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Reviewing Constitutionality of Time Spent on Death Row Under Eighth Amendment Jurisprudence

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REVIEWING CONSTITUTIONALITY OF TIME SPENT ON DEATH ROW UNDER EIGHTH AMENDMENT JURISPRUDENCE

by

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Abstract

Under the Eighth Amendment, the death penalty is in and of itself not considered cruel and unusual punishment. Although the death penalty is frequently attacked for the numerous death row exonerations (more than 150 in the United States alone), lack of evidence supporting the idea that the death penalty deters crime, and marginalized groups being more likely to receive this sentencing, the death penalty still remains on solid constitutional ground. In fact, the arguments that pose the biggest threat to the constitutionality of the death penalty tend to revolve around the potential risk of substantial pain while executing an offender, or the type of offender that can or cannot be executed. One argument that has not received as much traction, but rests on similar logic to those that have, revolves around the constitutionality of sitting on death row. Specifically, the argument that this thesis will address is whether the time spent on death row, not the execution itself, violates the Eighth Amendment? This question will be addressed through three-parts: I. Death Penalty in Modern U.S. Jurisprudence, II. Overlooked Problematic Effects of Death Row and III. Time on Death Row as a Possible Constitutional Violation. Part I. reviews the literature of death penalty jurisprudence and is divided into three smaller parts. Part II. presents an analysis of death row and the effects it has on inmates. Part III. analyzes connections between inmates' mental health and their competency.

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Introduction

The United States remains the only developed nation in the Western hemisphere to continue to administer the death penalty as the highest form of punishment. When studying modern day jurisprudence surrounding execution the question arises: why does the United States deviate from other Western nations' philosophies and principles? One simplified answer to that is: under the Eighth Amendment of the United States Constitution, it is legal for States to execute as a punishment for a crime. If there is one thing the US Constitution is known for, it would be for its vagueness which encourages broad interpretation and room for laws to evolve with present-day societal values and norms. In that respect, for years the death penalty as a form of punishment has been a topic of review in many important Supreme Court decisions.

Under the Eighth Amendment, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted" (US. Const. amend. VIII). When briefly examining Eighth Amendment Jurisprudence, *Gregg v. Georgia* (1976) reversed the Supreme Court's prior decision of eradicating the application of the death penalty and found that the death penalty as a punishment did not violate the constitution. The Supreme Court affirmed the decision of the Georgia Supreme Court and had held that the jury's review of the crime, the nature of the crime and individual characteristics of the defendant, along with the provided method of review did not violate the Constitution. When litigators bring lawsuits surrounding the lawfulness of the death penalty, a frequent concern is whether "cruel and unusual punishment" has been inflicted. However, most of the arguments presented revolve around the potential risk of substantial pain while executing an offender, or the type of offender that can or cannot be executed (*Furman v. Georgia*, 1972).

Since capital punishment is considered constitutional, surprisingly, not many lawsuits have been brought up arguing the constitutionality of sitting on death row. Although common justifications for administering the death penalty are that it serves as a form of deterrence and provides victims with a sense of closure, many cases have been presented questioning who should be eligible for death and how prison personnel should execute. Even though the application of the death penalty and those who would be considered eligible are constantly reviewed, a glaring component courts seemingly glosses over is the actual time spent serving this sentence. As of now, administering capital punishment does not constitute as "cruel and unusual punishment," however, the conditions and time spent are basically ignored by U.S. Courts. The time spent on death row creates many lasting, severe psychological effects that are overlooked by many courts. The ambiguity of what constitutes cruel and unusual punishment under the Eighth Amendment and the constant evolving standards presents an underexplored concept: whether the time spent on death row, not the execution itself, violates the Eighth Amendment?

This thesis will attempt to defend the contention that the length of time spent awaiting execution needs to be cured and reevaluated or else this remains unconstitutional, therefore, violating the Eighth Amendment. This thesis will examine capital punishment and death row through three-parts: I. Death Penalty in Modern U.S. Legality, II. Overlooked Problematic Effects of Death Row, and III. Time on Death Row as a Possible Constitutional Violation. Part I. reviews the literature of death penalty jurisprudence and is divided into three smaller parts. Part II. presents an analysis of death row and the effects it has on inmates. Part III. analyzes connections between inmates' mental health and their competency.

I. Death Penalty in Modern U.S. Jurisprudence

The intent of this literature review is to enquire whether or not placing convicted felons on death row violates their Eighth amendment and constitutes as cruel and unusual punishment through a review of precedents, legislation, social and political climates. This literature review will give an overview of the death penalty, eighth amendment, and the effects it has on inmates. This will be divided into three parts: (A) History of Eighth Amendment Jurisprudence, (B) Prominent Disputes, and (C) What Determines What is Considered "Cruel and Unusual" with Respect to Executions?

A. History of Eighth Amendment Jurisprudence

Modern Eighth Amendment jurisprudence begins with *Furman v. Georgia* (1972). *Furman* was a Supreme Court ruling which reevaluated what is considered cruel and unusual punishment and set the tone for Eighth Amendment jurisprudence thereafter. William Henry Furman, an African American, was convicted of murdering William Mickie in Savannah, Georgia while attempting a burglary in August of 1967. When he tried to flee the home invasion, he exclaimed that the shot he fired was merely an accident. Furman then became eligible for the death penalty under Georgia's state law for the murder of William Mickie. Along with this case, *Jackson v. Georgia* and *Branch v. Texas*, were also brought on a writ of certiorari to the U.S. Supreme Court. Unlike the defendant in Furman, Lucius Jackson and Elmer Branch were both convicted of rape. The Supreme Court struck down the three death sentences, with the majority finding that the death penalty violated both the Eighth and Fourteenth Amendment. The Court held that the application of the death penalty was erratic and discriminatory since it was imposed on very few, rare cases and was primarily inflicted upon certain minority groups.

The societal response of *Furman*, Carol and Jordan Steiker (2014) found that the decision was met with "consternation and even outrage" (C. S. & J. M. Steiker, 2014). The public's disdain of the decision in *Furman* was largely due to the new political reality of crime and punishment of that time. During the 1960s and 1970s, "homicides and serious violent crimes were among the offenses that rose the fastest, and urban centers went from being relatively safe to being notoriously crime-ridden" (p. 191). Along with the rise of crimes arose the trajectory of the growing demand for policies that were "tough on crime" and combated the "war on drugs." This led to the reinstatement of capital punishment in 1976 through *Gregg v. Georgia*.

Four years after *Furman* was instated, Tory Gregg was convicted of armed robbery and murder and was sentenced to death in the State of Georgia. Gregg had murdered Fred Edward Simmons and Bob Durwood Moore and then robbed from them and stole their vehicle. At that time, after the instatement of *Furman*, states such as Georgia, Florida, Texas, North Carolina, and Louisiana each amended their death penalty statutes to meet the Furman guidelines. Along with Gregg, five other defendants with the same conviction brought a writ of certiorari to the Supreme Court asking the court to review Furman and proclaim that the death penalty was unconstitutional since it violated the Eighth Amendment's cruel and unusual punishment clause. In *Gregg v. Georgia* (1976), the court found that the death penalty as a punishment did not violate the constitution and affirmed the decision of the Georgia Supreme Court. The Court held that the jury's review of the crime, the nature of the crime and individual characteristics of the defendant, along with the provided method of review did not violate the Constitution.

In *Gregg v. Georgia* the court praised Georgia's statute, finding that it served as a check against arbitrariness and eliminated the possibility that a person will be sentenced to die by the decision of a deviant jury. Although this was approved by the Court, in a law review written by

Robert J. Smith (2015), Smith believes that "*Gregg* did not demonstrate that post-*Furman* statutes such as Georgia's had eradicated arbitrariness" (p. 1159). Smith divides crime-based arbitrariness into two subsections: 1. Narrowing and Numerousness, and 2. Meaningful Appellate Review.

Under his first subsection: Narrowing and Numerousness, Smith contends that the narrowing of the death penalty eligibility needs to be fixed. Currently, in determining whether arbitrariness exists, the courts focus first on eligibility and then assesses the frequency of death sentencing within the class of eligible offenders. However, Smith explains that the narrowing requirement fails at limiting and restricting death-eligibility because legislatures have expanded the list of eligible crimes and increased the number of aggravating circumstances. His main argument is that arbitrariness has changed since *Furman*. Before *Furman* was instated, there was a lack of standards guiding the judge or jury tasked with making the death determination, and the risks associated with arbitrariness pre-*Furman* are not the same as today. Today, the death penalty is prohibited for non-homicide offenses, and there are standards in placed to guide judges and juries. In Smith's second subsection: Meaningful Appellate Review, Smith contends that the continued existence of arbitrariness in regard to the death penalty is due to "the failure of appellate courts to engage in the type of meaningful appellate review envisioned in *Gregg*" (p. 1162). Similar to problems seen in the narrowing requirement, the current proportionality review instated in *Gregg* suffers the same dilemma: arbitrariness has shifted its shape. Today, there is less need for monitoring because the death penalty is limited to homicide offenses and then is handled in a bifurcated trial where jurors are instructed to consider both aggravating and mitigating evidence (Smith, 2015). As opposed to pre-*Furman* and post-*Gregg*, monitoring arbitrariness is both time-consuming and difficult to do on an ongoing basis Smith argues that

both the narrowing requirement and proportionality review "promotes consistency but fails to address excessiveness adequately" (p. 1163).

Another issue that has somewhat evolved since *Furman* is crime-based race discrimination. Race discrimination was one of the main themes that emerged from *Furman*, and the justices at the time believed that it contributed to some of the lack of rational and consistent results. The death penalty's jurisprudence after *Furman* demonstrated that race discrimination was a huge influence in that justices' decision through *Coker v. Georgia*. In that case, the Supreme Court held that the death penalty is an excessive punishment for the crime of rape. This relates to crime-based race discrimination because black defendants disproportionately received the death sentence in most capital rape cases. Smith also cites *McCleskey v. Kemp* as the first time the Supreme Court addressed race discrimination. The argument made in *McCleskey* was that defendants of color that killed a white victim were disproportionately sentenced to death. *McCleskey* also provides a statistical analysis that defendants were sentenced to death 4.3 times more often if the victim was white than black victims. *McCleskey* also found that black defendants who killed a victim that was white were more likely to receive the death penalty. However, the Court recognized that these studies were not sufficient in proving race discrimination in *McCleskey*. Just like arbitrariness, Smith argues that crime-based race discrimination is not that same as when *Furman* instated it. He argues that (i) it is more difficult to pinpoint race as a factor that explains death sentencing inconsistencies, (ii) the Court's recent retrenchment from voting rights and affirmative action would make reforming or overturning the death penalty highly unlikely, and (iii) this retrenchment from voting rights and affirmative action would make reforming or overturning the death penalty highly unlikely, and would also call for a highly unlikely change in the criminal justice system.

The present state of the Eighth Amendment in regard to the death penalty simply states that there should be no excessive bail and it prohibits cruel and unusual punishment. When reviewing what constitutes as "cruel and unusual punishment" under the Eighth amendment, the Constitution does not explicitly say. When analyzing the cruel and unusual punishment clause of Eighth Amendment, Ingraham v. Wright (*1977*) attempts to confine it as the criminal process by "(1) limiting kinds of punishment that can be imposed on those convicted of crimes, (2) proscribing punishment grossly disproportionate to severity of crime, and (3) imposing substantive limits on what can be made criminal and punished as such" (*Ingraham v. Wright*, 1977).

B. Prominent Disputes

The controversies addressed in *Furman* and *Gregg* revolving around the Eighth Amendment jurisprudence have opened the gates to new arguments and stoked the flames of old arguments regarding the necessity of the death penalty. In a law review written by Kevin Barry (2014), he contends that the most prominent challenges introduced against the death penalty, revolve around these three common stances: "(1) the death penalty is invariably, or per se, unconstitutional; (2) the death penalty is unconstitutional as applied to a particular defendant based on the character of the defendant's crime or a characteristic of the defendant; and (3) the death penalty is unconstitutional as applied to a particular defendant based on the procedures used to sentence the person to death" (p. 359). Echoing Barry (2014), much of the literature indicates that, when discussing why one may be for or against capital punishment, the four most prominent disputes addressed are: (1) whether the death penalty actually deters crime, (2) whether the death penalty provides victims with closure, (3) whether imposing the death penalty

is too risky and treacherous, (4) whether people even have the right to sentence an individual to death (Ichinose, 2017).

(1) Whether the Death Penalty Actually Deters Crime

The most prominent justification for the death penalty is that it deters crime. This justification mostly stems from views and perception from the public on how the death penalty can serve as deterrent for future offenders. However, this notion itself is already problematic. In a study examining public opinion of the death penalty conducted by Falco and Freiburger (2011), they concluded that although that the majority of the public are in favor of the death penalty but, their opinions on whether it deters crime are inconsistent. In their research they concluded that there needs to be more comprehensive research that would be able to encapsulate the complexity of individuals views. With that being said, although there are numerous supporters in favor of the death penalty, the basis of its justification that it serves as a deterrent seems to stem from mostly public opinion. In a contention by Dr. Robert Bohm on whether the death penalty should be allowed, he stated there is not any evidence that supports the death penalty demonstrating a marginal deterrent effect (Lee & Bohm & Pazzani, 2013). Similar to what Bohm contended, studies seeking to confirm whether the death penalty serves as a deterrent, the findings tend to be minimal and inconsistent (Lee & Bohm & Pazzani, 2013).

Most studies that attempt to explain whether capital punishment deters crime result in findings that are insignificant. In research conducted by Bailey (1980), he states in order for deterrence to be effective, it must be "(1) severe, (2) administered with certainty, (3) administered swiftly, (4) and administered publicly" (p. 4). The purpose of the research in that study was to examine the celerity of death penalty sentences administered and whether there was any correlation between deterrence. In one of Bailey's analysis of sanctions and homicides rates

in 1960-61, in both measures, his findings did not support that there is a positive association between the certainty and celerity of the death penalty since none of the sanctions coefficients he measured were statistically significant. The rest of his study follows the previous results. Although this was an analysis of insignificant findings from the 1980s, there are still only limited findings supporting the majority consensus of administering the death penalty serves as a deterrent (Lee & Bohm & Pazzani, 2013).

(2) Whether the Death Penalty Provides Victims with Closure

The Victims' Rights Movement began its rise about over 40 years ago as a movement that demanded victims' testimonies to be heard and influence decisions made in court. It may seem a bit redundant for a movement to exist that solely demands for victims' testimonies to be sought when offenders and victims are always conjoined in a criminal trial. However, it is the sense of grief and rage that are introduced in cases that invites conflicting views on the level of influence victims provide in lawsuits.

Payne v. Tennessee (1991) is the landmark Supreme Court decision that reversed established death penalty jurisprudence in the United States and influenced the course of the Victims Rights Movement. *Payne* allowed for victim impact statements to be brought in capital cases. Although *Payne* can be considered a major triumph for the Victims' Rights Movement, the concept of "vengeance" in these cases emerged.

When examining capital crime lawsuits, modern legality tries to avoid retribution as the preeminent decision when inflicting punishment on an offender (Sarat, 1997). Although retribution is often thought of as a synonym to revenge, the philosopher Robert Nozick contends that there is a key distinction between these two terms and how the concept of retribution should

be treated in modern legality. Nozick's main argument is that the key distinction between retribution and vengeance is "passion and reason." Nozick's contention is also supported in other academia, "When the victim's voice is silent, punishment cannot restore to the victim a sense of being in control or being able to exert power" (Sarat, 1997). Through providing a distinction between retribution and vengeance contributes to the argument that allowing for victim impact statements does not inflict punishment through revenge but rather creating the best legal efforts to ensure that the victims receive relief. With the decision of *Payne* and the persistence of Victims' Rights Movement introduces another concept that the courts have to consider, victim closure.

In regard to arguing the necessity of capital punishment, a common stance people tend to propose is the idea of victim closure. Eaton and Christensen (2014) define closure as a term which describes the "desired state for the family members of murder victims, but also as a rationale for imposing the death penalty and for allowing co-victims to witness the execution" (p.328). They argue that this type of rhetoric is problematic for several reasons. The concept of victim closure creates the expectation that after witnessing an execution, a victim may gain a sense of relief and resolution, but Eaton and Christensen contend that this is not necessarily always the case. The main argument that drove their study was that victim closure is too abstract of a term to be used generally among all victims and reasons to promote capital punishment. In their qualitative findings, about 23% specifically used the term 'closure.' They then divided this group into two groups: those who stated that they gained a sense of closure and those who explicitly stated that they did not gain/experience closure. Along with this, another subset group was created, with 9% expressing closure without outright deliberating stating it. Eaton and Christensen both admit that it is difficult to quantify and define the concept of closure through

their study due to the influence of the media. In their findings, they could not accurately code explicit closure due to the fact that the mention of closure from the co-victim were mostly direct responses to a question posed to them by a media representative. This also affected their study since media reports tend to not provide the questions in their reports. The influence of media/media representatives greatly impacted their study since they could not necessarily estimate the number of victims who spontaneously mentioned closure after they witnessed the execution.

In debates that attempt to assess how imperative the damages and suffering of victims when reaching a ruling, there is not many significant findings that fully supports the concept of victim closure. Despite the wide public support for Victim Impact Statements and keeping capital punishment instated, to enforce the death penalty on the basis that it would provide "victim closure" when the concept itself has not been well defined is a bit challenging.

(3) Whether Imposing the Death Penalty is too Risky and Treacherous

On June 26, 2019, Charles Ray Finch was exonerated after spending 43 years in prison for a crime he did not commit. ("Charles Ray Finch Exonerated 43 Years After," 2019). Finch is now the 166th innocent person exonerated from death row in the U.S. A common argument brought by opponents of the death penalty are the potential risk it imposes (Blackerby, 2003). This often leads to a somewhat philosophical debate defended on both sides of the spectrum: is it justified to continue placing convicted criminals on death row as punishment even with the looming potential risk it invites.

Blackerby (2003) attempts to prevent wrongful convictions through examining current U.S. criminal justice system in her law review, *Life after Death Row: Preventing Wrongful Capital*

Convictions and Restoring Innocence after Exoneration. Blackerby provides examples of some the contributors that lead up to wrongful convictions in capital cases, and most of the examples provided were incompetent administration procedurals. She first introduces "faulty forensic science," where there have been many cases of individuals lying about their credentials and presenting false, misguided findings. Blackerby uses Joyce Gilchrist as an example of a recent case of a "forensic scientist" who lied about their credentials. Gilchrist worked with the Oklahoma City Police Department and provided testimony which helped send 23 defendants to death row. Now all the cases are being reexamined since there is now evidence that has been provided that Gilchrist gave false or flawed testimony throughout her 21-year career as a forensic scientist. Blackerby then moves on to misconduct performed by police and prosecutors. In many cases, misconduct or mistakes occur at times where it is safe to assume the system should be accurate. Many are wrongfully convicted at the investigation stage where a police officer identifies the wrong criminal. Another common cause that leads to a wrongful conviction are prosecutors' persistence to pursue a case even when there is substantial evidence of the defendant's innocence. Aside from prosecutorial causes, many defendants who are wrongfully convicted tend to have inadequate counsel. These common errors found in the criminal justice system further demonstrates that there is substantial risk in administering the death penalty.

(4) Does One have the Right to Sentence an Individual to Death?

Gregg v. Georgia reaffirmed that capital punishment is a constitutional and justifiable means of punishment since it does not violate the eighth amendment's cruel and unusual punishment clause. Most lawsuits focus on whether the "cruel and unusual" occurs when inflicting capital punishment, however, these cases tend to fail to bring up the argument whether if a State should have the "right" to conduct an execution. This may be largely due to the vagueness of the United

States constitution and the lack of written law examining the grand philosophical dispute of whether States should have the "right" to carry out the act of executing an individual.

Japanese philosopher, Masaki Ichinose (2017), believes that there are three chronological stages as to why modern society as whole feels the need to implement the death penalty. The first stage he provides is what he calls the "Harm Stage." This stage goes hand in hand with the Victims' Rights Movement beliefs because the direct focus is on the victims who suffered from the harm. The following phase is the, "Blame Stage." This extends to the period of the execution and relies heavily on retributive justice. The final phase is the "Danger Stage." This phase solely focuses on crime deterrence and the imminent danger society is in when a capital crime has occurred. This justification examines both society and the crime and how to prevent a crime of this scale from happening in order to fulfill a "unilateral goal" of potentially protecting victims of future crime.

When examining capital punishment, most arguments tend to have retributive justice as the underlying justification. Although it can be argued that almost all lawsuits have some sort of retributive themes underlying them since there is always some sort of victim suffering, if the goal for U.S. courts is to avoid inflicting punishment that adheres to a retributive form of justice, then it can be argued that there needs to be a reevaluation of capital punishment in the U.S. if recurring themes of retributivism continue to appear.

C. What Determines What is Considered "Cruel and Unusual" with Respect to Executions?

As mentioned earlier, when reviewing what constitutes "cruel and unusual punishment" under the Eighth amendment, the Constitution gives no explicit answer. When analyzing the cruel and unusual punishment clause of Eighth Amendment, *Ingraham v Wright* (1977) attempts to confine it as the criminal process by "(1) limiting kinds of punishment that can be imposed on those convicted of crimes, (2) proscribing punishment grossly disproportionate to severity of crime, and (3) imposing substantive limits on what can be made criminal and punished as such."

There are specific rules addressing whether an execution should be carried out and how the death penalty is mandated. The "*Eighth Amendment* mandates that court carefully consider both character and record of individual offender and circumstances of particular offense before upholding infliction of death penalty." *State v. Windsor* (1985). Many Supreme Court rulings address who is "eligible" to receive capital punishment and how this punishment is executed. In *Atkins v. Virginia* (1989), the Supreme Court prohibited executing offenders with an intellectual disability. In *Roper v. Simmons* (2005) the Supreme Court made it unconstitutional to execute offenders who were under 18 at the time their crime was committed.

There are also provisions states have to adhere to in regard to the certain type of murder a mentally competent adult commits. In *Coker v. Georgia* (1977), the Supreme Court prohibited executions for rape when the victim is not killed. *Kennedy v. Louisiana* (2008) limited a state to impose the death penalty to individuals committing a crime that resulted in the death of the victim and to crimes against the state such as espionage, and treason.

Since the death penalty is not considered unconstitutional under the Eighth Amendment, the methods of execution were an important distinction that had to be addressed. In *Baze v. Rees* (2008) the Court established “To constitute cruel and unusual punishment, the execution method must present "substantial" or "objectively intolerable" risk of serious harm; a state's refusal to adopt proffered alternative procedures, without legitimate penological justification for adhering to its current method of execution, may violate Eighth Amendment only where alternative procedure is not only feasible and readily implemented, but also, in fact significantly reduces substantial risk of severe pain.” (Baze v. Rees, 2008). Methods that were defined by the Supreme Court as posing a substantial risk of severe pain are addressed in *Wilkerson v. Utah* (1878) which recognized that drawing and quartering, public dissection, burning alive, or disembowelment constitute as cruel and unusual punishment.

Although plenty of established rules and regulations exist on how the death penalty is mandated and how capital punishment should be executed, there is little to no explanation which addresses whether the time being spent on death row could potentially cause an inmate to suffer mental illness. Under the Eighth Amendment and preceding landmark cases, many of them do not address the imminent psychological effects. The few cases that do attempt to try this fail to decide whether it constitutes “cruel and unusual.” In *Porter v. Singletary* (1995), the petitioner failed to prove that his prolonged stay on death row rose to the level of “cruel and unusual” because he had no evidence that the delays made by the state demonstrated were attributable to negligence. In *Porter*, there most likely would have needed evidence provided that demonstrated negligence resulting in the causation of severe emotional distress through negligent action (Legal Information Institute, n.d.). However, Porter failed to prove that lengthened stay on death row were attributable to negligence resulting in cruel and unusual punishment inflicted. There are

many other preceding cases which attempt to argue the delay of a death row sentence, but not many argue whether or not such prolonged sentencing can be deemed as psychologically taxing (*Lackey v. State*, 1995).

II. Overlooked Problematic Effects of Death Row

When overviewing capital punishment in the United States as whole, there are variety of aspects examined that are used as arguments for or against the justification of the death penalty. However, whereas most justifications solely focus on whether the U.S. should be allowed to execute, there is very limited research and argument that focuses on the current state of capital punishment and the effects that it has on those convicted inmates. Since the Eighth Amendment is conspicuously ambiguous, it allows for underexplored concepts to emerge, such as: whether the time spent on death row, not the execution itself, violates the Eighth Amendment?

A. Death Row Phenomenon and Syndrome

Harrison and Tamony (2010) attempt to define and address the ambiguity of the concepts of Death Row Phenomenon and Death Row Syndrome. Although the concepts are often used interchangeably, Harrison and Tamony defines Death Row Syndrome as "the consequential psychological illness that can occur as a result of Death Row phenomenon" (p. 2) and Death Row Phenomenon as "the harmful effects of the conditions experienced on death row, including solitary confinement and the mental anxiety that prisoners experience whilst waiting for their death sentence to be imposed"(p. 2). Since both concepts are similar, they made sure to distinguish key aspects of these terms through a more detailed description of Death Row Syndrome as the "resulting psychological harms of that experience, or the set of psychological

effects for inmates that can result from extended periods of time spent on death row, in harsh conditions, coupled with the unique stresses of living under [a] sentence of death"(p.2).

Though some psychiatrists and academics recognizing the presence of Death Row Syndrome, Harrison and Tamony admittedly note that it is not considered a mental health disorder by the American Psychiatric Association (APA). It is important to note within these definitions that there are smaller concepts that accompany them. When attempting to define Death Row Phenomenon it can be separated into three categories: "the harsh, dehumanizing conditions of imprisonment itself; the sheer length of time spent living under such conditions; and the psychological repercussions associated with a death sentence" (p. 3). Harrison and Tamony use these circumstances to further illustrate their article.

The concept of Death Row Syndrome mostly is the effects of solitary confinement has on a prisoner. When attempting to diagnose this "syndrome," one would have to examine individual and environmental factors that has the potential to psychologically damage an individual. Harrison and Tamony does this through describing a case study of an anonymous prisoner placed on death row. The inmate who currently resides in Sussex State Penitentiary, Virginia, typical daily schedule involves spending approximately 24 hours in 7x9 prison cell, one hour of solitary exercise, time to shower, meals that are handed to him through his cell door and confined limited visitations. Through this case study, Harrison and Tamony found this inmate's mental state had deteriorated, demonstrating symptoms of depression and active psychosis. This inmate's mental health team states that the lack of human contact has caused him to exhibit unusual behavior such as paranoid delusions and hallucinatory thoughts.

While Death Row Syndrome is the exacerbated psychological effects of being on death row, Death Row Phenomenon is the unnerving conditions that provokes the human psyche. This

is mostly as a result from the delay and time period awaiting execution. The lingering anticipation and uncertainty of an execution date, along with spending years of considerably inhumane conditions further heightens psychological illnesses. Although there is some plausibility to the concept of Death Row Phenomenon, so far there has not been case which has ruled the delay of an execution to be considered unconstitutional.

B. The Effects of Solitary Confinement

When sentenced to death row, convicted felons are sent to solitary confinement. In a legal digest by Wyatt and Kapoor (2018) they use the appeal, *Williams v. Secretary Pennsylvania Department of Corrections* (2017), to examine the constitutionality of the practice of holding inmates in solitary confinement through the observation of the psychological harms it leaves.

In *Williams,* Craig Williams appealed his criminal conviction and was granted a new sentencing hearing. Although he was granted a new sentence, he remained held in solitary confinement on death row for another six years, due to Pennsylvania Department of Corrections' policy which required that, once persons are placed on death row, "the secretary [of corrections] shall, until infliction of the death penalty or until lawful discharge of custody, keep the inmate in solitary confinement" (61 Pa. Cons. Stat. § 4303 (2009)). Shawn Walker who was convicted of first-degree murder, and sentenced to death, was also held in solitary confinement after his death sentence had been vacated. They both alleged that their eight and fourteenth amendment rights had been violated due to their continued placement in solitary confinement after they had been granted resentencing hearings and filed a suit against the Pennsylvania Department of Corrections under 42 U.S.C. § 1983 (2012). The basis of this allegation was that "the conditions of long-term solitary confinement had caused severe physical and psychological harm, including emotional distress, insomnia, and body tremors."

The U.S. Court of Appeals for the Third Circuit concluded that, "Messrs. Williams' and Walker's indefinite, long-term isolation was much more severe than ordinary prison life, and therefore they did have a protected liberty interest in avoiding such conditions." *Williams* allows Wyatt and Kapoor to open up a discussion on the damaging psychological effects solitary confinement of prison inmates. Several organizations have taken stances on the aspects of solitary confinement such as the American Psychiatric Association recommending limiting the use of prolonged (longer than 30 days) solitary confinement for adult inmates with serious mental illness, and the National Commission on Correctional Health Care believing that it is cruel and inhumane to leave inmates (with or with mental illness) kept in solitary confinement for longer than 15 days. Although *Williams* dealt with the restriction of solitary confinement of death sentences that had been vacated, the underlying question Wyatt and Kapoor were attempting to leave open for discussion was the "permissibility of solitary confinement for death row prisoners whose sentences have not been vacated and who are awaiting execution" (p. 119).

C. The Lingering Anticipation that Deteriorates the Human Psyche.

Inmates placed on death row typically spend 15 years awaiting their execution. When being confined to prolonged isolation anticipating the inevitable, one can be easily susceptible to psychological disorders. The deterioration of the human psyche can be best be seen with the high suicide rates in federal prisons in the United States. Although inmates placed on death row are surrounded by a greater level of surveillance as opposed to other prisoners, death row inmates have higher suicide rates than both the average prison population and the general public. In one literature review, Tartaro and Lester (2016), conducted a study that presented suicide data for death row inmates from the years 1978 through 2010. When examining suicide rates on death row the variables they used in their study were the number of offenders sentenced to death each

year, number of changes in one's sentence, and the number of executions each year. The aim of this study was to hypothesize that "the number of executions each year and the number of new prisoners sentenced to death did not contribute to the prediction of the death row suicide rate" (p. 1656).

Tartaro and Lester (2016) used data obtained from the annual U.S. Department of Justice Bureau of Justice Statistics (BJS) Capital Punishment series from 1978– 2010. Between 1978 to 2010, the mean rate of suicide on death row was 129.7 per 100,00 per year. Although, since the 70s, the average rate of suicides to occur on death row have shown gradual decrease, in comparison to inmates not placed in death row and individuals outside the prison system, they found that the mean suicide rate for inmates placed on death row were significantly higher than both the rate of males over the age of 15 in and outside of prison.

In recent years, courts have demonstrated willingness to award damages and injunctive relief for some lawsuits against prison personnel for damages caused in suicides or attempted suicides, however in most cases, it's very difficult to win this sort of lawsuit with the limited research and wide amount of variables that are difficult to pinpoint. Although it is widely known that death row inmates' living conditions differ from the regular prison populations, such as being separated from other inmates and experiencing long periods of isolation and inactivity, several variables are introduced that makes it challenging to determine the conditions of prison settings and the psychological impact it leaves on an inmate placed on death row. Tartaro and Lester indicate that with the 35 states that currently implement the death penalty, it is hard to generalize the conditions and effects of inmates placed on death row because some conditions, activities, and services are exceptional to certain state's system.

III. Time on Death Row as a Possible Constitutional Violation

A. Competency of Inmates on Death Row

The Eighth Amendment explicitly states that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Under this Amendment it forbids a state from executing a prisoner who is insane since one should not execute a person who has no comprehension of why he/she has been punished. *Ford v. Wainwright* (1986). The US Supreme Court has held that death row inmates may have the right to waive their appeal if they are deemed competent. However, this raises many concerns due to the increasing prevalent issues of mental illness among death row inmates. As mentioned previously, Death Row Syndrome is defined as "the consequential psychological illness that can occur as a result of Death Row Phenomenon" (p. 2). Although Death Row Syndrome is not considered as a psychological illness under the American Psychological Association, the very existence of the idea of Death Row Syndrome is very concerning due to courts potentially sentencing incompetent inmates to death. This can be considered as highly problematic when examining the Supreme Court's jurisprudence of having difficulty defining what is considered competency.

Rees v. Peyton is an illustrative example of the US Supreme Court's inability to determine a defendant's competency. In *Rees,* the defendant requested to withdraw his petition of certiorari to the Supreme Court. However, his counsel was highly against this request because they believed that Rees was not mentally capable of making that decision. This led the court to being unable to determine how to dispose his petition. Rather than determining a standard, the court sent this back to the district court to reach a decision of whether Rees had the capacity to

appreciate and make a rational decision. *Rees* is just one example of the court's difficulty of defining the mental competency of an inmate facing death row.

Since the Supreme Court did not further examine Rees' motivations for waiving his right, they failed to explain whether his choice to waive his appeal came from a place of rational decision-making or from his mental illness. With the seemingly "ambiguity" of defining Death Row Syndrome and courts' disdain of addressing this issue, ignoring this syndrome may result in the execution of incompetent inmates. If the concept of Death Row Syndrome truly exists, that would mean it would fit the definition of mental illnesses limiting the exercise of free will necessary to make rational decisions. This would mean the US courts have been deliberately violating inmates' Eight Amendment rights. Although they are not considered executioners, the roles of physicians are detriment when it comes to the execution of an inmate sentenced to death row.

Under the Fourteenth Amendment, no State shall "deprive any person of life, liberty, or property, without due process of law." Therefore, courts have recognized that an individual(s) has the right to refuse medical treatment is protected under this amendment (U.S. Const. amend. XIV). This becomes increasingly relevant regarding death row inmates who are deemed as incompetent. As of today, it is considered legal for physicians to practice the involuntary use of medication to treat their mentally ill patients in both civil and correctional environments. However, this right afforded to medical practitioners has caused the determination of whether an inmate displays a level of competency to become quite murky. *Ford v. State* is an example of the murkiness of the determination of competency displayed by an inmate. Alvin Ford was convicted of the murder of a police officer and was sentenced to death in 1974. Just like in *Rees*, Ford's attorneys also questioned his competency to be executed. However, after the psychiatrists

brought by the State had examined Ford, their diagnosis concluded that he was competent, thus based upon their opinions, Ford was sentenced to death. Through an amicus brief the American Psychiatric Association (APA) soon after argued that the quick group assessments, the evaluations of the experts brought by the defendants being excluded into evidence, and the absence of cross examination of the experts were insufficient procedures to accurately determine competency. As mentioned before, the execution of an inmate deemed as "incompetent" violates the cruel and unusual punishment clause of the Eight Amendment. This is made clear in a concurring opinion delivered by Justice Powell, "I would hold the 8th Amendment forbids the execution only of those who are unaware of the punishment they are about to suffer and why they are to suffer it."

This where the evaluations of competency become hazy. Although executing or sentencing an incompetent individual to death is forbidden under the constitution, is it unconstitutional and unethical for physicians that work in/or with correctional facilities to treat an incompetent inmate to restore their competence? This controversy lies in the fact that correctional psychiatrists' roles are dedicated to ensuring that they diagnose and treat mental, emotional, behavioral disorders. Since they are responsible for treating and medicating their patients, by medicating incompetent inmates awaiting their sentence to achieve a certain level of competency, they are ultimately indirectly involved with the execution process.

B. Does Volunteering Violate the 8th Amendment?

The four functional abilities to exhibit an adequate level of decisional competence in terms of legality are: expressing a choice, understanding information, appreciating information, and reasoning with information (Cooper, n.d.). When assessing these abilities in psychological settings, they are organized into a series of tests: a preference test, a basic understanding test, an

appreciation test, and a reasoning test (Cooper, n.d.). However, it is important to note when conducting the process of these evaluations, it is still possible for a defendant to perform a rational process of reasoning and still reach an irrational conclusion (Cooper, n.d.).

Evaluating and defining decisional competency is crucial since inmates are given the right to waive their death sentence appeal. This ensures the inmates receive some sense of autonomy, and self-esteem through allowing them to make their own decisions, creating a sense of humanization and dignity. However, given the context and conditions of being placed on death row, these rights inmates are afforded is quite controversial. To put it into perspective if Death Row Phenomenon and Death Row Syndrome were both recognized by the American Psychological Association, the Eighth Amendment would need to be revisited of what qualifies as a competent individual. It is widely known that State and Federal prisons have dire living conditions which have subsequently led to creating mental stress of living under a death sentence (Wyatt and Kapoor, 2018). This begs the question: do the conditions and the potentially altered mental state of inmates awaiting execution make them capable of making rational life-and-death decisions?

"Death row volunteerism,'" is a concept that can be defined as inmates who are sentenced to death waiving their right to receive post-sentencing appeals (Dama, 2007). When examining the paradigm of Court's decisions on evaluating inmates waiving their right to appeal it becomes clear that establishing the criteria of what is considered a "competent inmate" has not been thoroughly fleshed out. The competency tests demonstrated by preceding cases do not highlight or effectively articulate that these defendants who waive their right to appeal are incompetent. *Godinez v. Moran,* bests illustrates this. In *Godinez,* two psychiatrists that have examined him reach the conclusion that he was competent to stand trial. Later Godinez alleged that this had

violated his Due Process, and that the trial court had failed to establish a criterion which would have accurately determined his competency. The Court refused to reverse his sentencing on due process grounds and held that the trial court's preceding ruling had accurately determined that the defendant was competent before accepting his guilty plea. The Court's justification was that a defendant may plead guilty to capital crimes if there is an understanding of the proceedings held against them, and if the defendant had waived their constitutional rights knowingly and voluntarily (Dama, 2007).

The ambiguity of the definition of Competency can mostly stem from the Courts' strong emphasis on the concept of autonomy whenever a defendant makes the "conscience" decision to waive their right to appeal. The "next friend" jurisprudence is a strong indicator of their disdain to allow third parties to not have a standing in challenging a competent capital defendants' decisions to waive their appeals. *Whitmore v. Arkansas* (1988) demonstrates this when a Court denied a capital defendant having "next friend" standing to challenge the waiver of appeal because the defendant had "given a knowing, intelligent, and voluntary waiver of his right to proceed, and his access to court is otherwise unimpeded" (p. 1087). In *Whitmore*, Justice Marshall, joined by Justice Brennan, dissented and provided the opinion, " Appellate review is necessary not only to safeguard a defendant's right not to suffer cruel and unusual punishment but also to protect society's fundamental interest in ensuring that the coercive power of the State is not employed in a manner that shocks the community's conscience or undermines the integrity of our criminal justice system." Justice Marshall's perspective believes that it is the government's full obligation to society to safeguard a human's life before a State hastily reaches a verdict (p. 1087).

When defining decisional competence, decisional competence focuses on four functional abilities: expressing a choice, understanding information, appreciating information, and reasoning with information (Cooper, n.d.). When actually taking the term decisional competence and placing it in the context of an actual psychological evaluation, the four abilities are placed into a hierarchy of comprehensive tests: a preference test, a basic understanding test, an appreciation test, and a reasoning test (Cooper, n.d.). It is imperative to note that when analyzing these abilities, during psychological evaluations it must be interpreted as a process, not an outcome. This means that it is possible for a defendant to engage in a seemingly rational process of reasoning with a seemingly irrational outcome (Cooper, n.d.). Reiterating the point about Courts' emphasis on the concepts of autonomy and competency, they need to clearly define whether the fact that a defendant was able to reach a conscience, rational decision on their own in the moment is what constitutes as competency, or the process and motivations that had took them to reach that decision.

Aside from autonomy, those in favor of permitting inmates waiving their right to appeal believe that another proponent of allowing to administer these waivers is that it would safeguard their individual rights. A popular example used by proponents is that this right can be compared to people experiencing terminal illness. Just like the terminally ill, both groups "seek to greet imminent and unavoidable death on their own terms… They chose to hasten, rather than cause, their deaths." The key takeaway from this analogy is that 1) the judiciary had already deemed death as a suitable punishment, and 2) this speeds up a potential sealed fate. This analogy sheds a spotlight of the "defeatist" mentality meaning, if an inmate had come to the peaceful resolution of accepting an impending fate, than it would not constitute as committing suicide if you already accepted the outcome of the future. While these are some strong points, this parallel is still

flawed; choosing to expedite an imminent death can still be viewed as seeking to end suffering rather than being content with a decided ruling. In hindsight, when a State respects capital defendant's rights, they need to examine whether these sorts of motivations derive from the desire to escape confinement, or the acceptance of the State's initial decision. Whichever reason this may be, waiving this right can incidentally lead to breeding a form of retribution.

C. Does Time Spent on Death Row Create Incompetency?

The Eighth Amendment explicitly forbids a state from executing a prisoner who is insane based on the rationale that one should not execute a person who has no comprehension of why he/she has been punished. However, when observing death row demographics, mental illness is prevalent among inmates. When observing the phenomenon of volunteerism within death row, there is a clear correlation between volunteering and displaying signs of psychological disorders. In a statistic of a sample size of volunteers for execution with mental illness and/or substance abuse, 77.36% (82/106) exhibited mental illness, 52.83% (56/106) demonstrated substance abuse, and 87.74% (93/106) had both mental illness and/or substance abuse (Blume, 2005). According to psychiatrist Dr. Spencer Eth, "when you look at people who are either asking for the death penalty or are not actively fighting it, many of them are depressed and, in fact, suicidal" (p. 962). Due to prolonged periods of isolation, the feeling of hopelessness is also very prevalent among this group. In a study of attorneys' opinions and attitudes towards their clients' motivations which led to their decision to volunteer for execution, thirty-nine percent cited a sense of hopelessness in the inmate's decision to forgo his appeals (p. 963). While there is no significant research offering subsequent data overwhelmingly supporting the contention that the time spent on death row can lead to incompetency, there are many formalities that can lead to supporting this assumption. Popular theories such as Death Row Syndrome and Death Row

Phenomenon both support the idea of consequential psychological illness and harmful effects of the conditions experienced on death row can arise as result of time spent awaiting a death sentence. Volunteerism among those on death row also demonstrates clear correlation of inmates suffering mental illness of some sort. Therefore, while there is no research that explicitly suggests that time on death row creates incompetency, it can be reasonably inferred that psychological illness are even more aggravated when inmates spend a great deal of time on death row. As a result, it could be argued that the prolonged time of a death sentence can in fact create incompetent individuals.

D. Quantifying and Defining Time

There are a few cases which discuss the delayed of execution is unconstitutional. The first petition to reach the Supreme Court was in 1995 with, *Lackey v. Texas*. In *Lackey*, the defendant claimed that executing him after spending eighteen years on death row would violate his Eighth Amendment right, through his punishment being considered cruel and unusual. Although the U.S. Supreme Court had denied his petition for certiorari, the arguments the defense presented did leave an impact regarding delayed execution. In a memorandum, Justice Stevens provided the opinion, "though novel, petitioner's claim is not without foundation" (Sun, 2014). Stevens further explained in his memorandum that, "execution following such delays served neither of the death penalty's two principal purposes, retribution and deterrence" (p. 1595). Justice Stevens concluded that the state's interest in retribution and goals of creating any further deterrence were both satisfied. Any further punishment inflicted (execution) in his opinion would seem "minimal" (Sun, 2014). It is imperative to recognize this case and how it set the precedent for other lawsuits like this one. Like *Lackey*, when cases challenge the delay of execution as unconstitutional, defining time (regarding awaiting execution) is a topic that is

somewhat shunned; fortunately, although the delay of executions remain constitutional, the decision made in *Lackey* does leave a positive precedent. In *Barr v. Purkey* (2020), Wesley Purkey had been sentenced to death over sixteen years ago and is now sixty-eight years old, suffering from Alzheimer's disease and along with "intense mental anxiety" from prolonged isolation and waiting for execution. Justice Breyer, joined by Justice Ginsburg dissented, providing the opinion that, the delay in execution undermined the penology of the death penalty, which is to serve as a deterrence and retribution. Their opinion provided that both cases presented revealed inherent arbitrariness and highlighted the problems that come with excessive delay and risks of severe and unnecessary suffering (*Barr v. Purkey*, 2020). However, many courts still reject *Lackey* claims. This best demonstrated with *Duncan v. Carpenter* (2014), where Duncan alleges that the passage of time between his sentence and execution should be considered cruel and unusual punishment. However, the court denied his motion for summary judgement citing *Lackey*, no federal appellate court has found the delayed incarceration prior to execution violating the Eighth Amendment cruel and unusual punishment clause. With claims of delayed sentencing being considered unconstitutional continuously ignored and rejected by courts, lawsuits instead tend to focus on the effects of awaiting a death sentence rather than tying to the two concepts neatly together.

Collins English Dictionary definition of time defines it as a sequential relation of events (past, present, future) and continuous duration in which events succeed one another (Collins English Dictionary, n.d.). After reviewing many previous studies and opinions on the time inmates spend on death row, many studies fail to make the concept of time quantifiable. As mentioned previously throughout this thesis, prolonged/delayed sentencing can create lasting effects such as developing Death Row Syndrome, psychological illnesses, and can affect an

inmate's competency. These findings illustrate the effect time spent on death row has on inmates. Unfortunately, these findings do not go beyond the scope of fully supporting the contention of shortening time spent waiting for execution, or that the overall time spent itself should be considered unconstitutional.

This raises the question: is there a way to quantify time in relation to examining the overall effects it has on inmates and societal benefits? While it is reasonable to believe that time spent on death row can create negative lasting effects, there are too many different variables that would make it difficult draw a reasonable conclusion. One being that when observing the effects death row potentially has on inmates, the results are not universal. As mentioned throughout this thesis, while there are visible effects on inmates, the results done by studies are not widely recognized within the United States jurisprudence or academia. This is best demonstrated with the Death Row Syndrome not considered as a mental health disorder by the American Psychiatric Association (APA). This also shown with the Supreme Court's refusal to reverse sentencing on due process grounds arguing whether defendants who waive their right to appeal are competent before accepting their guilty plea.

Although there have not been enough studies creating a direct connection between time and the effects it has on the human psyche, the potential for this sort of inquiry is there. In a study conducted four years ago, it studied the last statements of 70 death row inmates, who were executed in Texas Huntsville Unit between 1982 and 2016. The aim of this research was to understand the perception of time on among inmates on death row. Within this study, it was distinguished that the perception of time for death row inmates differs from that the ordinary person because death row inmates are fully aware that they are in a process to complete their "earthly" time perception (Uysal, 2018). The methodology of this study used grammatical tenses

and analyzed the use of these tenses to understand how the inmates perceived time. The findings within this study demonstrated that inmates who mostly used present continuous tense, suggested that they still avoided taking responsibility of concrete reality. Inmates who used future tense viewed their sentence as a free of the thought of death and action. This observation led to the conclusion that not only crime but also the death is denied. Both findings demonstrated traces of existential anxiety, a sign of experiencing an unhealthy death process. These discoveries make this study important because it is an alternative way of explaining that the death penalty may not serve as an effective way of creating general or specific deterrence. As the study implies, a person may be guilty but might not feel guilty. It is not sufficient to just accept that one has done something prohibited, in order to truly feel guilty, an inmate needs to acknowledge the authority, which forbids what one has done (Uysal, 2018). This study relates to my specific point through serving as an alternative explanation of using time as a quantifiable object of analyzing the effects of the death penalty. The goal of the U.S. justice system should be ensuring a certain measure of positive deterrence and incapacitate capital crimes; the death penalty itself has failed to demonstrate that this sort of punishment has succeeded at doing so. Being able to conduct studies that would quantify time and connect it to the effects of the human psyche may help challenge the death penalty as a punishment that should be considered unconstitutional.

Conclusion

When analyzing how capital punishment affects the general public, there are very few significant findings that exhibits or supports deterrence resulting from that kind of sentence. Justice Thurgood Marshall best explains this: “The death penalty is no more effective than life imprisonment…It is also evident that the burden of capital punishment falls upon the poor, the ignorant, and the underprivileged members of society” (*Furman v. Georgia*, 1972). Under the

Eighth amendment, cruel and unusual punishment, *Ingraham v. Wright* (1977) confine it as the criminal process by "(1) limiting kinds of punishment that can be imposed on those convicted of crimes, (2) proscribing punishment grossly disproportionate to severity of crime, and (3) imposing substantive limits on what can be made criminal and punished as such." Through *Ingraham*, the rules and provisions states must adhere by are: it is prohibited to execute offenders with an intellectual disability (*Atkins v. Virginia*, 1989), it is unconstitutional to execute offenders who were under 18 at the time their crime was committed (*Roper v. Simmons*, 2005), and it is prohibited to execute for rape when the victim is not killed (*Coker v. Georgia*, 1977). The method of execution also has constraints such as it cannot "present 'substantial' or 'objectively intolerable' risk of serious harm" (*Baze v. Rees*, 2008).

With all the rules and provisions states must adhere to, the psychological effects that arise from awaiting a death sentence are overlooked in the eyes of Courts. Part II. of this thesis examined the overlooked problematic effects of death row. The effects death row has on inmates include severe physical and psychological harm, emotional distress, body tremors, and insomnia. Death row inmates' demographics also consists of some of the highest rates of suicide. Other mental illnesses solely unique to death row such as Death Row Syndrome and Phenomenon also emerges while awaiting execution. However, even with the unique psychosis one may develop during death row, these psychological effects are still considered insufficient and are not recognized by the Supreme Court. Along with psychological illness, delayed executions are not recognized as unconstitutional by the Supreme Court. Although cases like *Lackey* acknowledges that delayed execution does not satisfy a state's interest in retribution and goals of creating any further deterrence, these opinions are still rejected by most courts.

If administering the death penalty fails at serving as a form of deterrence, lacks sufficient evidence to support the idea of victim closure, and most of the inmates who serve this sentence die awaiting their execution, by keeping this practice, does the end justifies the means? As of now, under the Eighth Amendment of the Constitution, courts seem to believe it does. Despite Courts acknowledging theories like Death Row Syndrome and Phenomenon, the effects of solitary confinement have on the human psyche, and the competency of inmates awaiting their sentence; procedural reasons seem to always supersede these findings. Rest assured; these findings set a good precedent as to where arguments for against the death penalty can head. According to Statista Research Department, the average time inmates spend between sentencing and execution on death row in the United States from 1990 to 2017 averages to 243 months (20 years). While myriad of preceding cases argues who should be eligible for death and how prison personnel should execute, a glaring component courts seemingly glosses over is the actual time spent serving this sentence.

This thesis attempted to link the effects caused by sitting on death row to serve as a foundation, through making the parallel that time elapsed between sentencing and execution would help cement the argument that the continued administration of death row is unconstitutional under Eighth Amendment Jurisprudence. With the extensive studies provided throughout this thesis demonstrating clear psychological harm as a result of the conditions of death row, it is reasonable to believe that the time awaiting execution creates substantial harm. Therefore, courts need to reevaluate the length of time an inmate spends on death row or else this should be considered unconstitutional. This is not to say inmates need to be executed at a faster rate. The current system itself is lengthy and still has tons of administrative and procedural errors, therefore, it might be too risky to execute quicker. If the length of time and its effects

awaiting execution cannot be resolved, then the application of the death penalty itself should be considered unconstitutional under the Eighth Amendment.

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