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Criminological Research and the Death Penalty: Has Research by Criminologists Impacted Capital Punishment Practices?

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Abstract
At the request of the SCJA president this paper addresses five questions. Does criminological research make a difference relative to the death penalty? - If criminological research does make a difference, what is the nature of that difference? - What specific instances can one cite of research findings influencing death penalty policy decisions? Why hasn't our research made more of a difference? What can we do, either in terms of directing our research or in terms of disseminating it, to facilitate it making a difference? Specific examples of research directly impacting policy are examined. The evidence presented suggests that research on capital punishment has had *some* impact on policy, but not nearly enough. There is still a high level of ignorance that has limited the impact of criminological research on death penalty policy. The proposed solution is to improve the education of the general public and decision makers in order to increase the impact of criminological research on capital punishment policy.

Keywords Death penalty · Capital punishment · Impact of research · Policy implications

Professor Marvin Krohn, the President of the Southern Criminal Justice Association, has provided a very important theme for the conference, 'Making a Difference'. He has asked the panelists to respond to a series of five very important questions that many of us have been concerned about for a long time. The first question, "does our research really make a difference". He has continued his charge to the panelists with four related questions. "If it does, what is the nature of that difference? What specific instances can one cite of research findings influencing policy decisions? Why hasn't our research made more of a difference? What can we do, either in terms of directing our research or in terms of disseminating it, to facilitate it making a difference?" He asked the senior author to

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address these questions relative to capital punishment and they will be addressed in the sequence in which they were asked.

This is an intriguing and monumentally important set of questions because, in one sense, 'making a difference' is why most of us are criminologists; this is what criminology is all about. The field of criminology has grown rapidly in recent years, much faster than most other disciplines, and this is primarily because the issues we deal with are of relevance in the real world every day. Yes, the SCJA President has asked us to address questions of extreme importance, but upon considerable reflection, coming up with definitive answers may not be so simple. Determining causality is always difficult and reference will be made to 'direct' and 'indirect' influences in this paper because each can be important in bringing about change.[1] It should also be noted that it is easier to demonstrate a distinct and direct causal relationship between criminological research findings for some criminal justice policies than it is for others and this will be discussed more at a later point.

Question # 1 - Does Criminological Research Make a Difference Relative to the Death Penalty?

In answering the first question, "does criminological research make a difference relative to the death penalty?" several points should be made. First, it should be noted that there can be two different kinds of evidence used in answering this question; direct and indirect evidence. Direct evidence refers to situations in which some positive change has occurred concerning capital punishment and related to that change, reference was made to specific citations of relevant criminological research and the authors of the studies. A 'direct' connection can be made between the research and the policy change. Indirect evidence refers to situations where some positive change in capital punishment occurred and research findings and terminology from criminological research were discussed related to that change, but specific studies or authors were not cited. In the 'indirect' evidence case, however, it is clear from the material provided that the authors were aware of the research findings of criminologists even though direct citations were not used.

Second, a short recent history of capital punishment in the United States is necessary to provide the context for the response to the five questions being addressed. The Furman v Georgia decision in , 1972 abolished the death penalty, and with Florida and Georgia leading the way, many states rushed to change their statutes and reinstate the death penalty. The Gregg v Georgia decision in , 1976 effectively reestablished the

[1] One of the most interesting things the senior author learned in his first statistics class as an undergraduate, which became much clearer when he took his first graduate research methods class, was that if a correlation exists between two variables it does not automatically mean that one of the variables caused the other variable. This is true even if the one that appeared to be the cause (independent variable) met the first criteria for causation and occurred prior to the presumed effect (dependent variable). As he began to teach the first research methods course ever taught in the Criminology Program at Florida State University he also learned about extraneous variables, intervening variables, component variables, antecedent variables, suppressor variables, distorter variables, spurious non-correlations, conditional relationships, conjoint influence, etc. (Rosenberg, 1968). These different types of variables will not be discussed, but their existence has relevance in trying to answer the questions posed to the panelists. Instead, reference will be made to 'direct' and 'indirect' influences in this paper because each can be important in bringing about change.

capital punishment system in the United States, supposedly eliminating the problems the U.S. Supreme Court found in the Furman decision. While many states rewrote their death penalty statutes re-establishing the death penalty, several states that had previously abolished the death penalty remained abolitionist states after the Gregg decision. Remaining an abolitionist state, however, was not always easy, and there were attempts at restoring the death penalty in most of these states. The state of Michigan is one of these states and stands out for several reasons. It is an isolated, early example providing a qualified affirmative answer to the question being asked by the SCJA president yet still alerting us to the perilous nature of the process.

Michigan abolished the death penalty in 1846, the first state to do so, although it was retained for the crime of treason until the phrase "NO LAW SHALL BE ENACTED PROVIDING FOR THE DEATH PENALTY" was written into the Michigan State Constitution in 1962. Support for abolition at this time and place was very strong as shown by a vote in the Commission of 108 to 3 in favor of the proposal (Wanger, 2017, pp. 1&16). It might be noted that this occurred when the death penalty was beginning a sharp decline nationally with executions dropping from 56 in 1960, to 26 in 1963, to seven in 1965, and to zero in 1968 through 1976 (DPIC, 2002). As Radelet notes, Michigan is still the only state that has abolished capital punishment in its state constitution (Wanger, 2017, p. xiv). Nevertheless, not existing in state statute, and being specifically forbidden in the Michigan Constitution, did not stop death penalty proponents in Michigan. A proposal to remove this phrase from the constitution was considered by the House Committee on Constitutional Revision and Women's Rights in 1973 (Wanger, 2017, p. 17). This occurred during the national debate surrounding capital punishment following the Furman decision to abolish in 1972 and prior to the Gregg decision to reinstate in 1976. In testimony provided at the Michigan commission hearing, arguments opposing reinstatement were presented about executing the innocent, the brutalization effect, discrimination against the poor and minority groups, cost of the death penalty, and that "capital punishment adversely affects the administration of justice" (Wanger, 2017, p. 18). Citations are not provided in this presentation nor in two subsequent presentations by Wanger in 1975 before the Capital Punishment Task Force of the Michigan Advisory Commission on Criminal Justice on February 10, and April 7, 1975 making similar arguments (Wanger, 2017, pp. 27–61). These documents provide indirect evidence of the impact of criminological research. Needless to say, the proposal to eliminate the phrase from the Michigan Constitution did not pass.

Shortly thereafter, with lingering concerns about restoration of capital punishment, a booklet prepared by Wanger entitled "Why we Should Reject Capital Punishment" was distributed by Representative Jeffrey Padden to each member of the Michigan House of Representatives. In the accompanying memo, Padden stated:

> Recently a movement to reinstate the death penalty was begun in Michigan…. I expect that the potential reinstatement of capital punishment will continue to be a major political and moral issue in the state. I hope the readers will find this booklet useful in sorting through the complex questions raised (Wanger, 2017, p. 62).

This booklet prepared by Wanger provides some of the earliest evidence of criminological research having an impact on capital punishment. The booklet contained a list of

reasons for not reinstating the death penalty and provided citations referring to the research findings of numerous criminologists. The list of contributors includes Thorsten Sellin, Leonard Savitz, Hugo Adam Bedau, Hans Mattick, Brian Forst, William Bowers, Peter Passell, John Taylor, Glenn Pierce, Bernard Diamond, Edward Radin, the Washington Research Project, and various other sources (Wanger, 2017, pp. 76–78). In contrast to the earlier presentations of Wanger, this document provided evidence of the 'direct' effect of criminological research. Clearly by the 1970's, if not before, criminological research had an impact on capital punishment policy, at least in the state of Michigan, which prior to this had already abolished capital punishment by state statute and state constitution.

Michigan and nine other states (Alaska, Hawaii, Iowa, Maine, Minnesota, North Dakota, Vermont, West Virginia, and Wisconsin) that had abolished capital punishment prior to the Gregg decision in 1976 retained their abolitionist status so there is some evidence of criminological research making a difference, but it is a 'slippery slope'. In a more recent example, the Nebraska legislature abolished the death penalty in 2015 but they had to override the governor's veto to do so. Unfortunately, due to a 2016 referendum, lead by the governor, capital punishment was reinstated in 2017. On August 14, 2018 Nebraska executed Carey Dean Moore, the first person to be executed in Nebraska in 21 years. He had been on death row for 38 years (DPIC, 2018b). In the last three years six other states that had abolished the death penalty (Delaware, Iowa, New Mexico, Rhode Island, New Jersey, and Maryland) have had one or more bills presented in the state legislature to reinstate capital punishment (DPIC, 2018c). The proponents have, thus far, not been successful, but efforts are still being made to bring back the death penalty after it has been abolished. So yes, if criminological research is having an impact on the death penalty, it is a modest impact, and there is a very 'slippery slope' to climb, three steps forward and two steps back.

Question # 2 - if Criminological Research Does Make a Difference, What Is the Nature of that Difference?

This is the simplest and easiest question to answer. If the research has made a difference, then the nature of that difference would be found in evidence of a decline in support of the death penalty and the overall use of capital punishment. In addition to the evidence from Michigan, several other trends are relevant to answering this question. Two more states became abolitionists in 1984 (Massachusetts and Rhode Island) and seven more (Connecticut, Delaware, Illinois, Maryland, New Jersey, New Mexico, and New York) joined the abolitionists' ranks between 2007 and 2016, not counting Nebraska which had repealed and then reinstated capital punishment (DPIC, 2016). More states abolished the death penalty in the ten years between 2007 and 2016 than in any other ten-year period in United States history. Currently, twenty states do not have capital punishment as noted above (DPIC, 2018d). In addition to the nineteen states that have abolished the death penalty, twenty-three states that still have the death penalty have had bills filed in their state legislature to abolish capital punishment in the last three years. These states are Alabama, Arizona, Arkansas, California, Colorado, Florida, Indiana, Kansas, Kentucky, Louisiana, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, Ohio, Pennsylvania, South Dakota, Texas, Utah,

Washington, and Wyoming (DPIC, 2018c). With a couple of exceptions most of these bills have not made it very far through the legislative process but the fact that attempts are being made suggests that criminological research may be having some effect.

Although most states still have the death penalty in their statutes, nationally the number of executions conducted have declined dramatically in recent years. As Banner noted, the number of executions in the United States:

> reached what was probably an all-time peak in 1935 at 199. It then began to drop sharply. Nineteen forty-seven was the last year with more than 150 executions. Nineteen fifty-one was the last with more than 100. In 1961 the death penalty was carried out only 42 times; in 1962 only 21. Finally, in 1968, for the first year in the history of the United States, not a single person was executed (Banner, 2003, p. 208).

Following the Gregg decision, executions began to rise again and reached the post-Gregg peak of 98 executions in 1999. Since this peak only nineteen years ago, there has been a steady but gradual decline in executions to 71 in 2002, to 60 in 2006, to 46 in 2010, and 23 in 2017 (DPIC, 2018f). A partial explanation for this may be that the number of states actually using the death penalty has also declined during this period going from 26 states in the 1997–1999 period with one or more executions to 9 states with one or more executions in the 2015–2017 period (DPIC, 2018f).

While the death penalty still exists in most states, the kind of people executed, and the types of crimes for which someone may be executed has become more restricted because of changes in state laws and U.S Supreme Court decisions. The age at which someone may be executed has gone from age seven (old common law), to sixteen (Thompson v Oklahoma, 1988), to eighteen (Roper v. Simmons, 2004), and the American Bar Association (ABA) has recently recommended that the age be raised to 21 because of recent research (ABA, 2018b). It is now unconstitutional to execute the insane (Ford v Wainwright, 1986), and the mentally deficient (Atkins v Virginia, 2002). Executing someone for the crimes of aggravated assault (Hooks v. Georgia, 1977), kidnapping (Eberhart v. Georgia, 1977), presence during a murder with no participation or intent to kill (Enmund V. Florida, 1982), rape of an adult woman (Coker v Georgia, 1977), or rape of a child (Kennedy v. Louisiana, 2008) is no longer permitted. All of these Supreme Court decisions, and other decisions involving procedural changes that have been made, reduce the number of people eligible for the death penalty. These changes have all been made since the Gregg v Georgia (1976) decision reinstating capital punishment.

There is also a trend in the number of death sentences being received with fewer death sentences being given by the courts. For all states and federal courts in 1994 and 1996 there were 315 death sentences each year. Since these peak years there has been a steady decline down to 31 in 2016 but climbed back up to 39 in 2017 (DPIC, 2017). The number of states providing death sentences has also declined. Between 1995 and 1997 there were an average of 29 states that gave one or more death sentences each year and between 2015 and 2017 this had been cut by more than half to an average of only 13 states that had assigned a death penalty each year.

International trends are also of some interest. Prior to 1976 there were 21 countries that had abolished the death penalty for all crimes or for all ordinary crimes (excluding

treason or crimes against the government). By 1989, 40 countries had abolished capital punishment, by 1999 there were 78 abolitionist countries, by 2009 there were 101, and by 2017 there were 113 abolitionist countries. There were also 29 countries that were abolitionist in practice in that they had not used the death penalty for many years. There are currently only 56 countries that still use the death penalty (DPIC, 2018a). The United States is ranked among the top eight executing countries along with China, Egypt, Iran, Iraq, Pakistan, Saudi Arabia, and Somalia (DPIC, 2018e).

All of these trends over the past thirty or forty years suggest a decreasing use of the death penalty and a strong movement away from capital punishment. Accompanying these downward trends, but going in the opposite direction, criminological research related to the death penalty has been increasing at a rapid pace. Criminologists have been busy publishing articles, grant reports, and books dealing with many issues concerning the death penalty. These activities suggest an important trend in criminological research related to capital punishment. A very crude measure of the increasing attention paid to the death penalty by criminologists might be obtained by examining the publication dates for the 51 pages of references in the most recent textbook on the death penalty (Bohm, 2017 p. 493–543). There are no references used by Bohm dated prior to 1855, four are cited with dates between 1855 and 1919, nine have dates between 1920 and 1959, 13 are cited with dates between 1960 and 1969, 39 are cited between 1970 and 1979, 109 are cited between 1980 and 1989, 154 are cited between 1990 and 1999, there are 360 between 2000 and 2009, and 429 items have citation dates in the six years from 2010 to 2015. There may have been a tendency on the part of the author to use the most recent sources which would be understandable, but this crude measure would seem to support the hypothesis that criminologists are producing more and more materials on the death penalty and this is likely to continue until the death penalty is abolished.

More states and countries becoming abolitionists, fewer executions being conducted, fewer death sentences meted out, more restrictions on who can be executed and for which crimes, these findings all show a trend away from capital punishment. The trend in criminological research, showing the large increase in the amount of research and publications conducted by criminologists pointing to negative issues related to the death penalty, provides a strong negative correlation between the two trends, and they appear to be happening simultaneously. As the number of criminological publications on capital punishment have increased, the use of the death penalty has declined using any of the above measures.

This is a fairly strong negative correlation to be sure, but are these reductions related to the death penalty a product of increasing criminological research? Significant changes have occurred in other related areas. Defense lawyers are better trained, more time is spent preparing cases, more time and money is expended searching for mitigating factors, there is more concern on the part of juries and judges about executing the innocent, ‘death qualification’ of juries is receiving more attention from the courts, it is more difficult to exclude racial minorities from juries, and prosecutors are more aware of the costs involved and the time and resources taken away from other cases. Is there a causal relationship between the increasing quantity of criminological research and the changes in capital punishment, or is it simply a ‘spurious correlation’ brought about by some of these other factors? On the other hand, could there be an ‘indirect’ effect? Could it be that all of the changes noted above are themselves a

product of the increased attention by criminologist to the death penalty and these factors themselves are simply 'intervening variables' in the relationship between criminological research (independent variable) and the death penalty (dependent variable)?' A more complete answer to this question can be made after examining the issues discussed in the next section.

Question # 3 - What Specific Instances Can One Cite of Research Findings Influencing Death Penalty Policy Decisions?

There are several different areas that could be addressed in responding to this question, but this discussion will be limited to four general areas where the impact of criminological research can be documented, either directly or indirectly, on actions taken relative to capital punishment. These four areas are: (a) the impact of criminological research on professional organizations official position on the death penalty, (b) the impact of criminological research on public opinion polls, (c) the impact of criminological research on state abolition of the death penalty, and (d) the impact of criminological research on U.S. Supreme Court decisions related to the death penalty.

Impact of Criminological Research on the Official Positions of Professional Organizations on the Death Penalty

Given the positions they have taken many important professional organizations appear to have been affected either directly or indirectly by research findings related to the death penalty. These professional organizations cover a wide range of participants and activities. There are academic organizations, legal organizations, medical organizations, religious organizations, international organizations, and civil rights organizations that have been documented and there may be many others that have not been located.

American Society of Criminology

Starting with an organization very close to all of us, the position taken by the American Society of Criminology (ASC) on capital punishment demonstrates a clear and obvious impact of research on the position it has taken favoring abolition. The statement itself doesn't cite any references to specific research projects or publications so the effect is 'indirect' rather than 'direct', but since many of the voting members of the ASC were the people who had done most of this research it was probably not deemed necessary. The ASC resolution said:

> Be it resolved that because social science research has demonstrated the death penalty to be racist in application and social science research has found no consistent evidence of crime deterrence through execution, The American Society of Criminology publicly condemns this form of punishment and urges its members to use their professional skills in legislatures and courts to seek a speedy abolition of this form of punishment (ASC, 1989).

American Psychological Association

Twelve years later the American Psychological Association (APA, 2001) prepared a similar document calling for a moratorium on the use of the death penalty until various problems related to the use of the death penalty could be eliminated. The APA did not specifically ask for abolition but it is fairly well accepted that if there was a nationwide moratorium on the use of the death penalty it would eventually be abolished. While the APA document didn't specifically ask for abolition, it provides a strong 'direct' effect of criminological research and was written in greater detail than the ASC resolution. The APA statement mentioned nine different areas of criminological research related to the death penalty and referenced 38 specific publications in these nine areas.

For example, the APA position paper includes statements such as:

> ***Whereas*** race and ethnicity have been shown to affect the likelihood of being charged with a capital crime by prosecutors (e.g., Beck & Shumsky 1997; Bowers 1983; Paternoster 1991; Paternoster & Kazyaka 1988; Sorensen & Wallace 1995) and therefore of being sentenced to die by the jury. … This is especially true for African-Americans (e.g., Keil & Vito 1995; Thomson 1997) and Hispanic-Americans who kill European-Americans (Thomson 1997); …. *Whereas* research on the process of qualifying jurors for service on death penalty cases shows that jurors who survive the qualification process ("death-qualified jurors") are more conviction-prone than jurors who have reservations about the death penalty and are therefore disqualified from service. (Bersoff 1987; Cowan, Thompson and Ellsworth 1984; Ellsworth 1988; Bersoff & Ogden 1987; Haney 1984); … *Therefore be it resolved* that the American Psychological Association: Calls upon each jurisdiction in the United States that imposes capital punishment not to carry out the death penalty until the jurisdiction implements policies and procedures that can be shown through psychological and other social science research to ameliorate the deficiencies identified above (APA, 2001).

United Nations

Many organizations have taken strong positions against capital punishment and discussed many of the findings that criminologists have discovered through extensive research, but without specifically making references to this body of research. For example, the United Nations has taken a strong position against the death penalty. They stated in 1989 that:

> The States Parties to the present Protocol, Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights…. Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life, Desirous to undertake hereby an international commitment to abolish the death penalty, have agreed as follows: *Article 1* - 1. No one within the jurisdiction of a State Party to the present Protocol shall be executed. 2. Each State Party shall take

> all necessary measures to abolish the death penalty within its jurisdiction (UN General Assembly, 1989).

There is little reference to research findings in this document, but in another United Nations document one finds the phrase "Mindful that any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable…., and considering that there is no conclusive evidence of the deterrent value of the death penalty" (UN General Assembly, 2015). This statement is prominently displayed without any reference to the sources for these statements but clearly making 'indirect reference' to specific studies related to execution of the innocent and the questionable presence of a deterrent effect.

American Civil Liberties Union

The American Civil Liberties Union (ACLU) recently stated that:

> The death penalty in America is a broken process from start to finish. Death sentences are predicted not by the heinousness of the crime but by the poor quality of the defense lawyers, the race of the accused or the victim, and the county and state in which the crime occurred…. Time and time again, we have proven that the criminal justice system fails to protect the innocent and persons with serious mental disabilities and illnesses from execution (ACLU, 2016).

Although there are no specific references to any of the sources used for making these claims, this statement is clearly based on the research of criminologists concerning poor defense lawyers, race, geographic variations, mentally ill and/or deficient offenders on death row, and executions of the innocent providing evidence of an 'indirect' effect of criminological research..

American Bar Association

Similar to the APA position, four years earlier the American Bar Association (ABA) passed the Death Penalty Moratorium Resolution in 1997 which stated in part:

> RESOLVED, That the American Bar Association calls upon each jurisdiction that imposes capital punishment not to carry out the death penalty until the jurisdiction implements policies and procedures that are consistent with the following longstanding American Bar Association policies intended to (1) ensure that death penalty cases are administered fairly and impartially, in accordance with due process, and (2) minimize the risk that innocent persons may be executed: (i) Implementing ABA 'Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases'… to encourage competency of counsel in capital cases…; (ii) Preserving, enhancing, and streamlining state and federal courts' authority and responsibility to exercise independent judgment on the merits of constitutional claims in state post-conviction and federal habeas corpus proceedings…; (iii) Striving to eliminate discrimination in capital sentencing on the basis of the race of either the victim or the defendant…; and (iv) Preventing execution

> of mentally retarded persons…and persons who were under the age of 18 at the time of their offenses. (ABA, 1997)

There is no mention of the research that has been conducted on most of these issues but clearly there is an 'indirect' effect of criminological research. In 2018, however, the ABA addressed the issue of age and the death penalty and passed the following resolution.

> RESOLVED, That the American Bar Association… urges each jurisdiction that imposes capital punishment to prohibit the imposition of a death sentence on or execution of any individual who was 21 years old or younger at the time of the offense…. Now, more than 35 years since the ABA first opposed the execution of juvenile offenders, there is a growing medical consensus that key areas of the brain relevant to decision-making and judgment continue to develop into the early twenties…. In light of this evolution of both the scientific and legal understanding surrounding young criminal defendants and broader changes to the death penalty landscape, it is now time for the ABA to revise its dated position and support the exclusion of individuals who were 21 years old or younger at the time of their crime. (ABA, 2018a p. 1-20)

In contrast to the earlier resolution calling for a moratorium on the death penalty this resolution to raise the age eligible for execution to 22 was well documented by research over the past twenty years. It is not clear that most of this research was 'criminological', however, because it was conducted by academics in the biological and physical sciences. Some of these studies were published nevertheless in criminal justice journals so they might be considered 'criminological' research.

American Law Institute

The American Law Institute (ALI), is the prestigious legal organization that has developed the Model Penal Code used by most states when rewriting their criminal statutes. The ALI had reluctantly included a death penalty statute in the 1962 version of the code. On October 23, 2009, however:

> The ALI Council voted overwhelmingly … to accept the resolution of the capital punishment matter as approved by the Institute's membership at the 2009 Annual Meeting. The resolution … reads as follows: '… the Institute withdraws Section 210.6 of the Model Penal Code in light of the current intractable institutional and structural obstacles to ensuring a minimally adequate system… (ALI, 2009 Annex B p. 1)

Consequently the death penalty no longer exists in the Model Penal Code. Although most of the ALI membership leaned strongly in this direction a primary reason for the change at this time was a study conducted by Steicker and Steicker at the request of the ALI to determine if the death penalty statute could be rewritten to eliminate all of the problems involved. Their report, which was included as part of the ALI report last cited, discussed a number of different problems with capital punishment including:

> The near impossibility of addressing by legal rule the conscious or unconscious racial bias within the criminal-justice system that has resulted in statistical disparity in death sentences based on the race of the victim; the enormous economic costs of administering a death-penalty regime, combined with studies showing that the legal representation provided to some criminal defendants is inadequate; the likelihood, especially given the availability and reliability of DNA testing, that some persons sentenced to death will later, and perhaps too late, be shown to not have committed the crime for which they were sentenced. (ALI, 2009 p. 5-6)

The specific references footnoted in this report clearly demonstrate the 'direct' impact of criminological research on their conclusions. In addition to multiple citing's of the Steicker's own death penalty publications, there were 74 other studies and 57 different researchers that were cited with William Bowers, David Baldus, James Liebman, Samuel Gross, John Blume, and Craig Haney each cited multiple times. Strong support of a 'direct' effect of criminological research is present.

European Union

The European Union states that it:

> Is *the* **leading institutional actor and largest donor in the fight against death penalty** worldwide…. The EU holds **a strong and principled position against the death penalty in all circumstances and for all cases….** Capital punishment is inhumane, degrading and unnecessary. As a matter of fact, there is no valid scientific evidence to support that the death penalty deters crime more effectively than other punishments. Furthermore, any miscarriage of justice, which is a possibility in any judiciary no matter how advanced it is, could lead to the intentional killing of an innocent person by state authorities." (European Commission, 2018)

Specific mention is not made about the sources leading to this statement, but the phrases "there is no valid scientific evidence to support that the death penalty deters crime more effectively than other punishments" and "any miscarriage of justice…could lead to the intentional killing of an innocent person by state authorities" demonstrate a strong awareness of some of the findings of criminological research and an 'indirect' effect.

Amnesty International

The position of Amnesty International (AI) is presented as follows:

> The death penalty is the ultimate denial of human rights, and that's why Amnesty International opposes it in all cases and works to abolish it.… The flaws in the death penalty are too deep to fix. The risk of executing an innocent person can never be eliminated. More than 150 people sent to death row in the U.S. have later been exonerated, and others have been executed despite serious doubt about

> their guilt. There is no evidence that the death penalty deters crime or improves public safety. The death penalty is applied disproportionally against people of color and poor people. (Amnesty International, n.d.)

The issues they emphasize, without citations once again, show an awareness of some of the findings and conclusions found in criminological research and provide 'indirect' evidence of criminological research making a difference.

National Association for the Advancement of Colored People

One of the oldest human rights groups in the United States opposed to capital punishment is the National Association for the Advancement of Colored People (NAACP). The NAACP has been opposed to the death penalty since its inception in 1909. In a recent publication the 'direct' impact of criminological research on the NAACP position on the death penalty is clear because most of the statements quoted below are documented by reference to criminological research.

> The death penalty is plagued with racial disparities…. many studies have found the race of the victim to affect who receives the death penalty, with homicides of white victims more likely to result in the death penalty…. Innocent people have been sentenced to death and executed…. for every ten people executed, more than one person has been exonerated…. The death penalty consumes an enormous amount of resources without improving safety. There is no reliable evidence that the death penalty deters people from committing crime…. Contrary to popular belief, the death penalty is much more expensive than a sentence of life without parole…. Most of the world has rejected the death penalty, and national support for the death penalty has plummeted (NAACP, 2017).

Religious Organizations

In addition to these professional organizations there are numerous religious organizations that have taken official positions opposing or supporting the death penalty. A survey of religious organizations in the United States conducted in 2006 found that 77 had an official position opposing capital punishment, 22 officially supported capital punishment, and 27 had not taken an official position on the death penalty (Bohm, 2017 p.430). Religious organizations opposing the death penalty included the Roman Catholic Church, United Methodist Church, Lutheran Church, Episcopal Church, Presbyterian Church, National Association of Evangelicals, and the National Council of Churches. Among those in support of the death penalty are the Islamic Society of North America, Church of Jesus Christ of Latter Day Saints, United Synagogue of Conservative Judaism, and the Southern Baptist Convention which is the largest religious denomination in the United States (Bohm, 2017 p. 431–432, 438). Most of the position statements in favor of abolition are based on religious documents but some of them include 'indirect' references to some of the findings of criminological research. As early as 1980 the United States Conference of Catholic Bishops issued a report mixing religious doctrine indirectly with findings from criminological research. The report stated that:

> … the imposition of capital punishment involves the possibility of mistake. …(which) cannot be eliminated from the system…. (we regard a) mistaken infliction of the death penalty with a special horror, even while we retain our trust in God's loving mercy. Third, the legal imposition of capital punishment in our society involves long and unavoidable delays…. Fourth, we believe that the actual carrying out of the death penalty brings with it great and avoidable anguish for … those who are called on to perform or to witness the execution. Great writers such as Shakespeare and Dostoyevsky in the past and Camus and Orwell in our time have given us vivid pictures of the terrors of execution … for bystanders…. Sixth, there is a widespread belief that many convicted criminals are sentenced to death in an unfair and discriminatory manner. This belief can be affirmed with certain justifications…. The end result of all this is a situation in which those condemned to die are nearly always poor and are disproportionately black. Thus 47% of the inmates on Death Row are black, whereas only 11% of the American population is black…. it is a reasonable judgment that racist attitudes and the social consequences of racism have some influence in determining who is sentenced to die in our society. This we do not regard as acceptable…. We recognize that many citizens may believe that capital punishment should be maintained as an integral part of our society's response to the evils of crime, nor is this position incompatible with Catholic tradition. We acknowledge the depth and the sincerity of their concern. We urge them to review the considerations we have offered which show both the evils associated with capital punishment and the harmony of the abolition of capital punishment with the values of the Gospel (United States Conference of Catholic Bishops, 1980).

On August 2, 2018 Pope Francis reaffirmed the Catholic abhorrence of the death penalty and issued a statement changing the *Catechism of the Catholic Church* making the catholic position on capital punishment even stronger. His statement also includes 'indirect' references to some of the findings of criminological research.

Pope Francis has reaffirmed that "today capital punishment is unacceptable, however serious the condemned's crime may have been." The death penalty, regardless of the means of execution, "entails cruel, inhumane, and degrading treatment." Furthermore, it is to be rejected "due to the defective selectivity of the criminal justice system and in the face of the possibility of judicial error." It is in this light that Pope Francis has asked for a revision of the formulation of the *Catechism of the Catholic Church* on the death penalty in a manner that affirms that "no matter how serious the crime that has been committed, the death penalty is inadmissible because it is an attack on the inviolability and the dignity of the person" (Pentin, 2018).

Medical Associations

Virtually every major medical association in the United States prohibits their members from having any involvement in the execution process. Organizations such as the American Medical Association (AMA), the American Public Health Association (APHA), the American Correctional Health Services Association (ACHSA), the American Board of Anesthesiology (ABA), and the American Nurses Association (ANA) all prohibit their members from assisting in any activity that is related to a

state or federal execution (Culp-Ressler, 2014). While not calling for total abolition of capital punishment the AMA requires that "a physician must not participate in a legally authorized execution" (AMA, n.d.) The AMA statement is very specific and lists fourteen different things that a physician must not do under this code of ethics.

While all medical groups adhere to these AMA requirements, some have gone beyond the AMA position and have taken positions in favor of abolition. For example,

> The American Public Health Association, Believing that State executions have a direct adverse effect on the public's health by tending to increase homicides and social disruption, and diminish society's respect for human life …. And Recognizing that empirical studies fail to establish capital punishment as a deterrent to crime; …. And Noting further that capital punishment has impacted discriminatorily on minorities and the poor; and Concluding that procedural safeguards and legal due process standards cannot eliminate arbitrary and capricious imposition of the death sentence…., therefore, 1. Calls upon the legislative branches at national and state levels to abolish capital punishment; 2. Urges executive officials to use their power to prevent the imposition or execution of the death sentence; and 3. Encourages professional organizations of health workers to work for the abolition of capital punishment and to discourage their members from participating in or contributing to the carrying out of the death penalty" (APHA, 1986).

Fourteen different sources were referenced in this document including publications of Hugo Adam Bedau, Michael Radelet, William Bowers, David Baldus, and James Cole. There was clearly an awareness of criminological research related to capital punishment as this policy was being adopted providing evidence of a 'direct' effect of criminological research.

In 2017 the American Nurses Association (ANA) took a position similar to that of the APHA.

> The American Nurses Association (ANA) today announced its opposition to both capital punishment and nurses' participation in capital punishment…. The ANA has long been opposed to nurse participation in executions, either directly or indirectly, as it is contrary to the fundamental goals and ethical traditions of the nursing profession. Today's announcement strengthens ANA's position, adding it to the ranks of many U.S. and global human rights organizations opposing capital punishment, such as Amnesty International, the International Council of Nurses, and the American Public Health Association. (Byrd & Allen, 2017)

ANA President Pamela F. Cipriano said that "Capital punishment is a human rights violation, and ANA is proud to stand in strong opposition to the death penalty" (Byrd & Allen, 2017). Research citations are not provided but the connection to organizations that have provided such citations seems to provide 'indirect' support for the effect of criminological research.

Impact of Criminological Research on Public Opinion Polls

All of the organizations noted above are very important in their goals and activities, but they are not direct representatives of the public at large. They are an important and influential part of the public, but a relatively small part, numerically speaking. Public opinion polls represent one way of trying to measure the impact of criminological research on society at large. Additionally, public opinion polls are one of the methods the courts have used to determine if the standard of decency has shifted in society as they are contemplating a change in the interpretation of the 'cruel and unusual' clause in the United States Constitution as it relates to the death penalty.[2] Public opinion polling has also been used in different ways to assess the opinions of a variety of important groups such as state legislators, judges and Governors (Bohm, 2017; Robinson, 2008).

National Polls

Gallup polls have varied over the years, reminding one of a roller coaster in terms of the up and down changes in response to the question "Are you in favor of the death penalty for someone convicted of murder?" The earliest poll in 1937 reported 60% in favor of the death penalty, but in 1957 it was at 47% and in 1966 it had dropped to its lowest recorded point of 42%, before it began to climb again. In March of 1972 it was at 50%, in 1976 it was 66%, in 1985 it was 72%, and in 1994 it was at its highest recorded point of 80%. Shortly thereafter it began to decline. It was 70% in 2002, 64% in 2010, 61% in 2015, and 55% in 2017, its lowest point since 1972 (Gallup Inc, n.d.). This is a fifteen-point drop from 2002 and a staggering twenty-five point drop from 1994, when the U.S. was at its highest level of support (Sourcebook of Criminal Justice Statistics, 2013 Table 2.51).

Another question has been added to some of the more recent Gallup polls. The question, 'In your opinion is the death penalty imposed too often, about the right amount, or not often enough' has been asked in six of the more recent polls. In 2005, 53% responded 'not often enough' but in 2017 only 39% gave this response (Gallup Inc, n.d.).

The national Pew Polls on capital punishment have also had some ups and downs over the years but the long term trend indicates that support is clearly going down. In the 1996 Pew poll, 78% of those polled were in favor of capital punishment. In 2007, support had dropped to 64% and in 2016, support had dropped all the way to 49%. However, this may have been a polling fluke because support climbed back up to 54% in the 2018 poll. This latest number in the 2018 Pew poll of 54% is almost identical with the 2017 Gallop poll of 55% increasing our confidence in the long range downward trend in support for the death penalty (Oliphant, 2016, 2018).

[2] Two other methods the courts have used in this regard is the number of states that have made a significant change in their death penalty statutes, such as the number of states changing the age for execution of juveniles (Thompson v. Oklahoma, 1988). Another method the United States Supreme Court has used is international opinions. "It is proper that we acknowledge the overwhelming weight of international opinion …. The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions" (Roper v. Simmons, 2005 p.11).

Question Wording

The way the question has been worded in the polls has been challenged by criminologists. (Bohm, 2017). The question, "Are you in favor of the death penalty for a person convicted of murder" does not provide sufficient options for other forms of punishment. Different results are obtained when Americans are asked about their support for capital punishment and given a viable alternative such as Life Without Parole + Restitution to Victim Families. This is seen in a 2014 survey where only 50% of Americans would choose the death penalty for convicted murderers if life in prison without the possibility of parole was an alternative (Gallup Inc, n.d.). There has been relatively little variation in this finding since the questions inception in 1985 with the highest reported death penalty support being 61% in 1997 which coincides quite closely with the highest general death penalty support levels using the original wording. Many scholars argue that this fluctuation in response indicates a decline in support for capital punishment as a practical punishment (Bohm, 2017) which might suggest an 'indirect' effect of criminological research.

A recent national Quinnipiac Poll conducted on March 22, 2018 asks the question about support for the death penalty three different ways. The first wording was similar to that used in most previous polls, "Do you support or oppose the death penalty for persons convicted of murder?" In response to this question they found that 58% supported the death penalty and only 38% opposed it. Using a second wording they asked the question, "Would you like to see the death penalty abolished nationwide, or not?" In response to this wording they found even stronger support for the death penalty with 68% responding 'no', they would not like to see it abolished and 31% said 'yes', they would like to see it abolished. This may represent another example of the importance of question wording because it is not clear what would replace the death penalty if it were abolished with the question asked in this manner. But in response to the third question "Which punishment do you prefer for people convicted of murder: the death penalty or life in prison with no chance of parole?" only 37% preferred the death penalty and 51% preferred a life without parole sentence (Quinnipiac University National Poll, 2018). As previously noted, question wording is very important in measuring public opinion about capital punishment. When the question "Which punishment do you prefer for people convicted of murder: the death penalty or life in prison with no chance of parole?" was first asked in the Quinnipiac poll on December 14, 2004, 42% favored the death penalty and 46% favored life without parole, a change of 5% in both directions between the 2004 poll and the 2018 poll (Quinnipiac University National Poll, 2018).

State and Local Polls

State or local polls seem to differ somewhat from the national Gallup polls. Even death penalty states that have executed a lot of people appear to be seeing changes in public opinion. A poll taken in the Miami-Dade area of Florida in 2016

> of a representative group of nearly 500 jury-eligible Floridians… showed that when respondents are asked to choose between the two legally available options — the death penalty and life in prison without parole —

> Floridians clearly favor, by a strong majority (57.7 percent to 43.3 percent), life imprisonment without parole over death. The overall preference was true across racial groups, genders, educational levels and religious affiliation" (Haney, 2016).

More recently another Florida county poll

> shows that two-thirds of Pinellas County voters (68 percent) prefer some version of life in prison over the death penalty for people convicted of murder. Only 30 percent of respondents chose the death penalty as their preferred punishment. Sixty percent of surveyed voters also expressed support for redirecting the funds currently spent on death penalty cases to solving more rapes and murders. (White, 2018)

In a similar vein, a 2013 poll in North Carolina indicated an unusual trend for a southern, retentionist state as a majority of its citizenry (68%) are in favor of abolition and replacement with life in prison without parole and restitution for the families of victims (Hughes & Robinson, 2013).

On July 12, 2018 a poll of likely voters in the state of Washington was released. The poll was conducted by Public Policy Polling and found that, for defendants convicted of murder, 69% of voters preferred some version of a life sentence as compared to 24% who said they preferred the death penalty. Respondents were provided with four options: (1) life in prison with NO possibility of parole (10% selected), (2) life in prison with NO possibility of parole and a requirement to work in prison and pay restitution to the victims (46% selected), (3) life in prison with a possibility of parole after at least forty years (13% selected), and (4) the death penalty (24% selected). The remaining 8% were not sure which option to select. Every political demographic preferred some version of a life sentence over the death penalty (DPIC, 2018g).

The Deterrence Question

The changes noted above suggest that there has been some modest 'indirect' impact of criminological research on public opinions about the death penalty, but a more recent question added to the Gallup poll is even more persuasive. In 1985 Gallup asked the question, "Do you feel that the death penalty acts as a deterrent to the commitment of murder, that it lowers the murder rate or not?" In 1985, 62% responded 'yes, they thought it did have a deterrent effect and reduced murders'. In 1991 it was down to 51%, who thought there was a deterrent effect, in 2004 it had dropped to 35%, and in the latest poll reported in 2011 it was at 32% who said that the death penalty had a deterrent effect and reduced murders (Gallup Inc, n.d.). A drop of 30% from 62% in 1985 to 32% in 2011 in the belief that the death penalty is a deterrent to murder would seem to indicate that the public is paying considerable attention to criminological research in either a 'direct' or 'indirect' manner as it relates to deterrence research. The public may not be reading the publications containing the criminological research, but they may be getting the information through organizational meetings, newspapers, television news, and from internet reports that have at least a cursory understanding of the issues presented in the criminological research. Some of the more important

research also shows up in the class lectures and assigned reading materials in criminology classes which is getting to the younger generation of Americans who will be making the decisions in the future, assuming they retain this information learned in the classroom. The results of public opinion polling may represent a 'secondary' form of an 'indirect' effect of criminological research.

Impact of Criminological Research on State Abolition of the Death Penalty

New Jersey Abolition (2007)

New Jersey established a Commission to study capital punishment and a number of speakers presented information about the death penalty. Several people spoke about research on the deterrent effect of the death penalty and the report mentioned Ehrlich's research as well as some of his critics. Jeffrey Fagan is quoted as saying, "many of these studies use incomplete data or are otherwise flawed" but Kent Scheidegger said the death penalty "does have a deterrent effect and does save innocent lives if it is actually enforced" (New Jersey Death Penalty Study Commission, 2007 pp. 25&27). The report also included testimony about deterrence from Erik Lillquist stating:

> That recent econometric studies suggest that the death penalty does have a deterrent impact, at least if the death penalty is carried out in sufficient numbers. He also stated that, paradoxically, studies suggest that under some circumstances executions can cause a 'brutalization effect' so that the murder rate will increase. In summary of the deterrence literature he stated: 'It just may be impossible to know what the deterrent or brutalization effect is . . . at least as an empirical matter – simply because we're never going to have a large enough database that can be removed of the confounding variables, such that we can come to a conclusion. When scientists run studies in general, we try to do it in a controlled environment. You can't do that with murders and the death penalty . . . So we have to do these econometric studies. But they have confounding variables we can't control…. We may never be able to get a firm conclusion as to whether or not a deterrent value (or a brutalization effect) exists' (New Jersey Death Penalty Study Commission, 2007 p. 27-28)

Apparently the Commission was more convinced by Fagan and Lillquist than by Scheidegger because they concluded: "Nearly twenty years ago, the New Jersey Supreme Court discussed the inconsistencies among deterrence studies in State v. Ramseur, 106 N.J. 123 (1987). The Court's conclusions are still valid today:

> The argument about deterrence is different. All accept its legitimacy as a penological goal; the division, and it is a sharp one, concerns an empirical question. Does the death penalty deter murder? The answers, the reasons, and the statistics conflict and proliferate…. Given the plethora of scientific analysis, 'common-sense' explanations of the penalty's deterrent effect based on logic . . . are neither persuasive nor important" (New Jersey Death Penalty Study Commission, 2007 p. 28).

The Commission report led to abolition of the death penalty in New Jersey and the report appears to have been impacted by the evidence presented to the Commission, at least to some degree. It is not clear that criminological researchers spoke directly to the Commission on all of the issues because information came from many different sources but it is clear that they addressed several of the arguments in favor of abolition. The Commission concluded:

> (1) There is no compelling evidence that the New Jersey death penalty rationally serves a legitimate (deterrent) penological intent. (2) The costs of the death penalty are greater than the costs of life in prison without parole…. (5) Abolition of the death penalty will eliminate the risk of disproportionality in capital sentencing. (6) The penological interest in executing a small number of persons guilty of murder is not sufficiently compelling to justify the risk of making an irreversible mistake (New Jersey Death Penalty Study Commission, 2007 p. 1).

As noted above the Commission had examined several studies, and heard from several criminologists, on deterrence and the death penalty in reference to the first finding. The New Jersey Death Penalty Commission concluded their report as follows:

> RECOMMENDATIONS: The Commission recommends that the death penalty in New Jersey be abolished and replaced with life imprisonment without the possibility of parole, to be served in a maximum security facility. The Commission also recommends that any cost savings resulting from the abolition of the death penalty be used for benefits and services for survivors of victims of homicide (New Jersey Death Penalty Study Commission, 2007 p. 2).

It would appear that either directly, or indirectly, (or both) criminological research played a role in this outcome and the New Jersey legislature followed the Commission's recommendation and abolished the death penalty.

New Mexico Abolition (2009)

The legislature in the New Mexico House and Senate passed legislation abolishing the death penalty and Governor Bill Richardson signed the legislation in 2009. The New Mexico Coalition to Repeal the Death Penalty praised the New Mexico legislature for realizing that "the death penalty didn't deter crime, didn't prevent child abuse, did not keep our society safer and could put to death an innocent person…. The death penalty is a serious issue with fiscal implications for the state" (New Mexico Coalition to Repeal the Death Penalty, 2017).

The International Commission Against the Death Penalty reviewed the New Mexico abolition process and said:

> Some legislators cited the high cost of executions as a reason for supporting the bill, others the possibility of executing the innocent…. The state's legislature also drew upon an authoritative study published in the New Mexico Law Review on the application of the death penalty between July 1979 and December 2007, which found that the imposition of the death penalty in New Mexico was

> influenced by legally irrelevant issues such as where or when the crime was committed and the race or ethnicity of the victim and defendant" (International Commission Against the Death Penalty, 2013 p.32).

The study referred to above was conducted by Marcia Wilson and published in 2008 as the legislature was considering the bill to abolish the death penalty. Some of the findings from the study were as follows:

> In view of the data, it appears that where a crime was committed is a significant factor in determining whether the prosecution will seek the death penalty. …. The data strongly suggest that race and ethnicity played a role in determining who would live and who would die. The numbers suggest that prosecutors were more likely to seek and juries more likely to impose the death penalty if the deceased was white, non-Hispanic. The race or ethnicity of the offender also appears to have affected both the way the case was resolved and the likelihood that a particular defendant would be sentenced to death. This was most striking in the case of black defendants (Wilson, 2008 p. 284-285).

In further analysis of how cases were handled Wilson states,

> once the prosecution decided to seek the death penalty, cases involving black defendants were seldom resolved by plea agreements even though almost half of the resolved death penalty cases ended with plea agreements. Black defendants as a group were most likely to be convicted of first-degree murder and most likely to see their cases continue into a penalty phase. This suggests that prosecutors were particularly zealous in seeking the death of black defendants" (Wilson, 2008 p. 295).

Governor Richardson, who had been a proponent of the death penalty when he was elected, changed his mind after learning more about some of the problems with capital punishment. He said that "his conscience was challenged by the very real risk that an innocent person could be executed…. Another factor had been the worldwide trend towards abolition" (International Commission Against the Death Penalty 2013 p.32) He said:

> I do not have confidence in the criminal justice system as it currently operates to be the final arbiter when it comes to who lives and who dies for their crime…. Faced with the reality that our system for imposing the death penalty can never be perfect, my conscience compels me to replace the death penalty with a solution that keeps society safe (DPIC, 2009).

Richardson also said he was troubled by the fact that minorities are "over-represented in the prison population and on death row" (Grinberg, 2009).

Rep. Gail Chasey, who first introduced House Bill 285 in 1999, said the bill would relieve families of the burden of a lengthy death penalty trial and appellate phase and restore the focus to crime victims. She said, "Every time there is a court hearing, a conviction, an appeal, the focus is on the defendant, but the family (of the victim) still

has to go through it all again and again. It's very, very hard for the families. It reopens the wounds each time." She also noted that the legislation will also spare the state cost of mounting a death penalty trial, which typically costs significantly more than a non-death penalty trial. "We can put that money toward enhancing law enforcement, public works, you name it" (Grinberg, 2009). It is clear from all of the information presented about the New Mexico abolition that criminological research has played a 'direct' and significant role in abolition of the death penalty.

There have been several attempts to reinstate capital punishment in New Mexico but thus far each bill introduced has failed. "A range of organizations, from the New Mexico Conference of Catholic Bishops to the American Civil Liberties Union, raised concerns that the bill would lead to wrongful executions, do little if anything to prevent crime and cost the state with rounds of legal appeals." (Oxford, 2018). These are all issues brought to the attention of the legislature and different groups opposed to the death penalty based on the findings of criminological research and they passed this newly learned information on to legislators and the Governor.

Illinois Abolition (2011)

On January 31,2002 Illinois Governor George Ryan declared a moratorium on executions in Illinois. He had earlier appointed a Governor's Commission to study how the death penalty system in Illinois could be reformed in order to eliminate all of the errors that were in the system resulting in innocent people on death row. Nevertheless, the Governor made clear in his instructions that the Commission was to study how to reform the death penalty system, not to debate whether or not the death penalty should be abolished.

> The … Order forming the Commission and setting forth its mission stated: 'The Commission… shall submit to the Governor a written report … providing … recommendations to the Governor that will further ensure the administration of capital punishment in the State of Illinois will be fair and accurate.'… after two years of study, the Illinois Governor's Commission issued its Report. ….The Report made eighty-five specific recommendations for corrections to the Illinois death penalty system… Although discussion of the death penalty's abolition was not within the mandate of the Commission … the Commissioners stated: 'The Commission was unanimous in the belief that no system, given human nature and frailties, could ever be devised or constructed that would work perfectly and guarantee absolutely that no innocent person is ever again sentenced to death' (Sanger, 2003 p.103-104).

By the time the Commission's report was submitted, Governor Ryan had commuted the sentences of seventeen inmates from death row that had been found to be innocent (Sanger, 2003 p. 103–104). It is clear that the question of innocence was paramount in Governor Ryan's, and the legislature's, decision, but there is evidence of other kinds of criminological research that were part of the legislative debate. A report by Glenn Pierce and Michael Radelet presented data about racial discrimination and geographic bias in the Illinois death penalty and was in the Appendix of the Governor's Commission on Capital Punishment Report (Pierce & Radelet, 2002). The report noted that controlling for possible aggravating factors, death sentences were imposed in 8.4% of first-degree murder convictions in rural counties, but in only 3.4% in urban counties

(Pierce & Radelet, 2002 p. 92). Evidence of discrimination was documented in that defendants convicted of killing white victims were three times as likely to be sentenced to death as were defendants convicted of killing black victims in similar cases (Pierce & Radelet, 2002, p. 94).

An article by Leigh Bienen provided an in-depth analysis of the cost of the death penalty to the state of Illinois.

> It is not just that this is a waste of taxpayer dollars, at a time when Illinois needs every dollar for other services, but that the money has been spent foolishly, cynically, heedlessly, and without a discernible indication of responsibility to the state or the public.... For example, the state of Illinois wasted millions imposing a death sentence on Brian Dugan, who was already serving life in prison without possibility of parole for another murder. …. To make matters worse, this prosecution came only after two other people were wrongfully convicted, retried, and convicted again for the crime Dugan admitted to having committed. The state spent millions of dollars prosecuting these capital cases, and then paid out millions more to the men it had wrongfully sentenced to death (Bienen, 2010, 1389-1390).

A publication by Juden Ball that was submitted to the legislator gave six reasons to abolish the death penalty.

> The death penalty is racist, the death penalty punishes the poor, the death penalty condemns the innocent to die, the death penalty is not a deterrent to violent crime, the death penalty is 'cruel and unusual punishment', the death penalty fails to recognize that guilty people have the potential to change, denying them the opportunity to ever rejoin society" (Ball, 2007).

The report notes extreme geographic disparity stating that of the 167 active murder cases in Illinois at that time, 151 come from Chicago and Cook County. All of the other cities and counties in Illinois combined had only 16 active murder cases (Ball, 2007). Once again it is clear that criminological research had both a 'direct' and 'indirect' impact on abolition in Illinois.

Rob Warden probably wouldn't disagree that criminological research played a role in the abolition, but he would point to something else that was very important, 'serendipity'. Warden published a fascinating article about the abolition of the Illinois death penalty. He began the article by saying:

> The late J. Paul Getty had a formula for becoming wealthy: 'rise early, work late- and strike oil'. That is also the formula for abolishing the death penalty… that worked in Illinois. When Governor Pat Quinn signed legislation ending capital punishment in Illinois on March 9, 2011, he tacitly acknowledged the early rising and late working that preceded the occasion. 'Since our experience has shown that there is no way to design a perfect death penalty system, free from the numerous flaws that can lead to wrongful convictions or discriminatory treatment, I have concluded that the proper course of action is to abolish it.
> The experience to which the governor referred was not something that dropped like a gentle rain from heaven upon the place beneath and seeped into his consciousness

> by osmosis. Rather, a cadre of public defenders, pro bono lawyers, journalists, academics, and assorted activists, devoted tens of thousands, perhaps hundreds of thousands, of hours, over more than three decades, to the abolition movement.
> All of the work would have been for naught, however, without huge measures of serendipity - the figurative equivalent of striking oil. The gusher, as I call it, was a long time coming. The prospecting began in 1976-a year before the Illinois death penalty was restored after the temporary hiatus ordered by the U.S. Supreme Court in Furman v. Georgia '- when Mary Alice Rankin, a former high school teacher, organized the Illinois Coalition Against the Death Penalty (ICADP). The goal of the coalition, an umbrella organization of liberal and religious groups, was to prevent reinstatement of capital punishment and, if that failed, as it did in 1977,' to campaign for abolition and oppose any executions that might occur under the law.
> Rankin subscribed to a thesis espoused by Justice Thurgood Marshall in Furman …. In his concurring opinion, Marshall contended that 'if Americans were better informed of the realities of capital punishment, they would find it unacceptable'. Rankin, accordingly, focused on public education, establishing a speakers' bureau, organizing letter-writing campaigns, and convening public forums.
> The founding of the ICADP was the first of many serendipitous milestones on the path to abolition in Illinois…. (But) the movement could not have succeeded without other energizing forces, the most important of which would be the near-death experiences of prisoners who were eventually proven innocent (Warden, 2012 p. 245-246).

Warden continues with a string of serendipitous events leading to the eventual abolition of the Illinois death penalty. He refers to a "cavalcade of exonerations" where each of the exonerations resulted in an innocent person being saved from execution. More importantly, each of the exonerations was a product of hard work, chance, sheer luck, or 'serendipitous events'.[3] In addition, Warden discusses many other serendipitous events leading up to the abolition.

[3] Warden describes the first exoneration as follows. "The first of what would become a cavalcade of post-Furman Illinois death row exonerations occurred in 1987 when a young prosecutor, Michael Falconer, came forward with exculpatory evidence that exonerated two condemned Chicagoans, Perry Cobb and Darby Tillis. It is hard to imagine more fortuitous or improbable events than those that led to the exonerations of Cobb and Tillis, who had been sentenced to death for a double murder that occurred a decade earlier.' In 1983, the Illinois Supreme Court reversed and remanded their case because the trial judge had rejected a defense request to give the jury an accomplice instruction. The prosecution's star witness, Phyllis Santini, had driven the getaway car used in the crime - admittedly but, she claimed, unwittingly. *Chicago Lawyer*, an investigative publication … carried a detailed article based on the Illinois Supreme Court opinion and case file. As luck would have it, Falconer, who recently had graduated from law school, read the article, which discussed Santini's testimony in some depth. Years earlier, Falconer had worked with Santini at a factory and, as he would testify, she had told him that her boyfriend had committed a murder and that she and the boyfriend were working with police and prosecutors to pin it on someone else. "I thought to myself, 'Jeez, there's a name from the past,"'Falconer reflected in a Chicago Lawyer interview. "I read on and started thinking, 'Holy shit, this is terrible."'He called a defense lawyer mentioned in the article, reporting what Santini had told him. At an ensuing bench trial in 1987, Cobb and Tillis were acquitted by a directed verdict on the strength of Falconer's testimony." By then, Falconer was a prosecutor in a neighboring jurisdiction." Cobb and Tillis eventually received gubernatorial pardons based on innocence. As serendipitous as the Cobb and Tillis exonerations" were, they were no more so than many that would follow. … (there were) 20 Illinois death row exonerations - each involving odds-defying fortuity. The error rate among 305 convictions under the 1977 Illinois capital punishment statute was in excess of 6% (Warden, 2012 p. 247–248).

Connecticut Abolition (2012)

Several months prior to the Connecticut Legislature meeting to vote on a bill to abolish the death penalty they had received a 457-page report produced by Professor John Donohue, "Capital Punishment in Connecticut, 1973-2007: A Comprehensive Evaluation from 4,686 Murders to One Execution". This report discussed research on several different issues related to the death penalty. An abbreviated version of one section of the executive summary of that report, 'The Seven Main Findings of the Report' is presented below because it is an excellent example of criminological research impacting policies regarding capital punishment.

> First, Connecticut's death penalty regime today is assailable for producing results similar to the Georgia regime indicted by the Supreme Court's 1972 decision, Furman v. Georgia….. the sheer infrequency of death sentences and executions, given the number of murders, creates a strong suspicion that the determination of who is to die is highly arbitrary…. Connecticut has executed one criminal defendant over a period during which there were 4,686 murders…
> Second, there is no meaningful difference between capital-eligible murders in which prosecutors pursue capital charges and those in which prosecutors do not…. I found that cases prosecutors charge as capital are virtually indistinguishable in these measures of death worthiness from cases where prosecutors choose not to bring capital charges….
> Third, this command that within the class of death-eligible murders, the death penalty must be limited to the worst of the worst is also violated by the highly arbitrary sentences that capital-eligible defendants receive….. at every level of egregiousness, I observed a wide range of sentences….
> Fourth, while the data analyzed in this report comes from 205 death-eligible cases that end with a conviction, the focus on this limited sample understates the degree of arbitrariness in the system. … there has been a steady erosion in the fraction of murders that are cleared. Today, roughly 40 percent of all Connecticut murders go unsolved….
> Fifth, the Connecticut death penalty system results in disparate racial outcomes in the imposition of sustained death sentences that cannot be explained by the type of murder or the egregiousness and other aggravating factors of the crimes involved…. Minority defendants who murder white victims are three times as likely to receive a death sentence as white defendants who murder white victims (12 percent versus 4 percent). …
> Sixth, the regression analysis of capital felony charging decisions provides further evidence of the arbitrariness and racial bias…. minority killers of whites are treated most harshly, experiencing a charging rate that is roughly 20-22 percentage points higher than those who kill minority victims….
> Seventh, regression analysis also confirms that there are dramatically different standards of death sentencing across Connecticut. ….the death penalty system in Connecticut is not only arbitrary but is also impermissibly discriminatory. (Donohue, 2011 p. 3-8)

Members of the legislature had access to this report and verbal presentations were made on major parts of the report in various legislative committees throughout the legislative session. After several proposed amendments had been discussed, with most of them being rejected, the final bill with one amendment was prepared for a final vote. On April 4, 2012 the Connecticut General Assembly held a lengthy meeting going into the wee morning hours providing legislators an opportunity to express their views on the death penalty bill they were to vote on before concluding their business for the day. Based on their comments it is obvious that they are familiar with this report and aware of numerous problems with the death penalty based on other materials they have obtained. Senators discussed many different reasons they favored abolition, but virtually everyone who voted for abolition mentioned the lack of deterrence, concerns of executing someone who was innocent, the cost and better ways to spend the money, and discrimination against minorities and the poor. Different legislators emphasized different issues but most of their sentiments are captured in the abbreviated statement of Senator Coleman reported below.

> SENATOR COLEMAN: There are, in my opinion, plenty of reasons to support a change in our penalty with respect to capital (punishment) …. I'm very familiar with the fallibility of our criminal justice system and … there have been some well publicized cases where the system has made a mistake…. The punishment of death is so irreversible….The other concerns that I have… is the cost of it…. You think about that, and you think about all of the unmet needs …. That money could certainly have been better allocated. Another concern I have … is its discriminatory application. It seems that if you are a minority, if you are poor, then there is a greater likelihood that you will be convicted and sentenced to death…. There is as well a geographic bias…. And finally … it is believed that the death penalty serves as some sort of deterrent. Eighty-eight percent of the criminologists and sixty-four percent of Americans disagree with that proposition. They don't believe that the death penalty serves as any sort of deterrent…. In 16 states without the death penalty (they) have a homicide rate that is 25 percent lower than that of the 34 states with death penalties. So it doesn't seem to be any sort of deterrent (An Act Revising , 2012 p. 100-103).

Members opposing the abolition of capital punishment also made statements of disapproval, some being equivocal, and then a final vote was taken. The bill passed with a vote of 20 in favor of abolition and 16 opposed (An Act Revising , 2012 p. 312). The Governor signed the bill and Connecticut no longer has a death penalty. A reporter for the New York Times summed up this process by saying, "Democratic legislators — swayed by at least 138 cases nationally in which people sentenced to death were later exonerated and by arguments that the death penalty is imposed in a capricious, discriminatory manner and is not a deterrent to crime — voted for repeal" (Applebome, 2012). Some of the references noted above show that criminological research played a 'direct' and 'indirect' role in the abolition of capital punishment in Connecticut.

Maryland Abolition (2013)

One of the more recent and more obvious direct examples of criminological research having an impact on the death penalty is found in the state of Maryland. The Governor of Maryland had appointed a commission to study several questions related to the death penalty. After an extensive examination and having several distinguished criminologists discuss the findings of their research the commission submitted its final report. In the Executive Summary of the report they state:

> The Maryland Commission on Capital Punishment has reviewed testimony from experts and members of the public, relevant Maryland laws and court cases, as well as statistics and studies relevant to the topic of capital punishment in Maryland. After a thorough review of this information, the Commission recommends that capital punishment be abolished in Maryland (Maryland Commission on Capital Punishment, 2008).

Specific findings from criminological research are discussed in the conclusion of the report and several prominent criminologists are cited as providing written and oral testimony to the commission. Raymond Paternoster, who had conducted several of these studies and provided oral testimony, is cited 52 times in the report with David Baldus cited 37 times, Jeffery Fagan 31 times, and numerous other researchers cited one or more times. There can be no doubt that criminological research had a very 'direct' impact on the abolition of the death penalty in Maryland.

The final recommendation of the commission demonstrates impact of criminological research on the commission's conclusions.

> The present administration of capital punishment shows substantial disparities in its application based on race and jurisdiction. These disparities are so great among and between comparable cases that the death penalty process is best described as arbitrary and capricious. It is neither fair nor accurate. The costs of capital cases far exceed the costs of cases in which the death penalty is not sought. These resources could be better used elsewhere. The effects of prolonged capital cases take an unnecessary toll on the family members of victims. The risk of executing an innocent person is, in the Commission's view, a real possibility…. For all of these reasons—to eliminate racial and jurisdictional bias, to reduce unnecessary costs, to lessen the misery that capital cases force victims of family members to endure, to eliminate the risk that an innocent person can be convicted—the Commission strongly recommends that capital punishment be abolished in Maryland" (Maryland Commission on Capital Punishment, 2008 p. 21-22)

It should be noted, however, that despite all of the negative research findings about the death penalty presented by criminological researchers, and the presence of Kirk Bloodsworth (who was an innocent man exonerated from Maryland's death row in 1993) serving as a member of the commission, the vote on the above resolution to abolish the death penalty only won by four votes, with 13 in favor, 9 opposed, and one abstention (Maryland Commission on Capital Punishment, 2008 p. 23). It would appear that if the Governor had been opposed to abolition, as happened in New

Hampshire in 2018 (DPIC, 2018c), the death penalty would not have been abolished in Maryland even after the strong case for abolition presented above.

Delaware Abolition (2016)

In 2016 the United State Supreme court ruled that "The Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death …. Florida's sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, is therefore unconstitutional" (Hurst v Florida, 2016 p. 1, 10). The Florida statute had been declared unconstitutional, but the legislature quickly rewrote the statute reinstating the death penalty in Florida. The death penalty statutes in Delaware and Alabama were very similar to the Florida law. Following the U.S. Supreme Court's ruling in Florida the State Supreme Court of Delaware declared the state's death penalty unconstitutional (Eckholm, 2016). The Delaware Attorney General did not challenge the decision, the Governor has not questioned it, and the Delaware legislature has rejected attempts to rewrite the death penalty statute, thus capital punishment does not currently exist in Delaware. Capital punishment was not technically 'abolished' in Delaware, but for all practical purposes that is the case.

It is obvious, however, that some Delaware lawmakers wanted to have it restored because the Delaware House of Representatives passed a new statute in 2017 that would make capital punishment constitutional if passed by the Senate and signed by the Governor. Unfortunately for death penalty proponents, the Delaware Senate rejected the bill with apparently minimal consideration. An article discussing the House bill stated that "Opponents of the death penalty voiced their criticism of the measure, arguing that capital punishment does not deter crime, is racially biased against minorities, is expensive and is morally wrong" (Top Stories, 2017). Three of these points clearly show an awareness of the findings of criminological research suggesting an indirect causal connection although specific criminological references were not provided.

Impact of Criminological Research on U.S. Supreme Court Decisions Related to the Death Penalty

Early Death Penalty Cases

The US Supreme Court has greatly shaped the scope, methods, and applicability of the death penalty throughout history, but the major impact began in the 1970's. The first capital punishment case heard by the Supreme Court in 1820 was a federal case, United States v Cornell which upheld the tradition of death qualification for prospective jurors (Bohm, 2017 p. 32). According to Robert Bohm, "… before the Civil War the Court left state death penalty cases to the lower courts to resolve" (Bohm, 2017 p. 32). Wilkerson v. Utah (1879) determined that death by firing squad was not an 8th amendment violation. More importantly, however, this case opened up the possibility that certain forms of execution could become violations in the future (Wilkerson v. Utah, 1879). This was the beginning of numerous legal challenges to capital punishment. Similar to the Wilkerson case, in 1890 the In re Kemmler Supreme Court decision determined that the use of the electric chair was not a violation of the U.S.

Constitution (In re Kemmler, 1890). Prior to Powell v. Alabama (1932) it would appear that if capital defendants could not afford an attorney they could still be convicted and executed without an attorney to represent them in court.

A multitude of other cases have also had great bearing on the current use of the death penalty. Two of the most important were Weems v. United States (1910) and Trop v. Dulles (1958). While the Trop and Weems cases were not capital punishment cases, they led to the development of the ever reoccurring ideal that there are "evolving standards of decency that mark the progress of a maturing society" (Trop v Dulles, 1958). This led to broad questions about the acceptability of capital punishment in a modern society. Unfortunately, there was not much criminological research that made its way into the official court record and it is difficult to find any specific sources that might have affected any of these cases. Word of mouth, stories in the local newspapers, etc. dealing with criminological research findings may have had some effect on these cases but it is difficult to document.

Furman V Georgia (1972)

Arguably, the two most important death penalty decisions both came in the 1970's, Furman v Georgia (1972) and Gregg v Georgia (1976), and they resulted in opposite conclusions relative to capital punishment. In light of the new evolving standard of decency referenced above, the case of Furman v. Georgia (1972) was heard in an effort to see if society had matured to the point of being beyond the need for the death penalty. In this highly contentious, 5–4 split, per curium decision the justices ruled the death penalty was unconstitutional in its current form. Studies cited in the decision found arbitrary and discriminatory trends in the death penalty in multiple states. To the concurring justices this qualified the punishment as being unusual (some also thought it was cruel), making it a violation of the eighth amendment and therefore unconstitutional.

The Furman case is one of the early Supreme Court cases clearly illustrating the 'direct' impact of criminological research on capital punishment. There were at least 83 documents (journal articles, books, unpublished research reports) cited in the Furman decision. Many of these documents were written by prominent criminological scholars of the recent past such as, Thorsten Sellin, Hugo Adam Bedau, Edwin Sutherland, Leonard Savitz, Karl Schuessler, Robert Caldwell, Marvin Wolfgang, and Edwin Borchard, just to name a few.

Justice Douglas, voting with the majority to abolish the death penalty quoted from the President's Commission on Law Enforcement and the Administration of Justice (the Commission was composed primarily of academic criminologists, lawyers, and other criminal justice experts) that had recently finished their final report that had been submitted to the President. The report had stated, "Finally there is evidence that the imposition of the death sentence and the exercise of dispensing power by the courts and the executive follow discriminatory patterns. The death sentence is disproportionately imposed and carried out on the poor, the Negro, and the members of unpopular groups" (Furman v Georgia, 1972). In a similar vein Justice Douglas used a quote from former Attorney General Ramsey Clark who testified about the case. "It is the poor, the sick, the ignorant, the powerless and the hated who are executed. One searches our

chronicles in vain for the execution of any member of the affluent strata of this society. The Leopolds and Loebs are given prison terms, not sentenced to death" (Furman v Georgia, 1972).

Justice Marshall wrote the longest decision and brought into the discussion some of the early research related to the lack of a deterrent effect of the death penalty quoting heavily from the research of Thorsten Sellin on deterrence. "Sellin's statistics demonstrate that there is no correlation between the murder rate and the presence or absence of the capital sanction…. In light of the massive amount of evidence before us, I see no alternative but to conclude that capital punishment cannot be justified on the basis of its deterrent effect" (Furman v Georgia, 1972). Marshall had also reviewed some of the early studies on the cost of the death penalty.

> As for the argument that it is cheaper to execute a capital offender than to imprison him for life, even assuming that such an argument, if true, would support a capital sanction, it is simply incorrect. A disproportionate amount of money spent on prisons is attributable to death row. Condemned men are not productive members of the prison community, although they could be, and executions are expensive. Appeals are often automatic, and courts admittedly spend more time with death cases. When all is said and done, there can be no doubt that it costs more to execute a man than to keep him in prison for life (Furman v Georgia, 1972).

Marshall footnoted some of the research supporting each of his statements once again showing a 'direct' effect of criminological research on the U.S. Supreme Court decision in Furman.

Marshall concluded by saying,

> I believe that the following facts would serve to convince even the most hesitant of citizens to condemn death as a sanction: capital punishment is imposed discriminatorily against certain identifiable classes of people; there is evidence that innocent people have been executed before their innocence can be proved; and the death penalty wreaks havoc with our entire criminal justice system…. Regarding discrimination, it has been said that it is usually the poor, the illiterate, the underprivileged, the member of the minority group - the man who, because he is without means, and is defended by a court-appointed attorney - who becomes society's sacrificial lamb . . . . Indeed, a look at the bare statistics regarding executions is enough to betray much of the discrimination. … 455 persons, including 48 whites and 405 Negroes, were executed for rape. It is immediately apparent that Negroes were executed far more often than whites in proportion to their percentage of the population. … There is also overwhelming evidence that the death penalty is employed against men and not women…. It also is evident that the burden of capital punishment falls upon the poor, the ignorant, and the underprivileged members of society…. Just as Americans know little about who is executed and why, they are unaware of the potential dangers of executing an innocent man. Our

> 'beyond a reasonable doubt' burden of proof in criminal cases is intended to protect the innocent, but we know it is not fool-proof. Various studies have shown that people whose innocence is later convincingly established are convicted and sentenced to death (Furman v Georgia, 1972).

Gregg V Georgia (1976)

The Furman decision was quickly challenged by the states who sought to address the "barbaric" arbitrary and discriminatory concerns which all contributed to the justice's decision in Furman. Over the next four years, with Florida taking less than a year, 35 states rewrote their death penalty statutes using two different methods: (1) mandatory sentencing of all first-degree murders to death, or (2) discretionary sentencing based on a laundry list of factors to be considered by a jury. These statutes were tested in Gregg v. Georgia (1976) which was a compilation of five cases from two states with new mandatory laws and three states with new discretionary laws.

Criminological research cited in this decision focused primarily on questions related to the recent research on the deterrent effect of the death penalty. Particular attention is paid to a book by Charles Black, Capital Punishment: The Inevitability of Caprice and Mistake (Black, 1974). A quote from the Gregg decision contains a quote from the book. "Statistical attempts to evaluate the worth of the death penalty as a deterrent to crimes by potential offenders have occasioned a great deal of debate. The results simply have been inconclusive. As one opponent of capital punishment has said:

> [A]fter all possible inquiry, including the probing of all possible methods of inquiry, we do not know, and for systematic and easily visible reasons cannot know, what the truth about this `deterrent' effect may be …. The inescapable flaw is . . . that social conditions in any state are not constant through time, and that social conditions are not the same in any two states. If an effect were observed (and the observed effects, one way or another, are not large) then one could not at all tell whether any of this effect is attributable to the presence or absence of capital punishment. A `scientific' … soundly based conclusion is simply impossible, and no methodological path out of this tangle suggests itself (Black, 1974, p. 25-26).

Those in the concurring majority in favor of the death penalty, however, were adamant that assessing the deterrent effect was not the province of the court and should not sway their rulings. Nevertheless, they introduced a study by Issac Ehrlich that had used sophisticated econometric techniques and found evidence of a deterrent effect. The abolitionists discussed a large variety of deterrence research present at the time, some responding to the Ehrlich study and using the same econometric techniques used by Ehrlich. These studies pointed to the flaws in Ehrlich's research and failed to find a deterrent effect. Footnotes 8 & 31 in the Gregg v Georgia decision provide two lists of deterrence studies that had been examined by the court citing authors such as Issac Ehrlich, Jon Peck,

David Baldus, James Cole, Thorsten Sellin, William Bowers, Glenn Pierce, William Bailey, Peter Passell, and John Taylor.[4]

Justice Marshall made his own critique of the Ehrlich study based on his reading of some of the critical studies and he presents a very good summary of some of the problems encountered by the early studies trying to reproduce Ehrlich's findings. It would seem apparent that Justice Marshall, and his judicial aide's, must have had considerable assistance from criminologists in preparing this critique. Justice Marshall said,

> The methods and conclusions of the Ehrlich study have been severely criticized on a number of grounds. It has been suggested, for example, that the study is defective because it compares execution and homicide rates on a nationwide, rather than a state-by-state, basis. The aggregation of data from all States - including those that have abolished the death penalty - obscures the relationship between murder and execution rates. Under Ehrlich's methodology, a decrease in the execution risk in one State combined with an increase in the murder rate in another State would, all other things being equal, suggest a deterrent effect that quite obviously would not exist. Indeed, a deterrent effect would be suggested if, once again all other things being equal, one State abolished the death penalty and experienced no change in the murder rate, while another State experienced an increase in the murder rate. The most compelling criticism of the Ehrlich study is that its conclusions are extremely sensitive to the choice of the time period included in the regression analysis. Analysis of Ehrlich's data reveals that all empirical support for the deterrent effect of capital punishment disappears when the five most recent years are removed from his time series - that is to say, whether a decrease in the execution risk corresponds to an increase or a decrease in the murder rate depends on the ending point of the sample period. This finding has cast severe doubts on the reliability of Ehrlich's tentative conclusions. Indeed, a recent regression study, based on Ehrlich's theoretical model but using cross-section state data for the years 1950 and 1960, found no support for the

[4] Justice Marshall was careful to fully support his position surrounding the lack of a deterrent effect of the death penalty with two lengthy 'laundry lists' of research in the footnotes of his published opinion which are abbreviated here. "See, e. g., Jon Peck, The Deterrent Effect of Capital Punishment: Ehrlich and His Critics, 85 Yale L. J. 359 (1976); David Baldus & James Cole, A Comparison of the Work of Thorsten Sellin and Isaac Ehrlich on the Deterrent Effect of Capital Punishment, 85 Yale L. J. 170 (1975); William Bowers & Glenn Pierce, The Illusion of Deterrence in Isaac Ehrlich's Research on Capital Punishment, 85 Yale L. J. 187 (1975); Issac Ehrlich. The Deterrent Effect of Capital Punishment: A Question of Life and Death, 65 Am. Econ. Rev. 397 (June 1975); Hook, The Death Sentence, in The Death Penalty in America 146 (Hugo Adam Bedau ed. 1967); Thurston Sellin, The Death Penalty, A Report for the Model Penal Code Project of the American Law Institute (1959)." And "See Passell & Taylor, The Deterrent Effect of Capital Punishment: Another View (unpublished Columbia University Discussion Paper 74–7509, Mar. 1975), reproduced in Brief for Petitioner App. E in Jurek v. Texas, O. T. 1975, No. 75–5844; Passell, The Deterrent Effect of the Death Penalty: A Statistical Test, 28 Stan. L. Rev. 61 (1975); Baldus & Cole, A Comparison of the Work of Thorsten Sellin & Isaac Ehrlich on the Deterrent Effect of Capital Punishment, 85 Yale L. J. 170 (1975); Bowers & Pierce, The Illusion of Deterrence in Isaac Ehrlich's Research on Capital Punishment, 85 Yale L. J. 187 (1975); Peck, The Deterrent Effect of Capital Punishment: Ehrlich and His Critics, 85 Yale L. J. 359 (1976). See also Ehrlich, Deterrence: Evidence and Inference, 85 Yale L. J. 209 (1975); Ehrlich, Rejoinder, 85 Yale L. J. 368 (1976)… See also Bailey, Murder and Capital Punishment: Some Further Evidence, 45 Am. J. Orthopsychiatry 669 (1975); W. Bowers, Executions in America 121–163 (1974)."

> conclusion that executions act as a deterrent. The Ehrlich study, in short, is of little, if any, assistance in assessing the deterrent impact of the death penalty (Gregg v Georgia, 1976).

In footnote 8, Marshall adds a list of additional problems with Ehrlich's research. "Criticism has been directed at the quality of Ehrlich's data, his choice of explanatory variables, his failure to account for the interdependence of those variables, and his assumptions as to the mathematical form of the relationship between the homicide rate and the explanatory variables" (Gregg v Georgia, 1976). A cursory examination of the research cited would find that many if not most of Marshall's statements are verbatim quotations taken from this body of research showing a direct effect of criminological research.

The American Law Institute (ALI) was also important in the Gregg decision. The ALI in the Model Penal Code had developed a model death penalty statute and the Supreme Court adopted many of the provisions of that code. For example, the code said:

> The obvious solution . . . is to bifurcate the proceeding, abiding strictly by the rules of evidence until and unless there is a conviction, but once guilt has been determined opening the record to the further information that is relevant to sentence. This is the analogue of the procedure in the ordinary case when capital punishment is not in issue; the court conducts a separate inquiry before imposing sentence (ALI, 1959 p. 74-75).

This led to the requirement that there had to be two trials, one to determine guilt, and if guilt was the outcome of the first trial then there would be a second trial for sentencing. A flaw in this system is that both trials are conducted with the same jury and all of the problems related to death-qualified juries noted in the literature are present (Bohm, 2017 p127–134; Vollum et al., 2015 p. 138–140).

Other Supreme Court Death Penalty Decisions

Further limiting of the death penalty came in the form of a flurry of cases relative to specific issues but with much less documentation of criminological research findings. *Coker v. Georgia* (1977) found that imposition of the death penalty for the rape of an adult woman was unconstitutional. Minimal research was cited in the decision but five early articles appear in the footnotes, one written by Raymond Bye (1926), one by M. Bard and K. Ellison (1974), two by Pamela Wood (both in 1973), and one by Herbert Packer (1964). More recently, in *Kennedy v. Louisiana* (2008) the Supreme Court ruled that the rape of a child when no death occurred did not warrant the death penalty. The Kennedy decision appears to have been influenced to a large degree by criminological research because there were 26 articles or books related to the death penalty or the crime of rape cited in the Kennedy decision. Issues related to cost and deterrence are briefly discussed with similar conclusions as found in previous Supreme Court decisions so there is some evidence of a 'direct' effect of criminological research. It is clear, however, that major factors guiding the court's decision in this case, and other court decisions, is the number of states that currently have laws similar to the one being

considered by the court, and the number of cases of people receiving the death penalty or being executed under the law being considered by the court. If most states have abolished the death penalty for a particular crime, or if there is no one being executed for that crime, the court is very likely to rule the death penalty as 'cruel and unusual' punishment for that crime and thus unconstitutional. To fully determine the impact of criminological research on the Supreme Court decision would require information about how the state laws were changed and whether criminological research impacted some of those state decisions. It is likely that it did, either directly or indirectly, but this information is difficult to obtain and was not examined in this study. Perhaps, once again, there is evidence of a secondary 'indirect' effect.

Other limits were imposed to protect those with mental illness**.** *Ford v. Wainwright* (1986) found that it is unconstitutional to execute someone who is insane (mentally ill) at the time of their pending execution. Briefs were submitted by the American Psychiatric Association and by the American Psychological Association in this case. Ten articles are referenced but it is difficult to assess their significance in the decision. Ford was examined by Dr. Amin, a court appointed psychiatrist, who stated that Ford, "suffered from "a severe, uncontrollable, mental disease which closely resembles `Paranoid Schizophrenia With Suicide Potential'" a "major mental disorder. .. severe enough to substantially affect Mr. Ford's present ability to assist in the defense of his life" (*Ford v Wainwright,* 1986).

Subsequent cases defined in what situations a death row inmate may be medicated for psychosis control (Singleton v. Norris, 2003) and restricting execution to offenders who understand the purpose of their execution (Panetti v. Quarterman, 2007). For all these cases dealing with mental illness, minimal criminological research was presented in the decisions. Some definitional material was presented, and behavior was discussed tangentially through case law but no direct references to criminological or psychiatric research was discovered in the court's decision.

Other restrictions imposed by the Supreme Court include not executing the intellectually disabled (*Atkins v. Virginia,* 2002)**.** A large factor in this case was public opinion which is largely gathered by social scientists, but considerable contention rests on the decision to consider public opinion data in this case. There were 17 different public opinion polls cited in this decision and 20 articles, books or research reports. There were also numerous newspaper articles cited indicating a lot of public awareness and interest in the case. In a more recent case heard by the Supreme Court on intellectual disability and the death penalty, Hall v Florida (2014), it was found that the use of an arbitrary IQ score cutoff point for indicating eligibility for the death penalty was unconstitutional. They essentially recommended that individuals who score in the tests margin of error around the cutoff must be considered on a case by case basis pursuant to other criteria. Despite this highly technical topic, very little research evidence was directly presented. Instead, the court paid major attention to the expertise of medical professionals who in turn would be very familiar with the research in this area suggesting an 'indirect' effect.

> That this Court, state courts, and state legislatures consult and are informed by the work of medical experts in determining intellectual disability is unsurprising. Those professionals use their learning and skills to study and consider the consequences of the classification schemes they devise in the diagnosis of

> persons with mental or psychiatric disorders or disabilities. Society relies upon medical and professional expertise to define and explain how to diagnose the mental condition at issue. And the definition of intellectual disability by skilled professionals has implications far beyond the confines of the death penalty: for it is relevant to education, access to social programs, and medical treatment plans. In determining who qualifies as intellectually disabled, it is proper to consult the medical community's opinions. (Hall v Florida, 2014)

The Hall decision quoted from various psychological and/or psychiatric documents and measuring instruments such as the Diagnostic and Statistical Manual of Mental Disorders 41 (4th ed. 2000), the American Association on Intellectual and Developmental Disabilities, Intellectual Disability: Definition, Classification, and Systems of Supports 40 (11th ed. 2010), Oxford Handbook of Child Psychological Assessment 291 (D. Saklofske, C. Reynolds, & V. Schwean eds. 2013) Forensic Psychology and Neuropsychology for Criminal and Civil Cases 57 (H. Hall ed. 2008), APA, Diagnostic and Statistical Manual of Mental Disorders 33, 809 (5th ed. 2013), A. Frances, Essentials of Psychiatric Diagnosis: Responding to the Challenge of DSM-5, p. 31 (rev. ed. 2013).

Another long standing, contentious issue was decided by the court in a similar way. In a pair of cases, *Thompson v. Oklahoma* (1988) and *Stanford v. Kentucky* (1989), it was first decided that executing those under 16 was unconstitutional (Thompson) and then reaffirmed a year later that those who were 16 or 17 could still be legally executed (Stanford). Finally, in 2005 the Supreme Court ruled that executing those under the age of 18 was unconstitutional (Roper v. Simmons, 2005). The Thompson decision cited 23 academic sources from various fields such as historical law, psychiatry, and criminology. Importantly, Victor Streib, the leading legal expert on juvenile death penalty cases, and Hugo Bedau, a philosopher who dedicated much of his career to opposing the death penalty, both featured in this decision. In fact, Streib is cited multiple times in the Thompson, Stanford, and Roper decisions and was co-counsel for the defense in Thompson v. Oklahoma (1988). Logically, the fact that there was only a year between Thompson and Stanford meant that the progression in academic research on the subject was minimal. While Stanford cited 17 academic sources only 7 of those were new and of those 7, 3 were refreshed amicus briefs which likely cited the same research as those presented in Thompson. This lack of academic progression may have been a key factor in the case as there was insufficient additional evidence to satisfy the court that 16 and 17 year old's should be constitutionally barred from being executed. This idea is further supported by the Roper decision in which 20 academic sources were cited, 15 of which were new and had been published after 1989, the year of the Stanford decision.

In the Roper decision, Justice Scalia, a dissenter in the case, made a salient point surrounding Supreme Court decisions and their use of research. He criticizes the court for their proclivity to cherry-pick studies that align with their decision and then not support their inclusion/ exclusion criteria which should, logically, be based on methodological quality. He goes on to note that the APA was able to present evidence in Roper that supported the exclusion of those 17 and under from execution while in a case dealing with juvenile abortion (Hodgson v. Minnesota, 1990) they presented evidence supporting minors being sufficiently mature to obtain an abortion without parental consent. Another key to these decisions, however, was the same pattern the court used in other cases, looking at what states had done in changing their laws about

executing juveniles and also the fact that juveniles had not been executed during this period. It is difficult to know how much impact the criminological research had versus the other patterns followed by the court in observing state changes in their laws, but once again there may be a secondary 'indirect' effect if the research had been instrumental in state decisions to modify their statutes.

Question # 4. Why hasn't our Research Made More of a Difference?

First of all, criminological research has made a difference as noted in the trends related to the reduction in the use of capital punishment, the wide range of organizations opposing capital punishment, changing public opinions about the death penalty, the process by which some states abolished the death penalty, and the Supreme Court decisions that have made the scope of death penalty statutes more and more restricted reducing the number of people eligible for capital punishment.

But while the impact of criminological research on the death penalty is positive, it is still woefully insufficient to the need. In responding to question # 4, however, it is obvious that questions 4 and 5 are closely related because identifying the source of a problem is usually the first step to solving the problem. Having said this, the answer to question # 4, stated as simply and directly as possible, is '*ignorance*'. The main reason criminological research has not made more of an impact on the abolition of capital punishment is that a major portion of the public at large, and many of the decision makers, are not aware of the findings of criminological research on capital punishment. Most members of the public are ignorant when it comes to criminological findings about anything related to the death penalty. They are ignorant in terms of research related to deterrence, racial and geographic disparity, cost, innocence, death qualification of jurors, impact on the families of victims and people who participate in the execution process, etc., etc.

While none of us would like to be called 'ignorant', 'ignorance' is not really a 'dirty word', it is simply a status that affects everyone at some time depending on the topic being considered. In this context the word 'ignorance' is not being used in a negative or critical way. According to The American College Dictionary 'ignorance' is simply a "lack of knowledge or information as to a particular subject or fact" (Barnhart, 1957). There are many topics on which the authors of this paper, most other criminologists, and virtually all homo-sapiens in general, are ignorant. Different groups of people tend to be ignorant about different things. Many books could be, and have been, written about all the things on which both the authors of this paper are ignorant. Many of the issues on which the public are ignorant do not affect them to any major degree, but some of them do. The death penalty is one of the latter.

Legislators, Governors, and other 'want-to-be' politicians are a select part of the public and many of them are ignorant about the criminological findings related to the death penalty. They are aware, however, of an interesting fact – the public is even more ignorant of these facts than the politicians! This is important because they are elected by the public and they can be voted out of office by the public. Consequently, even if some politicians are aware of the facts related to the death penalty, and may lean towards abolition, they may vote against it if it comes for a vote in the legislature because of their fear of being voted out of office by an 'ignorant' public. The public does not know

what criminological researchers know about the death penalty and if the decision makers are aware of this information themselves, they have not tried or have not been successful in their efforts to inform their constituents about these findings.

The senior author has done a fair amount of 'pro bono' lobbying of Florida legislators concerning some of the findings of criminological research related to capital punishment and has assisted some of them with research questions related to criminal justice legislation on other topics. Some have agreed and appreciated the new information, some changed their minds, some have been left with 'something to think about', others still believe it should be retained for the 'worst-of-the-worst' cases, and one legislator effectively kicked the senior author out of his office.[5] Most importantly for this discussion, however, was a conversation he had with a seasoned and thoughtful legislative aide while the senior author was waiting to speak to a Senator.

The legislative aide had been very helpful, and it was clear that he personally leaned in favor of abolition of the death penalty. He told the senior author, however, that 'you could convince everyone in this building (holding up his hand and pointing in every direction - meaning everyone in the Florida House, Senate, and the Governor's office) – that we should abolish capital punishment in Florida, but if you don't convince the people out there (pointing out the window and referring to the general public) the death penalty will never be abolished in Florida'. That day the senior author left the Capitol Building convinced of at least one thing – if it never happened again, on that particular day, someone working in the legislature had told him the truth! This was not new information to the senior author, he already knew the magnitude of the problem, but it did convince him to continue teaching his undergraduate class and graduate seminar on capital punishment even though he had been retired for ten years!

Question # 5 - What Can we Do, either in Terms of Directing our Research or in Terms of Disseminating it, to Facilitate it Making a Difference?

The answer to question # 5 flows from the answer to question # 4 – education! If ignorance is the problem then education is the answer because it is the best way to reduce ignorance. It is important, however, that we know the 'audience' that needs to be 'educated' in order to eliminate their 'ignorance'. Some criminological issues can be solved by educating one person, or a small group, but others will require much more. Before getting into the discussion of the impact of criminological research on the death penalty we would like to briefly discuss an experience from the senior author's distant past that illustrates an important point – it is easier to demonstrate a distinct and direct causal relationship between criminological research findings for some criminal justice policies than it is for others and this is a direct function of the 'audience' that needs to be educated.

When the senior author was a new Assistant Professor at Florida State University he was the Director of the Southeastern Correctional and Criminological Research Center

[5] This only happened once with a legislator who was in favor of the death penalty and opposed to abortion. I later learned from other lobbyist's that he was known as a 'weird duck' and they tried to stay away from him. Fortunately, he is no longer in the legislature.

conducting correctional research in four southeastern states. Florida was just starting to establish a work release program but was experiencing problems in some communities concerned about increases in crime. An experimental design was possible because there were more people eligible for the program than the state could accommodate in the early phase of the program so random assignment was used to select participants in the program from the eligible pool. An experimental and control group were followed for a three-year period. In short, the experimental and control groups had virtually identical rates of recidivism and had only minor differences on other measures (Waldo & Chiricos, 1977).

Before this study was published one of the Home Owner's Associations (HOA) in Jacksonville, Florida took the Department of Corrections (DOC) to court because they did not want a work release center in their neighborhood. Louie Wainwright, Secretary of the DOC, feared that if the HOA won this case other HOA's around the state would file similar law suits and work release might be doomed in Florida. Trying to avoid this outcome he asked the senior author to be a witness at the hearing because of the work release study he was conducting. Not at all sure what kinds of questions might be asked he sat nervously in the hall outside the courtroom waiting to be called as a witness. While waiting he casually thumbed through several of the more recent annual reports prepared by the research department of the Florida DOC.

When called to the stand he responded to a variety of irrelevant questions related to work release and the study he had conducted and then the attorney for the HOA said in a self-assured manner, "isn't it obvious that unsupervised inmates in a work release center will escape and commit more crimes than inmates locked up in road camps or prisons?" The senior author's slow and careful response was "well, I can understand why it might seem obvious that would be the case, but it is wrong. The escape rate for the road camp down the road is twice as high as for the work release center, and the only people who 'escaped' from the work release centers had simply failed to return at the scheduled time but returned several hours later. They broke the rules, were removed from the program and returned to prison, but they had not committed a new crime. The work-releasee 'escapees' simply had stopped at a bar for a drink and stayed too late or had gone to visit a girlfriend before returning to the work release center."

The HOA attorney was so shocked by the response that he had no further questions. The two attorneys for the DOC, grinning from ear to ear, came running up the isle from their table shaking the first author's hand and slapping him on the back congratulating him as the judge brought the proceedings to a close ruling in favor of the DOC. The first author was treated as a hero, he had saved the work release program in Florida, and the rest is history. This might have been considered a good example of the first author's criminological research having a major impact on criminal justice policy except for one thing. The major research project on work release had nothing to do with the evidence presented that won the case for the DOC. The information presented was not taken from the research study, it was taken directly from the DOC annual report that had been casually examined by the first author while outside the courtroom waiting to be called as a witness.

The first author's research did not make a difference, but the criminological research conducted by the staff of the research department in the Florida DOC did make a difference. There was a strong and very direct relationship between the DOC research and the court decision. The way it worked may have been serendipitous, but the

connection is clear. The first author would not have been called to testify in the case if he had not been conducting a research study about recidivism rates and attitude changes for prisoners involved in the work release program, he would not have known the important data if he had not perused the DOC annual report moments before being questioned and therefore could not have presented the influential findings from the DOC report. So 'yes', in this case criminological research had a strong, direct and clear influence on criminal justice policy. But the main point of this discussion is the 'audience' that needed to be educated. For this particular policy, and under these circumstances, it was a very small 'audience'. It was one judge, making the decision for one facility, involving one program, in one state agency. If the criminal justice policy only affects one program, in one agency, in one state, it is much easier to connect directly to criminological research than many larger and more comprehensive policies such as the abolition of capital punishment in a state, or a country, or world-wide.

When dealing with a large-scale issue such as capital punishment the best way to overcome ignorance is to develop an informed citizenry through education because there is a very large 'audience' that needs to be 'educated'. But 'education' in this context does not simply refer to the current educational system of grammar school, high school, college etc. It is important, of course, for the school system to provide information coming from the research findings of criminological research on capital punishment. This information needs to be incorporated into our educational system from top to bottom as do many other criminological findings from research. Graduate students in criminology will be leaving to go into teaching, research or other positions in the criminal justice system and there is a lot of 'ignorance' out there that needs to be addressed. Undergraduate students, whether majors or not, may be going into criminal justice positions or other positions where they can help 'educate' their fellow workers, and if they go into the teaching profession they can help to educate youths at all levels about issues related to capital punishment. This is all well and good, but this is not enough. The entire population needs to be educated about capital punishment!

For criminological research to have an impact on the death penalty in the United States it may have to follow a rather convoluted path. Criminologists, loosely defined, carry out research projects, write books and papers, give presentations at professional academic meetings (ASC, SCJA, etc.), and occasionally before some committee or legislative group studying capital punishment or some civic or professional organization. These situations typically provide an opportunity to introduce the latest research and summarize other materials relevant to capital punishment. It may be more important, however, that reporters for news organizations pick up on this research and present it to the public in a highly simplified manner. Informed citizens might also write letters to the editor about why they oppose the death penalty. Various death penalty and human rights organizations also become aware of recent research, sometimes through the Death Penalty Information Center (DPIC) which can be very informative and up-to-date on what is happening around the country. Politicians find some of this information in the press or through interaction with 'pro bono' lobbyists from some of the organizations or academics. When a bill related to the death penalty is being debated, representatives from some of these organizations, and/or academics who have conducted some of the research might make presentations to the legislature. The same thing may happen in the judiciary when change-making legislation is being considered. Legislators and judges who accept the research findings and want to make changes

interact with their colleagues trying to educate them about the issues and bring them on-board. Crudely stated, this appears to be the process whereby change in death penalty policy is based on criminological research. There is both a direct, indirect, and convoluted process for criminological research to bring about a change in death penalty policy.

In the Furman decision Justice Thurgood Marshall had essentially said that if everyone was well informed about the death penalty they would favor its abolition (Furman v Georgia, 1972 p. 363). This has become known as the 'Marshall Hypothesis' and there is considerable research testing this hypothesis. Some of this research supports the hypothesis, some says the effect is short-lived, some says the results are 'polarizing' in that abolitionists and retentionists both become more set in their views (Bohm, 2017 p. 457–466). Marshall acknowledged, however, that if someone held a position based on retribution this hypothesis might not be true. Retribution, an-eye-for-an-eye, sometimes supported by religious doctrines from evangelical religions, is one of the oldest arguments in favor of capital punishment and is still the main argument and the most difficult to overcome in moving toward abolition. This is primarily because the retribution position is not based on research, facts or empirical data that lends itself to refutation based on the findings from criminological research.

Stuart Banner, in his classic work "The Death Penalty: An American History", says the death penalty was well supported in the seventeenth and eighteenth centuries for three reasons. It was believed to serve as a deterrent, it was appropriate retribution, and it would permit people to repent for their crimes (sins) before being executed (Banner 2003 p. 22). Banner says, however, that the argument for retribution is weakened by early criminological research.

> Capital punishment had a retributive basis only so long as capital crime was seen to be freely chosen. In the late nineteenth and early twentieth centuries, however, as crime became increasingly to be viewed as a consequence of biological or social forces beyond the criminal's control… the death penalty correspondingly ceased to be seen as a just punishment (Banner 2003 p. 208).

Retributive views, unfortunately, are not easily changed. The old cliché that it is easier to write on a clean or empty slate than a dirty one seems appropriate in this discussion. It is much easier to enhance the learning process if the person learning the new point of view doesn't previously have a strong competing or conflicting point of view on the subject. If they have a 'clean slate' relative to the topic it is easier for them to grasp the nuances of the new view-point being presented. If they start off with a strong opposing point of view, they have a 'dirty' or at least a 'cluttered slate' and it is much more difficult for them to hear, understand, and accept a perspective that is counter to what they have always believed.

It may be that the retributive view cannot be erased or eliminated and if this is the case another tact must be taken. If the ignorance cannot be erased then it needs to be 'outweighed'. The strong retributivist needs to be well educated to all the arguments on the other side – no evidence of a deterrent effect, high cost and better uses for the money (preventing more murders, solving more murders, helping families of murder victims, etc.), risk of executing an innocent person, victim's families hurt more than

helped by death penalty, system is arbitrary (like being struck by lightning), it discriminates against minorities and the disadvantaged, geographic disparities, changes in other countries, etc. If the retributivist understands all of these issues and then adds them all up, there is a good chance that the sum total of the abolitionist arguments will outweigh the retributive argument. Two of these points are central to this approach. The cost argument is helpful because money is scarce. If the money saved by eliminating the death penalty can be used to prevent more murders, or to solve more murders, this is hard for a true retributivist to ignore. Everyone wants to prevent more murders and to solve more cold-cases, even a staunch proponent of the death penalty. A second argument is that a death penalty system cannot be prepared that doesn't run some risk of convicting and executing an innocent person. As human beings we are all fallible. The authors have frequently asked the question in their classes, "if you believe in capital punishment, how many innocent people is it okay to execute?" Even the staunch retributivists have trouble coming up with an answer.

In situations that involve United States Supreme Court decisions, such as many capital punishment cases, another means of combatting ignorance at the highest level would be for the major criminology organizations, such as the American Society of Criminology (ASC) and the Academy of Criminal Justice Sciences (ACJS), as well as regional organizations such as the Southern Criminal Justice Association (SCJA), to file an *amicus curiae* ('friend of the court') briefs presenting the findings of criminological research that relate to the issue being considered by the court in that case in order to 'educate' the members of the court. Other organizations have done so, such as the American Bar Association (ABA, 2017), American Sociological Association (ASA, 2015) and the American Psychological Association (APA, 2018).

> Over the years, ASA has submitted *amicus curiae* briefs to the U.S. Supreme Court to bring social science data and analysis to the attention of the justices. The most recent was in *Michigan v. Grutter*, the affirmative action case in which ASA provided sociological research on the impact of race. Such 'friend of the court' contributions are appropriate for scholarly associations when there is science that can add empirical context to legal arguments (Hillsman, 2005).

Some of the materials presented in an *amicus curiae* brief filed by the APA in Roper v. Simmons (2005) was considered instrumental in the decision that it was unconstitutional to execute someone that was sixteen or seventeen years old at the time of a crime. "The majority opinion used several of APA's arguments in reaching its conclusion" (APA, 2005). The APA has submitted briefs in over 175 cases since 1962 (APA 2018). The American Bar Association (ABA) has been involved in over 350 cases since 1948 ABA (2018).

More recently, the American Psychological Association, American Psychiatric Association, National Association of Social Workers, and the American Academy of Psychiatry and Law joined together in an *amicus curiae* brief in Dassey v. Dittman (APA, 2018) presenting research findings on convicting the innocent related to the improper use of interrogation techniques resulting in false confessions (APA, American Psychiatric Association, 2018). The defense was not successful in this case but it would be appropriate for criminology and criminal justice associations to join with other relevant associations in presenting the most recent and most accepted criminological

research findings related to cases being heard by state and federal courts. Ignorance about many issues related to crime and criminal justice exists at all levels and it should be the duty of criminologists to present information that educates and thus overcomes this ignorance. Other social sciences have been doing this for many years (See, Epstein, 1992, and Erickson & Simon, 1998).

Education, in the broadest sense of the word, may not be a perfect solution, but it may be the only solution. Educating the general public and influential people in the community who can help educate judges, lawyers, legislators and other politicians is a good start. Educating the public so they elect politicians and judges who are willing to listen and modify their positions based on the findings of solid criminological research would be an even better start.

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