RACIAL DISPARITIES AND CAPITAL SENTENCING AS PERCEIVED BY CRIMINOLOGY AND CRIMINAL JUSTICE STUDENTS

by

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Presented to the Faculty of the Graduate School of

The University of Texas at Arlington in Partial Fulfillment

of the Requirements

for the Degree of

MASTER OF ARTS IN CRIMINOLOGY AND CRIMINAL JUSTICE

THE UNIVERSITY OF TEXAS AT ARLINGTON

May 2011

ACKNOWLEDGMENTS

I thank the Lord Jesus Christ for I can do all by His strength and grace. I would like to thank and offer my sincere appreciation to my supervising professor, Dr. Alejandro del Carmen. His guidance and knowledge assisted me on this thesis. His dedication to his students shows his passionate and professional character in which he plays an important academic role in the Criminology and Criminal Justice department at the University of Texas at Arlington.

I would like to send my appreciation to Dr. Randall Butler and Dr. Sara Phillips for their generous time and encouragement. Their knowledge and support not only contributed to this thesis, but also contributed to my graduate education at the University of Texas at Arlington.

Finally, I would also like to acknowledge my mother, brother and sisters for believing in me. I would never have been able to achieve this without their encouragement and prayers. I would like to thank my closest friends for all their support and encouragement which helped me succeed. A special thanks goes to my best friend, Clarisse Mafumba for her kindness, support and unconditional love. I share this accomplishment with each and every one of you.

April 15, 2011

ABSTRACT

RACIAL DISPARITIES AND CAPITAL SENTENCING

AS PERCEIVED BY CRIMINOLOGY

AND CRIMINAL JUSTICE

STUDENTS

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The University of Texas at Arlington, 2011

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The purpose of this study is to examine the difference of perceptions of criminology and criminal justice (CRCJ) male students in comparison with their female counterparts on possible race factor in death penalty sentencing. The data in this study were obtained from a sample of 100 male and female CRCJ students enrolled in CRCJ courses during the semester of fall 2010 at the University of Texas at Arlington, located in north Texas. The findings in this research suggest that there is a little significant difference of knowledge among both male and female CRCJ students as pertaining to the death penalty, while male respondents seemed to have strong perceptions of racial disparities and capital sentencing.

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CHAPTER 1

INTRODUCTION

1.1 Historical Background of the Capital Punishment

The taking of life was the primitive and supreme satisfying of personal vengeance (Laurence, 1960). For most of the United States (here after referred to as America) history, capital punishment was used in a discretionary, haphazard manner without strict legal controls (Siegel, 2006). The first case to address the death penalty did not truly address the nature of the penalty per se. In Logan v. U.S. (1892) the issue was one of federal government authority. The case involved the murder of a federal prisoner during transportation by federal marshals. The Court ruled that the real issue was the power of the federal government. A government, the Court ruled, which had the power to try and punish a person, had the power and duty to protect that person (Russell, 1994).

According to Russell (1994), other cases addressed the death penalty, but they generally considered procedural issues. None directly questioned the constitutionality of the death penalty per se. In McGautha v. California (1971), the constitutionality of the death penalty per se under the Eighth Amendment was discussed in a direct fashion only by Justice Black. The Court affirmed the conviction by a 6-3 vote (Russell, 1994). Only a year later, in Furman v. Georgia (1972), that the issue of the constitutionality of the death penalty under the Eighth Amendment was addressed.

But one really should not be surprised to find some form of racial bigotry present in the criminal justice system. It is surely evident in the society at large, and the criminal justice system is not isolated from the larger society. Indeed, the evidence is persuasive that the system is heavily influenced by the surrounding culture (Russell, 1994).

As result, its application was marked by extreme racial disparity; more than half the executions conducted in America involved African Americans (Siegel, 2006). Capital punishment has a long history in the United States,

with a brief respite between 1972 and 1976 when the U.S. Supreme Court declared in Furman v. Georgia (1972) that capital punishment was unconstitutional as it was being administered at the time (Lambert, Camp, Clarke, & Jiang, 2008).

The United States Supreme Court had the opportunity to consider the issue of the death penalty within the context of a claim of racially discriminatory application. In McCleskey v. Kemp (1987), the petitioner contended that the Georgia death penalty was applied in a racially biased manner (Russell, 1994).

The purpose of this research is to examine the perception of criminal justice students while controlling for gender on possible race factor in capital sentencing. This research first measured the knowledge different means between male and female respondents. The data in the present research were obtained from a sample of male and female criminology and criminal justice students; both groups were enrolled in criminology and criminal justice (CRCJ) courses during the semester of fall 2010 at the University of Texas at Arlington (UTA). UTA is a large university in the Dallas-Fort Worth metropolitan area, located in north Texas.

According to Laurence (1960), among the earliest records we find mention in the Ancient Laws of China of beheading as the prescribed mode of capital punishment. In early Egypt and Assyria the axe was used, and in some very early records it is stated that malefactors were ordered to kill themselves, usually by taking poison.

The Mosaic law is full of mention of the punishment of death, the principal mode of execution being stoning, through hanging seems to have been recognized, as is shown from the fact that in Deuteronomy xxi instructions are given to the effect that when a man has been hanged his body is to be cut down before the nightfall and not left dangling on the tree throughout the hours of darkness (Laurence, 1960).

In England we have no record of capital punishment earlier than 450 B.C., when it was the custom to throw those condemned to die into a quagmire. The gallows was the usual method of capital punishment in Anglo-Saxon times. But in addition to hanging, beheading, burning, drowning, stoning, and casting from rocks were common forms of death meted out to criminals under Saxon and Danish kings. The king had the right of choosing the form of death (Laurence, 1960).

The Atlantic crossing brought fortune seekers from England and Europe, the riffraff of the English jails, and indentured servants. With this wide variety of people came a need to impose some form of order. Early America

saw a dire need for discipline. New England's rigid religiosity and John Smith's militaristic approach to colonial life reflected these needs. Those two different approaches emphasized the fact that in the American colonies there was no uniform criminal law and the influence of English law was inconsistent at best. With each colony under its own charter, and given a certain amount of independence, a sporadic and choppy criminal law emerged. The evolution of the U.S. version of the death penalty reflected this (Gershman, 2005).

Allen and Clubb (2008) point out that English law and criminal justice practices were modified both deliberately and inadvertently in the transit to the new world. According to Laurence (1960), in the United States, capital punishment was inflected for treason, arson, rape, piracy, robbery of the mails with jeopardy to the lives of persons in charge, rescue of a convict going to execution, burning a vessel of war and corruptly destroying a private vessel. Banner (2006) points out that, when we think about the death penalty, we think in part, in race-tinged pictures-of black victims lynched by white mobs, of black defendants condemned by white juries, of slave codes, and public hangings.

Slavery was legal in all of the colonies and became the dominant labor system in the southern and border colonies and, for a time, in parts of the middle Atlantic region as well. With the adoption of the slave labor system, the population of African descent also increased, in some areas more rapidly than the white population (Allen & Clubb, 2008). Banner (2006) argued that to keep control over their growing number of slaves, the southern colonies resorted to ever-lengthening lists of capital statutes. In 1740, for example, South Carolina imposed the death penalty on slaves and free blacks for burning or destroying any grain, commodities, or manufactured goods; on slaves for enticing other slaves to run away; and on slaves maiming or bruising whites. Virginia, fearing attempts at poising, made it a capital offense for slaves to prepare or administer medicine.

Lynching was a powerful tool of intimidation that gripped blacks' imagination whether they lived in a mob-prone part of the South or in the relative safety of a border state (Brundage, 1997). When criminals were executed, the most public places were chosen, where there will be the greatest number of spectators, and so the most for the fear of punishment to work upon them (Laurence, 1960).

According to Banner (2006), race has interacted with capital punishment in two primary ways, both of which were products of slavery. First, for most of American history, capital crimes were defined unequally by race- as a matter of formal law before the Civil War, and then as a matter of unwritten practice after the Civil War, when formal racial discrimination became unconstitutional. Second, for a long time executions were staged so as to reinforce the racial hierarchy. From the content of gallows sermons to the choice of execution technique, the ceremony of execution included a variety of rituals intended to broadcast a message of white dominance (Banner, 2006).

Lynching, like slavery and segregation, was not unique to the South. But its proportions and significance there were unparalleled outside the region. Drawing upon traditions of lawlessness rooted in slavery and the turmoil of Reconstruction, lynch mobs in the South continued to execute alleged wrongdoers long after lynching had become a rarity elsewhere in the nation (Brundage, 1997).

By the late nineteenth century, mob violence had become a prominent feature of race relations in the South that for many symbolized black oppression. The proportion of lynchings that occurred in the South rose with each succeeding decade after the Civil War, increasing from 82 percent of all lynchings in the nation during the 1880s to more than 95 percent during the 1920s. The toll of mob violence outside the South, however sizable, is greatly overshadowed by the estimated 723 whites and 3,220 blacks lynched in the South between 1880 and 1930 (Brundage, 1997).

The impact of the middle class in criminal justice cannot be overemphasized. The “republic code” movements after the Revolution created state statutory law. The very elitist and historic common law, which flew in the face of democracy, gave way to law created by middle-class legislators. Although common law existed in appellate courts, statutory law became the main source of law. The modern police, created in the 1840s and 1850s, were a product of the urging of the middle-class reformers seeking more humane treatment of offenders (Pfeifer, 2006).

By the 1920s lynching had virtually disappeared from the South. The West and Midwest had declining lynching rates earlier. This is at a time when execution rates rose. The middle-class was responsible for reshaping

capital punishment. Although centralized and detached from public view and participation, capital punishment satisfied many groups. The invention and implementation of the electric chair in the 1890s seemed to be more humane and clean (Pfeifer, 2006).

Most victims of lynching and official executions were ethnic and racial males guilty of violating women. With an historical development there is no wonder that the vast number of those on death row today represent Black or ethnic lower-class males (Pfeifer, 2006).

In the twentieth century, the death penalty argument has centered on the Eighth Amendment, which guarantees, among other things, that cruel and unusual punishment shall not be inflicted. Although at times, the Supreme Court has sidestepped the key question, in the end, it was the questions surrounding that amendment that formed the core of the debate: Does the death penalty cruel and unusual punishment (Gershman, 2005)? Although other issues of fairness and equity that focused on Fifth, Sixth and Fourteenth Amendment issues arose, the fundamental question in death penalty litigation has always been whether the execution of criminals is in line with the requirements of the Eighth Amendment. Proponents have rejected that line of reasoning, and underlying all arguments of death penalty opponents has been that, at its core, capital punishment in modern society is cruel and unusual (Gershman, 2005).

The history of capital punishment well illustrates the point and, if anything, adds additional dimensions. If the notion of system implies a measure of uniformity-the same crimes, same legal procedures, same sentences, and same implementation of sentences-then the use of capital punishment has historically lacked systemic properties. The use of capital punishment has not only changed over time, its use also has varied from one area and jurisdiction to another and from one ethnic, racial, and social group to another (Allen & Clubb, 2008).

Apart from matters of race and ethnicity, it will come as no surprise that the large majority of those put to death, whatever their race or ethnicity, appear to have been of low economic status. These disparities cannot be taken as no more than indications of a discriminatory law and criminal justice system. We know on other grounds that the historical law and criminal justice was massively discriminatory and placed the poor at a disadvantage (Allen & Clubb, 2008).

Parker, DeWees, and Radelet (2003) note that constitutional safeguards are, in some cases, inadequate to protect innocent people from the pressures that push police, prosecutors, and courts to convict at all costs. There have been cases where anomalies have slipped through the cracks but mistakes-both intentional and unintentional-that result from systemic failures and flaws in the operation of justice. Studies consistently reveal a number of factors that can lead to the conviction of innocent people. Police mistakes and misconduct have caused wrongful convictions. Prosecutors have been known to ignore evidence counter to their case, misuse informants they know to be unreliable, and fail to report exculpatory evidence to the defense. Defense counsel has been found to be ill-prepared to argue their cases (Parker et al., 2003).

1.2 The Present Study

In Gregg v. Georgia (1976) and companion cases, the Unites States Supreme Court approved modern death penalty laws that it presumed would remedy the arbitrariness condemned in Furman v Georgia (1972). However, thirty years of experience and a wellspring of research on the modern death penalty are raising doubts in many quarters about the successfulness of the new legislation in overcoming the problems identified in Furman (Acker, Bohm, and Lanier, 2003).

Throughout the twentieth century, the issue of racial disparities in the criminal justice system has attracted the attention of criminologists. Scholars have studied race and ethnic differences in the frequency of criminal behavior and in arrests by police, adjudication by prosecutors, decisions by jurors, and sentencing by judges (Parker, DeWees, & Radelet, 2003). Many studies over the last quarter-century have documented continued racial disparities in the administration of capital punishment, particularly in relation to race of the defendant and race of the victim (Gross and Mauro, 1984; US General Accounting Office, 1990; Baldus and Woodworth, 1997, 2003; Dieter, 1998). Conventional wisdom holds that the race of the victim is pivotal, but the race of the defendant is not (USGAO, 1990). For instance, according to Breslin (2008), the race of the defendant and victim are both pivotal in Harris County, Texas. Death was more likely to be imposed against black defendants than white defendants, and death was more likely to be imposed on behalf of white victims than black victims.

Evidence of racial disparities appears in the administration of the death penalty in the United States. Death sentences have always been disproportionately applied to blacks, other minorities, and the poor (Bowers, 1984). While evidence of racial bias in executions has been found for as long as the death penalty has been used, particularly in rape cases (Wolgang & Reidel, 1973), researchers continue to find strong and consistent evidence of racial bias in death sentences today. In early 2000, 3,670 prisoners were on U.S. death rows; 46.3 percent were white, 42.9 percent were black, and 10.8 percent were other minorities (NAACP Legal Defense Fund, 2000). Several recent studies find that race-especially the race of the victim-remains a strong predictor of who has been sentenced to death during the past twenty-five years (Baldus, Woodworth, & Pulaski, 1990; Gross & Mauro, 1989; Radelet, 1981; Radelet & Pierce, 1985, 1991).

According to Howe (2009), statistical studies showing unconscious racial bias in capital selection matter under the Eighth Amendment. In McCleskey v. Kemp (1987), the Court appeared to shun such evidence as irrelevant to Eighth Amendment challenges to capital punishment. Yet, this kind of evidence has influence many of the Justices' views on the constitutionality of the death penalty and has sometimes caused the Court to restrict the use of that sanction under the Eighth Amendment (Howe, 2009).

Contemporary research on the death penalty indicates that the defendant's race is only marginally related to whether a murder results in a death sentence. Defendant characteristics most closely associated with a death sentence tend to be aggravating factors, such as defendant culpability, that are prescribed by law (Holcomb, Williams, & Demuth, 2004). Various characteristics of homicide victims also appear to be significant predictors of death sentences. In particular, several studies have found that homicides involving white victims are more likely to result in a death sentence even when other legally relevant case characteristics are controlled. Death penalty studies, however, consistently treat victim race and gender as independent effect (Holcomb, Williams, & Demuth, 2004).

The use of capital punishment in American history has been marked by elements of seeming paradox. On the one hand, the frequency of executions and the way in which they conducted have changed radically; on the other hand, regional, racial, and economic patterns of use from the distant past have persisted into the twentieth-first

century. It is probably fair that the most significant change has been the long-term decline in the incidence of capital punishment when viewed in relation to population (Allen & Clubb, 2008).

In early years, Allen and Clubb (2008) acknowledge that, executions were public events, often accompanied by a measure of ceremony and fanfare. In contrast, executions are now carried out in the utmost privacy, and the only fanfare is an occasional protest in from of a governor's office or outside the walls of a prison. That hypothetical obverse from the past might be surprised to find that the population of the nation's death rows in 2005 was well over three times greater than the total number executed since 1976, without counting those who died on death row of other causes or who were exonerated or otherwise reprieved (Allen & Clubb, 2008).

Public support for the death penalty in the United States is at the highest level recorded since Gallup conducted his first poll on the death penalty in 1936: 79% of Americans favor the death penalty for persons convicted of murder (Gallup, 1989). Ubiquity of support is so great that at least one-half of the respondents in every social category examined in the poll are in favor of the death penalty for persons convicted of murder. A particularly significant feature of this support is that most Americans know very little about the death penalty and its effects (Finckenauer, 1988; Ellsworth and Ross, 1983; Sarat and Vidmar, 1976). Thus a majority of Americans have taken a very strong position on an issue about which they are substantially uninformed (Bohm, Clark, & Aveni, 1991).

Society has always used punishment to discourage would-be criminals from unlawful action. According to Bentham (1789), the role of punishment in itself was evil and should be used only to exclude some greater evil. Thus, the only justification for punishment was deterrence (Williams III & McShane, 2004). The dominant approach to determining the relationship between deterrence and the death penalty involves comparing the rate of homicide or some subset of homicide and either the legal status of the death penalty or the performance of actual executions within or across particular jurisdictions. The deterrence hypothesis is supported when lower homicide rates are found within time periods or jurisdictions where the death penalty has been available or in use (Sorensen, Wrinkle, Brewer, & Marquart, 1999). In the post-Furman era, the South as a region accounts for more than 80 percent of execution in the USA. Moreover, 45 percent of all executions nationwide (1976-2004) have occurred in only two

states, Texas and Virginia (Death Penalty Information Center, 2005). Bedau (1997) has referred to this increasing concentration of executions within the USA as the regionalization of the death penalty.

A number of recent studies examine the possibility of disparity in the imposition of the death penalty (Baldus & Woodworth, 1998). The purpose of this study is to examine the perception of criminal justice students on possible race in capital punishment sentencing. The study examines how the victim's race and gender possibly influence the likelihood of death penalty sentencing by examining the relationship between the race of the victim and of the defendant.

It can be anticipated that more Criminology and Criminal Justice (CRCJ) credit hours completed and being a CRCJ major would all correlate with attitudes to whether the University of Texas at Arlington (UTA) CRCJ students feel that the race of the victim and defendant influence the death penalty sentencing. However, it is also assumed that the gender correlates with support for capital punishment. This study examines the relationship between various factors, such as the nature of the offense, defendant's criminal history, defendant socio-demographic characteristics, and victim demographics. The data for this study were obtained from CRCJ students at UTA. They were both undergraduate and graduate students enrolled in the 2010 fall semester.

The central claim of the research, racial disparities exist, as Breslin (2008) acknowledges, does not insinuate that judicial actors intend to discriminate. Because human motivations are unobservable, scientific methods cannot be used to determine whether disparities are intentional or unintentional, conscious or unconscious (Black, 1995). Traditionally, race has referred to the "major biological divisions of mankind," which are distinguished by color of skin, color and texture of hair, bodily proportions, and other physical features (Montagu, 1972). The word "disparities" is used throughout the research to denote aggregate numerical differences, while the word "discrimination" has been avoided because it unfairly impugns motives (Breslin, 2008).

The following chapter will present a review of literature. A history of capital punishment in America will be explored, as well as current issues. The literature review will look at the racial composition of the victim-offender in the death penalty from the slavery era to the present time. A review of literature on different issues such socio-economic of the defendants, rape and capital punishment, how the capital juries were and are selected, America's

support of the death penalty, deterrent effect and the United States Supreme Court opinions on a few leading capital cases in America. In Chapter Three, the methodology will explain how the study was conducted. The findings from this study will be discussed in Chapter Four. And Chapter Five will cover limitations of the present research, potential policy implications and suggestions for future research.

CHAPTER 2

LITERATURE REVIEW

The review of the literature explores the history of the racial disparities in regards to the administration of the death penalty in the United States from the colonies area via slavery to the present time. The review of the literature also examines the deterrence and the support of the death penalty among the American public. Due to the history of the death penalty in America, the perceptions of males and females have been influenced by the region where most lynching and executions took place. Capital cases such as Furman v. Georgia (1972) and McClesky v. Kemp (1987) are explored in the review of literature since they are the key cases in this study and have shaped the American Criminal Justice in regards to the administration of death penalty.

Few, if any, issues have received more intense and long-term attention in criminology than the proper place, if any, of capital punishment in an enlightened criminal justice system. Concerns about the death penalty were at the forefront of attention of a number of the early founders of criminology, and the debate continues today as the United States maintains the distinction of being the only Western nation to retain capital punishment for common murder (Bailey & Peterson, 1994)

It will come as no surprise to learn that African Americans have been executed in disproportionate numbers during the history of the United States. Members of other ethnic and racial groups also were executed in disproportionate numbers (Allen et al., 2008). Blacks compose 12.9 percent of the American population (U.S. Department of Commerce, 1999). Yet at the end of 1998, blacks accounted for 49.4 percent of the 1.3 million residents of American jails and prisons (U.S. Department of Justice, 1999). This proportion has risen slightly (from 48.6 percent in 1990), indicating that recent increases in prison populations disproportionately affect blacks. In fact, between 1990 and 1997 the number of prisoners serving sentences of more than one year increased substantially: 54

percent for white males and 61 percent for black males. Given these increases, the end of 1997 found more black males than white males in American state and federal prisons (U.S. Department of Justice, 1999).

The overrepresentation of blacks in U.S. prisons in partially attributable to higher rates of arrest for conventional crimes (Silberman, 1978). Tonry (1995), for example, found that blacks made up 44.8 percent of violent crime arrestees in 1991. In a study of 1992 arrest rates, Walker, Spohn, and DeLone (1996) argued that blacks were arrested at a rate two and a half times higher than that predicted by their representation in the general population. The same authors (2007) observed the largest disparities are found for robbery and murder. The arrest rate for African Americans is nearly four times what we would expect for murder and robbery. The differences also are pronounced for rape, motor vehicle theft, gambling, vagrancy, stolen property offenses, and weapons offenses (Walker et al., 2007).

Studies examining only cases of convicted felons continue to document racial disparities in sentencing. Walker et al. (2007) pointed out that people of color receive more severe sentences than whites do. For instance, in a study of persons arrested and charged with a single drug felony in Sacramento County, California, between 1987 and 1989, Barnes and Kingsnorth (1996) found that blacks were more likely than Hispanics and whites to receive a prison term. Additionally, among those sentenced to prison, both blacks and Hispanics served longer terms than whites did. For instance, according to Bureau of Justice Statistics (2005), in June 2004, there were larger among males between the ages of 25 and 29: 12,603 of every 100,000 African Americans, 3,606 of every 100,000 Hispanics, and 1,666 of every 100,000 whites were incarcerated.

2.1 Deterrence and the Death Penalty

Siegel (2006) defines deterrence theory as the view that if the probability of arrest, conviction, and sanctioning increases, crime rates should decline. According to Williams III and McShane (2004), the Classical School saw two forms of deterrence: a specific or individual form, and a general or societal form. Specific deterrence applied to the individual who committed an offense. The idea was to apply just enough pain to offset the amount of pleasure gained from the offense. General deterrence, on the other hand, was to apply to other potential offenders by showing them that a punished individual would not gain from his or her offense. Through watching, or

otherwise knowing about an individual receiving punishment for committing an offense, others would learn that such behavior is not profitable and thus would not commit similar acts (Williams III & McShane, 2004).

Dating back to the original formulations of Bentham and Beccaria, deterrence theory is fairly straightforward in its causal explanation of crime. Simply put, deterrence theory assumes that offenders exercise rational judgment and are reasonably aware of the potential costs and benefits associated with criminal acts (Paternoster, 1987). This assumption translates generally into the proposition that both individual-level and aggregate crime can be curbed by the crime-control activities of the criminal justice system, that is, by increasing the potential costs and probable risks of criminal behavior (Becker, 1968; Sherman, 1990).

Considerable heterogeneity exists across states in terms of whether states have adopted or readopted death penalty statutes in the wake of the Furman decision and the extent to which states that have the law on the books actually impose the sanction. Despite such variation in practice, however, policy makers are in greater agreement regarding the potential utility of the death penalty as a deterrent to criminal activity (Beckett, 1997; Moon, Wright, Cullen, & Pealer, 2000).

Empirical studies of deterrence and capital punishment are best classified by their research design. Cross-sectional designs compare homicide rates across jurisdictions. The earliest deterrence studies of this kind simply compared rates of homicide in retentionist states that have statutory provisions for the death penalty to the rates in abolitionist states without such provision. Findings showed that retentionist states typically experienced higher rates of homicide than did abolitionist jurisdictions (Sutherland, 1925). A new generation of cross-sectional studies has employed multiple regression analyses to predict the rate of homicide across jurisdictions while controlling for extraneous variables (Forst, 1977; Passell, 1975) and has consistently found executions to have no effect on murder rates (Cheatwood, 1993; Peterson & Bailey, 1988).

In a later study that included a measure of the certainty of punishment, Peterson and Bailey (1991) analyzed the relationship between actual executions and the monthly rates of felony murder throughout the United States from 1976 through 1987. The researchers found no consistent relationship between the number of executions, the level of television publicity of these executions, and the rate of felony murder. A study following Oklahoma's

return to capital punishment disaggregated homicides into felony murders and murders involving strangers (Cochran, Chamlin, & Seth, 1984). Using an interrupted time-series design, Cochran and colleagues (1984) found no change in the rate of felony homicides over the 68 weeks following this highly publicized execution, but observed an increase in another study that found an increase in several types of homicide in metropolitan areas after Arizona's first execution in 29 years.

Cochran et al. (1994) conducted an interrupted time-series analysis to examine the possible deterrent effect of Oklahoma's return to capital punishment after a twenty-five-year moratorium. On September 10, 1990, Charles Coleman was executed at the Oklahoma State Penitentiary. This execution generated a significant amount of media coverage in the state. Cochran and his associates reasoned that if the death penalty has a deterrent potential, it certainly should be evident in comparing weekly rates of felony murder for periods before and after the Coleman execution.

Examining the period January 1989 through December 1991 (n=156 weeks), Cochran and his associates (1994) did not find a statistically significant decline in total felony murder resulting from the Coleman execution. The average number of weekly felony murders was only slightly for the pre- versus post intervention period (.73 versus .65). The decline was not statistically significant, and the investigators concluded that it did not warrant a deterrence label.

According to Bonner and Fessenden (2000), the arguments for and against the death penalty have not changed much in Michigan that abolished the death penalty in 1846 in respect to death penalty and deterrence. At Michigan's constitutional convention in 1961, the delegates heard arguments that the death penalty was not a deterrent, that those executed were usually the poor and disadvantaged, and that innocent people had been sentenced to death. Michigan's governor, Eugene Wanger, pointed out that the same arguments are being made today in 2000. He went on to said that two-thirds (141 to 3) of the delegates were republicans, like himself, and most were conservative (Bonner & Fessenden, 2000).

Early in 1995, the Death Penalty Information Center (DPIC) reported that a new national survey showed the attitudes of police chiefs to be remarkably in line with those of the general public in regards to life without the

possibility of parole (Dieter, 1995). He pointed out that the police chiefs were asked if they had to choose the death penalty; 87 percent expressed no confidence in the doctrine that executions significantly reduce the number of homicides.

After thoroughly reviewing the empirical literature, Peterson and Bailey (1998) concluded that the lack of evidence for any deterrent effect of capital punishment was incontrovertible. According to them, no credible empirical studies had ever been able to demonstrate that the severity, certainty, or celerity of capital punishment reduced the rate of homicide.

2.2 Public Support of the Death Penalty

In his 1972 opinion in Furman v. Georgia (1972), Justice Thurgood Marshall stressed the importance of public opinion with respect to the constitutionality of the death penalty. In the opinion, Justice Marshall describes four standards by which to judge whether a punishment is cruel and unusual. His fourth standard is that where a punishment is not excessive and serves a valid legislative purpose, it still may be invalid if popular sentiment abhors it. Thus, Marshall wrote that it is imperative for constitutional purposes to attempt to discern the probable opinion of an informed electorate." He stresses that the public's choice about the death penalty must be a knowledgeable choice (Furman v. Georgia, 1972).

Bohm et al., (1991) point out that like many death penalty opponents, Marshall believes that, given information about the death penalty, the great mass of citizens would conclude that the death penalty is immoral and therefore unconstitutional. The authors argue that Justice Marshall assumes that support of the death penalty is a function of a lack of knowledge about it, and that opinions are responsive to reasoned persuasion. Although some of his colleagues on the Court disagreed with him, Marshall maintained that retribution is a goal that the legislature cannot constitutionally pursue as its sole justification for capital punishment (Furman v. Georgia, 1972). He could not believe that at this stage in our history that the American people would ever knowingly support purposeless vengeance. Inasmuch as an uniformed public may be influencing the practice of capital punishment, the amount of knowledge that the public possesses and its relation to opinion is important to consider (Bohm et al., 1991).

America is one of the very few nations with a representative government which still uses the death penalty, and the only one where the laws regarding its implementation are not uniform throughout the nation but vary widely in different parts of the country (McAllister, 2003). Today, the death penalty is legal in 37 jurisdictions within the United States. This includes 37 states, the federal government, and the military (DPIC, 2009). According to Death Penalty Information Center (2009), the May 2006 Gallup Poll found that overall support of the death penalty was 65% (down from 80% in 1994). The same poll revealed that when respondents are given the choice of life without parole as an alternative sentencing option, more choose life without parole (48%) than the death penalty (47%).

Breslin (2008) points out that too often Americans speak primarily to themselves when the topic turns to the death penalty. Because the United States is the last of the industrialized Western countries to retain the death penalty, we often think of it as a purely American phenomenon. But it does impact the international community in significant ways, especially given the reality that many of the nation's trading partners and closest allies refuse to extradite criminal suspects who may face the death penalty in the United States (Breslin, 2008).

Since the late 1960s, according to every available measure, the American public has professed support for capital punishment by a majority of more than two to one (Bedau, 1982). A February 1965 Gallup survey showed that 45 percent of the respondents supported capital punishment for murder, but only 23 percent favored it for persons under 21 years of age (Erskine, 1970). A 1953 Gallup poll indicated that while 68 percent of respondents favored capital punishment, only 65 percent it for women (Wolfgang & Reidel, 1973).

Examination of the polls reported by Erskine (1970), as well as other polls, indicates that the demographic correlates of death penalty attitudes are rather consistent across the polls. Bedau (1982) argued that most of the data are based on attitudes for the crime of murder with on consideration for post-Furman restrictions. Generally, people who support the death penalty tend to be older, less educated, make more wealthy, white and from urban areas. A greater percentage of white collar workers, manual laborers, and farmers favor capital punishment than do professionals and businesspersons. Among Catholics there is more support for the death penalty than among Protestants, and Republicans tend to favor capital punishment more than democrats and independents (Bohm, 1991).

In a study of 839 respondents in Volusia County, Florida, Thomas and Foster (1975) administered a number of multi-item scales measuring support for capital punishment, perception of crime rates, fear of victimization, perception of the effectiveness of punishment as a deterrent to crime, and willingness to employ punishment as a reaction to crime. All of the scales were positively and highly correlated with one another. The authors interpreted their findings as supportive of a complex sociological mode which assumes that support for the death penalty is a utilitarian response to rising crime rates. They argued that perception of an increasing rate of criminal behavior results in fears of victimization and willingness to employ punishment (Thomas & Foster, 1975).

Bedau (1982) suggested that in comparison to people opposed capital punishment, persons who favor capital punishment are more likely to be persons threatened by rising crime rates and to hold attitudes favoring general social and political conservatism. The author went on to say that they support the more direct poll results that suggest that at least for some people the death penalty may be favored more for retribution than deterrence.

According to Vidmar and Ellsworth (1974), persons who say they favor the death penalty are more likely to be willing to endorse attitude statements supporting such things as discrimination against minority groups, restrictions on civil liberties, and violence for achieving social goals than are persons who say they are against the death penalty.

Vidmar and Ellsworth (1974) observed that persons who favor capital punishment care more for the terminal values of a sense of accomplishment, family security, and national security and the instrument values of being ambitious, logical, and responsible. They care less for the terminal values of a world of peace, equality, and true friendship, and the instrumental values of being forgiving and loving.

Support of the death penalty appears to have steadily increased from around 65 percent in the early 1970s. According to a Gallup Poll in September 1994, public support for the death penalty is now at an all-time high of 80 percent (Bedau, 1997). Bohm (1991) pointed out, “little is known about what the American public really thinks of capital punishment (p. 139).”

Studies conducted by Fox, Radelet, and Bonsteel (1991) showed that public support for the death penalty depends a great deal on just what kind of murder is in question: Support for executing a serial murderer, such as the

notorious Ted Bundy (electrocuted in Florida in 1989), is one thing; support for executing a battered wife who in desperation kills her abusive husband is another. The authors also confirmed the Gallup poll of 1991 that showed a marked falloff in support for the death penalty if life without the possibility of parole (LWOP) is the alternative (Fox et al., 1991).

For those opposed to the death penalty, undoubtedly the most interesting and encouraging research discovery is that support for the death penalty falls off dramatically if its supporters are offered LWOP as an alternative (Bedau, 1997). This finding was first publicized in May 1990 in the New York Times by William J. Bowers (1990), who reported that in California where 82 percent of the public professed support for the death penalty, a mere 26 percent continued to prefer it if offered the alternative of life without the possibility of parole plus some form of restitution to surviving family members of the murder victim.

According to Bowers, Vandiver, and Dugan (1992), these findings have been supported by extensive further research, and conclude that "as few as one in four people are staunch death penalty advocates who will accept no alternative, and that as many as two out of four people are reluctant supporters who accept the death penalty but would prefer an alternative (p. 81)." Ellsworth and Ross (1983) provide more detailed data on a survey of 500 northern Californians in 1974, which also revealed widespread ignorance. Most respondents, from 54 percent to 89 percent, did not know that most Western European countries had abolished capital punishment, that comparisons across time and jurisdiction fail to show that the death penalty deters, that it is costly than life imprisonment, and so forth.

Indeed, the political, economic, and moral ramifications of America's experiment with death will continue to have profound consequences on the country's position in the international community. What is more, those consequences become even more serious-even more heightened-when one factors in the controversial issue of race. It is, therefore, incumbent on scholars and commentators from the United States and around the world to broaden the conversation about race and capital punishment, to become more cognizant of how race impacts America's death row (Breslin, 2008).

From the seventeenth century through the 1930s, the United States made increasing use of the death penalty, however, this did not increase as rapidly as the national population, and the rate of execution in relation to population declined. Capital crime was redefined particularly from the latter eighteenth century onward. The number of offenses that carried the death penalty was progressively reduced, and execution was increasingly restricted, although never exclusively, to offenses that involved the death of a victim (Allen et al., 2008).

2.3 Capital Punishment and Wrongful Conviction

Arguably, the American System of Criminal Justice is armed with more safeguards against wrongful conviction than those of any other nation in the world. The Bill of Rights of the U.S. Constitution provides nineteen separate individual rights for the alleged criminal offender. Among these constitutional safeguards are the right to be free of unreasonable searches of person and place of residence; the right to the presumption of innocence; the right to effective legal representation; the right to a speedy trial with a jury present; and the right to be adjudicated without regard to race, gender, and religious preference. In sum, we are afforded the right to due process at each stage of the criminal justice process (Westervelt & Humphrey, 2001).

Despite these safeguards, however, national attention has recently focused on the repeated discovery of the factual innocence of convicted persons (Connors, Lundregan, Miller, and McEwan, 1996). Documented cases of wrongful convictions continue to accumulate. For instance, Radelet, Bedau, and Putman (1992) report on four hundred cases of wrong-person convictions involving Americans found guilty of crimes, many punishable by death. Twenty three of these convicted persons were executed, while others spent several years in prison. More recently, a significant National Institute of Justice study (Connors et al., 1996) documented twenty eight cases of individuals who since 1979 had been convicted of either murder or sexual assault, only to be exonerated by DNA evidence. Since then, another thirty six individuals have benefited from DNA exonerations (Scheck, Neufeld, & Dweyer, 2000). Some of these cases also appear on the Death Penalty Information Center's list of death row prisoners who have been fully exonerated and released (Dieter, 1997).

By the end of 1990, more than 500 inmates had been executed nationwide; and the death penalty had become a much more significant reality within the nation's criminal justice system. With the increase in executions,

though, came increased concerns about the possibility of wrongful convictions and executions. The discovery of numerous wrongfully convicted death-sentenced inmates in Illinois during the late 1990s led to the most substantial reflection on the American death penalty system since the 1960s and early 1970s. governor Ryan, Illinois' Republican governor, first declared a moratorium on executions in 2000 and eventually commuted the sentences of all 167 inmates on Illinois' death row in 2003 (Lanier, Bowers, & Acker, 2009). "Until I can be sure that everyone sentenced to death in Illinois is truly guilty," Governor Ryan observed, "no one will meet that fate (Associated Press, 2000)."

Given that blacks are overrepresented in American prison populations, one would expect a higher proportion of blacks than whites among all those arrested to have prior records of felony convictions. Prosecutors, looking at the prior record, may believe that the suspect is the type who fits the stereotype of someone who might commit further felonies and, as a result, discount evidence pointing to a different suspect or to the innocence of the accused (Parker et al., 2003).

Parker et al. (2003) argue that those who are wrongly convicted are easy targets; and for a variety of reasons, blacks may be easier targets than whites. They are less likely than whites to have access to resources necessary to employ a high quality defense attorney and other members of a defense team. Blacks may be more likely to be transients and have no roots in the community or less likely to have contacts among established or affluent people with the power, knowledge, and energy necessary to fight an erroneous prosecution. To the extent that blacks, in part because of a relatively lower socioeconomic status, are easier targets than whites, such attributes will contribute to higher rates of wrongful conviction (Parker et al., 2003).

Recent public opinion polls reveal that most Americans believe that innocent people are sometimes convicted of murder. These polls also suggest that respondents' beliefs about the likelihood of wrongful convictions affect their views on the death penalty. A Harris poll conducted in July 2001 found that 94 percent of those polled believed that innocent people are sometimes convicted of murder; only 3 percent stated that this never happens (Walker et al., 2007).

Continuing their research on wrongful convictions, Radelet, Lofquist, & Bedau (1996) identified 68 cases since 1970 where prisoners were released from death row because of doubts about their guilt. They presented brief vignettes describing each case. In contrast to their earlier work (Bedau & Radelet, 1987), in which they relied upon the (assumed) judgment of neutral observers to determine whether a defendant was innocent, Radelet et al. (1996) identified these cases by "deferring to the decision made by the final court or jury that evaluated the evidence in the case (p. 914)." In the 1996 analysis, Radelet et al. found that a majority of those released from death row were African-Americans or members of other minority groups. However, they did not identify the race of the victim in these cases.

2.4 Death Penalty and Southern Justice

Holden-Smith (1996) argues that the execution of black men for allegedly raping white women is a defining characteristic of the history of race relations in the South. In the years between the Civil War and the early 1930s, these executions often took the form of extra-legal lynchings in which black men were burned, shot, or hung by mobs of whites. Lynching served primarily as a means to control black people in a white supremacist culture. However, Southern apologists for lynching argued that the mob acted in order to protect the virtue of white Southern womanhood from black men who were incapable of controlling their desire for white women. Thus, beyond functioning to create an atmosphere of danger and menace in which the white Southern woman was kept in a role of vulnerability and weakness in the patriarchal South (Holden-Smith, 1996).

In the Martinsville Seven, Rise (1995), an Assistant Professor of Sociology and Criminal Justice at the University of Delaware, tells the story of the legal proceedings that culminated in the execution of a group of young black men accused of having raped a white woman in Martinsville, Virginia. All seven men died in Virginia's electric chair in the first of February, 1951.

Rise's (1995) account of the Martinsville affair thoroughly describes the factual background of the case and the legal proceedings leading up to the convictions and executions. He also examines the place of this case in the history of Southern justice and race. In doing so, Professor Rise presents the interesting thesis that, because these

trials comported with the legal requirements for a fair trial, the convictions and sentencing of these seven men atypical of the Southern justice that had usually been meted out to blacks accused of crimes against whites.

Professor Rise's (1995) thesis is flawed; however, because he fails to recognize that a trial of seven black men accused of having gang raped a white woman could have but one outcome in the South of the 1940s, regardless of the procedures used or the guilt or innocence of the accused. Professor Rise downplays far too much the racial subtext that underlies most Southern stories about the conviction of a black man accused of having raped a white woman. Thus, he fails to acknowledge that the Martinsville affair is part of a long history of unequal justice in cases of blacks accused of crimes against whites, especially where the crime is rape (Holden-smith, 1996).

Gross and Mauro (1989) examined death penalty decisions in the post-Gregg era (1976 to 1980) in eight states-Arkansas, Florida, Georgia, Illinois, Mississippi, North Carolina, Oklahoma, and Virginia. They found that the risk of a death sentence was much lower for defendants charged with killing African Americans than for defendants killing whites in each of the eight states included in their study. In Georgia and Mississippi, for example, those who killed whites were nearly 10 times as likely to be sentenced to death as those who killed African Americans (Walker et al., 2007). Streiker and Streiker (2006) argue that 11 Southern and Border States are responsible for 85 percent of post-Furman executions, a geographical imbalance of unprecedented magnitude.

In terms of executions rates per capita, the top 15 states most likely to carry out death sentences through the end of 2005 were Oklahoma, Delaware, Texas, Virginia, Missouri, Arkansas, South Carolina, Alabama, Louisiana, Nevada, Georgia, North Carolina, Arizona, Florida, and Indiana (Robinson, 2007). Again the South leads the way, as 11 of the top 15 states are in the South.

The racial disparities did not disappear when Gross and Mauro (1989) controlled for other legally relevant predictors of sentence severity. They argued that, the major factual finding of this study is simple: there has been racial discrimination in the imposition of the death penalty under post-Furman statutes in the eight states that we examined. The discrimination is based on the race of the victim, and it is a remarkably stable and consistent phenomenon . . . The data show "a clear pattern, unexplainable on grounds other than race (p. 109)".

In McCleskey v. Kemp, the Supreme Court heard testimony from a sociologist, Professor David Baldus, who showed that the death penalty was applied disproportionately to African Americans in Georgia (Robinson, 2007). Baldus, Pulaski, and Woodworth's (1983) study utilized a multiple regression analysis including 230 variables likely to affect the outcome of death penalty cases in order to test the hypothesis that race of defendant and race of the victim played a role in death penalty sentences. The study found that only 1% of Caucasians received the death penalty in homicide cases between 1973 and 1979, whereas 11% of African Americans received the death penalty. Additionally, the study found that 22% of African Americans who killed Caucasians received death sentences, versus only 3% of Caucasians who killed African Americans (Baldus et al., 1983).

For Lanier et al., (2009), although critics of the Baldus study could quibble with some of the modeling in the research, it was hard to deny that the study offered considerable support for a proposition that most observers already believed: that the death penalty in the South (or in at least in one major Southern state) had a demonstrable caste aspect. Perhaps the most notable finding of the Baldus study was that race played its most significant role on the victim side, with few killers of African-Americans receiving the ultimate punishment; an interesting corollary was that African-American defendants might have fared better in some respects within the Georgia system, given that most homicides were intra-racial, and African-American killers of African-Americans were significantly less likely to receive the death penalty than white killers of whites (Lanier et al., 2009).

According to the Espy File (Espy and Smykla, 1995), Virginia has the distinction of executing more criminals than any other state between 1608 and 1991 (N=1288); this includes 736 slave executions, also more than any other state (Aguirre and Baker, 1999). This legacy of executions, historically rooted in slavery and race, continued well into the 20th century. In the pre-Furman era (1908-62), 86 percent of offenders executed were black (JLARC, 2001), a disparity that cannot be explained by the proportion of blacks in the total population (or in the percentage of capital-eligible offenders). Furthermore, Virginia continues to execute offenders at a high rate relative to other states in the post-Furman era (1976-2004), second only to Texas in the total number of executions and fourth among the death penalty states in its execution rate (DPIC, 2005). However, as the JLARC (2001) report

observed, racial disparities in executions have been substantially reduced, with 51 percent of those executed since 1976 being African American.

One study of the effect of capital punishment on homicide rates in Texas from 1933 through 1980 found no support for the deterrence hypothesis (Decker and Kohfeld, 1990). The authors found that executions were actually followed by an increase in homicide rates. By far the most active death penalty state, Texas has accounted for more than a third of all executions in the United States since the reimplementation of capital punishment in the years following Furman v. Georgia (1972). In 1997 alone, Texas executed a record number of 37 capital murderers, accounting for half of the 74 U.S. executions in that year. Texas has provided an ideal natural experiment to engage the deterrence hypothesis. The number of executions did not appear to influence either the rate of murder in general or the rate of felony murder in particular (Sorensen et al., 1999).

2.5 Rape and Capital Punishment

As early as the year 800, rape was a capital offense in Anglo-Saxon England. In 1769, William Blackstone, the leading 18th century authority on the common law in both England and the colonies, defined common-law rape as the carnal knowledge of a woman (sexual intercourse) forcibly and against her will (Samaha, 2008).

Rape is second only to murder in being regarded by law and society as the most serious crime. This is not just true today. From colonial times until 1977, when the U.S. Supreme Court declared it was cruel and unusual punishment, rape was punishable by death in several states. Rape is a serious crime even if victims suffer no physical injury, not even minor cuts and bruises. That is because rape violates intimacy and autonomy in a way that physical injuries cannot. Even less-invasive sexually generated touching, such as pinching buttocks or fondling breasts, is treated as a serious felony (Samaha, 2008).

In American history, the death penalty has been, very largely, a male monopoly (Allen et al., 2008). Considerable research demonstrates that the race, class, and gender of the victim are frequently associated with sentencing disparity (Holcomb et al., 2004). The perception of white females as a subgroup deserving special protection has frequently resulted in differential responses to their victimization. In the United States, the rape of a

white woman, especially one thought to be perpetrated by a black man, has historically been treated more seriously than rapes of black females (LaFree, 1989; Kleck, 1981).

Furthermore, the use of capital punishment for rape was limited almost exclusively to cases involving white female victims, particularly in southern jurisdictions. The symbolic power of white female victims, especially when threatened by non-whites, has been used to ensure public support for a variety of laws and social movements (Holcomb et al., 2004).

Allen et al. (2008) noted that while execution for most nonlethal offenses either declined or was discontinued prior to 1945, rape, attempted rape, and rape with other offenses such as burglary or robbery were exceptions. Again, executions for these offenses were marked by a clear ethnic bias. After the seventeenth century the percentage of African Americans put to death for rape was consistently greater, often many times greater, than that of whites. Moreover, in the decades of the late nineteenth century, the percentage of African Americans executed for rape increased. Most of the increase in the number of African Americans executed for nonlethal offenses was due to the increase in the number put to death for rape (Allen et al., 2008).

The number of whites executed for rape also increased in the early twentieth century, but the numbers were far smaller for African Americans. The offenses for which other ethnic groups were executed underwent little change. The large majority of these groups, around 90%, were executed for crimes that involved the death of a victim. Native Americans and Hispanics were sometimes executed for rape, but the number was small (Allen et al., 2008).

Evidence of interactive effects of victim demographics comes primarily from research on rape case processing and a limited number of death penalty studies. The majority of studies on sentencing disparity in sexual assault cases focus exclusively on outcomes across different racial combinations of female victims and male assailants. In general, studies find that rapes against white females receive the most severe responses, especially when the assailant is a black male (LaFree, 1989; Walsh, 1987; Spohn, 1994).

In Coker v. Georgia (1977), the Supreme Court found that death penalty for the crime of rape is unconstitutional. Mandery (2005) points out that Coker had argued in his brief to the Supreme Court that capital

sentencing was tainted by an impermissible degree of racial bias. Coker presented evidence that over a twenty-year period in the South, black men accused of raping white women were more than eighteen times as likely to be sentenced to death as white men accused of the same crime. But, the Court decided the case solely on the grounds that the death penalty was disproportionate to the crime of rape, and was thus in violation of the Eighth Amendment's prohibition on the cruel and unusual punishment. The Court completely sidestepped the racial issue-remarkably, there is not a single mention of race, or of Coker's racial argument, in the Court's reported opinion (Cole & Bunger, 2004).

The Supreme Court's silence on the racial disparities in Coker is instructive-the Court was doing its best to avoid discussing the overwhelming evidence of racial disparity, and it succeeded. But less than ten years after Coker, the Court confronted the issue of racial discrimination in capital sentencing head-on, in the landmark case of McCleskey v. Kemp (Cole & Bunger, 2004).

Contemporary research on the death penalty indicates that the defendant's race is only marginally related whether a murder results in a death sentence (Holcomb et al., 2004). Professor David Baldus' seminal study on racial disparities in the imposition of the death penalty served as the centerpiece of the McCleskey case, in which the defense lawyers argued that the racially discriminatory application of Georgia's death violated the Equal Protection Clause of the Fourteenth Amendment (Cole & Bunger, 2004). Mazzella and Feingold (1994) argue that the race of the defendant has an effect on how participants evaluate evidence and reach sentencing conclusions. In Furman, it seems fair to say that the Court was, at least, aware of the disturbing evidence of racism in capital punishment (Mazzella & Feingold, 1994).

Baldus et al. (1990) also discovered that the race of the victim played an important role in both the prosecutor's decision to seek the death penalty and the jury's decision to impose the death penalty. The victim's race was a particularly strong predictor of the prosecutor's decision to seek or waive the death penalty. The authors went on to say that, Georgia prosecutors were nearly four times more likely to request the death penalty for African American offenders convicted of killing whites than for African American offenders convicted of killing African Americans. Although the race of the offender was only a weak predictor of death penalty decisions once the legal

factors were taken into consideration, the race of the victim continued to exert a strong effect on both the prosecutor's decision to seek the death penalty and the jury's decision to impose the death penalty (Baldus et al., 1990).

The case of the Martinsville Seven is unique in the annals of the death penalty because the seven executions were the largest number ever for a single instance of rape. Indeed, no reported lynching incident involved a larger number of black men put to death for raping a white woman (Holden-smith, 1996).

2.6 Capital Juries and Capital Punishment

Juries stand at the center of the death penalty process. If the defendant requests a jury trial, the jury will make the original conviction determination. In the penalty phase, if the prosecution seeks the death penalty, the jury either passes sentence itself, recommends a sentence to the judge, or makes findings of fact that compel the court to reach a result (Russell, 1994).

According to Bright (1995), the unconscious racism and racial stereotypes of prosecutors, judges, and jurors, the majority of whom are white, may well be stirred up in cases involving an African American offender and a white victim. In these types of cases, officials' and jurors' beliefs that African Americans are violent or morally inferior, coupled with their fear of African Americans, might incline them to seek or to impose the death penalty.

If jurors can empathize with someone, they will be less likely to judge him or her as harshly. The ability to understand or empathize with someone depends upon the ability to identify with that individual. Sentencing typically focuses on just that notion of empathy. Yet, jurors typically feel less empathy for someone perceived to be from a different class (Adler, 1974).

Even though the jurors do not reflect their communities, they are the individuals most likely to be chosen for juries. Jurors who indicate that they may not be able to vote for capital punishment are excluded on the basis of Witherspoon. In Witherspoon v. Illinois (1968), the Court ruled that persons could be excluded from the jury if they indicated that they could not vote for the death penalty under any circumstances. Witherspoon seems to ensure that jury pools in capital cases will be more likely to vote for the death penalty and thus create an inherent pro-death penalty bias (Russell, 1994; Goldberg, 1970).

Survey research suggests that juror bias comes from the fact that significantly more black than whites, and more women than men, would be excused from a jury panel, with the result that those who survive will certainly be more conviction-prone (Russell, 1994:86; Goldberg, 1970). Although some scholars contend that "there has been no evidence to tie . . . death penalty support with race bias," a juror may more easily identify with someone of his or her own race or gender (Russell, 1994:91). Because a greater proportion of blacks and females are stricken from capital juries, this could generate a potential bias (Russell, 1994; Goldberg, 1970).

One major purpose of Baldus and his colleagues' (1990) study of Georgia is to determine, if possible, what impact racial or other suspect factors actually exerted on the post-conviction phases of Georgia's death-sentencing process both before and after the Furman-prompted legislative reforms enacted in 1973. Mandery (2005) points that Furman invalidated existing laws authorizing capital punishment, thus forcing death penalty supporters to write new laws to eliminate arbitrariness from sentencing in capital cases. A central question since Gregg has been whether the new laws solved the arbitrariness problem or merely papered over it. A large body of research indicates that the legal changes have failed to eliminate the arbitrariness that the Court had objected to in Furman. In McCleskey v. Kemp (1987), however, the Court rejected statistical evidence of the continuing impact of race on capital sentences, thus cementing the decision it reached in Gregg (Mandery, 2005).

The central issue in the Furman case was the meaning of the Eighth Amendment's prohibition of cruel and unusual punishment. According to Walker et al. (2007), the issue of racial discrimination in the administration of the death penalty was raised by the three justices in the majority. Justices Douglass and Marshall cited evidence of discrimination against defendants who were poor, powerless or African American. They noted that giving juries untrammeled discretion to impose a sentence of death was an open invitation to discrimination; and if any basis can be discerned for the selection of these few to be sentenced to die, it is the constitutionally impermissible basis of race.

The risk of race discrimination in capital sentencing is particularly pronounced because of the broad discretion invested in the actors that determine sentences. Mandery (2005) notes that prosecutors have discretion over whether to charge a death-eligible criminal with capital murder or to waive the death penalty through plea

bargaining. Juries may decline to impose a death sentence for any reason or no reason at all; they are only limited in imposing capital sentences by the requirement of finding a statutory aggravating circumstance. Governors have absolute discretion in clemency proceedings.

Potential jurors tended to be unrepresentative of the community at large. They tended to be older, wealthier, and better educated than those with reservations about the death penalty. They were also more likely to be married, conservative, authoritarian, and white than the community at large. Lastly, they tended to be punitive, and to possess both a high fear of crime and a perception of increasing crime rates (Thomas & Foster, 1975).

Justice Douglas's concurrence turned heavily on the cruelty of applying the death penalty selectively to minorities whose numbers are few, who are outcasts of society, and who are unpopular. Justice Marshall also bluntly discussed the history and ongoing evidence of discrimination. In dissent, Justice Powell acknowledged the history of discriminatory application of the death penalty, which he called admittedly indefensible, but argues that it was not grounds for striking down the then current death penalty, especially in light of his view that the possibility of racial bias in trial and sentencing had diminished in recent years. It seems fair to say that the Court was, at the least, aware of the disturbing evidence of racism in capital sentencing (Mandery, 2005).

Critics of the Court's ruling in Gregg were less optimistic. Wolfgang and Reidel (1975) suggested that it is unlikely that the death will be applied with greater equity when substantial discretion remains in these post-Furman statutes. Other commentators predicted that the guided discretion statutes would simply shift discretion, and thus the potential for discrimination, to earlier stages in the capital sentencing process. They suggested that discretion would be transferred to charging decisions made by the grand jury and the prosecutor.

In a study of death penalty cases in North Carolina, Nakell and Hardy (1987) found that a prosecutor's decision to seek the death penalty largely depended on which prosecutor was assigned to any given case, thus buttressing previously expressed concerns about arbitrariness and the potential for discrimination. Similarly, after examining data from five South Carolina counties, Johnson (2003) found the race of the victim to be a significant predictor of prosecutors' decision to file a notice to seek the death penalty.

For Gross and Mauro (1989), the explanation, at least in capital cases, may hinge on the degree to which jurors are able to identify with the victim. The authors argue that jurors take the life-or-death decision in a capital case very seriously. To condemn a murderer to death thus requires something more than sympathy for the victim. Jurors will not sentence the defendant to death unless they are particularly horrified by the crime, and they will not be particularly horrified by the crime unless they can identify or empathize with the victim (Gross & Mauro, 1989). In modern society, where social classes tend to be segregated and jurors tend to be Caucasian, jurors are more likely to be horrified by the killing of a white than of a black, and more likely to act against the killer of a white than the killer of a black, which is a natural product of the patterns of interracial relations in society (Gross & Mauro, 1989).

In terms of the race of the defendant, racial stereotypes become relevant in the sentencing phase of capital jury trials. In many states, juries are allowed or required to determine whether the defendant will be dangerous in the future, even in states where future dangerousness is not formally part of the sentencing process, and, according to a 1990 National Research Center Survey, a majority of whites feel African-Americans are more prone to violence than whites (Johnson, 2003).

Given these survey results, Johnson (2003) suggests that many Caucasian jurors think blacks are more likely to be involved in violent behavior, and as a result, these jurors are more likely to impose a death sentence. He also believes that mitigating factors, specifically good character, are less likely to be given significant weight in the sentencing phase for black because jurors attribute fewer positive traits to people of color, see them as less intelligent, less hard-working and less good than whites. Therefore, there is support for the conclusion that jurors are more likely to perceive the presence of aggravating factors in black defendant cases than they do in white defendant cases with equal evidence of aggravation, and they are less likely to give weight to mitigating factors (Johnson, 2003).

2.7 Furman and Racial Disparities

In Furman v. Georgia (1972), the Supreme Court ruled on a 5-4 vote that capital punishment was administered in an arbitrary manner that constituted cruel and unusual punishment. Most of the justices in the majority used the word “arbitrary” to refer to numerical disparities, arguing that there was no legal basis for

distinguishing the handful of defendants who were sentenced to death from the large number of defendants who committed equally reprehensible crimes but were not condemned. But two justices, Douglas and Marshall, also used the word "arbitrary" to refer to racial disparities in the imposition of capital punishment (Breslin, 2008).

One of the long-standing concerns about the administration of the death penalty has been the potential for racial discrimination. Many have documented racial inequality in the administration of the death penalty (Scheb II, Lyons, & Wagers, 2008).

Thus the stage was set for the challenge presented in Furman v. Georgia (1972). At this point in time it appeared two basic camps, with some slight variances, were emerging. On one side there were those who argued that death penalty was okay generally. Others, who agreed with this proposition, took a somewhat narrower view by focusing carefully on the process. In the end these two positions were not far apart. On the other side were those who conceded the death penalty might be constitutional if the procedure was fair, but the process never was and never could be fair, so the penalty was unconstitutional. Even more extreme, were those who argued the death penalty, per se, was unconstitutional. Justice Marshall was the greatest voice of this last position, seeing the death penalty in modern America as cruel and unusual because it was unconscionable for the state to be executing its citizens (Gershman, 2005).

According to Gorecki (1983), the abolitionists, Justices Marshall and Brennan, claimed that the death penalty constitutes cruel and unusual punishment under the prohibition of the Eighth Amendment; consequently, it is invalid per se regardless of depravity of the crime committed. To be sure, in the Framers' intent, the Eighth Amendment was aimed at preventing torture, not death. However, Justices Marshall and Brennan have rejected the binding force of the original meaning. The admit the ongoing process of cultural evolution-"the evolving standards of decency that mark the progress of a maturing society (Furman v. Georgia, 1972)-and they treat the Eighth Amendment as one of the those general clauses in the Constitution that warrant flexibility in adapting law to the evolving standards (Gorecki, 1983).

Gershman (2005) points out that the challengers to the death penalty raised two basic issues-that the death penalty overall was unconstitutional, and that the process by which the death penalty was applied was

unconstitutional, because it allowed juries absolute discretion with no guidance, therefore making the system arbitrary and capricious and fraught with inequities. The arbitrary nature of the penalty was a natural by-product of a penalty that was so rarely applied. In the natural course of the criminal process, the number of similar cases and therefore similar penalties created a leveling or an equalization of the system. In the case of capital punishment, however, because it was so infrequently used, it was bound to be applied inconsistently in similar situations (Gershman, 2005).

In addition to pointing out the natural inconsistencies, opponents of the death penalty quoted statistics that indicated that class and race played a huge part in the capricious nature of the penalty. If one was poor and black (and in the South), the chance of that person being executed greatly increased (Allen & Clubb, 2008). As Gershman (2005) points out that to this day, geographical disparity has provided fuel for the opponents' argument against the death penalty. They have noted that the same criminal acts committed in Texas and New Hampshire result in far different penalties.

Justice Marshall wrote a long historical discussion about the death penalty and how that history had evolved. Underlying Marshall's opinion was the recognition of the racial and class disparities in the application of the penalty and, for the great champion of civil rights, this as much as any other reason meant the death penalty was unfair (Gershman, 2005).

Gorecki (1983) argues that after the Supreme Court's decision in Furman, states began to revise their laws and reinstate capital punishment. Some states eliminated arbitrariness by making the death penalty mandatory for defendants convicted of certain crimes. Other states adopted "guided discretion," an approach that narrowed and specified the range of crimes eligible for death, separated the guilt and sentencing phases of a capital trial (allowing the prosecution and defense to introduce evidence of aggravating and mitigating circumstances during the sentencing phase that could not have been introduced during the guilt phase), and required automatic appellate review of death sentences (Breslin, 2008).

In Woodson v. North Carolina (1976) and the companion case of Roberts v. Louisiana (1976), the Supreme Court struck down mandatory death statutes arguing that the protection of human dignity required individual

consideration of each case. But the Supreme Court upheld guided discretion statutes in Gregg v. Georgia (1976) and the companion cases of Proffitt v. Florida (1976) and Jurek v. Texas (1976), beginning the modern era of capital punishment. Following the Supreme Court decision in Gregg (1976), social scientists began to examine whether guided discretion eliminated the influence of race on capital punishment (Breslin, 2008).

The discretionary use of capital punishment can produce problems of arbitrariness (Brock, Cohen, & Sorenseen, 2000). Gross and Mauro (1984) define arbitrariness as the absence of a legitimate justification for an action or a pattern of actions. The level of arbitrariness in a system can be measured by the amount of overlap in the culpability levels of death and life sentenced cases. Individual cases may be considered arbitrarily or comparatively excessive if offenders with comparable attributes regularly receive dispositions besides death for doing similar acts in the same jurisdiction (Brock et al., 2000).

2.8 Empirical Evidence

Warren McCleskey was an African-American man who was found guilty of two counts of armed robbery and one count of murder. His victim was white. McCleskey's argument rested heavily on studies conducted in Georgia in the 1970s by three professors (David C. Baldus, George Woodworth, and Charles Pulaski) who argued that defendants charged with killing white victims were far more likely to receive a death sentence than those charged with killing blacks. Also, according to the study, African-American defendants were more likely to receive the death penalty, no matter who they killed. Finally, of the people who were given the death sentence most were black defendants who killed white victims (Gershman, 2005).

Empirical evidence of racial discrimination in the capital sentencing process has been used to mount constitutional challenges to the imposition of the death penalty. Walker et al. (2007) argue that African American defendants convicted of raping or murdering whites have claimed that the death penalty is applied in a racially discriminatory manner in violation of both the equal protection clause of the Fourteenth and the cruel and unusual punishment of the Eighth. Amendment

These claims have been consistency rejected by state and federal appellate courts. The case of the Martinsville Seven, a group of African American men who were sentenced to death for the gang-rape of a white

woman, was the first case in which defendants explicitly argued that the death penalty was administered in a racially discriminatory manner (Rise, 1995). According to Walker et al. (2007), the U.S. Supreme Court rejected the defendants' petitions for certiorari, which were premised on statistical proof of racial disparity in capital sentencing for rape in Virginia.

In fact, the Supreme Court did not directly consider the question of the use of statistics to prove racial discrimination in capital sentencing until thirty-six years later in McCleskey v. Kemp. There the Court held that the individual defendant had to prove racial discrimination in his own case in order to make out an equal protection violation, even though the statistical evidence, the Court assumed, proved racial disparity in Georgia's decisions on whom to put to death (Holden-Smith, 1996). The Court assumed the validity of Baldus' (1990) study but dismissed the findings as inconsequential and suggested that disparities are in inevitable part of the criminal justice (Robison, 2007).

In support of his claim, McCleskey offered a sophisticated study of Georgia capital sentencing during the 1970s (the "Baldus study") that examined sentencing decisions in more than 2,000 murder cases. The study, employing multivariate regression techniques, sought to determine the role of race in Georgia's capital sentencing system by controlling for more than 200 non-racial variables. The study concluded that race-particularly the race of the victim-played a powerful role in Georgia's capital sentencing, with a finding that cases involving African-American defendants and white victims were significantly more likely to generate death sentences than any other racial combination; cases involving white victims as a whole were 4.3 times more likely than cases involving African-America victims to result in sentences of death (Lanier et al, 2009).

McCleskey argued that the Baldus study confirmed what the Court had feared in Furman: that the administration of the death penalty was intolerably arbitrary and infected by racial bias. According to McCleskey, the empirically demonstrated role of race in capital sentencing violated both guarantee of Equal Protection and the requirement of heightened reliability in capital cases under the Eighth Amendment (Lanier et al., 2009). McCleskey based his argument almost entirely on the Baldus team's study of capital sentencing in Georgia. The Supreme Court rejected McCleskey's equal protection claim because he had not established with exceptionally clear proof that the

decision makers in McCleskey's case acted with discriminatory purpose (Mandery, 2005). In rejecting McCleskey's claims, the majority opinion recounted some methodological concerns that had caused the District Court to deny McCleskey relief. But the Court assumed for the basis of its decisions that the study was methodologically sound and that it had established at least a risk that racial considerations contributed to some capital sentencing decisions in Georgia, including, perhaps, the jury's death verdict in McCleskey's case (Lanier et al., 2009).

Studies conducted during the past 3 decades document substantial discrimination in the application of the death penalty under post-Furman statutes. In fact, a 1990 report by the United States General Accounting Office (GAO) concluded that there was a pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty after the Furman decision (U.S. GAO, 1990).

McCleskey is by any measure a landmark decision. The Court's decision in Furman to regulate the American death penalty was rooted in suspicions that arbitrariness and discrimination clouded the capital decision-making process. With the Baldus study, the justices now had significant confirmation of the role race played in the system, even after states had reformed their statutes to conform to Furman (Lanier et al., 2009).

In the two decades following Furman, death-sentenced inmates sought to challenge particular aspects of the American death penalty on the basis of empirical studies and social scientific research. These claims sought to capitalize on the Justices' apparent concern, reflected in Furman, for the actual administration of the death penalty. But the Court uniformly rejected such claims, emphasizing that Furman should be read to regulate procedures rather than outcomes (Lanier et al., 2009).

The Justices' decisions in this regard appear to rest on a number of considerations. First, and foremost, the Court is wary of having constitutional doctrine subject to potentially shifting empirical demonstrations. As in other doctrinal areas, an empirically based jurisprudence would be only as stable as the empirical research available at any given time. Second, the Justices appear skeptical of empirical data presented in capital litigation, in part because of their fear that studies might reflect an anti-death bias of the researchers who produce and interpret the data. Lastly, the Court has particular expertise and experience crafting procedural requirements in the criminal context and is

reluctant to cede that authority to social scientists, especially if such an approach would require state achieve some empirically verifiable level of reliability in their criminal systems (Lanier et al., 2009).

If the Court accepted the Baldus study as methodologically sound, it was compelled to conclude that racial considerations in fact played a substantial role in capital sentencing-with the presence of a white victim having as much significance to the sentencing outcome as the existence of a prior murder conviction by the defendant (Lanier et al., 2009). The Court insisted that the risk of racial discrimination established by the Baldus study did not rise to an intolerable level, though it did not explain why the level of salience of race in capital sentencing reflected in the Baldus study fell within an acceptable range (Lanier et al., 2009).

Capital Jury Project (CJP) has collected data from more than a thousand jurors who served in capital cases, with the goal of understanding the decision-making process in capital cases. In particular, the CJP has sought to determine whether the intricate state capital schemes adopted post-Furman actually reduce arbitrariness in capital sentencing by controlling sentence discretion. Dozens of scholarly articles have been published based on the CJP data, and much of the research has documented the failure of jurors to understand the guidance embodied in the capital sentencing instructions they receive (Bentele and Bowers, 2001; Bowers, Sandys, and Steiner, 1998; Bowers and Steiner, 1999; Eisenberg and Wells, 1993).

In McCleskey v. Kemp (1987), the Court was faced with challenge that went to who was being executed, and that "who" made the penalty cruel and unusual, because it was argued, the only reason McCleskey was receiving the death penalty was because of his race (Gershman, 2005). Using various studies, death penalty opponents argued that African-Americans were disproportionately more likely to be executed than whites, and those who killed whites as opposed to blacks, were more likely to die at the hands of the state. Other research demonstrated a persistent race-of-victim effect, with white-victim/black murderer cases producing the highest probability of capital punishment (Russell, 1994).

Like the Baldus study reviewed in McCleskey, the CJP data represent a racial challenge to prevailing doctrine because they test the fundamental assumption that state schemes can reduce arbitrariness in capital sentencing and ensure a reasoned moral decision as to whether death is the appropriate punishment. By collecting

data from numerous jurisdictions, the CJP is able to identify not only idiosyncratic defects in particular state statutes but endemic flaws in jury decision-making, such as the propensity of jurors to decide punishment during the guilt-innocence phase of the trial (Bowers, 1995), their frequent misapprehension of the standards governing their consideration of mitigating evidence-suggesting that mitigating evidence plays a disturbingly minor role in jurors' deliberations in capital cases across jurisdiction (Bentele & Bowers, 2001), and their general moral disengagement from the death penalty decision-describing how prevailing capital sentencing practices assist jurors in overcoming their resistance to imposing the death penalty in part by diminishing their sense of responsibility for their verdict (Haney, 1997).

If blacks faced a higher chance and rate of execution because of their race, didn't that directly challenge Furman's admonition against arbitrary and capricious behavior? For what could be more arbitrary than executing individuals on the basis of their race (Gershman, 2005)?

2.9 Racial Composition of the Victim-Offender

Tyler (2000) has repeatedly demonstrated that perceptions of the process, not the outcome, shape judgments of the legal system. An enormous literature exists documenting substantial de facto procedural discrimination in our legal system. Countless studies a race-of-victim effect, particularly in the disproportionate use of the death penalty on assailants who murder whites (Keil & Vito, 1995). Crimes with white victims generate significantly faster police response time (Bachman, 1996), higher probabilities of arrest (Williams & Ferrell, 1990) and prosecution (Myers & Hagan, 1979), and more vigilant investigative strategies (Bynum, Cordner, & Greene, 1982). There is also a substantial bias due to the race of the suspect (Jackson, 1989), with officers more likely to use more force (Jacobs & O'Brien, 1998), arrest (Liska & Chamlin, 1984), and traffic profiling (Johns, 1992) with black than white suspects.

Over the past twenty-five years, numerous studies evaluating decisions to seek and to impose the death penalty have found that race is all too often a major explanatory factor. Most of the studies have found that, holding other factors constant, the death penalty is sought and imposed significantly more often when the murder victim is white than when the victim is African American (Lanier et al., 2009).

One little studied but important issue is the impact of the race of the defendant and victim on the development of evidence at successive stages of the pretrial process (Pierce & Radelet, 2007; Radelet & Pierce, 1985). For example, if a police department devotes more time and resources to the investigation of white victim cases, then white victim cases may appear to be more aggravated than similarly situated black victim cases that were only superficially investigated (Lanier et al., 2009).

As a consequence, prosecutors may base their charging decisions on evidence that distorts their perceptions of the culpability of the white and black victim cases. Similarly, if prosecutors consciously or unconsciously more thoroughly develop the evidence of statutory and non-statutory aggravation in white victim than in black victim cases, sentencing jurors will have a distorted picture of the culpability of the defendants that they sentence (Lanier et al., 2009).

According to Lanier and colleagues (2009), the studies conducted as a part of four of the state death penalty assessments reached the same conclusions. In Georgia, the data demonstrated that among all homicides with known suspects, those suspected of killing whites are 4.56 times as likely to be sentenced to death as those who are suspected of killing blacks. In Indiana, the odds of a death sentence among homicides with a similar level of aggravation were 16 times higher for cases where whites were suspected of killing whites than for cases in which blacks were suspected of killing blacks. Ohio had similar race-of-victim disparities, with those who kill whites being 3.8 times more likely to receive a death sentence than those who kill blacks (Lanier et al., 2009).

It is clear that victim demographics have both a direct and an indirect effect on criminal justice decision making. Empirically, both victim race and gender are associated with differential sentencing outcomes in homicide cases. Research on rape and other violent crimes provides additional evidence that victim race and gender are associated with sentence outcomes (Holcomb et al., 2004).

Statistical may mask that treat victim gender and race as independent may mask important differences within categories. For example, if female victim cases are treated more severely, what happens when the race of that female victim is added to the model? The aggravating effect of a victim's gender (i.e., female) may be offset by the mitigating effect of a victim's race (i.e., black). Thus, are black female homicides treated more like white female

victim cases or black male victim cases? Similarly, do white male victim cases result in sentencing outcomes consistent with black male victim cases or white female victim cases (Holcomb et al., 2004)?

Research suggests that a hierarchy exists in response to rape cases. Rapes where a black male assaults a white female are treated most severely, while rapes with black female victims and black male assailants receive the most lenient responses (LaFree, 1989; Spohn, 1994). Responses to rapes involving white male assailants generally fall in the middle of the severity range and appear to depend on specific circumstances of those cases (Walsh, 1987).

Examination of the interaction of victim characteristics in death penalty research is limited. Paternoster (1984) reported that prosecutors were most likely to seek the death penalty in homicides involving white female victims and least likely to do so in cases involving black male victims. Similarly, Radelet and Pierce (1991) reported that Florida homicides with white female victims were the most likely to result in a death sentence and those with black male victims were the least likely.

Researchers have advanced two interrelated explanations for the higher death penalty rates for homicides involving African American offenders and white victims and the lower rates for homicides involving African American offenders and African American victims (Quinney, 1970). The first explanation builds on conflict theory's premise that the law is applied to maintain the power of the dominant group and to control the behavior of individuals who threaten that power (Turk, 1969). According to Hawkins (1987), crimes involving African American offenders and white victims are punished most harshly because they pose the greatest threat to the system of racially stratified state authority. Some commentators further suggest that in the South the death penalty may be imposed more often on African Americans who kill whites because of a continuing adherence to traditional southern norms for the racial etiquette (Keil & Vito, 1990).

The second explanation for the harsher penalties imposed on those who victimize whites emphasizes the race of the victim rather than the racial composition of the victim-offender dyad. This explanation suggests that crimes involving African American victims are not taken seriously, crimes involving white victims are taken seriously, or both. It also suggests that the lives of African American victims are devalued relative to the lives of white victims. Thus, crimes against whites will be punished more severely than crimes against African Americans

regardless of the offender's race (Walker et al., 2007). Considering the historical marginalization and oppression of blacks in American society, crimes against black victims may be considered unworthy of the most severe criminal justice response (Holcomb et al., 2004).

In addition to racial composition, the pattern of homicide that develops in a jurisdiction plays a significant role in the formation of a tradition of execution or abolition. We know from other research that prior-relationship crimes are handled less punitively in the justice system than stranger crimes (Walker et al., 2007), and this is true of homicides as well (Gross & Mauro, 1984). Recent research shows that stranger and felony homicides are more likely to result in capital charges and death sentences (Pierce & Radelet, 2005).

According to Poveda (2006), homicides that involve prior relationships between victims and offenders are less likely to incur capital charges and result in death sentences and executions. Indeed, the 48 abolitionist jurisdictions (no executions since 1908) exhibit just such a pattern: more acquaintance (and fewer strangers) homicides, fewer homicides committed in the course of another felony, and in general less interracial violence. These homicide case characteristics are associated with a less punitive response by justice system officials – and in the long term favorable to a local legal culture not supportive of capital punishment (Poveda, 2006).

Myrdal's (1944) examination of the Southern court system in the 1930s, for example, revealed that African Americans who victimized whites received the harshest punishment, whereas African Americans who victimized other African Americans were often acquitted or given a ridiculously mild sentence. He went on to say that it was quite common for a white criminal to be set free if his crime was against a Negro (Myrdal, 1944).

No single even ticks off America's political schizophrenia with greater certainty than the case of a black man accused of raping a white woman (Brownmiller, 1975). Wriggins (1983) argued that the thought of this particular crime aroused in many white people an extremely high level of mania and panic. As Brownmiller (1975) pointed out, heavier sentences imposed on blacks for raping white women was an incontestable historic fact. According to Wolfgang and Reidel (1975), 405 of 453 men executed for rape in the United States from 1930 to 1972 were African Americans.

Mazzella and Feingold (1994) conducted a meta-analysis using studies that examined a variety of crimes. This analysis included over eighty studies on the effects of physical attractiveness, race, socio-economic status, and gender on participants' judgments of guilt and recommended punishment. Although there were no overall effects of race on judgments, the effect of race-of-defendant on punishment was found to be moderated by crime type. Participants recommended greater punishment for negligent homicide when the defendant was black and for fraud when the defendant was white (Mazzella and Feingold, 1994).

2.10 Defendant's Socio-demographic

According to Allen and Club (2008), many who were executed, prior to 1945, were disproportionately members of minority groups, of lower socioeconomic status, and younger than the national population. In 2003, Illinois Governor George Ryan announced that he commuted the sentences of all the state's 167 death row inmates to life in prison. He stated that he was concerned about the effects of race and poverty on death penalty decisions. He went on to say that the capital system is haunted by the demon of error: error in determining guilt and error in determining who among the guilty deserves to die. What effect was race having? What effect was poverty having (Robinson, 2007)?

Similar views were expressed by the United States Supreme Court Justice Harry Blackmun. According to Cole and Bunger (2004), Justice Blackmun announced that he would no longer tinker with the machinery of death. He stated that the death penalty was applied in an arbitrary and racially discriminatory manner. In Callins v. Collins (1994), Justice Blackmun stated that rather than continue to coddle the Court's delusion that the desired level of fairness has been achieved and the need for regulation eviscerated; and, he feels morally and intellectually obligated simply to concede that the death penalty experiment has failed.

Sarat (1998) points out that we deal with a group of people, who is in this situation not so much because of what they did, but because of who they are. And who they are has a lot to do with the color of their skin and their socioeconomic status. Echoing Justice Blackmun, Murphy (1988) argues that, these critics contend, the most profound expression of racial discrimination in sentencing occurs in the use of capital punishment. Status variables such as education and income were highly multicolinear with race (Blumstein, Martin, Tonry, 1983).

Arguments arising from Wilson (1978) have suggested that the disadvantages and racial isolation facing minority groups are primarily due to social class. In the 1970s Wilson was among the first to recognize that poverty had become increasingly concentrated geographically. Parker et al., (2003) point out that while research has linked race to the operations of the criminal justice system, urban areas where blacks face concentrated disadvantage-extreme levels of poverty concentration, joblessness, racial isolation, family disruption, and lack of residential mobility-are places where the largest racial discrepancies in wrongful convictions are likely to be found.

Parker et al., (2003) argue that jurors, who are primarily white, are more likely to vote for guilt in cases in which the evidence is weak when the defendant is seen as different and not like their families and neighbors and segregated housing increases the social distance of race (Parker et al., 2003). That is, the link between race and wrongful conviction mirrors the vast racial disparities and disadvantages in the urban environment in which these individuals reside. This link may be exacerbated, in part, by the lack of resources available to minority members to protect themselves from wrongful conviction, such as the lack of highly skilled attorneys (Bright, 1997). Also, a failure to make bond and the resulting longer sentences were found to be related to both race and social status (Lizotte, 1978).

Sarat and Vidmar (1976) interviewed 181 residents of Amherst, Massachusetts, in 1975. Most of their respondents knew that capital punishment is rarely imposed and that it is subject to discrimination by wealth (59% on each item). Ellsworth and Ross's (1983) studies showed an item on discrimination by wealth- 9 percent had no idea, and 68 percent correctly said that poor murderers were more likely to be sentenced to death.

Baldus et al. (1990) point out that Furman v. Georgia (1972) expressed a concern that standardless jury-sentencing procedures permitted discrimination against minorities and the poor. Although not all concurring justices specified the sorts of discrimination they had in mind, certainly race and socioeconomic status were matters of concern.

In one manner or another, virtually all of the Justices who participate in the Furman decision addressed the question of racially discriminatory death sentences. Several of the concurring justices expressed concern that

unrestrained sentencing discretion in capital cases left jurors free to consider racially discriminatory or other suspect factors, such as the defendant's sex or socioeconomic status, when imposing sentence (Baldus et al., 1990).

In Furman v. Georgia (1972), Justice Douglas focused on the discriminatory implications of the death penalty, concentrating on racial disparities in the imposition of the death penalty. He claimed that these racial inequities-more blacks than whites were executed-made the death penalty cruel and unusual. Douglas argued if a law functioned so that those who made more than $50,000 were for the most part exempt from the death penalty, and blacks, those who had not passed the fifth grade, people who made less than $3,000, and citizens who were unstable or unpopular were executed, the law would be unconstitutional. In essence the Georgia statute, because of its discretionary nature, did just that. It enabled the jury (or judge) to execute those who were not popular, not wealthy, not a member of the majority, and so on (Gershman, 2005).

As suggested with the review of the literature, there is a need in the literature to address the difference in perception as pertaining to the racial disparities and capital punishment among male and female students. Thus, the present study will attempt to examine the perception of criminology and criminal justice male and female students at the University of Texas at Arlington on possible race factor in capital punishment sentencing. Chapter three will discuss the methodological processes for this study, namely the design of the research, data collection and sampling procedure. It will also include the IRB review and approval, the type of measurement implemented on the sample, and how the data was analyzed.

CHAPTER 3

METHODOLOGY

3.1 Design of the Research

A cross-sectional, one-shot case study, was used to examine the perception of criminal justice students on possible race in capital punishment sentencing. This cross-sectional study was designed to measure numerous variables relating to racial disparities in death penalty sentencing in the United States. In order to examine the criminology and criminal justice students' perceptions, a survey was implemented. The researcher needed to obtain the approval from the Institutional Review Board (IRB) before starting this research study.

3.2 IRB Review and Approval

Babbie (2007) points out that often, though not always, social research represents an intrusion into people's lives. It also requires that people reveal personal information about themselves-information that may be unknown to their friends and associates. He goes on to suggest that because subjects can be harmed psychologically in the course of a social study, the researcher must look for the subtlest dangers and guard against them.

In order to protect the subjects being studied, the federal government has asked any agency (such as a university or a hospital) wishing to obtain federal research support to establish an Institutional Review Board (IRB), a panel of faculty who review all research proposals involving human subjects. Many universities apply the same standards and procedures to all research, including that funded by non-federal sources and even research done at no cost, such as student projects (Babbie, 2007).

In October 2010, IRB Form #1 Proposal for research involving human subjects, IRB Form #3 Application for waiver or alteration of informed consent requirements, a copy of professors' consent request note, a copy of selected fall 2010 CRCJ classes for the administration of the survey, a copy of the survey, and a copy of script to be read aloud before distributing the survey were submitted to the IRB for the protection of human subjects at the

University of Texas at Arlington for review and approval to implement the survey among Criminology and Criminal Justice students at the University of Texas at Arlington. Once the approval was granted by mid-November 2010, the survey was conducted between the November 18 and December 3, 2010, during class time.

3.3 Survey Instrument

The self-report survey included items that were designed to measure a number of variables in reference to possible race in death penalty knowledge and perception, such as deterrence, support for the death penalty, arbitrariness and discrimination, socio-economic conditions, race, court actors, information and demographic questions. Most of the statements were generated from the readings on the topic of race and the death penalty literature review. Academic and/or scholarly articles on racial disparities and capital punishment, books, and textbooks on the subject were located in the computerized database at the University of Texas at Arlington library. Key words such as race, capital punishment, death penalty, arbitrariness and discrimination, and innocence were utilized.

The first eighteen questions were designed to test the knowledge and perception of the death penalty. The researcher in this study composed questions in statement style. According to Babbie (2007), the item format devised by Likert is one of the most commonly used formats in contemporary questionnaire design. CRCJ respondents were asked to respond to the items in Likert scale design. According to Babbie (2007), Likert scale is "a type of composite measure developed by Rensis Likert in an attempt to improve the levels of measurement in social research through the use of standardized response categories in survey questionnaires to determine the relative intensity of different items (p.171)." Respondents were asked their degree of support or opposition for the death penalty using a five-point Likert-type response scale ranging from 1 being strongly agree to 5 being strongly disagree. According to Bachman and Schutt (2007), Likert-type responses generally ask respondents to indicate the extent to which they agree or disagree with statements. Researchers try to summarize the attitude in a fairly brief statement; then they present that statement and ask respondents whether they agree or disagree with it (Maxfield & Babbie, 2008).

The researcher in this study employed these questions in statement style utilizing a Likert-type scale. Questions 2, 8, 11-13, 15, and 17-18 were to measure knowledge about the racial disparities and death penalty. For

instance, statement 2, the support of the death penalty has decreased since 2000 was to measure knowledge of death penalty support. Statement 12, respondents were asked about their knowledge of the possible effect of the socio-economic conditions of the defendants in capital cases. Respondents were asked about their knowledge on whether the race of the actors of the court could influence the outcome of a capital case in statement15. Knowledge also was measured with these remaining statements "of all races, blacks commit most violent crimes," "blacks constitute the majority of inmates on death row," "minorities are more likely to be executed than non-minority," "the more minorities on the jury, the less likely the jury is to return a death sentence," and "when the victim is African American, non-black defendants are less likely to be sentenced to death."

Questions 1, 3-7, 9-10, 14, and 16 were designed to examine the participants' perception. For instance, statement 5, students were asked their opinion between death penalty sentence and life without parole. Also, statement 7 asked what respondents' perception was in regards to repeated felon defendants in murder cases. In addition, respondents' opinion on rape and death sentence was examined in the death penalty should be administered in rape cases. The remaining statements examined respondents' opinion such as "the death penalty is an effective deterrent punishment," "the United States should abolish the administration of the death penalty," "I support the death penalty," "the death penalty should be applied if the defendant knows the victim," "since the death penalty was reinstated in 1976, arbitrariness and discrimination have been eliminated in death penalty sentencing," "since the death penalty was reinstated in 1976, innocent people have been executed," and "a non-black jury can sentence a black defendant who killed white to life without parole."

The last part of the survey was general information and/or demographic questions. Most of the questions in this part of the survey were extracted from a research survey conducted by del Carmen, Polk, Segal, and Bing (2000). Respondents were asked to provide their gender, age, race/ethnicity, current academic level, whether or not they were CRCJ major, CRCJ course taken before, credit hours completed at UTA, political point of view, political party affiliation, religious affiliation and religious service attendance. It is important to underline that when asked to choose the religious affiliation, those respondents who chose other stated that they were Baptist, Pentecost,

Methodist and/or non-denominational. There were ordinal, nominal, and interval data included in this study as levels of measurement.

To avoid participants' fatigue, the researcher kept the survey short. About thirty questions seemed reasonable enough to give participants enough time to complete the survey. Researcher believed that it would take less than fifteen minutes to finish answering the survey questions.

3.4 Sampling Procedure

The data for this study came from a self-report survey conducted among Criminology and Criminal Justice students at the University of Texas at Arlington. A total sample size of 100 CRCJ students (N=100), males (n=51) and females (n=49), took part in this research study. The sample exceeded the requirements needed in order to achieve statistically significant results. Keppel, Saufley, and Tokunaga (1992) point out that power sampling is an approximation of the amount of respondents desired in order to reveal a correlation of a particular size. They argue that a sample of at least sixty nine respondents is crucial to obtain a seventy percent chance of attaining a statistically significant correlation at the 0.05 level (Keppel at al., 1992). Not every question was completed; however, all surveys were completed, in part, to result in a 100 percent response rate.

Availability sampling, which means that elements are selected because they are available or easy to find (Bachman & Schutt, 2007), was used in this study in order to collect data and respondents were enrolled in courses within the department of criminology and criminal justice introduce threats to external validity; therefore, the findings cannot be generalized to the general student body at the University of Texas at Arlington nor other schools across the United States. Availability sample in this study is partially justified because this study was exploratory in nature, and Criminology and Criminal Justice students are expected to have a better understanding of our criminal justice system.

A nonrandom sampling involving about seven academic courses in fall 2010, instead of eight as originally decided, was used. Of seven selected courses for this study, two courses were from the evening graduate classes and five from day and evening undergraduate classes as illustrated in Table 1. Fall semester begins mid-August and ends

mid-December. It is important to underline that not all participants were criminology and criminal justice majors, though they were enrolled in criminology and criminal justice courses in this study.

TABLE 1. Courses in Which Surveys Were Implemented

Course Title	Academic Level
Introduction to Law Enforcement, section 001	Undergraduate
Criminal Justice Statistics, section 001	Undergraduate
Race, Crime, and Justice, section 001	Undergraduate
Women and Crime, section 001	Undergraduate
Institutional Corrections, section 001	Undergraduate
Theoretical Criminology, section 001	Graduate
Crime and Public Policy, section 001	Graduate

The University of Texas at Arlington. Online Schedule of Classes at www.uta.edu

3.5 Data Collection

The researcher asked CRCJ professors to administer the survey to their respective classes, to which they agreed. It was up to professors' discretion whether to administer the survey at the beginning or the end of class period. Ten minutes were enough to complete the survey. The purpose of the research study was explained to participants by reading the statement of purpose before the survey was distributed. Participants were advised that their participation in this study was totally voluntary and anonymous. It was emphasized that participants were free to reject participation if they felt like not answering a question. Also, they were told that there were no rewards in participating in the study; and, participating or not participating in this study would not affect their grades. Participants were asked not to complete the survey if they had already completed one in another class since one could be enrolled in more than one CRCJ course, in order to prevent multiple participation. Surveys were dropped to the CRCJ Department office and placed into professors' mailbox. Once completed, surveys were returned to the secretaries at the CRCJ department office. The researcher was notified to pick them up.

3.6 Statistical Manipulation

The purpose of the statistical manipulation was to measure possible response differences of male and female criminology and criminal justice respondents' knowledge and perception as pertaining to the racial disparities in capital sentencing. The researcher utilized an independent t test to measure the male and female respondents' different means because it was believed to be the most appropriate statistical method to compare means

of both groups. Data were coded and analysis was performed using the Statistical Package for the Social Sciences (SPSS) version 19.0 in the computer lab at the University Hall, located in the College of Liberal Arts at the University of Texas at Arlington. Chapter four will explain the statistical results of this study.

CHAPTER 4

FINDINGS

This chapter focuses on the findings from the data collected. Descriptive statistics were used to analyze the data for this study. Babbie (2007) defines descriptive statistics as, "statistical computations describing either the characteristics of a sample or the relationship among variables in a sample (p. 450)." The data for this study were examined using a t test. According to Sweet and Grace-Martin (2008), "a t test is a special case of analysis of variance that compares the means of only two categories (p. 132)." For the purpose of this study, the t test was believed to be proper to compare the two groups, which are male and female CRCJ students enrolled in one or more CRCJ courses in fall 2010. Also, it is reasonable to expect that statistical significance to be found in the survey responses for both males and females respondents in this study.

The findings are presented in two sections. The first section discusses the demographic information of the sample and the second section presents the knowledge and perception difference between male and female CRCJ students.

The survey instrument contained a total of thirty questions. The first eighteen questions were intended to measure knowledge and perception. There were broken into two parts. Eight questions were designed to measure knowledge and ten questions to measure perception. The survey was administered to one hundred students. There was a one hundred percent response rate for the copies of the survey were only distributed to those who first agreed to participate. Variables were coded and data were analyzed. To measure responses, the researcher used the Likert scale, ranging from 1 to 5, 1 indicating "strongly agree" and 5 indicating "strongly disagree".

4.1 Demographic Information

As illustrated in Table 2, a total of one hundred surveys were completed as stated in the previous section. The majority of respondents in this survey were undergraduate (77%), were CRCJ major (87%), and most of them took CRCJ course before (97%) and were full time students (85%). More than half of the respondents were males (51%). In addition, Caucasians (39%) were the largest group of respondents, followed by Blacks (27%), and Latinos (26%). Most respondents were between 18-29 years old of age (80%). Almost half of the participants considered themselves as Democrats (45%) with most having moderate political point of view (43%). Asked their religious affiliation, most of the respondents chose other (62%) and attended religious services in a weekly basis (41%). It is important to note that most respondents considered themselves as Baptist, Pentecost and/or non-denominational in choosing other for religious affiliation.

TABLE 2**.** Demographics of Respondents

		Frequency	Valid Percent
Gender			
	Male	51	51
	female	49	49
Age			
	18 – 23 years	57	57
	24 – 29 years	23	23
	30 – 35 years	10	10
	36 – 41 years	8	8
	42 years and over	2	2
Race/Ethnicity			
	Caucasian	39	39
	Black	27	27
	Latinos	26	26
	Asian	4	4
	Other	4	4
Academic Level			
	Graduate	23	23
	Undergraduate	77	77
Enrollment Status			
	Full time	85	85
	Part time	15	15
CRCJ Major			
	Yes	87	87
	No	13	13
CRCJ Taken Before			
	Yes	97	97
	No	3	3

TABLE 2. Continued

Credit Hours Completed			
	0 – 15 hours	14	14
	16 – 30 hours	11	11
	31 – 45 hours	9	9
	46 - 60 hours	8	8
	61 – 75 hours	12	12
	76 – 90 hours	10	10
	Over 91 hours	36	36
Political Party			
	Republican	28	28.3
	Democrat	45	45.5
	Independent	26	26.3
Political Point of View			
	Liberal	27	27.3
	Moderate	43	43.4
	Conservative	29	29.3
Religious Affiliation			
	Catholic	20	20
	Protestant	16	16
	Muslim	2	2
	Other	62	62
Religious Service Attendance			
	Weekly	41	41
	Monthly	21	21
	Yearly	16	16
	Never	22	22

4.2 Comparing the Means of CRCJ Male and Female Students

This section presents the knowledge and perception difference between male and female CRCJ students; and, the section is divided in two sub-sections, knowledge and perception on racial disparities on capital sentencing. The researcher compared the responses to the survey questions utilizing a t test while controlling for gender. A t test is a statistical test of the difference between two means (Keppel et al., 1992).

4.2.1 Knowledge Statements

This section contains knowledge statements within the survey intended to examine knowledge between male and female CRCJ respondents as pertaining to the racial disparities in capital punishment as illustrated in Table 3. Some of the statements were related to race, socio-economic, and the trial court actors. Three questions reported

to be statistically significant at the 0.05 level, which means that there is a 99% certainty that a relationship exists not due to error.

TABLE 3. Comparing the Means of Males and Females Regarding the Knowledge of Death Penalty

Variable	Male (Means)	Female (Means)	P Value (Two-tailed)
The support of the death penalty has decreased since 2000	2.96	3.10	.337
Of all races, blacks commit most violent crimes	3.38	3.78	.029*
Blacks constitute the majority of inmates on death row	2.73	3.04	.050*
Indigent defendants are more likely to receive the death penalty in all homicide cases	2.41	2.80	.021*
Minorities are more likely to be executed than non-minorities	2.39	2.39	.990
Non-black prosecutors, judges, and jurors are more likely to impose a death penalty on African American defendants who rape a non-black victim	2.92	2.77	.428
The more minorities on the jury, the less likely the jury is to return a death sentence	2.92	3.02	.507
When the victim is African American, non-black defendants are less likely to be sentenced to death	2.71	2.88	.288

*Statistically significant at the 0.05 confidence level

With regards to statement "of all races, blacks commit most violent crimes," the reported p value was 0.029, which means that it was statistically significant at 0.05 level. That is statistically differences of opinions of males when compared to those of females.

There was a significant difference in response of males versus females for the statement "blacks constitute the majority of inmates on death row." The mean for males was 2.73 and the mean for females was 3.04. The t test produced a p value of 0.050. Males seemed to be more knowledgeable than females.

There was also a significant difference in the response to "indigent defendants are more likely to receive the death penalty in all homicide cases." The mean for males was 2.41 and the mean for females was 2.80. The t test for this response produced a p value of 0.21. When compared with females' response, males seemed to be more knowledgeable than females.

There was no statistically significant difference in males' knowledge versus females' knowledge to item "the support for the death penalty has decreased since 2000." The t test produced a p value of 0.337, which was not statistically significant at 0.05 level. The mean for males was 2.39 when compared with the mean for females, 2.39.

Also, there was not any statistically significant difference found when comparing males' knowledge with females' knowledge for the question "minorities are more to be executed than non-minorities." The males' mean was 2.39 versus the females' mean, 2.39, which produced a p value of 0.990.

With regards to statement "non-black prosecutors, judges, and jurors are more likely to impose a death penalty on African American defendants who rape a non-black victim," p value was 0.428 that was not statistically significant at 0.05 level. The mean for males was 2.92 when compared with the mean for the females, 2.77.

There was no statistically significant difference reported when comparing males' knowledge with females' knowledge to question "the more minorities on the jury, the less likely the jury is to return a death sentence." The males' mean was 2.92 when compared with the females' mean, which was 3.02.

Also, there was not any statistically significant difference in response of males versus females for the item "when the victim is African American, non-black defendants are less likely to be sentenced to death." A males' mean of 2.71 and a females' mean of 2.88 produced a p value of 0.288, which was not a statistically significant difference at 0.05.

4.2.2 Perception Statements

As illustrated in Table 4, the findings show that there were differences found between male and female CRCJ students' perceptions in racial disparities on capital sentencing. There were six variables found to prove to be statistically significant. Only four variables propose that both males and females seem to have similar perception in regards to racial disparities on death penalty sentencing.

TABLE 4. Comparing the Means of Males and Females Regarding the Perception of Death Penalty

Variable	Males (Means)	Females (Means)	P Value (Two-tailed)
The death penalty is an effective deterrent punishment	2.92	3.45	.002**
The United States should abolish the administration of the death penalty	3.90	3.61	.115
I support the death penalty	2.24	2.63	.052*
In murder cases, the jury should favor life without parole over the death penalty	3.27	2.93	.053*
The death penalty should be applied if the defendant knows the victim	3.04	3.38	.028*
Felony defendants accused of murder should receive the death penalty	2.90	3.22	.056*
Since the death penalty was reinstated in 1976, arbitrariness and discrimination have been eliminated in death penalty sentencing	3.78	4.00	.153
Since the death penalty was reinstated in 1976, innocent people have been executed	2.12	2.02	.539
The death penalty should be administered in rape cases	3.14	2.92	.204
A non-black jury can sentence a black defendant who killed white to life without parole	2.63	3.10	.019*

*Statistically significant at the 0.01 confidence level
**Statistically significant at the 0.05 confidence level

With regards to statement “the death penalty is an effective deterrent punishment,” the p value was 0.002, which means that it was statistically significant at 0.05 level. There were differences of opinions of males when compared with the opinions of females. The males’ mean was 2.92 and the females’ mean was 3.45.

There was a significant difference in response of males versus the response of females for the statement “I support the death penalty.” The mean for males was 2.24 and the mean for females was 2.63. The t test produced a p value of 0.052.

Another statistically significant difference is between the male and female response to “in murder cases, the jury should favor life without parole over the death penalty.” The mean for males was 3.27 and the mean for females was 2.93, producing a p value of 0.053.

A statistically significant difference was found for the statement “the death penalty should be applied if the defendant knows the victim.” A mean of 3.04 for males and a mean of 3.38 for females produced a p value of 0.028.

Another statistically significant difference is for the response to “felony defendants accused of murder should receive the death penalty.” The males’ mean was 2.90 when compared with the females’ mean, which was 3.22, producing a p value of 0.056.

Another statistically significant difference in response of males versus females for the question “a non-black jury can sentence a black defendant who killed white to life without parole,” the mean for males was 2.63 and the mean for females was 3.10. The t test produced a p value of 0.019.

The rest four statements pertaining to both male and female respondents’ perception were not statistically significant. For instance, both males and females seemed to have similar perceptions to statement “the United States should abolish the administration of the death penalty,” a t test produced a p value of 0.115, which was not statistically significant. The mean for males was 3.90 when it was compared with the mean for females, 3.61.

Little differences were found but not statistically significant at 0.05 level between males and females to statement “since the death penalty was reinstated in 1976, arbitrariness and discrimination have been eliminated in death penalty sentencing.” The males’ mean was 3.78 compared to females’ mean, 4.00, which produced a p value of 0.153.

There was no statistically significant difference at 0.05 level found when comparing males’ opinion with females’ mean to statement “since the death penalty was reinstated in 1976, innocent people have been executed.” Males’ mean was 2.12 and females’ mean was 2.02, which t test produced a p value of 0.539.

Also, there was no statistically significant difference found between males’ perception when compared with females’ perception to item “the death penalty should be administered in rape cases.” A males’ mean of 3.14 and a females’ mean of 2.92 produced a p value of 0.204, which was not statistically significant difference at 0.05 level.

CHAPTER 5

DISCUSSION

The findings of this research serve as an interpretation of the differences between male and female criminology and criminal justice students in regards to racial disparities and capital sentencing. The primary goal of this research was to examine the perception and knowledge as pertaining to the racial disparities in capital sentencing among male criminology and criminal justice students as compared to their female criminology and criminal justice counterparts. A survey was administered to a sample of 100 criminology and criminal justice students from the University of Texas at Arlington to measure the knowledge and perception differences.

A review of the literature explored the history of capital punishment from Ancient time up to present age in the United States of America, through the era of slavery. During the 1960s, the United States Supreme Court dealt with cases in relation to minority citizens' rights. Cases pertaining to the death penalty and the Eighth Amendment and studies examining death penalty and racial disparities were brought before the U.S. Supreme Court, namely Furman v. Georgia (1972), Gregg v. Georgia (1976), Coker v. Georgia (1977), and McKleskey v. Kemp (1987), including the post-conviction DNA exoneration cases throughout the United Sates.

Howe (2004) similarly contends that widespread evidence of racial disparity in capital sentencing undermines confidence in the neutrality of capital selection nationwide. There is certainly considerable evidence that the death penalty is discriminatory. About half the people on death row are from minority groups that represent only about twenty percent of the country's population (Dieter, 1994).

By far the most substantial and consistent extralegal basis of differential treatment under pre-Furman statutes was race. All but a few studies found gross racial differences in the likelihood of a death sentence; race of both offender and victim were associated with differential treatment, and race of victim was a more prominent basis

of differential treatment than race of offender. If the post- Furman statutes have remedied the previous ills, we should find no substantial or consistent differences by race in the likelihood of a death sentence for criminal homicide under the new statutes (Bowers and Pierce, 1980).

Justice Douglas expressed concern for racial bias in his concurring opinion in Furman, where he characterized the old Georgia capital punishment statute as "pregnant with discrimination (Furman v. Georgia, 1972). Supporters of death penalty were hopeful that the structured discretion model established by the new post-Furman statutes would lead to race-neutral application of the death penalty. However, social-science research in this area has cast doubt on this aspiration. While there is little evidence of racial discrimination in terms of the race of defendants, there is substantial evidence of disparity with regard to the race of victims (Scheb II et al., 2008).

A majority of the U.S. Supreme Court has consistently agreed that the proportionality principle applies to death penalty cases; as the Court puts it, "death is different." There are numerous capital crimes where no one is killed; they include treason, espionage, kidnapping, aircraft hijacking, large-scale drug trafficking, train wrecking, and perjury that leads to someone's execution (Liptak, 2003). In 1977, the Court heard Coker v Georgia; it decided that death was disproportionate punishment for raping an adult woman. In fact, it looked as if a majority of the Court was committed to the idea that death is always disproportionate except in some aggravated murders (Samaha, 2008).

Baldus and his colleagues compared the practice of the Georgia criminal justice system with regard to the imposition of the death penalty under the pre-Furman statute with its imposition under the post-Furman statute, which was approved by the Supreme Court in 1976 in the case of Gregg v. Georgia (Hood, 2002). Baldus and his colleagues (1990) controlled for more than 200 variables that might explain these disparities; they included detailed information on the defendant's background and prior criminal record, information concerning the circumstances and the heinousness of the crime, and measures of the strength of evidence against the defendant. They found that inclusion of these controls did not eliminate the racial differences

According to Walker et al., (2007), the results of the death penalty studies conducted in the post-Gregg era provide compelling evidence that the issues raised by the Supreme Court in Furman have not been resolved. The Supreme Court in Gregg notwithstanding, racial discrimination in the capital sentencing process did not disappear as a result of the guided-discretion statutes enacted in the wake of the Furman decision.

Methodologically sophisticated studies conducted in Southern and non-Southern jurisdictions and in the 1990s as well as the 1970s and 1980s consistently conclude that the race of the victim affects death sentencing decisions. Many of these studies also conclude that the race of the defendant, or the racial makeup of the offender-victim pair, influences the capital sentencing process (Walker et al., 2007).

The death penalty today remains arbitrary. There have been 1,025 executions since the death penalty was reinstated in 1976 as of June 2006: 80% of the executions involved murders of white victims; generally, less than 50% of murder victims are white, 82% of the executions took place in the South, 45% of the executions were in only 2 states-Texas and Virginia, 4 executions, less than %, were in the Northeast, all were of defendants who waived their appeals (DPIC, 2009).

Empirical studies of the death penalty continue to find that the race and gender of homicide victims are associated with the severity of legal responses in homicide cases even after controlling for legally relevant factors (Holcomb et al., 2004).

Focusing specifically on race as a determinant of prosecutorial behavior, Paternoster (1984) analyzed 300 homicide cases and found that prosecutors were four-and-a-half times more likely to seek the death penalty when black defendants have white victims. This would seem to suggest, as does other research, that “black offender/white victim homicides are treated as more aggravated killings, and black offender/black victim homicides are treated as less aggravated deaths (Paternoster, 1984; p.453)”.

As Dieter (1994) points out that the issue of race and the death penalty is compounded when one looks at the race of the victims in capital cases. Then it appears that not only is the death penalty targeted more often toward black defendants, it is used almost exclusively when the victim is white. Eighty five percent of the victims in cases resulting in execution since 1976 have been white even though whites

constitute only about fifty percent of murder victims overall. Thus, both the perception and the reality converge on the conclusion that if you kill a white person in this country, you are far more likely to receive the death penalty than if you kill a black person (Dieter, 1994). Rather than serving the objectives of deterrence and just retribution, capital punishment has served as an instrument of minority group oppression and majority group protection (Dike, 1982).

Breslin (2008) argues that a quick glance at the nation's death row suggests that something is afoot. The number of death row inmates identified as persons of color-currently 1,833 or 54.7% of the entire death row population-is notable in that it differs so dramatically from the general racial composition of the entire United States, where roughly 12.8% of the population is defined as African American and 14.8% defined as Hispanic or Latino. Until recently, no comprehensive study has yet shown that a defendant's race affects whether he or she will face execution. Which begs the question: How can there be such an apparently disproportionate percentage of non-white condemned prisoners and yet, at least with regard to the all-important race of the defendant, the institution of capital punishment is not considered racist? With so many racial minorities on death row, how is it possible that the race of the defendant has little or no meaning impact on the sentencing decision (Breslin, 2008)?

Scott Phillips (2008), a criminologist at the University of Denver, has uncovered evidence that suggests there is race-of-defendant bias in at least one death penalty jurisdiction. His study confirms that the race of the victim still makes a difference, but now it seems so does the race of the accused. More precisely, Phillips found that black defendants are 1.75 times more likely than white defendants to face the death penalty and 1.5 times more likely than white defendants to be sentenced to death.

In 1987, the U.S. Supreme Court ruled in McCleskey v. Kemp, that such evidence of systematic racial disparity in capital cases does not establish a federal constitutional violation. At the same time, the Court invited legislative bodies to consider adopting legislation that would permit courts to grant relief to defendants based upon the type of evidence of systematic racial disparity present in McCleskey (ABA, 2001).

In a 1990 review of twenty-eight studies that examined the correlation between race and death sentencing in the United States since 1972, the U.S. General Accounting Office (1990) concluded that the synthesis (of the twenty-eight studies) supports a strong race of victim influence.

Summarizing the thrust of research in this area, Radelet and Borg (2000) conclude that the death penalty is between three and four times more likely to be imposed in cases in which the victim is white rather than black. There is also some evidence of an interaction between the race of defendants and that of victims. Some studies have found that the greatest disparity in the rate at which the death penalty is sought or imposed exists between cases where black defendants are alleged to have killed white victims and those where black defendants are alleged to have killed black victims (Baldus et al., 1983).

Bailey and Peterson (1994) pointed out that it appears neither economists nor sociologists, nor persons from any other discipline have produced credible evidence of a significant deterrent effect for capital punishment. And not a single investigation to date has produced any indication that capital punishment deters capital murders-crime of direct theoretical and policy concern. Roughly thirty years ago, Sellin (1967) and Bedau (1967) conducted a survey and assessment of the then available deterrence and death penalty literature. Neither found evidence of deterrence.

In their studies, Ellsworth and Gross (1994) concluded that, throughout the entire period for which poll data are available, men have favored the death penalty more than women. Support for the death penalty is at an all-time high, both in the proportion of Americans who favor capital punishment and in the intensity of their feelings. Most people care a great deal about the death penalty but know little about it, and have no particular desire to know. This is not surprising, as their attitudes are not based on knowledge (Ellsworth & Gross, 1994).

5.1 Contribution to the Body of Knowledge

It is expected that this research will make a significant contribution to the body of knowledge in the field of criminology and criminal justice. As the literature review suggests, many studies have been conducted in regards to comparison of the differences in knowledge and perception of minorities and non-minorities as pertaining to the race and capital punishment. No studies were found that were

conducted at the University of Texas at Arlington that controlled for gender among criminology and criminal justice respondents. Fifty one percent of the respondents were males, CRCJ majors, and had taken CRCJ courses prior to the survey. Since the majority of criminal justice system officials are males, it is expected that among some of this research study respondents will be working in law enforcement, court and corrections.

5.2 Limitations of the Research

The researcher acknowledges limitations in the current research study. The researcher acknowledges that a convenience sample was employed, not a randomized sample. The sample was drawn from a large commuter school in North Texas. Most students live off campus and commute to school. Texas is a Southern state and a leading state in executions within the Union. Because of that fact, students might espouse a stronger view point as Texas residents in regards to capital punishment. Also, it is important to underline that not all respondents were criminology and criminal justice majors, though they were enrolled in CRCJ courses during the implementation of the survey. As it was stated before, due to these limitations, the findings in this study cannot be generalized to the general population or the entire student body.

5.3 Implications

This study suggests that there was a little significant difference of knowledge among male and females students as pertaining to death penalty, while male respondents appeared to have strong perceptions of racial disparities and the death penalty sentencing. The findings of this study indicate that male respondents' perceptions differ from their female counterparts' in their capital sentencing viewpoints. This suggests that one may have been brought up differently from the other. The American Criminal Justice System components are more masculinist agencies. Belknap (2007) points out that despite the legal and societal advancements in women's entry into the criminal legal system jobs, many still face considerable resentment and resistance, and this is most typically at the hand of their male coworkers, supervisors, and administrators. These perceptions seem to prove the facts that women have been a disadvantaged group regardless of their numerical dominance.

A majority of the respondents were undergraduate and had taken CRCJ course prior to the study. It is expected that respondents after leaving the university will become criminal justice officials and/or legislators whether at state or federal level; therefore, due to Innocent Project and DNA exonerations across America, the CRCJ department should offer Capital Punishment class as a core course to engage students in a serious debate regarding race and capital sentencing. Both male and female students should be well-equipped to face the challenges of the 21st Century.

One needs to keep in mind that the United States is still the only western nation that administers the death penalty to its citizens. The findings might suggest that males' perception of racial disparities and capital punishment may have been influenced by the history and culture of the death penalty in the United States, in particular the Southern region. A trip in a prison, precisely in death row section, will change students' perceptions about the capital punishment. Witnessing first-hand the race of the death row residents and their confinement conditions and the execution of an innocent man will make male students reduce their support of the death penalty.

Many of the students will become police officers, investigators and/or crime scene investigators. Police officers and investigators must make sure that they have the right person in custody. Early mistakes could lead to convicting and executing an innocent person. Contrary to the television CSI show, it is not easy to investigate and solve a murder case. Though it is a stressful job, the police should work closely with the District Attorney office in an early stage for guidance in order to safeguard the rights of suspects. It is important to underline that DNA tests should be available in all cases to help determine that no innocent person is convicted and/or executed.

It is important to suggest that courts could make sure that competent and experienced defense lawyers are assigned to assist the indigents and minorities who most of the time cannot afford attorneys, especially in capital cases. The courts could establish a list of lawyers who have knowledge about the death penalty and have experience in trying murder cases and appoint them to represent defendants. In addition, these findings may suggest to lawyers how to proceed in selecting potential members of capital

juries when it comes to gender, for it is up to jurors to convict or to acquit a defendant and to decide who dies and who lives.

5.4 Suggestions for Future Research

The researcher of this present study took his first capital punishment course from Political Science department. Since the present research studied gender among criminology and criminal justice students, future researchers may want to study gender among another major within the College of Liberal Arts. For instance, It could be a meaningful contribution to the discipline of criminology and criminal justice if future researchers compare the racial disparities and capital sentencing knowledge and perception held by criminology and criminal justice students against political science students since political science students would run and/or hold offices in the legislature or executive branches of the government and/or may find employment in the field of criminal justice system. Early point of view of death penalty can predict their positions once in the office. Too, future researchers might want to measure differences of knowledge and perception held by male and female minorities in regards to death penalty since they are most likely to be executed by the states.

APPENDIX A

STUDENT SURVEY

STUDENT SURVEY

Racial Disparity and Death Penalty Sentencing

For each of the statements below, please indicate the extent of your agreement by circling the appropriate number (1-5), 1 being Strongly Agree and 5 being Strongly Disagree.

1. The death penalty is an effective deterrent punishment.
   1 2 3 4 5
2. The support for the death penalty has decreased since 2000.
   1 2 3 4 5
3. The United States should abolish the administration of the death penalty.
   1 2 3 4 5
4. I support the death penalty.
   1 2 3 4 5
5. In murder cases, the jury should favor life without parole over the death penalty.
   1 2 3 4 5
6. The death penalty should be applied if the defendant knows the victim.
   1 2 3 4 5
7. Felony defendants accused of murder should receive the death penalty.
   1 2 3 4 5
8. Of all races, blacks commit most violent crimes.
   1 2 3 4 5
9. Since the death penalty was reinstated in 1976, arbitrariness and discrimination have been eliminated in death penalty sentencing.
   1 2 3 4 5
10. Since the death penalty was reinstated in 1976, innocent people have been executed.
    1 2 3 4 5
11. Blacks constitute the majority of inmates on death row.
    1 2 3 4 5
12. Indigent defendants are more likely to receive the death penalty in all homicide cases.
    1 2 3 4 5
13. Minorities are more likely to be executed than non-minorities.
    1 2 3 4 5
14. The death penalty should be administered in rape cases.
    1 2 3 4 5
15. Non-black prosecutors, judges, and jurors are more likely to impose a death penalty on African American defendants who rape a non-black victim.
    1 2 3 4 5
16. A non-black jury can sentence a black defendant who killed white to life without parole.
    1 2 3 4 5
17. The more minorities on the jury, the less likely the jury is to return a death sentence.
    1 2 3 4 5
18. When the victim is African American, non-black defendants are less likely to be sentenced to death.
    1 2 3 4 5

General information (Please check one answer for each question for the following questions)

19. Your gender
    [ ] Male [ ] Female
20. Your age
    [ ] 18-23 years [ ] 24-29 years [ ] 30-35 years [ ] 36-41 years
    [ ] 42-47 years [ ] 48-53 years [ ] 54-59 years

21. Your race/ethnicity
[] Caucasian [ ] Black [ ] Latinos [ ] Asian [ ] Other ____

22. Your current academic level
[ ] Graduate [ ] Undergraduate

23. Your enrollment status at UTA
[ ] Full time [ ] Part time

24. Are you a CRCJ major?
[ ] Yes [ ] No

25. Have you ever taken a CRCJ course before?
[ ] Yes [ ] No

26. How many credit hours have you completed at UTA?
[ ] 0-15 hours [ ] 16-30 hours [ ] 31-45 hours [ ] 46-60 hours
[ ] 61-75 hours [ ] 76-90 hours 91-105 hours [ ] over 106 hours

27. Do you consider yourself as a (an):
[ ] Republican [ ] Democrat [ ] Independent

28. Do you consider your political point of view to be generally:
[ ] Liberal [ ] Moderate [ ] Conservative

29. Religious affiliation
[ ] Catholic [ ] Protestant [ ] Muslin [ ] Other_____

30. How often do you attend religious service?
[ ] Weekly [ ] Monthly [ ] yearly [ ] Never

APPENDIX B

STATEMENT READ BEFORE THE COMPLETION OF THE SURVEY

Survey of UTA CRCJ students on race and death penalty sentencing.

Script to be read aloud before distributing the survey:

You are being asked to participate in a research study conducted through the department of Criminology and Criminal Justice at UTA. The study is to examine the perceptions of UTA CRCJ students on race as pertaining to the capital punishment sentencing. The survey is voluntary and anonymous. No personal information is asked in this survey; and no questions will enable the principal investigator of the survey to identify participants. However, you must be between 18 and 60 years old to participate in this survey. You are free to reject participation if you feel like not answering a question. The benefit of this research study will add knowledge to the understanding of the perceptions of CRCJ students in reference to racial disparity in death penalty sentencing. There are no risks associated with participation in this study. Also, there are no rewards in participating in the study. Participating or not participating in this study will not affect your grades.

It should take about 10 minutes to complete this survey. If you have already completed this survey in another class, please do not complete another one.

Thank you in advance for your participation. Please feel free to contact the Principal Investigator Hubert Lumbala or the chairperson of the UT Arlington Institute Review Board at (817) 272-3723 if you have any questions about this research or your rights as a research subject.

Principal Investigator Hubert Lumbala

UTA CRCJ Graduate Student

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BIOGRAPHICAL INFORMATION

Hubert Lumbala was born in Kinshasa, Democratic Republic of Congo. After two years at North Lake College, Dallas County Community College District, he transferred to the University of Texas at Arlington where he graduated with a Bachelor of Arts in Criminology and Criminal Justice in May 2009. Later, he earned a Master of Arts in Criminology and Criminal Justice in May 2011. He is currently employed with EMSI in Irving, Texas, and hopes to pursuit his career either at the federal or state government level or the United Nations.