PUBLIC OPINION AND THE DEATH PENALTY

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This paper seeks to answer two questions regarding public opinion and the death penalty. The first is: what is the public's view on the death penalty in the United States? Research on public opinion suggests that, while the pubic supports capital punishment in general, there are several areas of discomfort. The second question is then: how can the American criminal justice system be reformed to fit with the public's views? This paper does not necessarily advocate particular reforms, but rather attempts to discover what reforms are desired by the public.

The issue of capital punishment in the United States is a highly contentious one. Most see it as a moral issue, and thus opinions are not easily swayed or altered. In fact, public support of the death penalty has hovered at about the same level for most of American history, with about two-thirds of Americans in support of capital punishment[1]. That support, however, comes with reservations. Many people are wary of the criminal justice system or would like to see portions of it amended. These areas of reform range from who is sentenced to death to how the death penalty is carried out. This study seeks to examine which aspects of capital punishment the public supports and which it finds most worrisome. Once those areas have been identified, it is critical to consider how the American criminal justice system be reformed to fit with the public's views on capital punishment. The goal is to demonstrate what policies are supported by public opinion, and to look at what can be done to change the death penalty system in order to better conform to public standards of fairness and justice.

Given that this research question revolves around issues of life and death, examining how, why, and when the government chooses to execute its citizens is a tremendous task. Policy-makers on the state and national levels must have

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a firm idea what the public thinks about these issues before they can decide how to act on those opinions.

For the purposes of this paper, it will be useful to limit "public opinion" to refer to adults who are citizens of the United States. The term refers to all registered and eligible voters due to the fact that most opinion polls target only those individuals who have the greatest ability to affect whether or not reforms will actually be sought and implemented.

This study is set up in two basic stages. Stage one examines public opinion on the death penalty in the United States. To fully understand public opinion, one may examine several different sources. Modern polling methods by credible sources can be extremely accurate at describing public sentiment[2]. Other indicators of public opinion are the press and the public legislature. Both the media and the laws passed by politicians who stake their careers on re-election are valuable indicators. Experts in the media and in election politics must cater to public opinion in order to sustain their business or their political position. Thus, by examining these mediums, one can gain another window into what the public is thinking and feeling.

The second stage of this study analyzes the results of the public opinion investigation and looks at how different advocates and lawmakers have attempted to solve discrepancies between public opinion and the current criminal justice system. Its strategy is to decipher what reforms are acceptable and desirable to the public and how those reforms might be implemented without promoting a particular one.

History

Even in the earliest years of the United States, when people could be hanged and executed for crimes such as horse thievery and destruction of property, there was contentious debate surrounding the death penalty[3]. James Madison, Thomas Jefferson, and Benjamin Franklin even debated the morality of capital punishment using many of the same arguments that are still relevant today[4]. Throughout the

eighteenth century, executions were community events that drew crowds from miles around and served as both social functions and legal sanctions. However, as time passed, these ceremonies began to face opposition. "Public executions would be widely criticized in the nineteenth century... Respectable Americans of the nineteenth century would come to feel embarrassment at the idea of attending an execution, and a superiority to the sort of person who would attend[5]."

During the nineteenth century, the death penalty was both praised and criticized. Public figures such as Reverend Samuel Lee made statements such as: "[If] we would not reject our Bibles we must not abolish the penalty of death for murder. Opposition to capital punishment for willful murder *asserts* that men may modify the law of God to suit themselves[6]." Yet, there were prominent social figures like Charles Dickens voicing opposition to the idea of state sponsored killing. In 1842, Dickens wrote in his *American Notes*:

> The prison-yard...has been the scene of terrible performances. Into this narrow, grave-like place, men are brought out to die...The law requires that there be present at this dismal spectacle, the judge, the jury, and citizens to the amount of twenty-five. From the community it is hidden...The prison-wall is interposed as a thick gloomy veil[7].

These types of arguments have been a constant throughout United States history. However, even during times when the death penalty became particularly contentious, there was no specific political or judicial action taken until only very recently[8].

Moratorium and Reinstatement

In 1972, the United States Supreme Court heard the case of *Furman v. Georgia* (408 U.S. 238, 1972). Petitioner Furman argued that the death sentence imposed upon him by the state of Georgia constituted cruel and unusual punishment and was a violation of his Eighth and Fourteenth amendment rights[8] . In a

per curium, five-four decision, the Supreme Court agreed with Furman. Concurring with the decision, Justice Stewart wrote:

> These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual...I simply conclude that the Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed[11].

What Stewart meant by this was that the current death penalty system was unfair. There were no reasonable standards for applying the death penalty, and therefore sentencing was arbitrary. For the Supreme Court, this amounted to cruel and unusual punishment. The effective result of *Furman v. Georgia* was a national moratorium of the death penalty. There was, however, an important qualifier to the decision. The language used by Justice Stewart and others writing for the majority suggested that the death penalty *itself* was not cruel and unusual, but rather the way it was being *applied by the states* was in violation of the constitution. The states were left in the position of deciphering how to alter their capital punishment systems so that they would no longer be considered "wanton and freakish[12]."

A few years later, it was again the state of Georgia that returned to the Supreme Court with a solution. In the 1976 case, *Gregg v. Georgia*, 428 U.S. 153 (1976), petitioner Gregg challenged the newly reformed Georgia death penalty procedure. Georgia claimed to have fixed the previous errors that led the old court to rule the Georgia system unconstitutional. This time, in a seven-to-two decision, the Court found in favor of Georgia. The reforms that Georgia had made, such as creating a two-part (bifurcated) trial process and the consideration of both aggravating and mitigating circumstances, were enough to convince the court that Georgia's system was in compliance with the Constitution. In the words of the newly swayed Justice Stewart, writing for

the majority:

> The new Georgia sentencing procedures, by contrast, focus the jury's attention on the particularized nature of the crime and the particularized characteristics of the individual defendant...we hold that the statutory system under which Gregg was sentenced to death does not violate the Constitution[11].

With the Gregg decision, the death penalty moratorium in the United States was over, and in Georgia, states had found a model criminal justice system they knew would conform with the views of the Supreme Court. The profound impact of both *Furman* and *Gregg* opened the door for future judicial death penalty reform.

Supreme Court Reforms

Another major judicial death penalty reform came in June of 2002. In *Atkins v. Virginia* (00-8452, 2002), the issue of whether or not a state could execute a mentally retarded person came before the court. In a six-to-three opinion, the court held that to execute someone who was proven to be mentally retarded was a violation of the constitution because it amounted to cruel and unusual punishment[12]. This effectively forced states to develop a standard of quantifying and measuring mental retardation. As the mass media picked up the story, the case made both politicians and the public more aware of the issue of mental illness and incapacity in relation to the death penalty[13].

Four days after the Atkins decision the Supreme Court ruled on another important death penalty case: *Ring v. Arizona* (01-488 2002). On June 24, 2002, the Court ruled that juries, and not judges, must have the sole power to sentence a person to death. This seven-two opinion had a dramatic effect on the way many counties and states proceeded to impose the death penalty[14]. As Justice Ginsburg wrote in her opinion for the majority:

> The right to trial by jury guaranteed by the Sixth Amendment would be senselessly diminished if it encompassed the fact-finding necessary to increase a defendant's sentence by two years, but not the fact-finding necessary to put him to death. We hold that the Sixth Amendment applies to both[15].

The argument Justice Ginsburg makes here is that states where criminal justice systems allow judges to sentence defendants to death are in violation of the constitution and must be amended. Thus, *Ring v. Arizona* provides another example of how judicial decisions have served to reform the death penalty system.

Government Action

Court decisions have not been the only notable milestones in the history of capital punishment. Legislative and executive action has also considerably impacted the death penalty and focused public attention on the issue. A recent and high profile action came out of the governor's office of Illinois. On January 31, 2000, Governor George Ryan of Illinois announced that he was imposing a statewide moratorium on the death penalty until a number of recent wrongful convictions could be investigated[16]. On May 4th of that same year, Ryan created the Illinois Commission on Capital Punishment to study what he referred to as Illinois' "broken system[17]." The job of the commission was to make policy recommendations to improve death penalty administration in Illinois. Two years later, in April of 2002, the Commission published its findings. The Commission made many recommendations, including DNA testing for convicted murderers, videotaping police interrogations, and full investigations into the cases of each inmate currently on death row[18]. Governor Ryan considered the report, and after personally investigating the cases of each of the 171 prisoners on death row, came to a historic decision in January of 2003. On January 10th, Ryan formally pardoned four men and pronounced them innocent of the crimes they

were to be executed for. The next day, Ryan commuted the sentences of all of the remaining death row inmates. Ryan converted 164 of the death sentences to life in prison, and three of the prisoners had their sentences reduced to forty years.

Ryan's actions were momentous. His 164 commutations shattered the previous commutation record of eight people, set by the governor of Ohio in 1991[19]. His decisions drew national attention, and helped focus public debate on the issue of the death penalty. Governor Ryan's commutations are an important historical marker for capital punishment because they were both highly unusual and highly publicized. The Illinois case helps to demonstrate that the death penalty is an issue that policy makers and the courts are influencing.

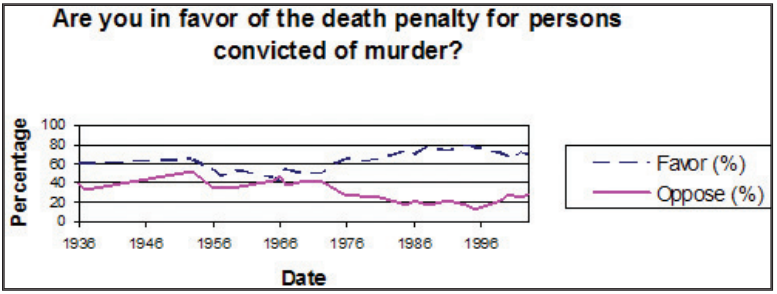
By looking at America's history with the death penalty debate and the major decisions that have shaped the legislative process of today, one can better understand the death penalty as a whole. In doing so, public opinion and its relation to death penalty reform becomes easier to identify and understand. This is not only true on the national level, but on the state level as well. By examining debates and reforms that have taken place in individual states, it becomes easier to understand how the public views the death penalty and what reforms they may seek.

Pubic Opinion

With all of the attention to the death penalty being generated by the courts and politicians in recent years, the American public has become more involved in the issue. Since the landmark decision of Furman v. Georgia in 1972, the public has been polled by countless sources regarding its opinions on the death penalty. Well known pollsters such as Gallup, Harris, and Reuters, as well as countless television, internet, and newspaper media have been gauging public opinion on the topic often over the past thirty years. Even before *Furman* intensified the study of the death penalty in the 1970s, public opinion on the death penalty was reasonably well documented.

Polling General Support

The Gallup Institute has been the most extensive and consistent in conducting death penalty public opinion polls. The first Gallup poll on the subject was taken in December 1936. The question asked was: "Are you in favor of the death penalty for persons convicted of murder[20]?" Since that survey, the group has asked the same question almost every year. Below are the results of Gallup's polling on this question[21].



A conclusion that may be drawn from these polls is that throughout the twentieth century the public has been in favor of the death penalty for persons convicted of murder. Even in 1966, when public support was at its lowest, 47% of those surveyed favored the death penalty. Gallup reported the error rate for 1966 to be 3%, thus the public opinion on the death penalty for that year is about evenly split. Throughout the 1980s and mid-1990s, public support for capital punishment reached record highs. During this period, the percentage of Americans in favor of the death penalty was consistently in the high seventies. Even in the early 21st century, support remains strong, with the percentage of public support in the high sixties to low seventies[22].

Gallup is not the only source for public opinion polling. Other groups have also conducted extensive polling on the issue and have found similar results. For example, Samuel Gross and Phoebe Ellsworth found a way to compile these studies and look at the overall trend. Their results were identical to the results of the Gallup Poll the public strongly supports capital punishment. In general, comparing different

polling sources on the same topic can be misleading because of differences in the way survey questions are asked. According to the research done by Gross and Ellsworth, however, the questions on the death penalty appear to be different:

> On this issue support for or opposition to the death penalty in general responses to survey items show no relationship to the form of the question. Since the 1970's, almost all Americans have had a position on the death penalty, know what that position is, and give it in response to any question that they interpret as asking for it[23].

This conclusion is supported by the "non-response" data collected by Gallup. Since 1971, less than ten percent of those responding to the Gallup Poll answered the question either "don't know" or "no response[24]."

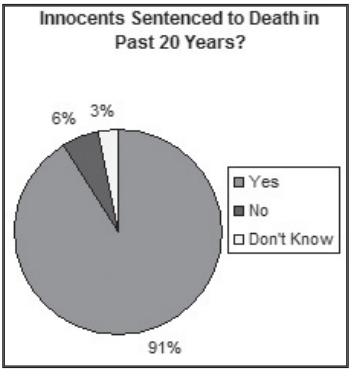
The strong support for capital punishment found by the Gross-Ellsworth study is replicated by several other polling sources. Harris polling, ABC News, The National Opinion Research Center, and The Washington Post all show 21st century public support for the death penalty to in the high sixty to low seventy percent range[25]. This again supports the conclusion that the American public strongly favors the idea of having the death penalty. However, when one begins to look at more detailed polling, it becomes apparent that there are some aspects of capital punishment of which the public is less supportive.

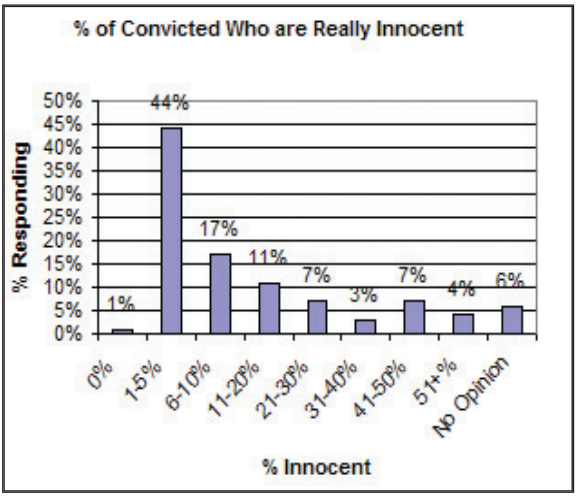
Polling Areas of Concern

Innocence

In recent years, media and public attention have increased around the notion that innocent people may be put to death under a capital punishment system. This attention was initially piqued in 1973 when David Keaton became the first man to be exonerated from death row[26]. The issue of innocence climaxed at the turn of the century as the use

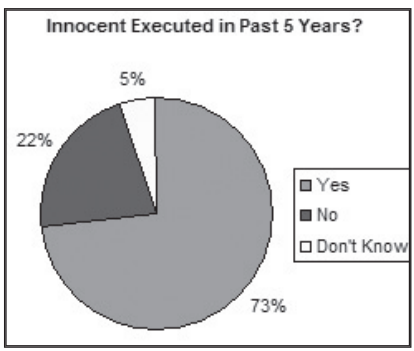
of DNA testing became wide spread and reliable[27]. Gallup was also the first polling organization to take a reliable survey of American attitudes toward innocence[28]. In the year 2000, Gallup conducted two polls intended to discern public sentiment concerning the execution of innocents. The first question asked was, "How often do you think that a person has been sentenced to the death penalty who was, in fact, innocent for the crime he or she was charged with do you think this has ever happened in the past 20 years, or do you think it has never happened?" The second question posed was slightly more open ended asking, "Just your best guess, about what percent of people convicted to serve the death penalty (in the past five years) are really innocent?" Below are the results of those two survey questions[29]:

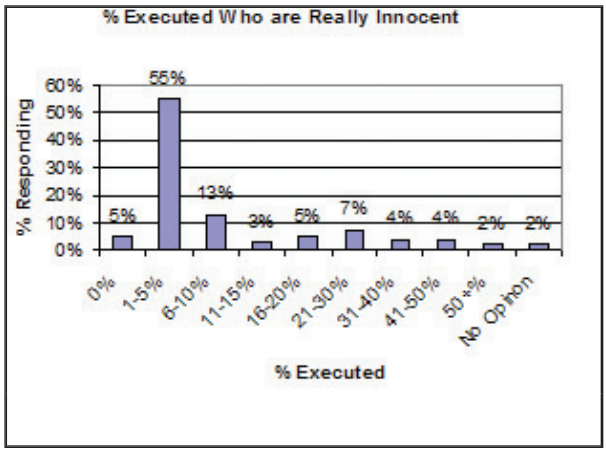




These polls demonstrate that the vast majority of people believe that innocents are being sentenced to death. It is interesting that the first poll shows ninety-one percent of respondents believe an innocent has been sentenced to death in the past twenty years; however, when the second poll asked respondents to pick the percentage of innocents sentenced to death in the past five years, ninety-three percent of respondents chose one percent or higher. This means that ninety-three percent of respondents to this second poll believed that an innocent person had been sentenced to death in the past five years[30]. In the case of either poll, these are extremely high percentages. It should be mentioned, however, that the polls do not ask if an innocent person has been *executed*, but rather if an innocent person has been *sentenced to death*. Even with this qualification, the numbers clearly suggest that the vast majority of the public believe that innocents may be failed by the flaws of the system.

Perhaps a more telling poll on the issue of innocence is one taken as recently as May of 2003. In this survey, Gallup asked similar questions to the ones posed in the 2000 surveys, with one important distinction: instead of asking about innocents *sentenced* to death, it asked about innocents who were actually executed. Thus, the two questions asked were: (1) "How often do you think that a person has been executed under the death penalty who was in fact innocent in the past five years?" and (2) "Just your best guess, about what percent of people who are executed under the death penalty are really innocent of the crime they were charged with?" The answers to these questions are charted below[31].





As these graphs show, the great majority of respondents believe that innocent people have been executed. As with the 2000 polls, the more open-ended question led more people to answer that an innocent had been executed in the past five years. In this case, ninety-three percent believed that one percent or more of those executed are innocent, versus seventy-three percent who simply answered the question yes or no. While these results are not perfectly comparable to the results from the 2000 survey, they still show the same important trend: the public believes that innocent people are being sentenced to death and executed[32].

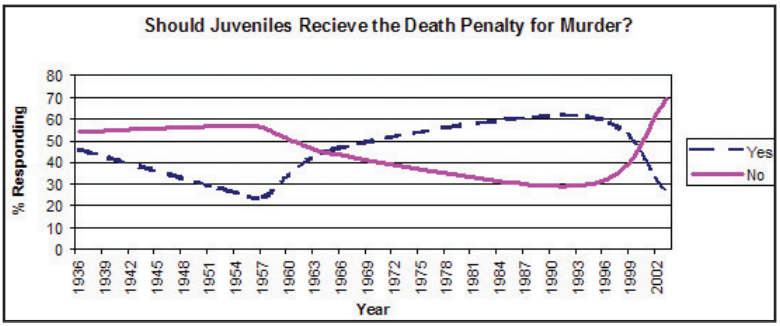
Polling data from other sources also point to this same conclusion. A CNN News poll from 2003 asked the question: "Do you think the criminal justice system in death penalty cases is generally fair or generally unfair?" The poll results showed that forty-five percent of respondents did not think that it was generally fair[33]. According to the analysis of the CNN study by the Roper Center at University of Connecticut, this can be considered a large percentage. As pointed out by the Gross-Ellsworth study, since most people would interpret this question as asking whether or not they favor the death penalty, it is significant that such a large percentage would still answer that they did not think the death penalty system was fair[34].

All of this data strongly indicates that even though the public supports the death penalty, they still believe that

innocents are being executed. As the polling results show, this is an area of the criminal justice system that the public finds to be unfair.

Juveniles

Another aspect of the death penalty debate that has been the subject of much polling is the issue of executing juveniles. While the public's attitude towards the death penalty in general has remained relatively strong throughout the 20th and 21st centuries, attitudes toward juvenile executions have experienced dramatic change in recent years. As with the death penalty in general, it is the Gallup Institute that has been responsible for most of the long-term polling on the topic of juveniles. Since 1936 Gallup has intermittently asked the question, "Should juveniles [persons under the age of 18] receive the death penalty for murder?" The results of those polls are displayed on the graph below[35]:



The above graph demonstrates that the public has changed its mind more than once on the topic of the juvenile death penalty. The changes that took place in the 20th century, however, were fairly gradual. Support for the juvenile death penalty slowly increased as opposition slowly decreased, until the majority of Americans were for, rather than against, capital punishment for minors. In 2000, there was a dramatic shift in public thinking and support for the juvenile death penalty plummeted, and opposition soared. This trend continued to be seen in polls taken in 2001 and 2002[36].

The public seems to be coming to a clear consensus about the juvenile death penalty. A study done by Francis T. Cullen, et. al. in 2002 focused on the choice between rehabilitating juvenile offenders, or executing them. His study shows the same trend as the Gallup polls:

> The public clearly endorses rehabilitation as a, if not the, main purpose of juvenile corrections. Thus [survey results] reveal that 98 percent of the sample 'agreed' that 'it is important to try to rehabilitate juveniles who have committed crimes and are now in the correctional system'...When asked what the 'main emphasis'[of juvenile imprisonment] should be, 4 out of 5 members of the sample in a forced-choice response set selected 'rehabilitation'over 'punishment' and 'protect society'[37].

Just as with the issue of innocence, the public seems to be troubled by the idea of juvenile executions. The American public used to support the practice, but now they seem much more wary of it, and more inclined to seek alternative solutions. Clearly, the public's overall support for the death penalty changes when the issue refers specifically to juveniles.

The Media and Public Opinion

Public opinion polling is an invaluable form of determining public opinion because it provides a standardized, scientific method for determining the public's thoughts and feelings. Nonetheless, there are other ways of gauging public opinion, such as observing the media's approach to the death penalty, specifically, its approach to the topics of innocence and juveniles in the death penalty system. Another source of insight into the public mind are the actions of legislators and law makers. These individuals rely on public support and approval to win elections. Since their careers depend on their familiarity with public sentiment, it can be assumed that

they try to conform their political behavior to fit with public opinion. Therefore, looking at their actions can help illuminate what public opinion may be.

The Media

Just as it can be argued that the media reflects public opinion, it can also be argued that public opinion reflects the media. However, as Roger Rosenblatt points out in his essay *Journalism and the Larger Truth*, causality is unimportant:

> …Every form journalism takes is designed to draw the public's attention to what the editors deem most important in a day's or week's events...Oddly, the public often contributes its own hierarchical arrangements by dismissing editors' discriminations and dwelling on the story about the puppy on page 45 instead of the bank collapse on page one. The 'truth' of a day's events is tugged at from all sides[38].

Rosenblatt asserts that public opinion is both determined and imitated by the media simultaneously. Ultimately, the result is that, whether the media has formed public opinion or not, what the media reports will ultimately reflect what the public thinks.

Recent media coverage seems to echo the idea that the public is concerned about the execution of innocents. For example, a flurry of editorials were published between 2000 and 2002 criticizing the criminal justice system for the wrongful imprisonment of innocents. A *Los Angeles Times* editorial (September 21, 2002) comments, "One out of every seven people executed since 1977 has been exonerated by new evidence...There are over 3,700 men and women in this country on death-row, and the prospect that innocent people could be among them should frighten every American[39]." This sentence seems representative of editorials nationwide[40]. Newspapers of varying location and political leaning, from *The New York Times* to *The Arizona Daily Star*, and *The*

San Francisco Chronicle to *The Christian Science Monitor,* have criticized the problems with the justice system that are indicated by the large number of inmates exonerated from death row[41].

More media attention to innocence has developed in television and films. The Oprah Winfrey Show, a mainstay of daytime television, recently addressed the issue. On October 7, 2003, Kirk Bloodsworth appeared as a guest on the Oprah show to share his story. Bloodsworth, the first person to be exonerated from death row by DNA evidence, told of his wrongful conviction and near death on national television[42]. Using this forum to tell his story brought the issue of innocence and the death penalty directly into the homes and lives of millions of Americans.

In 2003, the popular film *The Life of David Gale* was released into theaters. The film explores the possibility of an innocent man being put to death through a faulty criminal justice system. Through its intricate plot, the movie reveals that it is entirely possible for an innocent man to be executed. It suggests that the realization of this possibility should be enough to cause the public to abolish the death penalty. The film ranked number two at the box office for three weeks and grossed millions of dollars evidence of great public support for its story and theme.

Clearly, the media is paying attention to the idea of innocence in the death penalty. As Rosenblatt illuminated, public opinion and media portrayals are inextricably linked. Thus, the multitude of news editorials and the productions of the entertainment industry strongly support poll results showing that the public is concerned over the execution of innocents.

The Law

While the media has focused on the issue of innocence, legal reforms have centered more on the juvenile death penalty. On March 1, 2005, the Supreme Court voted to abolish the juvenile death penalty in the case of *Roper v.*

Simmons, 03-633 (2005). Leading up to that decision, there were several state laws that indicated a trend in changing public opinion. State laws are passed by state representatives who are appointed to represent the views of their constituents. Due to this face, looking at juvenile death penalty laws within states can provide insight into prevailing public opinion on the subject.

Prior to the 2005 decision, seventeen states had banned the execution of juveniles[43]. In disagreeing with a decision not to grant ceritori in a recent juvenile death penalty case, Supreme Court Justice John Paul Stevens wrote: "Given the apparent consensus that exists among the states and in the international community against the execution of a capital sentence imposed on a juvenile offender, I think it would be appropriate to revisit the issue at the earliest opportunity[44]." Steven's comment clearly describes how the trend in legislative action can be seen as a reflection of public sentiment against juvenile executions and foreshadows the Court's most recent decision on the issue.

Reforms

By this point, it seems clear that there are two areas of the death penalty that the public are concerned about: the possibility of killing innocents and the execution of juveniles. This leads to the second question presented by this study. The next portion of this paper will look at how the American criminal justice system can be reformed to fit with the public's views.

Reforms for Innocence

The case of Kirk Bloodsworth, the man exonerated by DNA evidence who appeared on Oprah Winfrey, is a prime example of a reform that may help to prevent the execution of innocents. If Bloodsworth had had access to DNA testing from the beginning of his ordeal, he would not have spent the nine years incarcerated. Post-Conviction

DNA testing has been proposed as a reform that could help prevent the execution of innocents. The concept being that anyone convicted of a crime in which DNA evidence is should be allowed access to it[45]. Bloodsworth has written about the idea of DNA testing, saying:

> But I'm not alone in having such a story. DNA testing has proved that more than 130 people are innocent of a host of crimes for which they were serving time. One of those was Frank Lee Smith, who was on Florida's death row. Smith was never exonerated in life as I was - he died of cancer before the DNA test that cleared him was run. The same test that proved Smith's innocence pointed to another man already in custody in another Florida institution[46].

As Bloodsworth points out, allowing inmates access to DNA testing helps provide a safety net for the innocent and properly identifies the guilty. Evidence suggests that this specific reform is supported by the public.

In a January 2003 survey, the Gallup Institute asked respondents how concerned they were that "A lack of funding sometimes prevents DNA testing from always being carried out." In total, 82% of respondents admitted to being either "very" or "somewhat" concerned about the problem, with 45% of the public stating that they were "very concerned[47]." This poll indicates that the public would likely be very supportive of mandatory DNA testing.

Many lawmakers at the state level have recognized the public's wariness regarding the execution of innocents, and have passed criminal justice reforms. Currently, twenty-one states have passed laws providing for Post-Conviction DNA Testing[48]. Other state laws have also been passed, in attempts to protect the innocent and appease public anxiety. Examples include California *Chapter No.943* which provides council to indigent defendants in order to help them obtain DNA testing, and Washington Bill HB1314 which funds a study to examine court rules that may lead to the inappropriate imposition of

the death penalty[49].

Perhaps the best example of this was the death penalty moratorium imposed by Governor Ryan of Illinois. As previously discussed, Ryan placed a temporary moratorium on the death penalty in Illinois after thirteen people were exonerated from death Row. Ryan wanted to investigate Illinois' criminal justice procedure and ensure that no innocents would be executed[50]. The purpose of a moratorium is not to abolish the death penalty, as it is clear that is not what the public wants. Rather, the point is to take the time and care necessary to thoroughly investigate the cases of those who are sentenced to death to help ensure that the state is not executing an innocent person.

Like Post-Conviction DNA testing, moratoriums seem to have a good deal of public support. An NBC News poll from July of 2000 asked people if they favored or opposed a suspension of the death penalty until question about its fairness could be studied. 63% of respondents stated that they favored a temporary suspension of the death penalty a moratorium[51]. This indicates strong public support for a possible solution to what they seem to view as a problem. Enacting both Post-Conviction DNA laws and temporary moratoriums would reform the criminal justice system in such a way that would ease public concern over the execution of innocents.

Reforms for Juveniles

To understand where criminal justice reform currently stands on juvenile death penalty, it is first important to understand some of the history behind the issue. Juveniles and the death penalty came to the forefront in legal circles in June of 1989 when *Stanford v. Kentucky*, 492 U.S. 361 (1989) came before the United States Supreme Court. The case involved two minor children, seventeen and sixteen years old. The petitioners argued that the age of the defendants made the imposition of the death penalty tantamount to cruel and unusual punishment. In a five-four decision, the majority ruled that the states had the right to decide whether or not to

execute juveniles. Justice Scalia cited that:

> We discern neither a historical nor a modern societal consensus forbidding the imposition of capital punishment on any person who murders at sixteen or seventeen years of age. Accordingly, we conclude that such punishment does not offend the Eighth Amendment's prohibition against cruel and unusual punishment[52].

Unlike the previous decisions of *Furman* and *Atkins*, this decision meant that it was now up to the states to debate individually whether or not their citizens supported the death penalty for juveniles.

The precedent set by *Stanford v. Kentucky* meant that, in order for the juvenile death penalty to be unconstitutional, it must by contrary to "evolving standards of decency[53]."

In every state that currently allows capital punishment, legislation has been introduced to abolish the juvenile death penalty[54]. Even before *Roper v. Simmons*, seventeen states had adopted such legislation. Of the remaining states that did allow capital punishment for juveniles, fifteen had not executed a juvenile since the death penalty was reinstated in 1976. Nine other states had no juveniles on death row[55]. This means that state legislatures had acted to reform the criminal justice system and remove the juvenile death penalty. In the states that had not done this, the public was still very hesitant to sentence juveniles to death, as evidenced by the states that had not executed juveniles in almost thirty years and by those states with no juveniles on death row.

The culmination of this public opposition came on March 1, 2005 when the Supreme Court decided *Roper v. Simmons*. In a five-four decision, the Court struck down the juvenile death penalty. The Court cited American public opinion, state laws, and international opinions in order to argue that the American standard of decency had evolved[56]. In a direct reversal of its *Stanford v. Kentucky* decision, the court found that the juvenile death penalty constituted cruel

and unusual punishment. In abolishing the juvenile death penalty, the Court has acted to allay a major public concern and reform the criminal justice system to better fit the public views.

This study sought to illuminate the public's view of the death penalty in the United States. Public opinion polls plainly show that there is strong public support for capital punishment in general. However, the polls also show that the public is worried about the execution of innocents and is uncomfortable with juvenile executions. These conclusions are supported by trends in the media as well as by recent government action.

In examining the results to the first research question, this paper investigated ways of reforming the criminal justice system that would fit with the public's views. In doing so, the public's two main concerns of innocence and juveniles were addressed.

The abolition of the juvenile death penalty has responded to public opinion and alleviated the discomfort over the execution of teenagers. By providing for Post-Conviction DNA testing to inmates and by adopting a temporary death penalty moratorium, public fears about executing an innocent person could also be assuaged. After a careful analysis of public opinion, these are the solutions, promoted by legislators, judges, and activists, that are supported by the public as a whole.

Endnotes

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[2]While some of the poll results used in this study were found on internet sites, none of the polls referenced are "on-line polls" that appear on websites for voluntary response.

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[14]Criminal Justice Reform Education Fund. www.cjedfund.org.
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[33]CNN News Online
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www.ropercenter.uconn.edu.*Stanford v. Kentucky* (492 U.S. 361, 1989)
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