A CLOSER LOOK AT RACE, CAPITAL, AND SENTENCING:

AN EXAMINATION OF RACE AND DEATH PENALTY

POST- FURMAN AND GREGG DECISIONS

FROM 1977-2011

by

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Presented to the Faculty of the Graduate School of

The University of Texas at Arlington in Partial Fulfillment

of the Requirements

for the Degree of

MASTER OF ARTS IN CRIMINOLOGY AND CRIMINAL JUSTICE

UNIVERSITY OF TEXAS AT ARLINGTON

MAY 2012

ACKNOWLEDGEMENTS

I would like to first acknowledge, Dr. Robert Bing, committee chairman. This thesis would never have been completed without his advice and guidance. In addition, I would like to extend my gratitude and thanks to committee members, Dr. Rhonda Dobbs, and Dr. John Rodriquez, for their encouragement and support. I owe many thanks to Dr. Rodriquez, who inspired me to come to the graduate school in the first place. As for Dr. Dobbs, one day that I was about to give up, she took her time and wrote me a lengthy e-mail, encouraging me not to give up and to stay on the program- I am forever indebted.

I want to give many thanks to my wife, Adriana, for her endless support, understanding, and patience, in the many hours spent away from her in pursuit of this thesis. I also want to give thanks to my brother Dr. Hussein Khodayari MD, for always being there. Very special thanks to Tim Bielik, for his assistance and direction. I am extremely grateful to Dr. Ardeshir Anjomani, Dr. Robert Kunovich, and Dr. Nancy Rowe for their ideas, provisions, and contributions. Finally, I personally want to thank the entire Criminal Justice family at UTA for this immense accomplishment.

April 27, 2012

ABSTRACT

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The aim of this thesis is to study racial disparity in capital sentencing since Gregg and Furman decisions from 1977-2011. The data used in this study came from execution in the United States, 1608-2002 (the ESPY file) and death penalty information center, 2003-2011. The findings of the data suggest that there is a relationship between the race of the victim and the race of the offender in the capital sentencing. Most of the empirical literature to date examined in the study also conclude that race is a determining factor in capital punishment cases.

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CHAPTER 1

INTRODUCTION

1.1 Statement of the Problem

Throughout the world and in most western countries, law authorities the legal system to use permanent incarceration as its' most severe punishment, but choose not to follow the popular "eye for an eye." As of 2011, more than two- thirds of the countries have rejected the death penalty by law or practice; there is only one country in Europe, Belarus that practices capital punishment (Liem, 2012).

The number of the countries that carry out death sentence fell from 41 in 1995 to 23 in 2010 (The Economist, 2012). Soss, Langbein, & Metalko (2003) state that some of these countries have decided that the legitimate scope of state violence should not extend to the taking of a prisoner's life. Other countries have abolished state executions, partially due to findings that death penalty convictions are closely tied to racial and economic bias. Yet, in the United States, a civilized society separated from most every other country on earth by its freedoms, liberties, protection under the law, and a pioneer in human rights, the use of the capital punishment remains deeply entrenched; further the vast majority of these judicial killings falls disproportionally on African Americans and visible minorities.

Soss et al. (2003) suggest the United States is one of four nations that account for nearly 90% of known executions worldwide. Ironically, despite the United States firm global stance on the rights of children and mentally challenged persons, it is among six countries known to execute both. In the United States, there are currently thirty-four

states, along with the federal government, that rely upon the death penalty for capital crimes.

Paternoster, Brame, & Bacon (2008) maintain that the public support for capital punishment in the United States has always been favorable and robust, but has varied over time. In 1936, 61% of Americans favored the death penalty (Ellsworth & Gross, 1994). In the 1960's public support declined to 47%, but then progressively rose during the 1970s to 75% (Young, 2004; Ellsworth & Gross 1994; Combs & Comer, 1982). Public support for capital punishment reached its highest peak around 80% in 1994 (Ellsworth & Gross, 1994). Ellsworth & Gross (1994) further added that the public feels strongly about the death penalty, knows little about it, and is reluctant to hear the detail about the nature of executions.

According to Goodstein (2001), concerns over racial disparities, erroneous convictions, and emergence of many innovative humanitarian approaches have led to the death penalty declining in recent years. Since 1992, over 260 people in the United States have been exonerated by DNA testing, including 17 people who served time on death row. These people served an average of 13 years in prison before exoneration and eventual release (The Innocence Project, 2011).

As of 2011, less than 60% of Americans support use of the death penalty for those convicted of capital crimes (Pew Research Center, 2012). This is the lowest level of support since 1972, the year the U.S. Supreme Court voided all existing state death penalty laws in *Furman v. Georgia.* This low level for support of the death penalty can be partially attributed to the execution of Troy Davis in Georgia, a black man accused of killing a white police officer. Troy Davis's execution created widespread protests and extensive media coverage suggesting evidence against him was flawed and he may have been an innocent.

The majority of Americans believe that the capital punishment process in the U.S. is free from racial bias and it is imposed fairly despite its flaws (Bright, 2004). A substantial body of research has found the legal system is flawed to the point where an unknown proportion of individuals on death row are innocent regardless of race (Peffley & Hurwits, 2005). Bright (2004), asks how Americans have arrived at their conclusions? How much do individuals know about plea bargaining and the role of the prosecutor? Have they ever attended a trial? In the words of the former U.S. Supreme Court Justice Thurgood Marshal: "Other than having a side on pro or against death penalty, vast majority of Americans know nothing else about the death penalty" (Bright, 2004).

Soss et al. (2003) asked questions such as; do Americans know that the United Stated joins some of the most notorious violators of human rights (China, Iran, and Saudi Arabia) together account for the most known executions globally? Do Americans know that there is no consistency in capital punishment and it varies state by state? And finally do they know if the legal system may penalize offenders who murder white victims more harshly than victims of any other race? Swanson (2011) asked if Troy Davis had been able to hire an expensive lawyer, and if Troy Davis's victim was black instead of a white police officer, would the outcome of his sentence to be any different?

1.2 Research Question

With these issues in mind, this research is predicated upon the assumption that race is often a major descriptive factor, holding other factors constant (*ceteris paribus*); the death penalty is administrated considerably more often when the victim is white. As such, the following research questions have been formulated:

Null Hypothesis: There is no relationship between the race of the offender and the race of the victim in the capital punishment.

1.3 Limitations

To test the hypothesis, secondary data was used. The secondary data for the project comes from two different datasets that accompaniment each other. The first data was collected from Executions in the United States, 1608-2002: The Espy file. The second data was obtained from Death Penalty Information Center (DPIC), 1977-2011. The both datasets describe each individual executed and the circumstances surrounding the crime for which the person was convicted, since the moratorium was lifted in 1977. The data from The ESPY File does not provide victim information and the Death Penalty Information helps fill in this gap. Variables include the offender's age, race, name, sex, the victim's race and gender, method of execution and the crime for which the offender was executed.

However, the data does not permit certain comparison; as such the researcher cannot test if blacks are more likely to get the death penalty for a certain type of crime, compared to whites. To compensate for this shortcoming, there is heavy dependence upon research findings in the empirical literature.

1.4 Outline of Research

A history of the capital punishment since colonial America will be presented in the next chapter, followed by more specific information on slaves and their encounter with the criminal justice system. Landmark U.S. Supreme Court cases are also identified in Chapter 2. In the second part of Chapter 2, the author offers an overview of the empirical research assessing racial disparity in the capital sentencing. Chapter 3 details the research methodology, systematic policy and limitation of this research. The result of the analyses and brief important empirical literatures are presented in Chapter 4. Chapter 5 contains discussion and implications related to the study.

CHAPTER 2

LITERATURE REVIEW

2.1 The History of Capital Punishment in the United States

This section explores the history of capital punishment since the colonial era and the relationships between African Americans and experience with the criminal justice system. Since race is such a relevant area of study, this section provides insights into existence of racial disparities in death sentence outcome in the United States from 1608 to present. In the latter segment of this chapter, important U.S. Supreme Court cases are too discussed. The focus is to enhance our understanding about the relationship between race and capital punishment; the introduction is presented for three periods: 1608-1929, 1930-1967 and1977 to present.

2.1.1 Period of 1608-1929

The death penalty in the U.S. is not a recent phenomenon, but has existed since the European colonization of the Americas. The first known documented execution was Capitan George Kendall. Capitan Kendall was one of the original colonists in Jamestown executed by firing squad because of treason and mutiny in 1608 (Espy & Smykla, 2005).

Hearn (1999) explains that the American colonies permitted the use of the death penalty for a long list of criminal offenses based on the English common law of mandatory statute, religious beliefs, and the unique economic opportunity in the South. Under these statutes a sentence of the death penalty was automatically imposed when a defendant was found guilty of particular crimes. A man in Weymouth, Massachusetts was hung in 1623 for stealing corn from the Native Americans; another man named George Spencer was hung for having sexual relations with an animal (Hearn, 1999). In the Salem

witch trials, more than one hundred and fifty people were accused of witchcraft; and eventually fourteen women and five men suspected were convicted and hanged (Hearn, 1999).

There was an extensive list of offenses that resulted in execution during the early period (Paternoster et al., 2008). These offenses generally included murder, rape, burglary, horse stealing, forgery, counterfeiting, piracy, robbery, arson, treason, spying, rioting, slave revolt, aiding a runaway slave, witchcraft, sodomy, and concealing a birth. During the period of 1608-1929, there were an estimated 10,598 executions in the United States (Espy & Smykla, 2005). Southern colonies, because of their plantation economy, were more aggressive in imposing the death penalty for property crimes than in the northern states. North Carolina, for example, had over 20 capital offenses, including concealing a slave with the intent to free him, slave stealing, inciting slaves to insurrection and circulation of seditious literature among slaves (Banner, 2002). Other Southern "colonies" could impose the death penalty on slaves enticing other slaves to run away, striking and injuring whites, or raping a white woman (Banner, 2002).

Many researchers of the death penalty agree that the law of early America was vague and, due to inconsistent historical record keeping many executions, were not reported. It has been only within the past few decades that researchers have assembled evidence that gives an indication of what capital punishment was like during the early period, both in terms of how many people were executed and who those people were (Paternoster et al., 2008).

Once the colonies became the United States of America, the types of offense that resulted in execution began to drop and capital punishment became more centralized, shifting from local to state and federal authority. Keedy (1949), for example,

documents Pennsylvania as being the first state in 1795 to enact legislation requiring murder in the first degree to be punishable by death.

2.1.2 Defining Slaves and Black Race

In order to understand racial and ethnic biases in our legal system, one must first recognize these issues within the larger context of Americas' past and present. Lynch, Patterson, & Childs (2008), for instance, state that racial and ethnic biases have long been a part of American culture and racial tensions and disparities are often reflections of the racial divide that remains in many aspects of American society. History reveals since the crusade, most Europeans had negative interpretations of Africans and Muslim people (Berlin, 1998; Feagin & Vera, 1995). The xenophobia and anti-African views imported by the colonies were quickly assimilated by the newly formed United States of America. Many studies support the notion that early Americans assigned negative traits to people of African descent (Alexander, 2010; Tonry, 1995; Barkan & Cohn, 1994). Today xenophobic and biased thoughts have found a new wave of supporters (Barkan & Cohn 1994); both have agreed that African Americans have been stereotyped as people who do not want to work, who would rather be on welfare, who gain money through victimization and, who are violent by nature.

Most plantation owners believed that the slave was three-fifths of a man, was inhuman and repugnant and slavery was for their own benefit, therefore occasional killing a slave was not considered a murder, no matter the circumstance (Alexander, 2010). Although, the importations of new slaves into the American Colonies became illegal in the late eighteenth century, there were more than enough slaves to replenish the supply through natural reproduction (Davis, 2006). The slaves were taken as the legal personal property of their masters and were often included in wills along with land, horses, mules, cows, and farm equipment. The law essentially saw the relationship between slave owner

and slave as purely a private matter and slaves were legally at the mercy of their masters (Paternoster et al., 2008; Davis, 2006; Stampp, 1956). It is worth noting that the laws of the early American colonies were often ambiguous with no regular policing to serve and protect its meager citizens and these laws of the land often categorically separated people into groups and favored one group over the other.

Again, as Berlin (1998) points out that serious crimes such as major felonies and capital crimes were handled by state courts but almost all of their rulings favored whites. Federal laws also protected the interest of whites and slaveholders. Blacks could not serve on juries, nor could they testify against whites, and whites often were reluctant to testify against other whites. In 1854, the U.S. Supreme Court ruled in the *Dred Scott* case that neither free nor black slave could ever be considered a United States citizen (Paternoster et al., 2008). Shortly after the Civil War and despite their defeat, Southern whites were not likely to give up their legal and economic advantages and kept control over the large, but "free" black population (Alexander, 2010; Mahoney & Foner 1995). Both Alexander (2010) and Mahoney & Foner (1995) further add that Southern whites felt their livelihood was threatened by the sudden population of freed slaves.

Alexander (2010) notes that Southern whites felt in order to retain the social order; one clear solution was segregation which led to the birth of the "Jim Crow Laws". These laws required separate facilities for whites and blacks in transportation, education, housing, and other public accommodation. Alexander (2010) further explains that despite their best efforts to slow the emancipation process, blacks made some economic progress. But despite these achievements, for the majority of whites, blacks were inherently savages, impulsive, and with an amoral characters and needed to be lynched (Newby, 1968). During the period of 1882 to 1930, when lynching was a common

occurrence, nearly 2,000 black offenders were executed by the legal system (Tolnay & Beck, 1995).

2.1.3 Methods of Execution

The method of execution was heavily influenced by English laws. According to Oberly (2002), of the 10,000 executions between1608 to 1929, approximately 83% were by hanging, 14% by electrocution, and less than 3% by other means. Oberly (2002) points out that one purpose of public execution was deterrence, since the public often took part of watching. In 1841, a crowd of about 35,000 came to see the hanging of four black men in St. Louis while 50,000 came to see the hanging of a notorious individual named John Johnson in New York in 1824 (Banner, 2002). These public hangings were also a method of entertainment.

Many early American colonies believed that deterrence was at its best when the entire community was involved as spectators. The convicted person, always chained and sometimes dressed in a special uniform would be taken and transported by horse-drawn carriage to the execution site where religious leaders would deliver homilies. The condemned would then be allowed to give his or her final words, which were followed by a hymn or prayer, and then the execution. The entire event from jail to gallows would often take several hours and was a heavy symbolic public ceremony. The hangings sometimes had their flaws and unfortunately, things did not always go well for the condemned (Paternoster et al., 2008; Banner, 2002; Duffy, 2001; Halttunen 1998).

By the nineteenth century, the abolition movement began to express concerns that the use of hanging might be cruel and unusual punishment (Banner, 2002; Moran, 2002; Teeters, 1963). The state of Pennsylvania (1843) became the first state to move execution away from the public eye and carried them out in correctional facilities. In 1866, New York Governor David Bennett Hill appointed a commission to investigate the

possibility of finding a more humanitarian and civilized method of execution to replace hanging (Moran, 2002). The Commission, after considering several scientific alternatives, including death by lethal injection, chose death by electrocution as quick and painless. In 1896, the state of Ohio became the second state to switch from hanging to electrocution. Other researchers (e.g., Espy & Smykla, 2005 and Oberly, 2002) make the point that there were 93 known executions in the United States in 1889, all by hanging. By 1924, the majority of executions in the U.S. were by electric chair or lethal gas. In 1921 the state of Nevada was the first state to adopt lethal gas as its method of more humane execution but as it turned out that lethal gas was judged the worst of all (Denno, 2007). The first person to die in gas chamber was Gee Jon, a member of a Chinese gang, who killed a rival gang member (Oberly, 2002; Moran 2002).

William Kemmler became the first person in the country to be sentenced to death by electric chair in 1890 (Denno 2007; Ressig, 2003). Kemmler's execution was far from quick and painless and more like cruel and unusual punishment. After the initial surge of electricity, everyone thought Kemmler was dead, his body returned to life. The execution had to be repeated and this time, the smell of burnt flesh filled the execution room and Kemmler finally lay dead (Moran, 2002). Such calamity did not discourage other states from adopting this new method of scientific discovery. Just as Kemmler, a century after, Allen Lee Davis suffered deep burns and bleeding on his face while being electrocuted in Florida in 1999. But this time, millions of people around the world who viewed the result of Davis's execution through the Florida prison website pushed for reforms in method of execution (Radelet, 1998).Currently, injection is the sole method of execution for most states.

2.1.4 Period of 1930-1967

Unlike the previous period, most executions were conducted by state, rather than by local authorities. The official data began to be regularly collected on the frequency of executions. During the early part of the 1930-1967, there was more execution than in any other known segment of American history, mainly because most Americans who experienced prohibition and the great depression believed that death penalty was a necessary social measure (Bohm, 2003). There were a total of 3,891executions performed under state and federal authority, Bishop Adams was the first and Luis Jose Monge was the last casualties of capital punishment (Espy & Smykla, 2005).

During World War II, the number of executions declined to an annual average of about 130 and in the 1950's public sentiment began to shift from capital punishment and the numbers plunged to a record low of 191 during the 1960s. Oberly (2002) observes that the imposition of capital punishment was a fairly frequent occurrence during the 1930s and 1940s. By the beginning of the 1960s, the death penalty would become a rare event until capital punishment was temporarily banned by 1967 through a series of constitutional court battles (Oberly, 2002).

As in the preceding period, the majority of executions (54%) during the period of 1929-1967(at which point execution stopped, pending a decade-long U.S. Supreme Court overhaul of the death penalty) were conducted disproportionately on black offenders (Lane, 2010).The vast majority of the executions for rape, (over 90%) numbering 455 men, were black (Lane, 2010; Banner, 2002; Oberly, 2002; Duffy, 2001; Masur, 1989). This disproportionate representation in executions created concerns and eventually led to a moratorium period in 1967. On June 2, 1967 Luis Jose Monge was the last known person in the United States to be put to death for almost 10 years. During this time, there were no executions anywhere in the United States; as state and federal courts

were deciding some fundamental issues with respect to the death penalty, including whether or not capital punishment itself was constitutional (Paternoster et al., 2008; Shelden, 2001).

2.1.5 Death Penalty and the Constitutional Conflict

The decade of the 1960's brought many challenges to the fundamental legality of not only the death penalty, but all features of the criminal justice system in America. And while the U.S. constitution through the Fifth, Eighth, and Fourteenth Amendments had always supported the death penalty, in the early 1960s, it was suggested that the death penalty was a "cruel and unusual" punishment in violation of the Eighth Amendment (Bohm, 1999 & 2003).

Lane (2010) concludes that although racial bias was not formally part of *Furman v. Georgia (1972)* when it was reviewed by the U.S. Supreme Court, Justice Douglass stated that racial disparities were part of what made the death penalty "cruel and unusual" under the Eighth amendment. On June 29, 1972, the U.S. Supreme Court effectively voided 40 death penalty statutes, thereby, commuting the sentences of 629 death row inmates around the country and suspending the death penalty because existing statutes were no longer valid (Death Penalty Information Center, 2011). Although two justices voted that the death penalty was unconstitutional, the overall holding in *Furman* suggests that states need to rewrite certain death penalty statutes. Most new state laws no longer had the death penalty option for rape after the 1976 *Coker vs. Georgia*. The 10 year moratorium on executions came to an end in 1977, when Gary Gilmore was executed by firing squad in Utah (Shelden, 2001).

2.1.6 Period of 1977-Present

The landmark U.S. Supreme Court decisions of *Furman v. Georgia* (1972), and *Gregg v. Georgia* (1977), *Jurek v. Texas (1977)*, *Coker v. Georgia (1977),* and *Proffitt v. Florida (1977)* revitalized the controversy surrounding cruel and unusual punishment (Shelden, 2001). In *Gregg v. Georgia*, (1977) the U.S. Supreme Court ruled that the death penalty was not unconstitutional and suggested states engaged in capital punishment can rewrite their laws that would meet into compliance (Lane, 2010).

In addition to first degree murder, other crimes such as armed robbery, accomplice to murder, and rape were also death eligible during the early years of the current period. Between1977 and 2011, there are 1,277 executions, with 1,274 supervised by states, and three by the federal government. Gary Gilmore was the first casualty of the new era who gave up his legal appeals and was executed on January 17, 1977 in Utah. Charlie Brooks was the first person put to death by lethal injection in Texas in 1982. Just as the first two periods, the overwhelming 99% have been males and in term of the race, 61% have been racial minorities (Death Penalty Information Center, 2011). Southern states are still responsible for most executions (80%) in the country, while Texas accounts for 35% of all executions.

As expected, the pace of executions was extremely slow from the time the moratorium was lifted until 1986. Lane (2010) explains the states with valid death penalty statutes were being confronted with numerous constitutional challenges by lawyers. These challenges needed time to filter through state and the federal courts of appeals which helped to drop the African American share of executions by a third in the current period. The average time on death row before execution is about 10 to 12 years (Paternoster et al., 2008).

2.2 Landmark U.S. Supreme Court Decisions in Modern Period

In *Furman* decision (*Furman v. Georgia, Jackson v. Georgia and Branch v Texas*), the U.S. Supreme Court ruled in that capital punishment was unconstitutional and that it was in violation of the Eight Amendment because they gave the jury complete discretion to decide whether to impose the death penalty. The U.S. Supreme Court did not rule that death penalty itself was unconstitutional, only the way in which it was administrated. In regards to this decision, some states put themselves up to the task of drafting new death penalty statutes to suit their ideas of how the death penalty should be imposed.

2.2.1 Furman v. Georgia (1972)

Furman was armed and was burglarizing a private home when he was confronted with the owner of the house. Furman attempted to flee, and in doing so tripped and fell. The gun that he was carrying went off and killed a resident of the home. Furman was convicted of murder and sentenced to death. Furman appealed his case to U.S. Supreme court on the basis that imposition and carrying out the death penalty in this case violated his Eighth Amendment rights. The U.S. Supreme Court held that imposition of the death penalty in these cases was cruel and unusual punishment and violated the constitution. The outcome from this case forced states legislature to rethink their statutes for capital offenses to assure that death penalty would not be administered in a capricious or discriminatory manner (www.law.cornell.edu).

2.2.2 Gregg v. Georgia (1976)

A jury found Gregg guilty of armed robbery and murder and sentenced him to death. On appeal, Gregg challenged, claiming that his capital sentence was a cruel and unusual punishment that violated the Eighth and Fourteenth Amendments rights. In a 7-2 decision, the Georgia Supreme Court affirmed the death sentence. *Gregg*, along with

Jurek v. Texas and *Proffitt v. Florida*, became collectively referred to as the Gregg Decision (www.law.cornell.edu).

2.2.3 Coker v. Georgia (1976)

The defendants, a black man convicted for murder, rape, kidnapping, and assault, escaped from prison and raped a woman. The Georgia courts sentenced Coker to death on the rape charge. Coker carried his appeal to the U.S. Supreme Court on the basis his Eighth Amendment rights was violated. The U.S. Supreme Court held in a 7-2 decision that the punishment should fit the crime, and the death penalty was a "disproportionate" punishment for the crime of rape since no life was taken (www.law.cornell.edu).

2.2.4 McCleskey v Kemp (1987)

McCleskey, an African American man, was convicted of murdering a police officer in Georgia and was sentenced to death. The defendant appealed and argued that that research (e.g. Baldus study) has found that black defendants who kill white victims are the most likely to receive death sentences in Georgia. The Court in 5-4 decision held that there was no constitutional violation, since the defendant could not prove that there was discrimination (www.law.cornell.edu)

2.3 Race and Capital Punishment: A Closer Look at the Literature

This literature review examines the research on capital punishment. It also explores potential racial bias by key players of the legal system. The police, jury and prosecutor are pervasive actors in death penalty cases. Research suggests that unethical behavior and a bias kindness for a particular race or gender may drive the disparity between the death penalty rates between whites and non-whites (Jenkins, 2005; Gonzalez-Perez, 2001). Since executions were reinstated in 1977, 80% of the total defendants who were executed murdered at least one white victim and 54% of these judicial executions involved whites killing whites. The black offenders killing of white victims were 23% while less than 3% of all executions have involved whites killing black victims (Lynch et al., 2008).

According to Paternoster et al. (2008), there are three sets of racial factors when it comes to racial disparity in the capital punishment: (1) the race of the defendant, (2) the race of the victim, and (3) the dynamic of the combination of the offender's and victim's races. If black defendants who kill white victims are singled out because, in part, they crossed racial lines, then racial disparity is at work (Paternoster et al., 2008).

2.3.1 Defining Racial Differences and Racial Disparity

Before proceeding, one must first differentiate between "racial differences" and "racial disparities". A racial difference connotes a difference between the proportions of those who have received a death sentence for black versus white defendants. For example, blacks comprise 45% of those receiving a death sentence, while whites comprise 56%. That 11% represents an aggregate difference between whites and blacks in simple ratio terms. It is simply an observation of mathematical fact. Alternatively, a racial disparity compares the odds of a death sentence for each race expressed as a percentage of the total population from each race. For instance, if 42% of those received

under a death sentence are black, but blacks comprise 14% of the total population, then blacks are 3.0 times more likely than the average person to receive a death sentence. This clearly indicates that blacks are overrepresented on death row (Lynch et al., 2008). As another example of disparity among the key actors in the death sentence process, African Americans represent less than 5% of the partners in law firms and only 2% of the prosecutors (Death Penalty Information Center, 2011).

2.4 Studies of Race and Capital Punishment, 1930-1977

Between1930-1967, approximately 3,859 executions occurred under state and federal authority (Paternoster et al., 2008; Sigel, 2006). Espy & Smykla (2005), reports 10,598 executions from 1608 to 1930. The Death Penalty Information Center (2012) reports a total of 1,277 executions from 1977-2011 which bring a total of 15,731executions since 1608. There is no way of knowing how many of the 15,731 people executed may have been innocent. But there is a substantial body of evidence support that despite the fact that African Americans comprise less than15% of population, majority of these judicial killing links to them. Based upon the over representation of blacks on capital sentences, much of the empirical literature focuses on African Americans.

Sellin (1928) was among the first researchers of the 20th century to notice glaring disparities in incarceration rates between blacks and whites and at a rate of 14 to 1.

Johnson (1941) examined capital punishment indictment in Richmond, Virginia between1930-1939. Johnson (1941) discovered black offenders who killed a white victim were more likely to be convicted of murder than any other racial mixture. Johnson (1941) further states that more than 50% of offenders who killed a white were sentenced to death and only 6% of those who killed a black were sentenced to death. Blacks who killed the whites were almost eight times more likely to get the death sentence.

Myrdal, Sterner, & Rose (1944) studied the court system in the Deep South in the 1930's. Myrdal et al. (1944) revealed that it was quite common for a white accused of crime against a black to be set free. Conversely, for black offenders accused of raping or killing a white victim to receive a harshest punishment.

Garfinkle (1949) conducted a study of homicide indictments in ten counties in North Carolina from 1930-1940. Garfinkle (1949) found no evidence of racial disparity at the indictment and charging stages when he separately looked at the race of the offender and the race of the victim. Garfinkle (1949) reported that 82% of white offenders and 91% of black offenders were indicted for first degree murder. However, Garfinkle (1949) found evidence of a disparate racial impact when the race of the offender and victim were both considered. Considering the race of the offender and victim, 69% of black offenders who killed whites were charged with first degree murder and 53% of black offenders who killed black were charged with first degree murder. White offenders who killed other whites were 44% and white offenders who killed black were 42%. Both the Garfinkle (1949) and Johnson (1941) studding in North Carolina and Virginia find that the majority of homicides were interracial, the overwhelmingly majority of defendants who received capital punishment were blacks.

Wolfgang, Kelly, & Nolde (1962) studied about 400 people sentenced to death during 1914-1958 in Pennsylvania. They found that African Americans who committed a felony in conjunction with another felony were less likely to have their case commuted compared to their white counterparts.

Similarly, Partington (1965) found that from the total of 2,798 rape cases in Virginia during 1908-1964, blacks committed 1,560 compared to 1,238 by whites. From the total of 2,798 rape cases during this period, the 74 defendants executed were all African American but not one white offender was executed during that period for rape.

Koeninger (1969) examined 483 people executed in Texas from 1924 to 1968 and discovered that the ratio between white and black capital defendants having their cases commuted was 26% to 16% in favor of whites. In other words, 76% of white offenders were executed; while 99% of black offenders did not have their sentences commuted and were eventually executed.

The American Academy of Political and Social Science published an extensive study conducted by Wolfgang & Riedel, (1973). From 3,000 rape convictions in 11 states, the study revealed that while the death sentences for rape declined, cases that involved a black offender and white victim had not. Wolfgang & Riedel (1973) concluded that blacks accused of raping a white victim were six times more likely to be sentenced to death for rape than white offenders, further, blacks who raped a white victim were 18 times more likely to get a death sentence than a white serial rapist.

In another study, Wolfgang & Riedel (1975) examined 361 rape convictions in Georgia from 1945-1965. Wolfgang & Riedel (1975) found out that if the rape was committed along with another felony, defendants of both races were more likely to be sentenced to death. On the other hand, blacks were 20 times more likely to be sentenced for raping white women.

Zimring, Eigen, & O'Malley (1976) examined the disposition of 204 homicide cases in Philadelphia during 1970. They found that the Philadelphia police department arrested 245 people in order to get the 204 homicide cases. Zimring et al. (1976) reported that 65% of offenders who killed a white victim received capital punishment or life imprisonment and only 25% of those who killed a black received death or life imprisonment.

By contrast, Baldus, Woodworth, Zukerman, & Weiner (1990) explored data in Georgia on 300 defendants who were tried and convicted before the *Furman* decision in

1972, the authors found that juries were selective in their decision to sentence someone to death. The results show that in the pre-*Furman* data for Georgia, there is evidence of racial disparity in outcomes by both the race of offender and the race of victim. Ignoring the level of aggravation of the murder, black offenders who killed white victims were the most likely to be sentenced to death, more than three times more likely than any other offender/victim racial combination.

2.4.1 Contradictory Findings

Not all studies in capital offenses supported racial disparity. Judson, Pandell, Owens, McIntosh, & Matschullat (1969), for example collected data on the cases using questionnaires that were sent out to key players in court processing and the California Department of Correction. Judson et al. (1969) found that neither the defendant's race, nor victim's race had any effect on sentencing.

Perhaps the most well-known study of race in death sentencing is Kleck (1981).The author reviewed 40 independent studies of capital sentencing decisions between 1935 and 1979. The author calculated the number of death sentences per 1,000 homicides arrests; he found that the death-sentencing rate was generally higher for whites than for blacks. Kleck (1981) further asserted that out of the 40 studies only 8 consistently supported racial discrimination.

Bedau, (1964) examined data from 1907-1960 in New Jersey and found that white offenders on death row were no more likely to have their sentences commuted than black offenders. Similarly, a year later, Bedau (1965) conducted a study in Oregon and found race to have little or no effect in a sentencing comparison. The findings of these conflicting reviews cast considerable doubt on the idea that a consistent racial bias is a primary source of disparity in the United States. Supporters suggest that further research should be conducted on factors other than racial discrimination; and that the idea the

criminal justice is systematically biased against African-Americans is a “myth” (Wilbanks, 1987).

2.5 Studies of Race and Capital Punishment, 1977- Present

As expressed in the earlier portions of this paper, the U.S. Supreme Court’s decision in *Furman v Georgia* (1972) halted the use of capital punishment. Four years later in 1976, three landmark U.S. Supreme Court rulings *Gregg v. Georgia, Jurek v. Texas, and Proffitt v. Florida* best known as the *Gregg Decision* ended the moratorium under the Eighth Amendment. States legislatures introduced legal reforms to make procedural changes in statutes to improve the fundamental problem of arbitrariness and racial disparity while keeping the death penalty as the ultimate punishment. It included that: “(1) bifurcated hearings (a guilt and separate penalty phase), (2) the formal consideration of aggravating and mitigating factors of crime, and (3) some form of appellate review of all death sentences” (Paternoster et al., 2008, p.199). These procedural reforms attempted to remove bias towards minorities as to which capital defendants live and which die. The modern-day reforms enticed a new generation of social scientists to investigate whether the new death penalty laws were actually any different from their predecessors.

Riedel (1977) was among the first to compare sentencing outcomes after *Furman* decisions. Riedel (1977) examined data from National Prison Statistics (NPS), NAACP Legal Defense, and Educational Fund which consisted of 407 inmates waiting on death row in twenty-eight states. Riedel (1977) concluded that despite constructing new death penalty statutes imposed under *Furman,* racial disparities had not eliminated from the capital justice system.

Bowers & Pierce (1980) explored the probability that an offender would be indicted for first degree murder once charged with homicide in Florida from 1973-1977.

Bowers & Pierce (1980) found that the black offenders charged with homicide for killing whites were more than twice as likely to be eligible for the death penalty as for killing blacks. In homicides that were committed with the presence of another felony, all black offenders who had killed a white victim/s were indicted for first degree murder.

Ziest (1981) also conducted a study in Florida on death row inmates and discovered that reforms actually made a difference. The percentage of people on death row that had killed blacks surged and the percentages of black offenders on death row actually dropped.

Bowers (1983) examined the capital charging process in Florida and found out that even after considering the circumstances such as number of offenders and victims involved, the commission of another felony, the age of the victim, the type of weapon used, and the type of attorney the defendant has, those who killed white victims were more likely to be charged with first degree murder.

Similarly, Paternoster, & Kazyka (1988) examined the role of race on decisions of prosecutors in South Carolina and found that prosecutors were more likely to seek the death penalty, if the victim was white, and the offender was black than any other combination. .

Vito & Keil (1988), in a similar study in Kentucky, found from the 104 cases that were sent to a penalty trail by prosecutors, black offenders were frequently sentenced to death.

Bienen (1988) in order to find evidence of racial disparity in capital punishment in northern states conducted a widespread investigation in New Jersey during 1982-1986. Bienen (1988) reported that after considering all kind of aggravating and mitigating factors, prosecutors were 10 times more likely to ask for the death penalty when the victim was white.

Meanwhile Baldus, Woodworth, & Pulaski (1990) argued that recent rhetoric in the U.S. Supreme Court and Congress has given currency and legitimacy to claims that racial discrimination in the administration of the death penalty is inevitable and impossible to prevent, let alone to correct. They have stated that the inevitability hypothesis is probably overstated and that the impossibility hypothesis is almost certainly wrong. Baldus et al. (1990) also considered recent developments in the New Jersey and Florida Supreme Courts that provided models for examining structural discrimination in capital sentencing and discrimination in individual cases. The authors concluded that over time, developments in these and in other state courts may shed important light on the plausibility of the inevitability and impossibility hypotheses. The study concluded that after controlling for aggravating factors and other legally relevant variables, "there was a statewide decline in the race of defendant effect" (Baldus, Woodworth, & Pulaski, 1990, p.182). But in the rural areas, the race of the victim had a vital effect on racial disparity among death row inmates (Paternoster et al., 2008).

Aguirre & Baker (1993) analyzed the relationship between racial prejudice and support for the death penalty. The authors used 1984 GSS data consisting of a random sample of 1,473 white respondents. A racism scale was created from seven items where the respondent was given the opportunity to support discrimination toward having someone of a different race in varying contexts of social proximity. Aguirre & Baker (1993) concluded that people who were racially prejudiced were more likely to support the death penalty.

Similarly, Pierce, & Radelet (2005) in a California study (1990-1999) found that defendants convicted of killing non-Hispanic white victims received the death penalty at a rate of 1.75 per 100 victims compared to the rate of 0.47 for defendants convicted of killing non-Hispanic blacks.

In examining over 502 deaths eligible cases, Unah & Boger (2001) found race to be a dominate factor in capital punishment.

After exploring 700 homicide cases in Philadelphia, Baldus, Woodworth, Zukerman, & Weiner (1998) discovered that both the race of defendant and victim had a significant role on the probability of receiving a death sentence.

Ditchfield, Paternoster, Bacon, & Brame (2004) examined “death eligible” data from Maryland during 1978-1999 and found that the probability of being sentenced to death was about twice as high for those who killed white victims as for those who killed a black victim.

Grosso & O’Brien (2010) reviewed over 5,000 death penalty eligible cases between 1990 and 2009 and discovered that when victim is white, a defendant is almost 3 times more likely to be sentenced to death.

Meanwhile, using 1990 GSS data, Barkan & Cohn (1994) investigated whether support for the death penalty was associated with racial prejudice. Barkan & Cohn (1994) used a random sample of 1,150 white respondents and among the independent variables were “racial antipathy” and “racial stereotyping.” Racial antipathy was measured by two items, asking respondents the degree to which they favored or opposed “living in a neighborhood where half of their neighbors were Black” and “having a close relative or family member marry a Black person”. Racial stereotyping was measured by six items asking respondents the degree to which they thought blacks were lazy, unintelligent, living off welfare, unpatriotic, violent, and poor. A single item asking whether respondents favored or opposed the death penalty for persons convicted of murder measured the dependent variable. Barkan & Cohn (1994) found that antipathy toward blacks and racial stereotyping was associated with death penalty support.

Hurwitz & Peffley (1997) used sample of 501 white adults in Kentucky to examine public perceptions of race and crime. The authors found that black racial stereotypes were significantly related to all measures of capital punishment.

Borg (1997) used a national random of 1,074 white adults to assess support for the death penalty. Among the independent variables were two measures of "racial antipathy" and "racial stereotyping; Borg found that both racial antipathy and racial stereotyping were significantly related to capital punishment.

Johnson (2001) examines data (4,068) GSS data in New Orleans to determine if the courts do not respond harshly with criminals. Among the independent variables were three measures of racism. The first was "Jim Crow" racism (there should be law against marriages between blacks and whites, blacks are unintelligent, whites have the rights to keep blacks out of their neighborhoods). The other two racisms measured as the perception that blacks lack motivation to pull themselves out of poverty and black's unemployment, income, and housing are not due to discrimination. Johnson (2001) found that all three racism variables were significantly related to support for the death penalty.

Bobo & Johnson (2004) used collected data from National African American Election Study and Race, Crime and Public Opinion Study, to assess the differences between black and white Americans' views on the death penalty and support for harsher punishment. Bobo & Johnson (2004) found that racial resentment was significantly related to support for the death penalty and for harsher punishments.

2.6 The Role of the Actors and Race Relations in Court System

The actors inside the criminal justice system are vital figures to how crime and criminal behavior are defined and how laws are enforced to protect the public. For many of these actors, sentencing a person to death in capital cases is the last resort and it should come as a result of many meticulously fact-findings, precise decision-making

process and fair play. How these actors process offenders through funnel's justice should bring us closer to revealing how racial disparity could emerge. For the purpose of this research project, only the role of the capital jury and prosecutor will be discussed. The following is a brief examination of what the literature says about these individuals.

2.7 Jury in Capital Cases

Ellis & Diamond (2003) document that juries are expected to be impartial and make informed decisions using their prior knowledge of the case to deliver a verdict based on values, principles. There is however, a substantial body of evidence revealing a substantial racial disparity in the court system, including capital sentencing (Cochran & Chamlin, 2006). The stress on selecting an impartial juror is relatively new. Research supports that pre-existing bias and attitudes can affect how a juror sees trial information and decides a verdict (Fitzgerald & Ellsworth, 1984). Tabak (1995) believes that juries are regularly selected along racial lines; while all-black jury for a white defendant is rare, all-white juries remain common for black defendants.

2.7.1 Personality Characteristics and Attitudes

Cochran & Chamblin (2006) further note that the bias and misconduct in courtrooms can lead to levels of distrust and alienation among racial and ethnic minorities. In *Batson v. Kentucky* (1986) the court rejected a Sixth Amendment challenge that the defendant would be deprived of a fair jury in favor of a Fourteenth Amendment equal protection holding that race-based elimination of black jurors violated their rights to jury service. Ingram (2005) argues that under *Batson v. Kentucky (1986)*, if a defendant accuses a prosecutor of discrimination against jurors because of race, the defendant would be responsible of proving that the prosecutor dismissed jurors of the same race as the defendant. Meanwhile, Mauer (1999) has noted that since both prosecutor and defense often dismiss certain jurors, defendants are having problems proving it.

Paternoster et al. (2008) report that there are two major issues with capital punishment jurors: 1) stereotyping, and, 2) lack of racial diversity. Gonzalez-Perez (2001) noticed that the typical jurors are older, conservative white males, strict, and Christian. Prosecutors often select people with these characteristics to serve as juries in capital cases knowing that they more likely to support the death penalty. Intriguingly, Eisenberg, Garvey, & Wells (2001) found that in 53 South Carolina capital cases, the 21 with nine or more all white jurors whose first vote was for death all ended with death sentences. Eisenberg el al. (2001), suggest that racially diverse juries often create obstacles for prosecutors. For instance, an issue or factor that influences the initial vote of even only one or two individuals in diverse jurors may serve as a "tipping points" that affects the final jury verdict (Lanier, Bowers, & Acker 2009). Research also emphasizes the importance of diverse juries and suggests that racially diverse groups may be more systematic and capable than homogeneous ones (Sommers, 2006).

Barkan & Cohen (1994) find that whites who are more likely to see blacks as "lazy," "unintelligent," "desirous of living off welfare," "unpatriotic," "violent" and "poor," for example, are more likely to support capital punishment. Meanwhile, Soss et al. (2003) has noted that whites' support for capital punishment in addition to law and order is driven by their proximity to black residents and their antipathy towards them. Sunnafrank & Fontes (1993) conclude that there are certain felony offenses that whites interpret as "black" crimes. These offenses include murder, muggings, theft, and assault.

In another study, Peffley & Hurwitz's (2002) main finding suggests that whites explicitly think of penalizing African American offenders by supporting the death penalty. States or cities that hold an enormously low minority population cannot be expected to have racially diverse juries. Therefore, based on the finding, one can be implied that in the case of a white dominate jury; the fate of a minority defendant is not likely to be

impacted negatively. Conversely, little is known about the experience or role of all black jurors on the murder trials of white offenders accused of killing a black victim. As Barkan and Cohn (1994) conclude if public support for capital punishment is motivated by racial prejudice, it is unacceptable in a democratic society for officials to be guided by such support.

2.7.2 All-White Jury

Kennedy (1997) points out that African Americans have been systematically excluded from jury service by the continuing practice of racially biased absolute challenges. Kennedy also asserts despite high profile cases (e.g. the O.J. Simpson trial) recent research continues to demonstrate the unequal representation and marginalization of blacks from jury service.

Tabak (1995) has noted that there are also instances of all-white juries in communities with large black populations. In Georgia, for instance, a state with a population more than 30%black, a black man was convicted of murder in front of an all-white jury (Tabak, 1995). A similar situation took place in Louisiana where blacks represented more than 40% of the population in 1997. According to Amnesty International (2011), between 1997 and 2010, all-white juries were responsible for one in five African Americans being executed. Tabak (1995) further argues that even in cases where there is only one African American juror, blacks are still at a disadvantage because it is very difficult for their opinions to matter. Furthermore, Tabak (1995) and Bowers et al. (2001) have noted that sometimes the lone black juror may feel pressured by other jurors to vote in favor of a capital sentence. This was indeed the case in *Hance v. State* (1984) where Gail Lewis Daniels was the only African American on a Georgia capital jury. Although, Mrs. Daniels refused to vote for the death penalty, the other jurors reported to the judge that they were unanimous.

In *Strauder v. West Virginia (1879),* the U.S. Supreme Court ruled for the protection of a black offender going against all-white juries. Furthermore, the court indicated that it is a violation of the Fourteenth Amendment's equal protection clause to exclude blacks from serving on juries (Bowers et al., 2001). Despite guidelines intended to protect jurors from subjective factors such as race and gender, most studies indicate that race is still a strong issue among the jury members, as both blacks and whites report that jury deliberations were filled with racial tensions and deep ideological struggles over capital punishment amongst the white majority and black minority. Evidence supports that a jury composed of at least five white males on a death penalty case involving a black offender and a white victim is substantially more likely to result in the imposition of a capital sentence.

2.8 Jury Studies

Bowers et al. (2001) interviewed more than a 1,000 capital jurors to collect information of how they reached their verdict. As expected, race was an important issue among the jurors. The authors found that black jurors felt serving as the lone black juror resulted in resentment and enmity with white jurors. Other minority jurors reported that white jurors were often impatient with deliberation.

Kalven & Zeisel (1966) interviewed 500 judges to recall jury trials over which they resided. Kalven & Zeisel (1966) found most judges expressed concerns over juror's attitudes, and personality characteristics based on preexisting bias to be fair in their in their deliberations.

Sorensen & Pilgrim (2000) document that in some states jurors may make decisions based on preexisting bias. Both Sorensen & Pilgrim (2000) assert that whites are more likely to associate blacks with crime and to be more capable of committing

murder. Therefore, jurors might be more inclined to vote guilty when judging those of a different race rather than those of their race.

Smith, Bjerregaard, & Fogel (2008) studied a dataset of 1,272 jury decisions for1977 through 2006 and found out that the majority of jury decisions resulted in a life sentence, but those who killed white victims were more likely to receive death sentence than those who killed black victims.

It might be tempting to conclude from the preceding that all, or substantially all, white jurors are biased, this is not the case. Pfeifer & Bernstein (2003) observe that there is substantial number of white jurors with their conscience without regard to the race, gender or age of the defendant. This next segment explores the role of the prosecutor and what research says about the factors that guide their decisions.

2.9 Prosecutorial Discretion

Prosecutors are elected officials whose role is to "defend for the public" (Farnworth & Teske 1995). Farnworth & Teske (1995) further report that the prosecutors' duties vary state by state; in some states, prosecutors decide whether to initiate the charging process and conduct extensive investigation; while in other states, their success is relies heavy on the work of the police department. Each prosecutor must decide whether to prosecute or dismiss charges. In capital punishment cases, prosecutors have enormous discretion.

Feleichaker (2009) points out that the integrity, reputation, and effectiveness of the entire death penalty system is shaped in great measure by the way in which the prosecutors exercise their discretionary power. The prosecution has the discretion to remove potential jurors through peremptory challenges, which makes them a powerful actor in courtrooms. Feleichaker (2009) also proclaims that peremptory challenges (*Batson v. Kentucky* 1986*)* provide a legal loophole for prosecutors who may want to

exclude certain races from the jury pool. In *Holland v. Illinois* (1990), the defendant objected when the prosecution used peremptory challenges to dismiss minority jurors. In *Powers v. Ohio (1991)* the court ruled that a defendant has the rights to object to the use of the peremptory challenges.

2.9.1 Racial Profile of the Prosecutor

There are reports that only 1% of the prosecutors in the United States are African Americans, and the remaining 98% are white or Hispanic (Death Penalty Information Center, 2011). Paternoster et al. (2008) explain that the system cannot be blamed for this disparity because the minorities are under-represented in law schools making their under-representation as prosecutors nearly certain.

Paternoster et al. (2008) comment that the emphasis on electing an impartial prosecutor is as important as selecting as juror. Paternoster et al. (2008) furthermore assert that the founding fathers affirmed that the purpose of the state in prosecuting criminals is not to win at any price, but to seek justice. Today the prosecutors want to win at any cost; and while winning, if justice prevails, then that is nice too (Albonetti, 1995). Albonetti (1995) added that the substantial power of the prosecution needs to be checked. In concurrence with Albonetti (1995), Paternoster et al. (2008) assert that the prosecution has inadequate knowledge of the facts and rather than being objective, like all of us, they are a product of habit and social norms (Paternoster et al., 2008).

2.9.2 Prosecutorial Studies

Sorenson & Wallace (1995) studied the prosecutor's pre-trial decisions in Missouri and concluded that black offenders killing a white victim would get a first degree murder charge illegible for capital murder trial. Meanwhile, Baldus, Woodworth, Young, and Christ (2001) concluded in their study of 175 death eligible cases during 1973-1999 that prosecutors advanced cases faster when the defendants were minorities and their

victims were white. Why would prosecutors be more inclined to advance cases faster when the defendant is black and victim is white? To answer this question, Beckett & Sasson (2000) comment that while the great majority of prosecutors are ethical, law-abiding individuals who seek justice, the existence of prosecutorial misconduct and its impact on innocent lives cannot be ignored. Beckett & Sasson (2000) conclude that prosecutors who fail to win verdicts fail to get re-elected. Therefore, in order to sustain their reputations and advancement to lucrative private practice, the environment becomes conducive to unethical behavior and misconduct.

An extensive body of research also suggests that prosecutors do not act out of evil intent; they are just wedded to a theory and ignore the evidence that doesn't fit (Paternoster et al., 2008). Salgado (2005) has noted that when the prosecution uses peremptory challenges to exclude minority from serving on juries, does not mean that they are racist. Just as any professions, this is the nature of their business to be firmly competitive to ensure a death sentence since their obligation is to protect the innocent.

Fishman (2002) similarly suggests that the power of mass media and public pressure influences the decision making of prosecutors. According to Barkan & Cohn (1994), the mass media will continue to play a critical role in the way white Americans identify African Americans. Both Fishman (2002) and Barkan et al. (1994) additionally argue that the media prays on crime, drug use, and gang violence; and adopt a one-sided malicious public perception of African-Americans.

In *Batson v. Kentucky (1986)* a black defendant accused the prosecution of a violation of his rights under the Sixth and Fourteenth Amendment when the prosecution used peremptory challenges to exclude black jurors from serving on the trial. As part of the *Batson decision*, prosecutors and attorneys are prohibited from excluding jurors from serving on a case due to their race, ethnicity or gender. In an earlier case before *Batson*,

Swain v. Alabama (1965), the U.S. Supreme Court rejected an appeal from a black defendant to vacate an all-white jury's verdict after all the eligible black jurors were excused from serving on the trial. The U.S. Supreme Court declared that a black defendant would have to prove that the peremptory challenge as a whole was being misused. *Batson v. Kentucky* overturned this decision and if the defendant can prove that peremptory challenges were being misused in regards to his or her case, then the defendant would get a new trial (Tabak, 1999). Tabak (1999) added that even these protections have boundaries.

The use of peremptory challenges to remove certain jurors is not exclusively reserved for black defendants. The white defendant can also remove individuals from jury duty. In *Holland v. Illinois (1990)*, a white defendant objected when the prosecution used peremptory challenges to dismiss minority jurors. Although the court ruled against the white defendant, but as it was mentioned in a different segment of this study, in *Powers v. Ohio (1991)* the court ruled that a defendant has the rights to object to the use of the peremptory challenges. What this essentially tells us is that if these strategies are done intentionally and on regular basis, in a worst-case scenario, they have punitive consequences not only for the capital punishment as a policy, but also for the entire capital justice system (Paternoster et al., 2008; Tabak, 1999).

2.10 Innocent and Serving on Death Row

As of October 2011, there were 3,199 death row inmates waiting for the outcome of their sentences (Death Penalty Information Center, 2011). But not all defendants who are sentenced to death get executed. In 2010, the Innocence Project received 3,120 new requests for assistance from prisoners with claims of innocence. There is no way of knowing how many innocent people are behind bars, but the innocence project reports if only 1% of the 3,220 death row inmates behind bars were innocent, that would mean

32.2 people are sentenced to death for crimes they did not commit (Innocence Project, 2011; Paternoster et al., 2008).

The frequency of mistakes in capital cases has led some jurisdictions to consider extra-judicial body to examine cases that have already been reversed to detect how the system failed (Turow, 2003). Kentucky became the first death penalty state to pass the "Racial Justice Act" into a law that prohibits the death penalty from being sought on the basis of race. A similar scenario played out in North Carolina where the law permits a judge to overturn the death penalty sentence or prevent prosecutors from seeking the death penalty if bias is shown (Robertson, 2012). It was the case in 2003, when the Illinois Governor George Ryan declared a moratorium on further executions of 164 prisoners on death row on the grounds that the ultimate punishment is both irreversible and flawed in the sense that perhaps some death row inmates are on the verge of losing their lives for crimes they never committed (Turow, 2003).

2.10.1 Prosecutorial Misconduct

Huff (2002) stated that some prosecutors engaged in unprofessional, unethical, and sometimes criminal behavior in the name justice by arresting and convicting the wrong person, leaving the real criminal free to continue victimizing citizens. For instance, an assistant prosecutor in Pennsylvania left a voice device with an instructional message for his colleagues that they needed to be ultra-selective on choosing minorities to serve on juries (Dieter, 1998). In another scenario, a prosecutor in Kentucky compromised the death penalty prosecution against the defendant by cutting a secret deal with a witness (Death Penalty Information Center, 2012).

The former district attorney who sought capital punishment for Ruben Cantu (executed 1993 in Texas), after talking to the NAACP Legal Defense and Educational Fund, now believes that Cantu was "probably innocent"(Paternoster et al., 2008).

A similar scenario by NAACP Legal Defense and Educational Fund revealed that Larry Griffin, who was executed in Missouri in 1995, could have been innocent (Patrick & Ratcliffe, 2007).

Turow (2003) noted that in May of 2002, Parris Glendenning, the Governor of Maryland suspended all executions in his state pending a study of racial disparity (see figure 3.3). Turow (2003) also states that in 2001, Indiana set up a Criminal Law Study Commission (CLSC) to exam various issues related to the death penalty in 2003, and a committee that Pennsylvania's Supreme Court appointed to examine the evidence of racial bias recommended halting all executions so the death penalty could be better understood.

As mentioned before, the U.S. Supreme Court has taken protections against such immoral conduct, in *Powers v. Ohio (1991)* by prohibiting the prosecution from abusing peremptory challenges which prevented blacks from serving on the jury in a case with a black defendant and a white victim. Critics argue that the Supreme Court decisions against the legal system's immoral conduct is nothing but guidelines that are intended to create more form than substance (Paternoster et al., 2008). It is startling that more legislation and reforms have not been introduced to control discrimination, excessive punishment, and wrongful conviction. Various studies have noted that the reason many politicians and legislators ignore loopholes in death penalty cases is that once when these flaws have been detected and pushed for reform, it could lead to the public mistrust of them which could lead to the election of the new politicians (Baker, Lambert, & Jenkins 2005; Niven, 2002; Dieter, 1998). That is to say, as long as the public is in favor of capital punishment, prosecutors will continue to support the death penalty since their mission is to represent the public.

The findings from this empirical review are mixed, but favor the thesis that blacks are punished disproportionately. On the one hand, some studies perhaps a majority, find that minorities particularly blacks, and are punished more harshly than whites convicted of similar crimes (Garfinkle, 1949; Wolfgang, Kelly, & Nolde, 1962; Zimring, Eigen, & O'Malley, 1976; Balus, Woodworth, & Pulaski1990; Pierce & Radlet 2005). On the other hand, a fairly significant portion of the research finds no differences in sentencing outcomes by race of the defendant, while a considerably smaller number of studies find that whites are punished more harshly than minorities (Kleck, 1981; Judson, Pandell, Owens, McIntosh, & Matschullat 1969; Bedau, 1964). Clearly, more research is needed before drawing firm conclusions. The next chapter delivers methods and design of the study.

CHAPTER 3

METHODS

This chapter covers methods. It begins with a description of the type of data and how the data was identified and collected. The coding and merging of data was performed using Statistical Package for the Social Sciences (SPSS). The chapter also describes sampling procedure, method of analysis, IRB review, and limitations of the dataset.

3.1 Sample of Analysis

The secondary data for the project comes from two different datasets that complement each other. “The ESPY File: Execution in the United States, 1608 to 2002” and “The Death Penalty Information Center, 1977-2011Executions in the United States”, both help to provide data on executions under civil authority between 1977 and 2011 in the United States for this project. Race, gender, name, date, and race are some of the variables included in the data. The data from The ESPY File does not provide victim information and the Death Penalty Information helps fill in this gap.

The Death Penalty Information Center (DPIC) provides data on executions in the United States since 1977 to 2012, but for this project only the data from 1977 to 2011 was used. The DPIC is a national non-profit organization founded in 1990. The DPIC promotes informed discussion, statistics, and issues in an annual report. The variables are characteristics of the defendant’s and victim’s information, date, and circumstances surrounding the crime for which the person was executed.

The first secondary dataset ESPY File looks at executions in the United States from 1608 to 2002 and was collected from the Inter-university Consortium for Political

and Social Research (ICPSR). The original investigators are Espy & Smykla, (2004). Both datasets contain attributes about each execution from 1977 to 2002 including the criminal's personally identifiable information, execution details, and the crime(s) committed. However, both data sets are combined in order to obtain foreign data which is unique to each dataset. The results of these joined operations produce personally identifiable information on the victims of the crimes with the criminal's data. Although the ESPY file stops at 2002, we can use the information from the DPIC dataset to add onto the ESPY from 2003-2011 for additional cases. Also, the ESPY is a recognized and established academic dataset whereas the DPIC is operated by a nonprofit and by using both we can increase the validity of the results.

In order to combine both datasets, a new database was manually created with the ESPY file and the DPIC in order to create a new dataset labeled "Theory". The Theory dataset when created had only records inserted when the individual executed, state, date, race, and the sex of the offender matched both datasets ESPY and DPIC. The ESPY dataset was given priority over the DPIC dataset in the event that the records of the variables did not match from 1977-2002. Any records beyond that were pulled from the DPIC. Records with one or more victims with the same race were given a numeric value of 1 when all victims were white, a value of 2 if all victims were black, and zero if mixed. Records with a value of zero will be disregarded due to the complexities of measuring racial parity when the offender murders people of multiple races. The dataset used is from 1977 to 2011 (considered part of the Modern Period of Executions as mentioned previously) and a filter has been applied to the dataset to exclude cases before 1977. The most important variables that will be analyzed are the race of the offender and race of the victim and the relationship between those two in regard to capital

punishment sentencing. The null hypothesis stated in the previous segment is tested with cross-tabulation and chi-square method in this study.

Null hypothesis: There is no relationship between the race of the victim and the race of the offender in the capital sentences.

3.2 Method of Analysis

A cross tabulation table with chi-square is used to test if there is any relationship between the race of the offender and the race of the victim. A detailed inferential statistics test will not be used because the dataset contains data from the executed population alone. In order to use inferential statistics, a researcher would need to have data from the entire prison system such as those murdered and not executed with those who were executed. Or, have a dataset of those found guilty and sentenced to death versus those who were sentenced to life in prison. Instead, descriptive statistics such as chi-square will be used to test whether there is or is not a relationship between the race of the offender and the race of the victim in regard to death penalty. However, this study does have limitation as it only suggests whether or not there is a relationship between race of the victim and race of the offender. Chi-square does not imply what direction or strength of the relationship.

3.3 IRB Review

Any university researcher wishing to obtain federal research support must apply first to Institutional Review Board (IRB) to protect the subject(s) being studied. This researcher was informed by the Institutional Review Board (IRB) that the data only included information about deceased individuals; therefore, this project would not be considered "research with human subjects" as the regulations only apply to living individuals. IRB approval is not required.

3.4 Limitations of Data

This researcher acknowledges a number of possible limitations in the proposed research data. First, the data failed to produce variation for those who did not get capital punishment for committing the same crime; this shortcoming prevents this researcher from testing an expanded inferential statistics (t, z, regressions, and etc.) to get a better and more profound outcome in order to test the hypothesis. Second, data obtained from a private agency opponent to capital punishment sentencing may not contain the degree of accuracy and objectivity. This is why the researcher took such extended measures to compare it with a tested academic dataset such as the ESPY for executions between 1977 and 2002. Last, the data did not categorize manslaughter and negligent homicide, both of which are not committed premeditatedly compared premeditatedly murder such as first or second degree punishable by death. The ESPY file did label the crime committed, but still failed to document all aspects of the case such as premeditation. Zimmerman, (2004) argues that offenders do not rationally consider the consequences of their actions. Bowers and Pierce, (1980) assert that most murders are committed out of anger or passion rather than premeditatedly such as arm robbery, murder for hire, and etc.

CHAPTER4

FINDINGS AND ANALYSIS

The data is presented and analyzed in this chapter. As mentioned before, the data did not permit certain statistical comparisons; as such the analysis is based primarily upon the empirical literature. The findings of this study are described in two stages. The first stage involves a cross-tabulation and a chi-square table for analysis. By using these methods, it is easy to look for a relationship between the offender's race and the victim's race. In stage two, the analysis is presented by describing numerous observed and experimental literatures on the related subject.

4.1 Descriptive Analysis (Cross-Tabulation and Chi-Square)

This section presents a cross tabulation and chi square tables between black and white offenders for killing black and white victim. The various tables provide the results for the descriptive statistics for the time frame of 1977 to 2011 for whites and blacks.

Table 4.1 Race of Victims

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	White	946	76.5	84.9	84.9
	Black	168	13.6	15.1	100.0
	Total	1114	90.1	100.0	
Missing	System	123	9.9		
Total		1237	100.0		

Tables 4.1, 4.2, 4.3, and 4.4 reveal demographic characteristics about the dataset. Table 4.1, for example, looks at the race of the victim for blacks and whites and generates a total number of 1114; this number does not include the 123 missing cases. Keep in mind that the missing cases were spread out over different races such as Asian,

Latino, and Other. These different categories of race were filtered out since the other races did not fit into the scope of any of the listed hypotheses for this project.

Table 4.2 Race of Offenders

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	White	693	56.0	61.8	61.8
	Black	429	34.7	38.2	100.0
	Total	1122	90.7	100.0	
Missing	System	115	9.3		
Total		1237	100.0		

Table 4.2 looks at the race of the offender for both blacks and whites. When the other cases of Asian, Latino, and other are filtered out as missing, there are a total of 1122 cases to examine in the dataset for race of the offender. In this table, it can be observed that most offenders are white, but 38.2% are black offenders.

Table 4.3 Age at Execution

AGE AT EXECUTION		
N	Valid	1208
	Missing	29
Mean		40.74
Median		39.00
Mode		38

Table 4.3 illustrates the average of age of offenders who were executed for their crimes. This table takes into consideration all of the offenders in the dataset regardless of race. From the table, it can be observed that the average age at which most of the offenders were executed was at age 40 to 41 with a mode of 38.

Table 4.4 Sex of Victims

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Male	532	43.0	43.0	43.0
	Female	519	42.0	42.0	85.0
	Male and Female	184	14.9	14.9	99.8
	Missing	2	.2	.2	100.0
	Total	1237	100.0	100.0	

Table 4.4 illustrates the sex of the victims that were overall murdered in our dataset. The data reveals the sex of the victims for the male and female, at 43% and 42% respectively.

Table 4.5 Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
RACE OF OFFENDER * Race of Victims	1056	100.0%	0	.0%	1056	100.0%

Table 4.6 Chi-Square Test (1977-2011)

	Value	Df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	224.109[a]	1	.000		
Continuity Correction[b]	221.491	1	.000		
Likelihood Ratio	230.718	1	.000		
Fisher's Exact Test				.000	.000
Linear-by-Linear Association	223.897	1	.000		
N of Valid Cases	1056				

A preliminary finding summarized on Table 4.6 is a chi square with (N= 1056), shows a Pearson chi-square value of 224.109 which has a significance level of .000 for looking and seeing if there is a relationship between black and white offenders with black and white victims only. The number of cases that examine our hypothesis is 1056 since both the variables race of victim and race of the offender have blacks and whites that correspond to the other variable which can be viewed in table 4.5. The descriptive data further reveals with alpha set at .05, that there is a relationship between the race of the offender and the race of the victim.

Table 4.7 Cross-Tabulation Table 1977-2011

			Race of Victims		Total
			White	Black	
RACE OF OFFENDER	White	Count	642	17	659
		% within RACE OF OFFENDER	97.4%	2.6%	100.0%
	Black	Count	250	147	397
		% within RACE OF OFFENDER	63.0%	37.0%	100.0%
Total		Count	892	164	1056
		% within RACE OF OFFENDER	84.5%	15.5%	100.0%

Table 4.7 is a cross-tabulation table summarizing the incidence of homicides committed by blacks and whites versus the race white and black victims from 1977 to 2011. Table 4.7 has 1056 cases compared to tables 4.1 and 4.2 which show 1114 and 1122 valid corresponding cases for the race of each table. The difference in cases is attributed to offenders do not always murder victims of the same race and Table 4.1 and 4.2 are only looking at the overall view of the dataset whereas the cross tab combines both of the data to help measure the hypothesis. Certain observations can be made about the data. First, the descriptive data reveals that majority of homicides committed by whites are intra- racial. Second, the victim's race seems to play a significant role in the process toward justice. Third, most homicides committed by blacks are interracial. Last, one important observation to be made here is that the data does not support the null

hypothesis and it is rejected. Therefore, a relationship between the race of the victim and the race of the offender exists in capital cases.

4.2. Inferential Analysis

In the absence of a randomized study, this section highlights a review of existing research on the question. The research summarized below appears to indicate the existence of significant racial disparities. Over the past seventy years, numerous studies have found that the death penalty is sought and imposed more often when the murdered victim is white. In other words, race and racial attitudes are often a major explanatory factor. A review of the literature also suggests that even in states that are recognized with racial disparity, slight, if anything has done to correct the crisis.

Research of capital sentencing in pre-*Furman* (1972) revealed a strong racial disparity against African Americans defendants, particularly in the South (Johnson, 1941; Garfinkle, 1949). Rape also appeared to show a racial disparity when it came to the death penalty (Wolfgang & Riedel 1973) and in fact, both Partington (1965) and Zimring et al. (1976) concluded that it was almost automatic for blacks to receive death penalty for killing whites. However, there were no significant effects in northern and western states (Judson et al., 1969; Bedau, 1964).The United States Congress passed the Civil Rights Act of 1964, which bestowed many rights not previously enumerated to the minority population. In addition, U.S. Supreme Court Cases created new protections for minorities when it came to death penalty cases. The studies enumerated here, along with Congressional and U.S. Supreme Court action played a crucial role in the *Furman* decision in 1972.

Empirical research for the capital punishment after *Furman* (1972) indicates a major shift from the race of the defendant to the race of the victim. Bladus & Woodworth (2004) point out that between the race of the defendant and victim by itself, only the race

of the victim remains significant. Riedel's (1976) study from death row inmates concludes a higher death penalty rate for nonwhite defendants whose victims were white. The landmark cases pertaining to racial disparity in capital punishment sentencing brought before the U.S. Supreme Court were *Furman v. Georgia* (1972), *Cregg v. Georgia* (1977), *Coker v. Georgia* (1977), and *McCleskey v. Kemp* (1987). However, substantial studies have examined capital sentencing and race since the *Furman* standards were implemented (Paternoster et al., 2008). Because of the difficulty of obtaining complete data in some jurisdictions, most researchers had to introduce new methods to ensure the true comparability among cases necessary to isolate the race effect (Pierce & Radelet, 2004).

The capital jury decides whether a convicted murderer should live or die, but it does not have complete discretion (Bowers, Brewer, & Lanier 2008). Dieter (1998) argues that of the issues facing the capital jurors, there are two that stand out above the rest: first, a racial bias, and second, a lack of racial diversity. The stereotyped juror is a conservative older male, religious, and white. For example, Bowers, Steiner, & Sandys (2001), exposed stark differences between white and black jurors' in capital sentencing patterns in their analysis of 1,155 jurors from the Capital Jury Project (CJP). The authors found that in cases with black defendants and white victims, white male dominated juries had a higher likelihood of imposing a death sentence than juries with less than five white male jurors. If juries that had even one black male juror it dramatically changed the sentencing outcome. There are reports that many white jurors come to the trial with their minds made up about punishment and by ignore evidence (Bowers, 2001). The empirical literature also shows that while the vast majority of the prosecutors are principled in their profession, the importance of prosecutorial misconduct in death penalty cases cannot be overlooked. Fleischaker (2009) argues that misconduct behavior can include a wide

range of actions such as: failing to disclose exculpatory evidence, abusing peremptory challenges, allowing racial discrimination, etc. A substantial body of evidence supports that most prosecutors tend to be unwilling to participate in research about capital punishment. Fleischaker (2009) further states that we cannot hope to fully understand how the death penalty is working without a clear picture of the prosecutor's role. The purpose of the empirical research was to synthesize the existing body of literature examining the relationship between race and capital sentencing outcomes. At least 70 years of empirical research has focused on this issue. In fact, the vast majority of research has found that minorities are most disadvantaged in murder cases, which involve a white victim.

At last, most of the empirical studies using regression, and other hypothesis test based methodologies shared the same conclusion of a racial skew to capital sentencing (Baldus & Woodworth, 2004).

4.3 Additional Studies on Race and Capital Sentencing

The purpose of the empirical research was to synthesize the existing body of literature examining the relationship between race and capital sentencing outcomes. At least 70 years of empirical research has focused on this issue. In fact, the vast majority of research has found that minorities are most disadvantaged in murder cases, which involve a white victim. This empirical research finding goes even further, suggesting that blacks are generally punished more harshly than whites. At such the researcher has selected seven cases for review and discussion. The first pertains to the research of Elmer H. Johnson during the 1950s.

4.3.1 Rape, Race and Capital Punishment

Johnson (1957) was among the first researchers to conduct an extensive examination of the likelihood of execution amongst those sentenced to death for rape.

Johnson studied data from 1904-1954 offenders executed because of rape cases in North Carolina and found that a majority of the executions involved blacks with a ratio of 56% to 43% of whites. In terms of the race of the victim, data revealed that 64% of those who were convicted and sentenced to death for the rape of a white woman were blacks, while only 14 % of whites were executed for raping a black woman. It is worth mentioning that until *Coker*, 80% of those executed for rape were African Americans.

4.3.2 Shifts from Defendant's Race to Victim's Race

Most researchers agree that Baldus, Woodworth et al. (1990) is one of the most well-known and complete studies of post-*Furman.* The outcomes of the study rejected commonly held views in regard to death penalty. The authors used the 750 cases from the Procedural Reform Study (1970-1978) and Charging and Sentencing Study (1973-1979) in Georgia. After using logistic regression test and controlling for over 400 variables, Baldus and Woodworth et al. (1990) found out that race of victim had a significant explanatory effect in the post-*Furman* era, mostly in rural areas. Instead of a death penalty system that seemed to directly target black offenders, the Baldus study suggested a major shift toward targeting anyone that killed white victims (Paternoster, et al., 2008).

4.3.3 The U.S GAO Study (1990)

In *McCleskly v. Kemp (1987)*, the U.S. Supreme Court invited legislative bodies to consider adopting legislation that would permit courts to grant relief to defendants with the evidence of racial disparity (Gershman, 2005). At least partly in response to the *McCleskly v. Kemp,* the U.S. Senate authorized the United States General Accounting Office (GAO) to examine whether race was still an influence in capital punishment post *Furman* reforms. The GAO assessed and rated 28 studies as low, medium or high based on the date of publication and found evidence of racial disparities in the charging

sentences, and imposition of the death penalty after the *Furman* decision (Lynch et al., 2008). The study also revealed a higher likelihood of a death sentence for black defendants in rural versus urban area (Baldus & Woodworth et al., 1990).

4.3.4 Black Defendant-Black Victim v. White Defendant-White Victim

Blume, Eisenberg, & Wells (2004), in order to study the widely held belief that African Americans are at a higher risk of a death sentence than whites in modern era, conducted a descriptive analysis and logistic regression study on 31 capital jurisdiction from eight states. The authors tried to explore why despite the empirical evidence, racial bias disadvantages to black offenders was not reflected in the racial composition on death row with proportionally more white defendants. Blume et al. (2004) found that the proportion of black defendants on death row was lower than in the population of murder offenders because most blacks murders involved black victims, and these cases were the least likely to end in a death sentence. To put the findings into a numbers perspective, in one state, only 2.9 per 1,000 black-black cases resulted in death penalty, compared to 67.8 per 1,000 in black-white cases (Blume et al., 2004).

4.3.5 Mitigating Factors in Capital Sentencing before and after Mckoy

Kremling, Smith, and Cochran (2007) examined the effect of Mckoy v. North Carolina (1990), which required jurors to be unanimous in accepting the validity of mitigating circumstances. The authors tested the hypothesis that post-Mckoy there would be increase or decrease in the number of death sentences in state by capital juries. Comparing trials before and after Mckoy, the authors found that there was actually an increase in on death sentences handed down by capital juries. The findings also revealed that neither defendant's race nor victim's race were statistically significant on the outcome of the sentencing by capital juries (Kremling et al., 2004).

4.3.6 Race of Victim still a dominate force in Twenty-first Century

Radelet & Pierce (2010) explored 15, 281 homicides in the Deep South during 1980 to 2007, which led to 368 death sentences. The study revealed that the odds of defendant receiving a death sentence were three times higher if the person was convicted of killing a white person than if he had killed a black person (Death Penalty Information Center, 2011). North Carolina passed the Racial Justice Act in 2009 which allows death row inmates and murder suspects to present statistical evidence of racial bias to ensure that the defendant's or victim's race does not play a key role in the defendant's sentence.

4.3.7 Significant Racial Disparities in Military

Death Penalty Information Center (2012), reports that a soon-to-be-published study has found significant racial disparities in the U.S. military's capital sentencing (Baldus, Woodworth, Grosso & Newell, 2011). The study examined every potential capital case since 1984 and found that minorities in the military are twice as likely to be sentenced to death as whites accused of same crime. The study revealed that from the total of 16 death sentences handed down, 10 were of minority defendants and furthermore showed evidence that many key players involved in the U.S. military court system "consciously and knowingly" discriminated on the basis of the race of the offender and race of victim (Death Penalty Information Center, 2011).

The seven studies reviewed above found two important relations between racial disparity and capital sentencing. First, despite the various reports that claim racism is obsolete, such attitudes are still vigorously alive today. As stated earlier, the history of minorities in America, raise many serious questions about how can one group of individuals can treat another so differently? According to Supermacism theory, it can be

accomplished by defining the other group as very different as to be generally inferior (Williams, 1997; King, 1981).Second, the race of the defendant, by itself, is significantly declined over time. However, the race of the victim remains relevant.

4.4 Study Limitations

The researcher acknowledges limitations in the current research data. As it was mentioned in the previous chapter, the data identified and utilized for this research analysis did not yield an expanded chi-square, t or z tests, so a large part of the analysis is predicated upon descriptive observations lifted from the data. Also, there is no variation in the dataset from those who received the death penalty and those that did not. This is the major limitation of the study since it is the population of those executed since 1977 to 2011 and not a dataset of those who had been sentenced from 1977 to 2011 for the death penalty and not. Had the second mentioned dataset been readily available, more statistical tests could have been done to determine the point in the process at which racial parity might have occurred from sentencing to conviction or during the appeal process. Also, the data is limited on certain demographic variable from the combining the two datasets. Some important variables lost were the geographical locations of the sentencing as well as where the murders were committed. Just knowing the region and separating those executed by region could have played more of a role in the methods used since racial parity can be at different levels in different states.

CHAPTER 5

DISCUSSION

The purpose of this thesis is to examine whether one's race and racial attitudes has any effect on the relative application of capital punishment on whites versus non-whites. Data for this study was collected from the Death Penalty Information Center and Executions in the United States; the Espy files from 1977-2011.

5.1 Review

Chapter 2 reviews the literature exploring the history of capital punishment from early Colonial times up to present-day America. Essential Supreme Court cases were examined, as well as studies examining capital punishment and race. In this thesis, conclusions are made based upon empirical literature reviews. Certain data was cross-tabulated and chi square tests were conducted. The result of these statistical analyses seems to indicate a relationship between the race of the victim and the race of the offender. The numerous research papers cited herein indicates that death sentences are imposed in a biased manner. The majority of the empirical research post *Furman* also indicates significant racial disparity in applying the death penalty.

Furthermore, the literature review explored the history of capital punishment since colonial times in the United States. Then, the death penalty could be imposed for long list of offenses, including breaches of community order (Banner, 2002). Early executions were frequently public events and for entertainment. Most of the executions occurred in Southern states as they were for offenses of murder and rape. A majority of the executions were imposed on black offenders. During the 1960s and 1970s, the minority civil rights, racial disparity, and post-conviction DNA exoneration cases were

brought before the U.S. Supreme Court. During the past 40 years, a considerable number of people have been exonerated from death row by DNA testing and a majority of those exonerated were minorities which bring us to the current discussion.

5.2 Policy Implementation

Since the inception of the legal system, the execution for the wrongful killing of another human being has been acceptable in many societies. Critics of the judicial killings would argue that a mistake by a state or government could lead to the execution of an innocent person. What makes the death penalty intriguingly debatable is that once a person is executed, there is no return. Life imprisonment of alleged innocent can later be corrected; a wrongful execution of a person can never get undone (Paternoster et al, 2008). In their book, *In Spite of Innocence*, Radelet, Bedau, & Putnam (1992) concluded that from 1900 to 1985, there were at least 350 instances of flawed convictions in United States (Paternoster et al., 2008).Opponents of capital punishment would further argue that the current death sentence process in the United States is not free from racial bias. Race often plays a major role of who lives or dies; defendants who kill white victims are more likely to receive a death sentence than those who kill black victims. Research in North Carolina found that black potential jurors were dismissed at twice the rate of whites in death-penalty cases (Smith, Bjerregaard, & Fogel, 2005). According to Smith et al. (2005), the state passed a law that allows all death-row inmates to challenge their convictions on the basis of racial bias.

As stated earlier, Americans have always been very supportive of capital punishment and it is an emotionally charged issue, which does not appear to be influenced by knowledge about the process that results in the death penalty (Young, 2004). However, scholars argue that when Americans are fully aware of the realities of the way the death penalty is administrated against poor and racial minorities, they will

abandon it as they have done similar wrongs in the past (Radelet & Borg, 2000). Bright (2004) suggests that one alternative to eliminate the racial disparity tis to abolish the death penalty. Neumayer (2003) goes even further by suggesting that abolishing the death penalty would create more jobs and would help to challenge poverty and prevent homicides. This is not the first time that research has mentioned a link between crimes with poverty.

Various theoretical views suggest that poverty has a significant relationship with committing crimes. According to Merton's strain theory (1938), social structures within society may pressure its citizens to commit crimes.

Wilson (1978) agrees the primary issues facing African Americans are unemployment, poverty, and economic collapse in their inner-city communities (Wadsworth & Kurbirin, 2004). Wadsworth & Kurbin (2004) further assert when minority commits crimes against the majority, it is usually due to structural factors and inequalities. "The American Dream" is a cultural goal, therefore, in order to compensate for the shortcoming; acts of violence including homicides are essentially inevitable.

5.3 Racism is Alive and well

Although modern times suggest that racial prejudice has no place in our society let alone the legal system, Alexander (2010) argues that despite recent progress for African Americans on capital sentencing, blacks are still over represented on death row when compared to their share of the population. Furthermore, many Whites Americans continue to view African Americans in negative ways. Peffley & Hurwitz (2002) further found white populations in the United States often act on racial bias of African Americans, when thinking about punishment. Young (2004) also found racism to be the cornerstone of white's attitudes toward the death penalty. Conversely, Young (2004) goes on to say that if we had a society composed exclusively of blacks and no prejudiced whites, still

more than half of population would support the death penalty. To Young (2004), there is nothing intrinsically wrong with support of judicial killing as long as racial minorities are not intentionally singled out for more severe sanctions. As stated in this chapter, one way to eradicate racial disparity in capital sentences is to abolish capital punishment, but critics argue that there is no way to insure prejudiced thoughts and racial bias will be eliminated. Nevertheless, the trademark of elected government is that public officials should be generally responsive to public opinions, and as long as the public support the capital punishment, the elimination of death penalty should not even be considered.

5.4 Suggestion for future Research

Research findings suggest that much more needs to be considered when evaluating bias attitudes toward black offenders accused of killing white victims. For example, race is a common factor in death penalty research, but rarely is it investigated any deeper than white racism or demographic differences. It to determine what drives people to be a racist in the first place. As stated in this chapter, perhaps a more reasonable solution for racial disparity in capital sentencing would be to eliminate the death penalty. Unfortunately, there is not enough research to support that abolishing the capital punishment will improve racial prejudice. Conversely, some research point out abolishing the capital punishment will worsen the problem of racial disparity (Heilbrun, 2006). Future research might want to explore that perception and knowledge.

In closing, as research support, capital punishment is often the focus of many political campaigns and politicians who prefer to appear tough on crime. Politicians and decision makers need to put party affiliation aside and bear the responsibility to eliminate racial disparities in our legal system; one thing is certain: Americans feel strongly about capital punishment, on both sides. And sadly, race still plays a role.

APPENDIX A

LIST OF CASES

LIST OF CASES

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