall average number of years spent wrongfully incarcerated (see tables two and three).

Table 2 - Average Number of Years Spent Wrongly Incarcerated

Year Convicted	1980's	1990's	2000's	2010's	Totals
Average Time Incarcerated	13.35	11.46	9.78	3.2	12.10

Table 3 - Average Number of Years Spent Wrongly Incarcerated by Race

Year Convicted	1980's	1990's	2000's	2010's	Totals
Race					
Black	15.03	13.96	8.67	4.00	13.91
White	12.42	8.90	8.25	2.00	10.35
Latino	9.6	9.25	14.50	N/A	10.13
Other	8.00	14.00	N/A	N/A	11.00

Reasons for Exoneration

Tables four and five describe the reasons for exoneration. Table five further describes this data by the race of the exoneree. Official misconduct and perjury or false accusation are the most common reasons for exoneration across the two samples. In order of prevalence, they are followed by false or misleading forensic evidence, inadequate legal defense, mistaken witness

identification, false confession, and insufficient evidence. Official misconduct, perjury or false accusation, false or misleading forensic evidence, inadequate legal defense, mistaken witness identification, and false confession were all found to be more frequent in black inmates' cases compared to their counterparts (see table five). Insufficient evidence was found to be more frequent in the cases of white inmates (see table five).

Table 4 - Reason for Exoneration by Decade

Year Convicted	1980's	1990's	2000's	2010's	Totals
Reason For Exoneration					
Official Misconduct	54	35	5	3	97
Perjury or False Accusation	52	35	6	1	94
False or Misleading Forensic Evidence	27	17	4	2	50
Inadequate Legal Defense	22	11	4	0	37
Mistaken Witness Identification	17	9	1	0	27
False Confession	14	8	3	0	25
Insufficient Evidence	8	0	2	3	13

Table 5 - Reason for Exoneration by Race by Decade

Year Convicted		1980's	1990's	2000's	2010's	Totals
Reason For Exoneration						
Official Misconduct	Black:	30	21	2	3	56
	White:	18	10	2	0	30
	Latinx:	6	4	1	0	11
	Other:	0	0	0	0	0
Perjury or	Black:	29	18	2	1	50

False Accusation	White: 13	13	2	0	28
	Latinx: 9	4	2	0	15
	Other: 1	0	0	0	1
False or Misleading Forensic Evidence	Black: 11	9	1	1	22
	White: 12	6	2	1	21
	Latinx: 3	1	1	0	5
	Other: 1	1	0	0	2
Inadequate Legal Defense	Black: 12	4	1	0	17
	White: 7	5	1	0	13
	Latinx: 3	2	2	0	7
	Other: 0	0	0	0	0
Mistaken Witness Identification	Black: 11	5	1	0	17
	White: 6	2	0	0	8
	Latinx: 0	1	0	0	1
	Other: 0	1	0	0	1
False Confession	Black: 10	4	0	0	14
	White: 2	4	2	0	8
	Latinx: 2	0	1	0	3
	Other: 0	0	0	0	0
Insufficient Evidence	Black: 1	0	1	1	3
	White: 5	0	1	2	8
	Latinx: 2	0	0	0	2
	Other: 0	0	0	0	0

DNA

Table six describes whether DNA was a contributing factor in the exonerations. The data exhibits a downward trend in the amount of DNA testing that is being done. It also shows that frequently, DNA testing is not a contributing factor in the exonerations (see table six). DNA testing was only utilized in 12.32% of cases.

Table 6 - Was DNA a Contributing Factor in the Exoneration?

Year Convicted	1980's	1990's	2000's	2010's	Totals
Yes	17	8	3	0	28
No	60	40	6	5	111

Number of Factors Contributing to an Exoneration Per Case

Tables seven and eight describe the number of reasons for exoneration per case. Table eight is further examined by race. The data exhibits that it is most common that three or more factors contribute to an exoneration. This is followed by two contributing factors, with one contributing factor being the least common. Three or more contributing factors account for 43.88% of all exonerations between the 1980's and 2010's. This data exhibits that often, there are multiple errors in any given case of exoneration (see table seven). When further described by race, it is shown that black exonerees are likelier to have three or more contributing factors in their exonerations compared to their counterparts, while white exonerees were likelier to have only one factor contributing to their exoneration compared to other exonerees (see table eight).

Table 7 – Number of Factors Contributing to an Exoneration Per Case by Decade

Year Convicted	1980's	1990's	2000's	2010's	Totals
Number of Factors					
One	13	9	2	1	25
Two	28	19	2	4	53
Three or more	36	20	5	0	61

Table 8 – Number of Factors Contributing to an Exoneration Per Case by Race

Year Convicted	1980's	1990's	2000's	2010's	Totals
Number of Factors					
One	Black: 6	1	1	0	8
	White: 6	8	1	1	16
	Latinx: 1	0	0	0	1
	Other: 0	0	0	0	0
Two	Black: 13	10	0	3	26
	White: 8	6	2	1	17
	Latinx: 6	2	0	0	8
	Other: 1	1	0	0	2
Three or More	Black: 21	12	2	0	35
	White: 12	6	1	0	19
	Latinx: 3	2	2	0	7
	Other: 0	0	0	0	0

Chapter 5. Discussion

Introduction

This study was conducted to research developments and trends in issues regarding the death penalty over a period from 1980 to 2021. The study specifically focused on factors such as the race of the exoneree, the amount of time spent wrongly incarcerated, the role of DNA in the exonerations, and the contributing factors in the wrongful conviction, such as evidence of perjury or false accusation, official misconduct, false or misleading forensic evidence, false confession, inadequate legal defense, insufficient evidence, and mistaken witness identification. Issues regarding the difficulties in proving innocence and the presence of intellectual disability are also discussed.

Existing Literature

The existing literature found many troubling issues concerning the influence of racial bias throughout the legal process. Not only are blacks more likely than whites to be wrongfully convicted of capital crimes, but they are also 22% more likely to experience police misconduct during this process (Bedau & Radelet, 1987; Gross et al., 2017; Huff, et al., 1996; Parker, et al., 2003; Radelet, et al., 1992; Scheck, et al., 2000). Additionally, a study by Gross et al. (2017) found that black murder convicts are 50% more likely to be innocent than other convicted murderers and spend an average of four years longer wrongfully incarcerated compared to whites (Gross et al., 2017).

The existing literature found that DNA has played an important role in irrefutably proving that wrongful conviction do happen, but it only accounts for 15.1% of exonerations since 1973 (Death Penalty Information Center, n.d.; LaPorte, 2017). This is due to many factors, such as a backlog of DNA evidence or the simple fact that DNA evidence may not be available. More troubling is evidence that in some cases, courts are refusing to permit those who believe they have been wrongfully convicted from having their DNA tested (Death Penalty Information

Center, n.d.). Although forensic science can greatly help those wrongfully convicted, the existing literature also found it could have the opposite effect, with false or misleading forensic evidence being a factor in 31.9% of death row convictions since 1973 (Death Penalty Information Center, n.d.). In fact, apart from DNA testing, no forensic science method has been rigorously exhibited to demonstrate a connection between evidence and a specific individual with a high degree of consistency and certainty, and a false perception of the reliability of such methods may sway jurors in a capital trial (Hamirani, et al., 2018; Martire et al., 2019). The existing literature also found that forensic testimony can be impacted by the fact that police departments and forensic labs are often closely intertwined, which can lead to misconduct such as withholding or diminishing exculpatory forensic evidence or using ambiguous terminology to mislead jurors (National Institute of Justice, 2017; Zakirova, 2018).

There are many other contributing factors in wrongful convictions, some more prominent than others. Perjury or false accusation was present in 67.6% of death row exonerations since 1973 (Death Penalty Information Center, n.d.). The existing literature found that many of these are police informants who may often lie for personal gain, such as to receive a reduced sentence, and that informants are often rewarded despite the fact their information is not ensured to be accurate or reliable (Gould & Leo, 2010; Zimmerman, 2001). Even when it was evident that a witness had external motivations, which could harm the accuracy or reliability of the testimony, the existing literature found jurors mostly ignored this and voted guilty regardless of these motivations (Neuschatz et al., 2007).

The existing literature also found official misconduct to be the leading cause of wrongful convictions at 69.2%, with many issues existing regarding both misconduct by law enforcement and prosecutions, such as failing to disclose vital or exculpatory evidence or engaging in overly

suggestive witness identification procedures (Death Penalty Information Center, n.d.; Elliot & Weiser, 2004; Gershman, 2002; Gould & Leo, 2010; Plantania & Moran, 1999). Most researchers also agree that law enforcement officers may influence the witness identification process through either unknowingly or knowingly employing suggestive identification procedures that make their preferred suspect more noticeable in a line-up or other witness identification procedure (Edlund & Skowronski, 2008; Gould & Leo, 2010; Norris et al., 2019; Rossmo & Pollock, 2019; Shell, 2013). In fact, it was found that mistaken witness identification accounts for 20% of death row exonerations since 1973, and there are many factors besides overly suggestive witness identification procedures that influence this, such as the presence of a weapon at the original crime, if the victim and perpetrator are different races, and other such psychological errors in human judgement and memory (Gould & Leo, 2010; Norris et al., 2019; Meissner & Brigham, 2001; Wells & Murray, 1983). Adjacent to police misconduct is the presence of false confessions in wrongful death penalty convictions. False confessions accounted for 16.2% of death-row exonerations. These confessions, often prompted by police through aggressive or deceptive interrogation techniques, can taint other evidence, as well as harm relationships between the defendants and their defense lawyers and increase the risk of prosecutorial misconduct (Dror et al., 2006; Elaad et al., 1994; Findley & Scott, 2006; Hasel & Kassin, 2009; Kassin et al., 2009; Kassin et al., 2013; Morehouse, 2019; Vick et al., 2021.

The existing literature was not very expansive regarding the presence of inadequate legal defense, which accounts for 25.4% of all death-row exonerations since 1973, but it was found that significant issues exist, such as accounts of defense lawyers sleeping or drinking alcohol during the trial, showing racial bias towards their clients, or simply providing inadequate representation due to a lack of effort or a lack of experience (Death Penalty Information Center,

n.d.). Many of these issues of inadequate representation stem from the fact these court-appointed public defenders are often overworked and underpaid (Lucas, 2018). Lastly, insufficient evidence accounts for 9.2% of death-row exonerations since 1973, but the existing literature on this subject is sparse (Death Penalty Information Center, n.d.).

Current Study

The current study added to this discussion into the causes of wrongful death penalty convictions by examining a secondary dataset of 139 death row exonerations, with convictions ranging from 1980 to 2021. The study examined the prevalence of the factors of average number of years spent wrongfully incarcerated, the reasons for exoneration (official misconduct, perjury or false accusation, false or misleading forensic evidence, etc.), if DNA was a contributing factor in the exoneration, and the number of reasons for exoneration per individual case. Some of the data was further described by race to examine trends of racial disparity. The major findings revealed that racial disparity still exists in the legal process, but it is declining. However, overall, black exonerees still spend longer amounts of time wrongfully incarcerated compared to their white counterparts, and they are also more likely to have more factors that contribute to their wrongful conviction. In general, too, wrongfully convicted individuals are more likely to have three or more factors contributing to their wrongful conviction. The study also found official misconduct and perjury or false accusation to be by far the most common reasons for exoneration. The current study also found that often, DNA is not available to test or is simply not being tested, and there is a downward trend overall in the amount of DNA testing being done. Overall, the results of the current study are aligned with the findings of previous literature on the subject.

Difficulties in Proving Innocence and Intellectual Disability

The following cases of three men add to the current discussion by examining the difficulties in proving innocence, particularly in the case of intellectual disability, which varies widely from state to state. Three men who recently were exonerated or are in the process of having their cases reexamined are discussed. These men's cases exhibit many of the issues present in the current legal system, such as allegations of racism, official misconduct, and the overall difficulties present in the legal system that make it difficult for a person to prove their innocence and/or their ineligibility for the death penalty.

Julius Jones was convicted and sentenced to death for the murder of Paul Howell, who was killed in 1999 by shooting. Jones was nineteen at the time of the shooting, and he has consistently maintained his innocence for nearly twenty years (Death Penalty Information Center, 2020). There are several factors that suggest Jones' innocence. Firstly, Jones has an alibi, as he was having dinner with his parents at the time of the shooting. However, his defense failed to present this evidence at the original trial (The Innocence Project, 2021). Jones also does not resemble the eyewitness' description of the murderer, who was described as having a couple of inches of hair, while Mr. Jones had a shaved head. In fact, the primary witness against Mr. Jones, Christopher Jordan, does resemble the description, but he claimed at trial that he was only the getaway driver. Jordan received a plea deal in exchange for his testimony, serving 15 years in prison. Additionally, three people who were in prison with Jordan have claimed in sworn affidavits that Jordan confessed to the murder on several different occasions. It should be noted that none of the three men knew each other or received any incentive in exchange for their testimony. There is also evidence of racial bias in Jones' case. The arresting officer and a member of the jury in the case both referred to Mr. Jones by the n-word and threatened violence against him (The Innocence Project, 2021). Mr. Jones' sentence was recently commuted to life

with the possibility of parole, with Oklahoma's Pardon and Parole Board citing doubts regarding the evidence in the case (Murphy, 2021).

Pervis Payne was twenty years old when he was convicted and sentenced to death for the 1987 stabbing murder of Charisse Christopher and her 2-year-old daughter, as well as the stabbing of her 3-year-old son, who survived the attack (Loller, 2021). Payne claimed he was an innocent bystander who came upon the scene while waiting for his girlfriend to return to her apartment and tried to help, and he has maintained his innocence for over thirty years. He was covered in blood and fled the scene when police arrived, which understandably made him the main suspect in the case. Payne claimed the blood on his clothes was from trying to help the victim, but the police did not believe him. However, there are factors that place doubts upon his guilt. Firstly, DNA evidence in the case went untested for many decades. On January 19, 2021, the Shelby County Criminal Court ordered that these key pieces of evidence be tested. Many pieces of evidence in the case have gone missing, including the victim's fingernail clippings, which is a crucial piece of evidence as the prosecution argued that the victim scratched her attacker. There is no explanation for why these crucial pieces of evidence have gone missing. Additionally, Payne's DNA was not found on the handle of the murder weapon, but partial DNA from an unknown male was found. Another factor is that Payne did not have any motive to commit such crime. The prosecution relied on racial stereotypes that painted Payne as a sex-crazed drug user who approached the victim for intercourse. However, Mr. Payne was described by those who knew him at the time as kind and respectful, and there was no evidence that Payne had used drugs and he had no history of drug use, nor did he have any criminal record. A major factor in Mr. Payne's case is that he is intellectually disabled. Payne struggled in school and was unable to graduate high school. His teachers and family testified that he is not able to follow

complicated instructions and that growing up, he had trouble with chores and needed help feeding himself until he was five (Shelby, 2020). He also has an IQ of 72, with a functional score in the 60s. His diagnosis aligns with the standards set by the American Association on Intellectual and Developmental Disabilities and the American Psychiatric Association (Powers, 2020). Because of his intellectual disability, Mr. Payne was removed from death row in 2021, and his resentencing hearing is set to take place at a later date (Shelby, 2020).

Mark Allen Jenkins was convicted and sentenced to death for the murder of Tammy Hogeland, who was killed in 1989 (The Associated Press, 2019). Jenkins lives with an intellectual disability, with an IQ of 76. Jenkins' lawyer failed to present this mitigating evidence at the penalty phase of his trial. However, judges claimed the lower court did not err in determining him eligible for the death penalty, citing childhood tests that measured his IQ in the 80s (The Associated Press, 2019). Although the court focused primarily on Jenkin's IQ tests, Jenkins also struggled with learning basic tasks like counting coins or telling time, and he was placed in a special education class (Shriver, 2021). However, no court has allowed the opportunity for Jenkins to prove his intellectual disability.

These men's stories outline many of the difficulties in proving a wrongful conviction, such as how time consuming the process can be. Julius Jones and Pervis Payne spent decades fighting to prove their ineligibility for death row, and Mark Jenkins is still fighting to prove his intellectual disability. They also exhibit how common the issues of official misconduct and using incentivized or mistaken witnesses are in cases of wrongful convictions. In Julius Jones' and Pervis Payne's cases, there was also evidence of racial bias in their original trials. The results of the case studies also emphasis important concerns regarding intellectual disability. Although *Atkins v. Virginia* (2002) prohibited the execution of intellectually disabled individuals, many

states vary in how they determine intellectual disability. This variance can sometimes cause those with intellectual disability to slip through the cracks of the criminal justice system. For instance, until May 2021, Tennessee had no mechanism by which an inmate could reopen his or her case in order to submit a claim of intellectual disability (Loller, 2021). Oversights such as these need to be dealt with to ensure the death penalty is being applied justly and equally.

Recommendations for Improvements

Despite the many alterations to the death penalty since its original establishment in America, the death penalty is still not being applied equally, and people are still being wrongfully sentenced to death. It is likely that we will never know the full extent of the number of wrongful convictions in the United States, nor can we ever truly eliminate the possibility that someone will be wrongfully sentenced to die. However, we can lessen the likelihood that these miscarriages of justice will occur. It seems that focusing on systemic reforms throughout the legal process could lessen the chance that an individual is wrongfully convicted and sentenced to die. Official misconduct, either by police or prosecutors, is the most common reason for a death sentence to be reversed. These officials need to be held accountable for their actions when misconduct occurs, as this will both dissuade other officials from doing so and ensure guilty officials do not make the same mistakes again. Whether in the interrogation room or a court room, the goal should be to see that justice is done, not simply to get a conviction. This applies to many other factors contributing to wrongful convictions: witnesses should not be overly incentivized or threatened in any way to give testimony; forensic experts should offer candid and clear testimony; suspects should not be threatened or coerced into a confession; there should be adequate funding for public defenders so they can sufficiently defend their clients, especially in death penalty cases; if there is insufficient evidence to pursue a case, that case should not go to trial; and witnesses should not be pressured, either implicitly or explicitly, to identify law

enforcement's preferred suspect. There also needs to be more consistency in the way the death penalty is applied among states. States very widely in their application of the death penalty. For instance, in Mr. Pervis Payne's case, Tennessee previously had no method by which a person sentenced to death could submit a claim of intellectual disability. States also vary widely in how they determine intellectual disability, and some states are still using outdated methods or differing scales to decide a determination of intellectual disability. The issue of racial disparity is more difficult to solve, as it is so deeply ingrained into America's legal institutions, stemming from a history of the death penalty as a racially fueled practice. There are some obvious fixes, such as ensuring a prosecutor's closing remarks does not include racially fueled stereotypes, but changing the implicit biases in people's minds is a much harder issue to solve. Overall, ensuring equity and consistency in death penalty trials would greatly lessen the chances of a wrongful conviction, and by ensuring swift and serious consideration of appeals, those who were wrongfully convicted would not languish in prison for an entire lifetime, as has been the case with so many wrongfully convicted individuals in the past.

Limitations

As with any study, this study is limited by the quality of the data set that was used. While there is no reason to believe these results or the dataset used are inaccurate, this study is nonetheless dependent on the accuracy and detail of the secondary dataset from the Death Penalty Information Center. The current study was largely exploratory and focused on easily observable patterns, but future research could expand more on this by conducting more advanced statistical analysis on this subject. Lastly, another limitation of this study is that we will never truly know how many wrongful death penalty convictions have occurred. Therefore, this information is gathered based on the wrongful convictions that are publicly known. However, this will be a concern with any study regarding this topic.

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