

**The Effectiveness of Capital Punishment in  
Reducing the Violent Crime Rate**

by

Michael A. Pieton

Submitted in Partial Fulfillment of the Requirements

for the Degree of

Master of Science

in the

Criminal Justice

Program

YOUNGSTOWN STATE UNIVERSITY

May, 2017

## The Effectiveness of Capital Punishment in Reducing the Violent Crime Rate

Michael A. Pieton

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Signature:

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Michael A. Pieton, Student Date

Approvals:

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Attorney Patricia Wagner, Criminal Justice Dept. Chair and Thesis Advisor, Date

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Chief Jim Willock, M.S. Date

---

Derick A. Young, M.S. Date

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Dr. Salvatore A. Sanders, Dean of Graduate Studies Date

### Abstract

The death penalty has been one of the most controversial issues facing the American public for many years. The purpose of this research was to determine the effectiveness of capital punishment in reducing the violent crime rate. The focus of this study was integrative as I reviewed previous research to see if its conclusions support my hypothesis. My hypothesis is that the death penalty is not effective in reducing the violent crime rate and secondly that states with a death penalty have just as high of crime rates as states without a death penalty.

Most offenders are not thinking with a rational head at the time they commit their crimes. They are usually not pondering the consequences of jail time if/when they get caught. I gathered my evidence from a meta-analysis of other death penalty deterrence studies. I found that there are many studies proving that the death penalty does not deter violent crime and why it is failing in doing so. Some of the benefits of this study are to enlighten people to the fact that we as a nation must realize the failures of the death penalty and recognize that every other industrialized nation has discontinued the use of the death penalty. Thus, as the embodiment of the free world we must stop killing offenders for nothing more than mere retribution.

### Acknowledgements

What a journey this has been for me. After receiving my Bachelors in 1994 and having a nineteen year break in between that degree and starting my Master's degree I must first thank my wife, Marla Pieton, for having the patience and understanding to allow me to follow my dream of getting my Master's Degree. It is with her help and support in raising our two beautiful sons, Maddox and Maverick, and without her none of this would have been possible.

I would also like to acknowledge my father, may he rest in peace, John S. Pieton Jr. He was proud that I was back in school at YSU for my Master's Degree. He passed away in the fall of 2015 unexpectedly. I know he is smiling down with pride in my accomplishment of my completing my Master's Degree.

I would further like to acknowledge my mother, Marjorie Pieton, and my mother-in-law, Carol Mogulich. You both have also been very supportive and helpful in my demanding schedule throughout this journey. Thank you for always being able to step up and help out with watching the kids so that I could attend night classes and meetings, etc. to achieve this degree.

My boys, Maddox and Maverick, Daddy is now going to be able to coach your sports teams. Thank you for understanding that I was not able to during this thesis process, but now, I will be able to again. I love you both very much.

Here at YSU, I must start with Attorney Patricia Wagner. She was one of my first instructors that I experienced here at YSU and spiked my interest in the death penalty and enlightened me to its many flaws. Thank you for serving and leading me on this thesis as the committee chair.

Thank you also to Chief of Police at Mill Creek Park, Jim Willock. Thank you for your support and direction, first as an instructor then most recently as one of my committee members.

Thank you to Derick Young for serving on my committee as well and for your insight and guidance into this final product of my thesis. Last but not least, I would also like to thank you for your service to our country as a United States Marine.

Thank you also to all my brothers and sisters in blue. Yes we are serving our country too and lately we are often treated as though we are the enemy trying to suppress people's rights on a daily basis. It is not an easy task to be perfect all of the time on the many split second decisions we must make on a daily basis. God bless those of us who are able to do this and God help those of us who are the unfortunate and human ones who make a mistake and have to face the public outcry when they demand justice and perfection.

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## **Chapter 1**

### **Introduction**

What is the effectiveness of capital punishment in reducing the violent crime rate? The death penalty has wavered in public support over the years. It has been proven that it does not deter violent crime. People get emotionally tied up in “an eye for an eye” and wanting retribution or revenge. I chose the death penalty as my topic because it is fascinating to me that we in the United States still have it on the books and the public still supports it.

The research I am looking into is the effectiveness of capital punishment in reducing the violent crime rate. I truly want to see what the other research has shown and why we as a civilized nation are still pressing forward on this barbaric cause.

The theory used is that of an integrative one as I will take a look at previous research and see whether it supports my stance on this issue. I am going to gather my evidence from a meta-analysis of other death penalty studies. I expect to find that there are many studies proving that the death penalty does not deter violent crime and why it is failing in doing so.

The main contributions that this project makes is that of providing the facts about the failure of deterring crime by imposing the ultimate penalty; one’s life.

The Death Penalty Information Center released the results in November, 2010 of a national poll of 1,500 registered voters which showed growing support for alternatives to the death penalty. 71% of voters would choose a penalty other than the death penalty for murder (Death Penalty Information Center, 2017). Many of the Justices who sit on the Supreme Court, still struggle with the idea of state-sponsored killing. According to the

book, “Murder at the supreme Court”, ten of the 15 cases profiled in the book split the court 5 to 4 (Clancy & O'Brien, 2013).

### **History**

Capital punishment dates back to the Eighteenth Century B.C. to the Code of King Hammurabi of Babylon, where the death sentences were used for twenty-five different crimes. Execution was present in many other codes including the Fourteenth Century B.C.'s Hittite Code, the Seventh Century B.C.'s Draconian Code of Athens, and in the Fifth Century B.C.'s Roman Law of the Twelve Tablets (Death Penalty Information Center, 2016). Sentences punishable by death in these times were carried out by crucifixion, drowning, beating, burning and impalement.

In the Tenth Century, A.D., Britain introduced hanging as the most common form. By the 1700's, capital crimes started to increase and Britain began executing criminals for stealing and cutting down trees; over 222 crimes were cause for execution. Their justice system was brought to America by European settlers where soon thereafter, the first execution in the United States took place. The first recorded execution was that of Captain George Kendall in the Jamestown Colony of Virginia in 1608 who was hanged for acting as a spy for Spain (Death Penalty Information Center, 2016). Soon after, the death penalty was used for smaller offenses such as killing chickens, trading with Indians or even stealing grapes.

In the late 1700's, the Abolitionist Movement began in the Unites States. There were several attempts made to change the death penalty laws, and to limit the number of crimes punishable by execution. Through the leadership of Dr. Benjamin Rush, (signer of the Declaration of Independence and Founder of the Pennsylvania Prison Society),



Benjamin Franklin, and Attorney General William Bradford, Pennsylvania became the first state to consider degrees of murder based on culpability. In 1794, Pennsylvania repealed the death penalty for all offenses except first-degree murder (Death Penalty Information Center, 2016).

By the early to mid-Nineteenth Century, many states made only a small number of crimes punishable by execution. These states no longer allowed executions to be held in public; instead facilities were built to uphold the sentencing. Pennsylvania was the first state to do this in 1834, and soon after, state penitentiaries were being constructed to house criminals.

While many states started to eliminate capital punishment, others made more crimes capital offenses. In 1838, in order raise public awareness of the severity of the death penalty, states within the United States began passing laws against “mandatory death sentencing.” Instead, “discretionary death penalty statutes” were enacted in certain states (Death Penalty Information Center, 2016). For abolitionists, this was a “win” in terms of changing the system because prior to the enactment, the death penalty was enforced in all states for capital crimes, regardless of the details surrounding each case. By 1963, with a few exceptions for small crimes, all mandatory capital punishment laws had been abolished (Death Penalty Information Center, 2016).

After the Civil War, new ways of executing started to arise and at the end of the Nineteenth Century, death by electrocution was introduced. New York built the first electric chair in 1888. In 1890, they executed William Kemmler for the murder of his common-law wife (Death Penalty Information Center, 2016).

It wasn't until the beginning half of the 1900's that the United States started its "Progressive Period" of reform. Between 1907 and 1917, six states totally banned capital punishment, while other states limited the death sentence to such crimes as first degree murder of a law enforcement officer or treason. As an outbreak of terror erupted in the United States in the wake of World War I, citizens became afflicted with the threat of revolution and almost all abolitionist states restored the death penalty by 1920.

Although previous execution methods tolerated the destruction of the human body and criminals dying a slow, painful death, Nevada felt its inmates deserved a more civilized way of being executed. By 1924, the first death by use of Cyanide gas was that of Gee Jon, who was convicted of murder (Death Penalty Information Center, 2016). While he slept, the lethal gas was pumped into his cell but proved unsuccessful when the gas leaked. The gas chamber was then built a short time later. Between 1920 and 1940, there were more executions in American history than any other decade; an average of 167 per year; although there is no evidence to prove how many of those executed were wrongfully convicted (Death Penalty Information Center, 2016). Through this time period, Americans were suffering from Prohibition and the Great Depression.

By the 1950's, the American attitude toward the death penalty had turned its cheek. While many nations eradicated capital punishment, executions within the United States dropped dramatically. With 1,289 executions in the 1940's, 715 in the 1950's, and only 191 from 1960 to 1972, the support for death sentences reached an all-time low by 1966; a Gallup report showed only 42% in favor (Death Penalty Information Center, 2016). There was a moratorium on executions with the outcome of the Furman case in 1972, to the Greg decision in 1976.

Through the 1960's, the legality of the death penalty under the U.S. Constitution was reportedly challenged in the Court system. Before this, the Fifth, Eighth and Fifteenth Amendments had been interpreted to allow the death penalty. Many Courts in the early 1960's considered that the death penalty was "cruel and unusual punishment" under the Eighth Amendment and therefore unconstitutional (Death Penalty Information Center, 2016). The Supreme Court, as a result, started to alter how the death penalty was governed by the late 1960's. The Court heard two cases in 1968 that gave discretion given to the prosecutor and the jury in capital cases (Death Penalty Information Center, 2016). The first case *U.S. v. Jackson* (1968), 390 U.S. 570, involved an aspect of the federal kidnapping statute mandating that only the jury could recommend the death penalty. The Court stated that this is unconstitutional as it encourages defendants to "waive their right to a jury trial" to ensure they would not receive a death sentence (Death Penalty Information Center, 2016). The second case, *Witherspoon v. Illinois* (1968), 391 U.S. 510, held that a potential juror's mere reservations about the death penalty were insufficient grounds to prevent that person from serving on the jury in a death penalty case. Prosecutors, in *voire dire*, could previously excuse or disqualify a juror if they felt the juror's feelings toward capital punishment would make them partial. The prosecutors then had to prove such behavior existed.

In any event, the litigation did not stop there. In 1971, there were still concerns with jurors and addressing whether valid discretion could be used in capital cases. In *Crampton v. Ohio and McGautha v. California* (1971), consolidated under 402 U.S. 183, the defendants argued that it was a violation of their Fourteenth Amendment right to due process for jurors to have unrestricted discretion in deciding whether the criminal should

live or die, and such discretion resulted in arbitrary and capricious sentencing (Death Penalty Information Center, 2016). There were also arguments regarding whether determining innocence or guilt, along with whether the punishable sentence would be death is unconstitutional when decided in one set of deliberations. These claims were rejected by the Supreme Court. The Court stated that a jury of open-mindedness and understanding in one proceeding is sufficient to determine the guilt of the defendant, and the sentence.

In 1972, the world renowned case of *Furman v. Georgia*, *Jackson v. Georgia*, and *Branch v. Texas* (1972), known collectively as the landmark case *Furman v. Georgia* 408 U.S. 238, was brought to the Supreme Court. The appellants in *Furman* argued that executions resulted from random and unpredictable sentencing laws, constituting cruel and unusual punishment, thus violating the Eighth Amendment. The Court agreed and ruled that a punishment would be “cruel and unusual” if it was too severe for a crime, if it was arbitrary, if it had offended society’s justice, or if it was not more effective than a less severe penalty (Death Penalty Information Center, 2016). In a five to four vote, the Court held that capital punishment was “cruel and unusual,” and violated the Eighth Amendment (Death Penalty Information Center, 2016). The Court instantly made forty death penalty statutes void and suspended it due to the invalidity of existing statutes. The ruling in this case allowed states to re-write their death penalty statutes in order to remove the challenges that arose in the *Furman* case.

In response to *Furman*, states reexamined their capital punishment laws; some abandoned the death penalty, other states proposed new statutes to end the capriciousness in sentencing of the death penalty. Five months after the *Furman* case, Florida was the

first state to rewrite its statute; it wasn't long thereafter when thirty-four more states followed the same procedure.

The words "jury discretion" seemed to be the controversial topic through the 1970's. States were trying to limit that discretion, and in doing so developed sentencing guidelines that were to be followed by both the judge and the jury when deciding to sentence one to death. The new rules introduced "aggravating and mitigating factors" in making the sentencing verdict. In 1976, these guided discretion statutes were approved by the Supreme Court in *Gregg v. Georgia* (1976), 428 U.S. 153, *Jurek v. Texas* (1976), 428 U.S. 262, and *Profitt v. Florida* (1976), 428 U.S. 242, collectively referred to as the *Gregg* decision (Death Penalty Information Center, 2016). This decision stated that the death penalty statutes in Florida, Georgia and Texas were constitutional and thereby capital punishment was constitutional under the Eighth Amendment. The death penalty was then reinstated in these states.

The aggravating and mitigating factors were not the only sentencing change resulting from the *Gregg* decision. In addition, guilt and penalty phases of a trial became separate deliberations called bifurcated trials (Death Penalty Information Center, 2016). In addition to aggravating and mitigating factors, second sentencing change required in the new states was an automatic appellate review of convictions and sentences (Death Penalty Information Center, 2016).

On January 17, 1977, the execution of Gary Gilmore by firing squad in Utah ended the ten year hiatus of executions that began with the *Jackson* and *Witherspoon* decisions. Also in 1977, Oklahoma became the first state to institute lethal injection as a

death penalty option. The first execution by lethal injection was on December 7<sup>th</sup>, 1982 in Texas (Death Penalty Information Center, 2016).

### **Methods of Execution / Lethal Injection**

Please see table 1 in the appendices section for authorized methods of execution by states (Death Penalty Information Center, 2016). With respect to the imposition of the death penalty, state statutes typically read: “The punishment of death must be inflicted by continuous intravenous administration of a lethal quantity of an ultra-short-acting barbiturate in combination with a chemical paralytic agent until death is pronounced by a licensed physician according to accepted standards of medical practice” (The Clark County Prosecuting Attorney, 2014).

The above is an excerpt from the Texas protocol. Texas, which has the busiest death row in the nation, further accomplishes its executions in the following manner, which is also typical of other states: The criminal is strapped and bounded to a gurney by several restraints. Immediately before execution, the criminal is connected to a heart monitor. Two saline IV’s are started, one in each arm, by which one acts as a back-up due to the possibility of a collapsed vein. The warden usually signals for the flow of the drugs to start. In most areas, the combination of three drugs is used. Sodium pentothal is first administered and puts the criminal in an unconscious state. Pancuronium bromide is then given which paralyzes the lungs, diaphragm and relaxes the entire muscular system to where the inmate stops breathing. Lastly, potassium chloride is given in order to stop the heart. All the drugs are dispensed in lethal doses and death results in cardiac arrest (The Clark County Prosecuting Attorney, 2014).

The Texas lethal injection procedure consists of Sodium Thiopental which will sedate the offender, Pancuronium Bromide, and the last drug, Potassium Chloride. The person is usually pronounced dead approximately seven minutes after lethal injection begins. The grand total for the cost of this three drug cocktail per execution is \$86.08 (Del, 2008, p.349).

The federal government, along with seventeen other states, uses lethal injection as their only method of execution. Nineteen others use it as their main method, but inmates may choose an alternative method if they wish. Some states have altered their statutes to allow other methods in the event that lethal injection is deemed unconstitutional. It was not until *Baze v. Rees* (2008) that the Supreme Court ruled that the three drug lethal injection method is not cruel and unusual and is constitutionally permissible (Del, 2008, p. 349). The Supreme Court has held in April 2008, that lethal-injection procedures in Kentucky do not violate the Eighth Amendment's prohibition against cruel and unusual punishment. This action opens the way for an end to a de facto national moratorium on lethal injection executions that has been in place since the Supreme Court agreed to consider the issue. Numerous medical experts believe the process to be inhumane. In California, an execution was stopped when physicians declined to participate because of such concerns. As of 2015, the number of executions in the U.S. has significantly diminished based on apprehensions about the legality and availability of the lethal injection method of execution (News Batch, 2016).

### **Electrocution**

State statutes typically read: "The sentence shall be executed by causing to pass through the body of the convict a current of electricity of sufficient intensity to cause

death, and the application and continuance of such current through the body of such convict shall continue until such convict is dead” (The Clark County Prosecuting Attorney, 2014).

Almost all electric chairs are constructed of wood and have restraints where the prisoner is strapped by their arms, chest, legs and groin. The person is shaved for the sole precaution of hairs catching fire. The chair is bolted down to a concrete floor and placed on a rubber mat. A metal electrode shaped like a headpiece fits onto the scalp and forehead of the prisoner. Between the skin and the headpiece is placed a wet sponge saturated with saline. If the sponge is too wet, the electric current will short-circuit; if it is too dry, the resistance will be high. An electrode and sponge are also attached to the criminal’s right calf. The inmate is then blindfolded. A control panel is activated which sends 2,300 volts for eight seconds, followed by 1,000 volts for twenty-two seconds, and finally another 2,300 volts for eight seconds (The Clark County Prosecuting Attorney, 2014). If after this cycle the prisoner is not dead, it is immediately repeated. Concerns with the electric chair are burning of body parts, and the prisoner not dying after several jolts of electricity.

Nebraska was the only U.S. state that used the electric chair as its sole method of execution until February 2008 when the U.S. Supreme Court ruled that it was in violation of Nebraska’s State Constitution. No other method has been indicated as a replacement. Nine other states use it as a method of choice, again depending on the decision of the inmate, the date of the execution or sentence, or that it may be viewed unconstitutional (Del, 2008).



## **Lethal Gas**

State statutes simply read: “The punishment of death must be inflicted by the administration of a lethal gas” (The Clark County Prosecuting Attorney, 2014). When sentenced to die by lethal gas, a steel airtight chamber is used which encompasses a chair and restraints. Below the chair is a metal container that holds cyanide pellets. Under this sits another container filled with sulfuric acid solution. The prisoner at this point is held by straps around the chest, waist, arms and ankles. The cyanide container is then opened by a switch, and the pellets fall into the sulfuric acid, producing a lethal gas. The prisoner is encouraged to take deep breathes but on many occasions, will hold his/her breath. A heart monitor allows the warden to pronounce the inmate dead by hypoxia; an estimated six to eighteen minutes after lethal gas is emitted. The air in the chamber is neutralized after the execution is completed by the pumping of ammonia into the area. Exhaust fans are used to remove excess fumes. This process takes approximately thirty minutes (The Clark County Prosecuting Attorney, 2014).

Arizona, California, Maryland, Missouri and Wyoming are the only five states that still use lethal gas as a death punishment in replacement of lethal injection if chosen (Del, 2008).

## **Hanging**

A gallows, which is built with two upright posts and a crosspiece, is the source for a prisoner to be put to death by hanging. The day prior to execution, the prisoner is weighed and a “practice run” is performed with a sand bag of that same weight. The experiment is done to be sure that the inmate will die instantly, and to also calculate the

correct drop length. The day before the execution, all mechanisms and the trap door are checked to be certain they are operating efficiently. The rope that is used is made of manila hemp and must be at least  $\frac{3}{4}$ " but not more than  $1\frac{1}{4}$ " in diameter while being in the vicinity of thirty feet in length. The rope is boiled, stretched and soaked to rid it of its potential to curl, spring up or be stiff. This "hangman's knot" is treated with a wax in order for it to slide smoothly. Seconds before the prisoner is executed, their hands and legs are tied, and the noose is placed around their neck with the knot behind the left ear. Instant death occurs after the trap door opens, the prisoner falls through and the neck is broken (or by asphyxiation). With proper calculations, at least 1260 pounds of force must be delivered to the neck (The Clark County Prosecuting Attorney, 2014). Hanging is the oldest form of execution in the United States, and only two states, New Hampshire and Washington still authorize it as an alternative to lethal injection (Del, 2008).

### **Firing Squad**

Utah's statute authorizing execution by firing squad states: "If judgment of death is to be carried out by shooting, the executive director of the department **or** his or her designee shall select a five-person firing squad of peace officers" (The Clark County Prosecuting Attorney, 2014).

Traditionally, the prisoner to be put to death by shooting is seated in a chair and bound by straps across the waist, legs, chest and head. Sandbags are stacked all around the inmate to be used as a sponge to soak up blood. The prisoner is usually dressed in a dark blue outfit with a white round patch covering the heart, along with a black hood that covers the head and face. In front of the prisoner is a wall which stands almost twenty feet away; it has firing ports for the firing squad members. Three to six shooters per prisoner

line up using .30 caliber rifles loaded with single rounds. The squad fires on command simultaneously, aiming at the chest, hoping to rupture the heart, main blood vessels and lungs. One of these shooters is given blanks in order to prevent them from knowing which one actually carried out the execution; but that person is unaware as to the designee. The criminal will die of shock and/or excessive hemorrhaging.

Oklahoma and Utah are the only states using a firing squad as an alternate way of executing next to lethal injection (Del, 2008).

### **Limitations on the Death Penalty**

For over four centuries, the death penalty has posed controversy and intense opinions as to whether “the act” is considered unconstitutional and cruel punishment. From young teenagers to the elderly, from women to the mentally challenged, questions have been raised as to whether or not certain members of society should be exempted from execution. With this, U.S. Courts have struggled in making the decision to be just, and felt the pressures of other systems around the world. By the 1980’s, many western European countries had stopped the use of the death penalty; the United States sought to do things a little differently.

In 1977, the start of limitations concerning the death penalty arose with the decision in the case of *Coker v. Georgia* (1977), 433 U.S. 584. The United States Supreme Court held that “the death penalty is unconstitutional punishment for the rape of an adult woman when the victim was not killed” (Del, 2008). Throughout the next several years, boundaries on the death penalty were redrawn, and for specified killers or criminals, a “right to life” acknowledgement by the law kept them alive.

## **Mentally Retarded**

“Executing the mentally retarded is senseless cruelty. Even strong death penalty supporters recognize that capital punishment is wrong for people with the mind of a child” (Robinson, 2016), said Jamie Fellner, Human Rights Watch Associate Counsel. She commented on the scheduled execution of a man that had the mental age of a second grader. In June of 2002, in the case of *Atkins v. Virginia* (2002), 536 U.S. 304, the Supreme Court viewed this act the same way. The Court reversed a ruling it made in 1989 in the case of *Ford v. Wainright* (1986), 477 U.S. 399, which held that executing people with mental retardation was not a violation of the Eighth Amendment (Del, 2008, p.106). The Court in *Atkins* held that punishment of the mentally challenged does indeed constitute “cruel and unusual punishment.” Since this case in 2002, condemned inmates across the U.S. have had their death sentences communicated due to mental retardation. Close to 10% of all death row inmates have been classified as mentally retarded (News Batch, 2016). It should be noted that the term Mentally Retarded is the court legal terminology for the politically correct term of Developmentally Disabled.

## **Race**

By working towards the abolition of the death penalty Amnesty International points towards the economic and racial bias and tainted by human error (Amnesty International, 2016). Racial discrimination and convictions of African-Americans have been in the forefront of the death penalty debate for decades. In recent studies, blacks no longer outnumber whites on death row and the proportion of their death penalty sentences is roughly equal to their high percentage of prison population (News Batch, 2016).

Shockingly, despite the fact that 50% of murders in the United States are of black people, if a white person is killed, it is more likely that the defendant accused of that murder, white or black, will be executed. This pattern is illustrated by statistics collected in October 2016 (Death Penalty Information Center, 2016). Please see table 2 in the table section for the race of victims in death penalty cases and table 3 on the race of death row inmates in the United States (Death Penalty Information Center, 2016).

### **Juveniles**

In 1988, the case of *Thompson v. Oklahoma* (1988), 487 U.S. 815, held that executing juveniles ages fifteen and younger at the time of their crime was unconstitutional (Del, 2008). Therefore, execution in any state could not occur if the person was under sixteen years of age at the time the crime was committed. Nevertheless, in *Stanford v. Kentucky*, and *Wilkins v. Missouri* (1989), collectively 149 U.S. 361, the Supreme Court ruled that the Eighth Amendment does not prohibit the death penalty for crimes committed at age sixteen or seventeen. The court reasoned that “the number of states permitting the death penalty for 16 and 17 year olds was sufficient to establish a national consensus in favor of the death penalty” (Del, 2008, p. 133). Since 1976, twenty-two people have been executed for crimes committed as juveniles (Death Penalty Information Center, 2016).

In 2005, the case of *Roper v. Simmons* (2005), 543 U.S. 551, ended in the decision that executing juveniles is unconstitutional (Del, 2008). In using the evolving standards test, the court held, in a five to four decision, the imposition of the death penalty for offenders who commit their crimes prior to reaching the age of 18 is prohibited (Del, 2008).

## **Women**

Since the exercise of the death penalty during colonial times, women have not been exposed to the death penalty the same way as men. Women have composed only 3% of all U.S. executions since the first woman, Jane Champion hanged in Virginia in 1632, to Aileen Wuornos put to death in Florida in October of 2002 (Death Penalty Information Center, 2016). As of January 1<sup>st</sup>, 2016, there are fifty-five women on death row and only sixteen have been executed since 1976. Over a period of time, women, as opposed to men, are more likely to be “dropped out” the further the capital punishment system progresses. According to the Death Penalty Information Center in 2016 the following list indicates reasons for this “weeding out” effect:

- Women account for one in ten (10%) murder arrests
- Women account for one in fifty (2.1%) death sentences imposed at trial level
- Women account for one in sixty-seven (1.8%) persons presently on death row
- Women account for one in one hundred (.9%) persons actually executed in the modern era

An interesting statistic regarding women and the death penalty lies within the state of Virginia. Although Virginia is one of the leading death penalty states for males, it has sentenced only one female to death since 1973, and that was in 2010 (Streib, 2016).

## **Public Opinion and the Arguments**

One of fourteen people Governor George Ryan of Illinois appointed to serve on his Commission on Capital Punishment, author and attorney Scott Turow, states how he has struggled with such a controversial issue: “Confessions, generally considered iron-clad evidence, may be obtained through questionable means” (Turow, 2016). He questions

eyewitness testimony and jailhouse snitches who give prosecutors false information for leniency.

Many polls of public opinion have fluctuated with inconsistency over the past century. One theory states that public opinion may be intensely divided because of the lack of relevant facts (Death Penalty Information Center, 2016). The public should be completely informed of all aspects of the death penalty, along with why and how it is imposed, so that a fair and unbiased opinion could be formed. Whether it is for or against execution, many believe that public opinion is based on moral leadership and education, and that the government should guide opinions in the matters of criminal and human rights.

According to the well-known Gallup polls, in 1936, 61% of Americans that were surveyed supported the death penalty for people convicted of murder. Capital punishment support dropped to an all-time low in 1966 to 42%. From the 1970's through the early 1990's, a steady increase proved an 80% acceptance by 1994. When voters were given the choice of life imprisonment without parole for criminals, the death penalty support declined to about 50% support (Death Penalty Information Center, 2016). The amount of people who favor the death penalty may also be influenced by what the bible says of an eye for an eye.

So why has the death penalty become so controversial in the United States in recent years? Two developments that have been the focus of many debates are the moratorium in the state of Illinois, along with the execution of Timothy McVeigh in 2001.

“There is a flaw in our system, without question, and it needs to be studied,” said George Ryan, Republican Governor of Illinois. Although he campaigned in support of the

death penalty, he started to review cases dating back to 1977 and concluded that there needed to be some kind of change. As a result of errors in the administration of justice, he commuted all 156 death row inmates' sentences (Del, 2008, p.383).

Sparking global interest, the May 2001 execution of Timothy McVeigh placed all eyes on death penalty issues simply because of the high profile nature of the case (News Batch, 2016).



## **Chapter II**

### **Literature Review**

The following Literature review is going to provide documentation that proves that the death penalty does not deter violent crime. I also hope to find out how the process of the death penalty, if carried out in a more timely fashion, could be a more effective deterrent.

### **Body**

The first article I looked at was “Does the Death Penalty Deter Crime?” by Benjamin S. Tyree (2005). Tyree is currently an attorney with Taylor, Taylor and Taylor Law firm in Richmond Virginia. He attained his B.A. from the University of Richmond in 2008 and his J.D. from Wake Forest University in 2011.

There have been many studies on the effectiveness of the death penalty in reducing violent crime rates. Tyree’s study focuses on whether the threat of the death penalty prevents people from committing capital crimes.

In completing this study there are two hypotheses which govern it: 1) States with a death penalty statute will have lower rates of crimes punishable by death than states without death penalty statutes, and 2) States that have the most executions will have fewer crimes punishable by death than states that do not use their death penalty often and those without a statute at all.

In testing this theory of deterrence it is important to analyze the past practices of utilizing the death penalty, including the place the death penalty holds in present society and the possibilities for its continuance or discontinuance in the future. In order to compare all states equally only the murder rate was considered. There is some

inconsistency among the states regarding which crimes are eligible for the death penalty. All states with the death penalty, however, make first-degree murder or aggravated murder punishable by death.

In order to test the first hypothesis, states with the death penalty will have lower crime rates punishable by death than states without death penalty statutes; the crime rates of Texas were compared with Michigan which has no death penalty statute.

In Tyree's findings of his study his assertion was refuted and thus resulted in a null hypothesis. The relationship between crime rates was either statistically insignificant or significant in the opposite direction of that hypothesized. He found that states that use the death penalty on an average of once per year do not have lower murder rates than those who do not use the death penalty at all. Thus the theory of deterrence does not hold up under comparative testing.

In conclusion the study suggested that capital punishment does not deter others. States that actually carried out more frequent executions had higher murder rates than states with no death penalty sentence.

Another study I reviewed was "Does the Death Penalty Save Lives" by T. Kovandandzic, et. al. (2009). The policy implications they studied were how policy makers and the public can continue to support the death penalty based solely on its deterrent effect. Their support is based on retribution, religion and other justifications.

The authors looked at the work of Sellin (1959) on his capital punishment findings. He determined that there is no discernible deterrent effect on homicide, with death penalty states. Ironically he even revealed that their murder rates were equal to or higher than the equal abolitionist states.

Numerous academic papers over the next two decades investigated the potential deterrent effect of capital punishment on homicide, with most criminological studies showing no deterrent effect or even citing brutalizing effect as homicides increased as an unintended consequence of state executions.

The article mentioned Zimmerman's (2004) study where none of the following methods: lethal gas, lethal injection, hanging or firing squad had a significant impact on homicide rates. The only method of execution that did show a significant relationship to deterrent effects was the utilization of the executions by electrocution.

Frequency of execution was the most widely used method of execution risk in death penalty deterrence studies. The study showed that optimal deterrence is likely to be realized by simply reminding prospective murders of the state's willingness to use capital punishment to deter homicide.

Some of the latest death penalty papers failed to account for some important crime-control initiatives and other historical events that came about in the post-moratorium era. The three strikes sentencing laws enacted in 1994 under the violent crime control and law enforcement act have been linked to homicide increases. The statute provides for mandatory life imprisonment if a convicted felon has been convicted of a serious violent felony in federal court, has two or more previous convictions in state or federal court (at least one is a serious violent felony) and the other may be a serious drug offense (retrieved from Findlaw, 2017).

Some of the deterrence measures looked at in Kovandzic's study is the number of police officers per 100,000 population, the state incarceration rate and the prison death rate. The end result of this study is that they found no deterrent effect of the death

penalty on homicide which suggests the risk of execution does not reduce the violent crime rate.

Another study addressed the argument as to whether or not the death penalty deters criminals. It has been inferred that serious crime rate such as murder are greatly influenced by other factors. A recent survey of criminologists concluded that 88% rejected the theory that the death penalty acts as a deterrent to murder (Death Penalty Information Center, 2016). Of those criminologists surveyed nearly 78% said that the murder rate is not lowered by a state having the death penalty. Also, 94% agreed that there was little empirical data to support the deterrent effect of capital punishment (Death Penalty Information Center, 2016).

In a 1996 survey by Radalet and Akers, sixty-seven leading American criminologists were asked their opinion on the empirical research on deterrence. The consensus was that the death penalty never was, is not and won't ever be superior to long prison sentences as a deterrent to criminal violence. In a 2009 study Radelet and Lacock, "Recent Developments, Do executions lower homicide rates?: The views of the leading criminologists (2009)" replicated the above mentioned Radalet and Akers 1996 survey conducted about twelve years ago in which sixty-seven leading criminologists were surveyed to determine if there was a consensus on whether a long term in prison was inferior to the death penalty. The test was to see if the views of the country's top criminologists have changed by using a different sample of expert criminologists.

Jeffrey Fagan in 2000 looked at the Mocan and Gittings study, conducted by University of Colorado-Denver economist Naci Mocan and one of his graduate students, Kaj Gittings. They built a data set with 1,050 observations (one observation per state for

twenty-one years) by examining 6,143 death sentences imposed between 1977 and 1997 in the United States. Their results showed that each execution resulted in five fewer homicides and each commutation of a death sentence to a long or life prison term resulted in five additional homicides.

Richard Berk, a prominent criminologist, noted that the execution figures were highly skewed. Using Mocan and Gittings's original data set, Berk removed the Texas data, which had a higher than normal number of executions in a few years. After running the model as the original authors did, with Texas removed, the deterrent effect of executions disappeared.

Another reexamination of the Mocan-Gittings study was carried out by Fagan. He showed that results that eliminate deterrent effects were strongly correlated from homicide rates from year to year within a given state which was able to be shown by using alternative statistical models. By using Morbidity and Mortality data from the National Center for Health Statistics instead of the data sets used by Mocan and Gittings which had wide gaps and missing data from the counting of homicides, a more accurate measure of the homicides was obtained. Instead of proving that Mocan and Gittings erred in their assumptions, Fagan showed that small changes in their assumptions could produce wild variations in their deterrence estimates (Fagan, 2005).

A minor change could cause a positive deterrence effect, no deterrence effect, or even the brutalization effect, whereas the homicide rate is increased with each execution. The authors did a great job at refuting several claims that homicide rates were lowered with executions.

Another set of studies that Radelet and Lacock looked at was the Emory Studies. The Emory group was made up of Emory University scholars Paul Rubin, Joanna Shepherd and Hashem Dezhbakhsh. The Emory group's first study covered a period from 1977 to 1996 using the data from 3504 counties and concluded both death sentences and executions tend to lower the homicide rate. They estimated in this study that each execution leads to eighteen fewer murders.

The second Emory study covered a period from 1977 to 1999 and used monthly murder and execution data. They concluded that each death sentence lead to 4.5 fewer murders and each execution lead to three fewer murders.

The third study from the Emory Group looked at the moratorium effects on executions in the United States from 1967 to 1977. They discovered that 91% of the states had higher homicide rates after the death penalty was suspended. After the death penalty was reinstated homicides decreased in 70% of the states. The data they gathered came from all 50 states and covered the time period of 1960 to 2000.

The final study from the Emory Group they discovered that in the states that executed fewer than nine prisoners, there was either no deterrent effect or else the homicide rate actually increased in response to the executions.

In *Flawed Criminal Justice Policies* (2012), Reddington and Bonham deal with the death as the ultimate punishment or failed public policy. They explain that scholars and policy makers of today have by the majority abandoned deterrence as a rational argument for the death penalty. Law Enforcement officials from around the world gathered in Washington, DC recently to hold a summit on the death penalty and discovered that a general agreement was that the death penalty was not an effective

deterrent. The majority of offenders do not think through the consequences of their actions. In fact, they do not think they will ever be caught. A substantial proportion of the general public continues to cite deterrence as a reason for supporting the death penalty.

For decades, researchers have been attempting to answer the question of whether the death penalty deters others from committing murder. Early studies attempted to assess the deterrent effect of the death penalty by comparing states that employed the death penalty with those that did not. These studies typically failed to find any apparent deterrent effect for those states that maintained the death penalty. Murder rates were comparable across similar states regardless of whether or not they had the death penalty. In many cases, murder rates were higher in death penalty states than in non-death penalty states. Some researchers have examined murder trends in more immediate proximity (both temporally and spatially) to executions, also examining the impact of publicity and media exposure for executions. These studies found that, unexpectedly, executions led to both a decrease (deterrence-effect) and increase (brutalization effect) in murders. Highly publicized executions were found to discourage some forms of murder while catalyzing others.

The authors share that the most recent research on deterrence and the death penalty centers around econometric analyses that purport to measure the specific impact of executions on homicides (i.e., identifying the number of murders averted for each execution). These studies revisited the controversial studies done in the 1970's by economist Isaac Ehrlich. Ehrlich, through the use of multivariate economic models to examine the death penalty during the 1950's and '60s, concluded that each execution

resulted in eight less murders. More contemporary economic analyses have found that the death penalty deters anywhere from three to eighteen additional murders. However, documentation of methodological and statistical problems with these studies are many. These economic analyses and their conclusions have been discredited on a variety of grounds including failure to control for other casual factors, ignoring missing data, ignoring the effects of imprisonment (and particularly life imprisonment without parole) on murder rates, and failure to account for population size and faulty assumptions. Fagan (2005) captures the gravity of these flaws: These are serious flaws and omissions in a body of scientific evidence that render it unreliable, and certainly not sufficiently sound evidence on which to base laws whose application leads to life-and-death decisions. The omissions and errors are so egregious that this work falls well within the unfortunate category of junk science.

Attempts at repeating some of these analyses have resulted in inconsistent findings including that, in some cases, executions led to an increase in murders. According to Donohue and Wolfers (2005, p. 841), “We are lead to conclude that there exists profound uncertainty about the deterrent (or antideterrent) effect of the death penalty; the data tell us that capital punishment is not a major influence on homicide rates.”

### **Incapacitation**

Incapacitation refers to physically removing the opportunity for an individual to engage in violent behavior. The death penalty serves as a form of incapacitation. Death certainly prohibits one from being able to commit further acts of violence and murder. Thus execution is the most effective form of incapacitation. In order to have the death



penalty available as a punishment, the individual must have committed a particularly heinous murder which would invoke the greatest level of fear and outrage amongst citizens.

The authors state that the public often holds the mistaken notion there is no real life in prison sentence. The belief is often miscalculated as to the amount of time the offender will serve in prison on their life sentence. This notion is a faulty one as Reddington and Bonham state that all 35 death penalty states and 14 of the 15 non-death penalty states have true life without parole sentences. The convicted offender will spend the rest of their life incarcerated. This does not remove the ability of the offender to harm other inmates and correctional staff. There is also the possibility of an escape, which ironically just happened last year: Three men escaped from the Orange County Jail, California on January 22, 2016, while awaiting trial on charges in violent crimes.

### **Cost**

The death penalty is alleged to reduce costs for the criminal justice system and lessen prison overcrowding. According to Reddington and Bonham, research has frequently revealed that the death penalty is not more cost-effective than alternatives including life sentences. The extraordinary cost to the taxpayers is noticeably more than other alternatives. Various studies have been conducted and the total estimated cost has become profoundly clear that the death penalty presents a substantial financial burden. With the bifurcated trial consisting of the separate guilt and penalty phases, consideration of aggravating and mitigating circumstances which call for extensive investigation and expert involvement and automatic appellate review. The end result is higher costs for pre-trial, trial, and post-conviction components of capital cases (Bohm, 2003). The

authors failed to talk about the attorneys having to be death penalty certified attorneys. This definitely is another factor that should not be ignored.

Another element Reddington and Bonham touch on is the cost-based arguments for the death penalty. The focus seems to be shifting from using the death penalty to reducing costs to abolishing the death penalty to reduce costs (Dieter, 2009).

### **Retribution**

Reddington and Bonham state that retribution is fueled by public outrage and anger in response to what are disturbing and horrible crimes. Retribution is the most cited rationale for the death penalty. Retribution is the repayment of a debt to society for the harm and destruction caused by the offenders' criminal actions. It calls for the death of the offender because by committing murder he forfeited his right to continue living and must lose his life in order to pay back society and make things right, or society has moral imperative, on behalf of all the victims to pay the offender back in a way that matches the or exceed the harm his crime caused. The death penalty is mandated in order to maintain a balance of justice and order in society.

Reddington and Bonham explain the three keys of criteria to consider when determining whether the death penalty actually meets the objectives of retribution.

1. It must be proportionate that the offenders receiving the death penalty are the most deserving of death.
2. It must create a righting of wrongs created by the original crime.
3. It must be given out as a sentence with little error as possible.

### **Proportionality**

As stated in *Gregg v. Georgia*, 1976, the death penalty is applied equivalently based on the heinousness of the offense in that those who commit the same crimes will receive the same punishments and that the death penalty is the worst of these punishments and is reserved only for those who commit the worst possible crimes. Reddington and Bonham touch on the fact that cannot be ignored in that where one commits the crime (geographically) appears to be much more of a factor whether one receives the death penalty than any other consideration of proportionally. To prove this point only five states account for about two-thirds of executions in the United States (Bohm, 2007).

Prosecutorial discretion as well as jury discretion fuels the inequalities of the application of the death penalty based on the characteristics of the offender and/or victim. Offenders who murder a black victim are far less likely to receive the death penalty than those who murder a white victim (Baldus & Woodworth, 2003).

Another variable is social class and gender of the offender and victim as a deciding factor in who gets the death penalty. According to Reddington and Bonham, death row is populated predominately with poor offenders.

### **Justice and Social Catharsis**

Reddington and Bonham explain that the death penalty is perceived as moral imperative both in the sacredness of human life and also maintaining order within society. It is an attempt to balance the scales by meeting equal gravity of punishment with the harmful criminal acts. The claim that we have a duty for retribution and to bestow justice for the victims and their families is one of the most emotionally and

powerful arguments in favor of the death penalty (Vollum, 2008). Many victims state that the execution failed to deliver healing, justice and closure that they were seeking. Some went on to state that it only extends their grief and suffering. The death penalty appears to be reflective of the retributive criminal justice system that in the wake of a crime neglects victims and their families.

### **Innocence and Wrongful Conviction**

The United States death penalty system has been plagued with errors over the years. Since 1973, 138 death row inmates have been exonerated, some within hours of execution. Still troubling yet is the number of those who were executed only to have evidence surface after the fact that they were innocent. The greatest error that can be made in our criminal justice system is the execution of an innocent person. Reddington and Bonham pose the question, "Are errors more likely in capital cases?" The answer appears to be "yes." Capital murders are particularly brutal cases by their very nature in which the public is outraged and filled with horror. The pressure to make an arrest and secure a conviction is heightened. The authors contend that increased risk for error is well documented and not merely hypothetical theories. The bifurcated process in which capital cases are tried contributes to the heightened risk for error. In the first phase, guilt is determined and in the second the sentence is determined. The jury selection process is where the error appears to lie. The death qualification process of the jury selection eliminates those who are against the death penalty and stacks the deck as far as the composition of capital jurors who serve and who are in favor of the death penalty. In the *Decline of the Death Penalty and Lessons Learned*, Reddington and Bonham point out that with the financial costs of the death penalty, the growing knowledge of wrongful

convictions, and the awareness of life without parole alternatives, there seem to be a change in public opinion. The death penalty fails to achieve deterrence, incapacitation, cost-savings or retribution comparable to what less severe alternatives provide.

The authors state that resources currently spent on capital cases should be shifted toward policies that work to prevent violence and criminal actions. The trend appears to be shifting from a punitive approach to a multi-faceted approach with the reduction of crime and violence as its focus. They go on to say that the death penalty does not live up to the rationale on which it was based. It is a failure in deterrence, cost-savings or any value. The decline of its implementation in the United States reflects the harsh reality of its shortcomings and leads the way for hope of more socially productive policies in the future. With the advent of modern science and technology techniques there is hope for more thorough and accurate investigations by law enforcement in the future.

## **Chapter III**

### **Methods**

Supporting literature on the death penalty's failure to deter violent crime was located utilizing the Youngstown State University Maag library journal finder and Ohio Link. Search terms included the following: death penalty, capital punishment, executions, deterrence, crime rates and homicide rates. Approximately fifty articles and studies were looked at for my research. Not all of them were cited in this thesis, however, as they did not provide relevant detail that I was able to use. Some exemplary resources are noted in this section.

I searched for and reviewed articles, books and websites with an eye for anything that would shed light either on the death penalty saving lives or on it lowering homicide rates. The Death Penalty Information Center, a non-profit group based in Washington, DC, proved to be a valuable resource and wealth of information, facts and charts. Those researching the death penalty quite often cite and quote information from this website.

Amnesty International, as I referenced earlier, has worked towards the abolition of the death penalty by pointing out that it is skewed by economic and racial bias and tainted by human error (Amnesty International, 2016). On their website they have a wealth of information and reasons for calling for the end of capital punishment. The racial discrimination and convictions of African-Americans have been in the forefront of the death penalty debate for decades. In this vein, scholarly articles were considered towards the research field of study including *Race Discrimination and the Death Penalty: An Empirical and Legal Overview* by Baldus & Woodworth; and *New Claims About Executions and General Deterrence: Déjà vu All over again* by Berk. R.M. Bohm had

two excellent articles in the book *Deathquest III: An Introduction to the Theory and Practice of Capital Punishment in the United States, and The Economic Costs of Capital Punishment: Past, Present and Future*.

Another search I carried out was on the death penalty and crime rates. I found a vast array of information was on the Newsbatch website which examined some key issues of the policy issues on understanding the death penalty. I discussed some of the information earlier from the legality and availability of the lethal injection method of execution, to the number of death row inmates who are mentally retarded (10%) and lastly to the number who wind up on death row because of the high profile nature of their cases.

I also supplemented my research with textbooks from some recent death penalty classes I have taken here at Youngstown State University, including *The Death Penalty: Constitutional Issues, Commentaries and Case Briefs* by Del; *Law and Society* by Vago; and *Flawed Criminal Justice Policies: At the Intersection of the Media, Public Fear and Legislative Response* by Reddington.

I have done an overview or review of the various death penalty studies previously conducted through academic articles, journals and text books, comparing resources and collaborating results. My research design was that of an integrative one as I looked at previous research to see what conclusions support my stance on this issue. I gathered my evidence from a meta-analysis of other death penalty deterrence studies. I found that there are many studies proving that the death penalty does not deter violent crime and why it is failing in doing so.

I did not have a sample population as I reviewed previously conducted studies and various research and I did not have variables as I completed a qualitative study completing a meta- analysis of previous studies. I analyzed and evaluated previous research studies, statistics, and academic journal reports.

The reliability and validity of the measures in this study were looked at after the fact to assess the quality of the information obtained. The reliability and validity will be strengthened or weakened over time through longitudinal studies based on this theoretical perspective of the death penalty a deterrent in reducing violent crime rates.

My main focus was on reduction and deterrence in violent crime with the use of Capital Punishment.

Definitions are listed as follows:

1. Deterrence is the act of making someone decide not to do something: the act of preventing a particular act or behavior from happening (Merriman-Webster, 2016).
2. Capital Punishment is simply defined as punishment by death: the practice of killing people as punishment for serious crimes (Merriman-Webster, 2016).



## **Chapter IV**

### **Conclusions / recommendations**

Any judicial sanction should either be for the purpose of deterring others or providing justice. Scholarship to date strongly supports my thesis that the death penalty does not reduce the violent crime rate. There is consensus among previous researchers that there is no measurable deterrent effect: All the literature I reviewed supported my thesis with the exception of a few decades-old studies which were later debunked as junk science by later researchers. The statistical analyses used in prior studies showed that the difference in crime rates was not significant in death or no death penalty sanctions. Ironically states that actually carried out executions frequently experienced higher rates of murder than the states with a death penalty statute with infrequent use and states that have no death penalty statute at all.

The jury is still out on whether or not capital punishment meets the requirement of providing justice.

Studying crime rates to determine the short-term deterrent effect of an execution as it compares to the crime rates on a weekly basis could be one way of continuing further research on this important topic. People currently sit on death row for an average of 15.83 years until they exhaust all their appeals (Death Penalty Information Center, 2017). So, if the executions were carried out in a more timely fashion, swift, certain and severe, would it deter violent crime?

## **Chapter V**

### **Contributions**

The main contribution that this project makes is providing the facts about the failure of lowering the violent crime rate by imposing the ultimate penalty; one's life. Future research is needed and should be completed as a furtherance to abolish capital punishment.

Through the analysis of the various and previous studies I believe that there is a consensus through the research that the death penalty is not effective in reducing violent crime rates.

The Supreme Court interprets the limitations on the death penalty based upon the evolving standards that mark the progress of a maturing society. The fact that the United States is the only industrialized western society still executing their people speaks volumes about how far out of line we are with the rest of the world. There has been a recent trend in the narrowing of death penalty eligible crimes. Do we really want to be associated with China, Iran, Iraq and Saudi Arabia whom in 2009 executed 714 people combined?" (Vago, 2012, p.203)

## **Chapter VI**

### **Discussion**

Some of the potential problems, limitations and weaknesses I found in this project are that there are many difficulties in determining a reduction in crime rates. For instance, different courts in different areas of the country are presided over by judges who hold true to the values and ideologies of the region in that part of the county. It will have a direct effect in how harsh or lenient they may be in sentencing to deter crime those that are brought before his or her court, which may affect crime rates.

Another difficulty may be the want or will of the prosecutor in bringing forth some of the charges on the cases brought before him or her. This once again ties into the plea bargain process and the sometimes necessary charge of capital punishment being placed on the table as a possible conviction to get the subject to take a plea.

The effectiveness of counsel brought forth to represent the defendant is always an issue in death penalty cases in court. Are they court appointed or has the defendant sought out their own attorney to represent themselves?

What about the race of the suspect and the victim? Studies have shown the high imposition of the death penalty when the suspect is black and the victim is white. However, some statistics show that more white people are put to death than blacks, as is the case in Ohio; Post Gregg decision.

The education or lack of education is a factor in understanding whom is in favor of or against capital punishment. The vast majority of the general public is probably not aware that it has been proven that it is cheaper to keep an inmate in prison for the rest of

his or her life than it is to house them on death row with an execution date years down the road.

I examined various studies, academic journal articles and various text books with these above issues as possible roadblocks to my study and for future studies.

## Chapter VII

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Table 1. Authorized Methods of Execution by State

Retrieved from the Death Penalty Information Center (06 Oct. 2016).

Method	# of executions by method since 1976	# states authorizing method	Jurisdictions that authorize
Lethal Injection (Primary method in all states)	1263	33	Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska*, Nevada, New Hampshire, New Mexico*, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wyoming, U.S. Military and U.S. Government
* Nebraska and New Mexico abolished the death penalty but their repeals may not apply retroactively, leaving inmates on death row facing possible execution.			
Electrocution	158	8	Alabama, Arkansas, Florida, Kentucky, Oklahoma, South Carolina, Tennessee and Virginia
Gas Chamber	11	5	Arizona, California, Missouri Wyoming and Oklahoma
Hanging	3	3	Delaware, New Hampshire and Washington
Firing Squad	3	2	Oklahoma and Utah



Table 2. Race of Victims in Death Penalty Cases

Retrieved from the Death Penalty Information Center (06 Oct. 2016).

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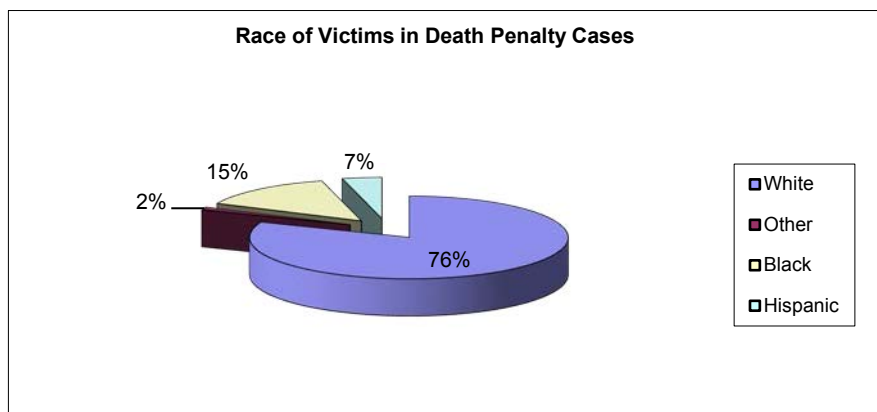


Table 3. Race of Death Row Inmates in the United States

Retrieved from the Death Penalty Information Center (06 Oct. 2016).

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