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The Boston University Public Interest Law Journal

Spring, 2008

17 B.U. Pub. Int. L.J. 237

LENGTH: 8716 words

ARTICLE: **NOT "WAIVING" BUT DROWNING:** THE ANATOMY OF DEATH ROW SYNDROME AND VOLUNTEERING FOR EXECUTION

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SUMMARY:
... The present paper explores the likely connections between the legal concept - "death row syndrome" - and the lived experiences of individuals who have been sentenced to death, and encourages systematic research documenting the psychological effects of this particular set of conditions on death row inmates. ... Based on the existing descriptions of the phenomenon, for purposes of this paper, "death row phenomenon" is theorized to include three components: . a temporal component (amount of time between sentencing and execution); . a physical component (the conditions in which a condemned inmate is held); and . an experiential component (the meaning of living under sentence of death). ... While some scholars have argued that death row phenomenon, as used in international law, has few or no implications for capital punishment within the United States, others have suggested that its existence may raise constitutional issues. ... Death Row Syndrome While the term "death row phenomenon" refers to the particular experience of confinement under harsh conditions, the term "death row syndrome" has been used to describe the resulting psychological harms of that experience, or the set of psychological effects for inmates that can result from extended periods of time spent on death row, in harsh conditions, coupled with the unique stresses of living under sentence of death. ... Perhaps most relevant to death row syndrome are the studies that have identified consistent patterns of coping with confinement in condemned inmates.

HIGHLIGHT: Nobody heard him, the dead man,
But still he lay moaning:
I was much further out than you thought
And not waving but drowning. [n1]

TEXT:
[*237]

I. Introduction

Variously described as a "morgue" [n2] and "tomblike" [n3] by the men and women who call them home, this nation's death rows are places rarely seen. Behind those tomblike walls, however, more than 3,000 individuals are currently awaiting their own deaths, their voices rarely heard. [n4] More than just a stop-over on the way to death, the amount of time individuals spend living within those walls waiting for that death is significant - for executions in 2006, more than twelve years had expired on average between the time an individual was told he or she would die at our hands, and the execution itself. [n5] Some individuals have been awaiting that "certain" death for more than twenty years. [n6] And while our Constitution claims to protect us against "cruel and unusual punishment," a complex combination of circumstances

and ignorance have somehow lulled us into believing that those we have condemned to death either deserve this pain in exchange for the harms they have caused or that they don't suffer much as they await their executions.

Yet several facts belie this illusion. Within the international community, other countries have recognized the potential for harm caused by our current system, and as a result have refused to extradite back to the United States individuals **[*238]** who might face the death penalty. [n7] These countries cite not only the possibility of execution as reason for refusal, but the waiting process which attends that death as a separate, independent violation of human rights. [n8] If we remain unpersuaded by the international community, the behavioral trends of those individuals awaiting execution are telling as well. Within one week in 2008, two individuals awaiting death in Texas committed suicide, [n9] reflecting the heightened suicide rates on death row, estimated at ten times greater than those in society at large and several times greater than those in a general prison population. [n10] In addition, the widely-recognized practice of "volunteering" for execution permits condemned inmates to waive their state and federally mandated rights to appeal in order to speed up the execution process, in essence "volunteering" to be executed. [n11]

In attempts to conceptualize this combination of forces and experience, the legal term "death row phenomenon" has been used to describe the experience of living in the harsh conditions of death row for a long period of time under the sentence of death [n12]. A similar term, "death row syndrome," has been used recently in the legal arena to describe the psychological effects of death row phenomenon on individuals. [n13] Despite the use of the word "syndrome," however, the concept has never been systematically studied by psychologists, psychiatrists, or social scientists. The present paper explores the likely connections between the legal concept - "death row syndrome" - and the lived experiences of individuals who have been sentenced to death, and encourages systematic research documenting the psychological effects of this particular set of conditions on death row inmates.

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II. Death Row Phenomenon

"Death row phenomenon" is a concept that has been used internationally to prevent the extradition of individuals facing the death penalty to the United States and is most commonly traced back to Soering v. United Kingdom. [n14] In that case, the European Court of Human Rights held that extradition to the United States would violate Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. [n15] The Court found that, because in the United States "the condemned prisoner has to endure for many years the conditions on death row and the anguish and mounting tension of living in the ever-present shadow of death," extradition would violate protections against "inhuman or degrading treatment or punishment." [n16] Similar determinations have been made by the Judicial Committee of the Privy Council, [n17] the United Nations Human Rights Committee, [n18] and the Supreme Court of Canada. [n19] Several African courts have also used these international decisions as a basis for human rights determinations, [n20] and "death row phenomenon" has been used to theorize about capital punishment in Japan. [n21]

Most definitions of "death row phenomenon" have included at least two components. For example, a recent legal analysis describes both a temporal requirement (length of time) and a physical one (harsh conditions), emphasizing that neither of these alone is sufficient to constitute the phenomenon. [n22] A third, key component is also included in many descriptions of death row phenomenon: **[*240]** the psychological effects of living under sentence of death. [n23] It is this experiential component, focused on the unique situation of inmates living under a sentence of death, which distinguishes death row inmates from the two million other inhabitants of our prisons today, and limits the possible application of the concept to a larger group. [n24] Based on the existing descriptions of the phenomenon, for purposes of this paper, "death row phenomenon" is theorized to include three components:

. a temporal component (amount of time between sentencing and execution);

. a physical component (the conditions in which a condemned inmate is held); and

. an experiential component (the meaning of living under sentence of death).

While some scholars have argued that death row phenomenon, as used in international law, has few or no implications for capital punishment within the United States, [n25] others have suggested that its existence may raise constitutional issues. [n26] Indeed, there is quite a bit of legal scholarship speculating on the appropriateness and likely success of claims based on "death row phenomenon." [n27]

One problem with application of the concept of "death row phenomenon" as developed in international decisions to cases within the United States is that the **[*241]** Soering Court failed to specify which circumstances in the case constituted "death row phenomenon," and which were anomalous to Jans Soering himself. [n28] Because the Court relied upon several mitigating factors in the case in addition to the fact that another remedy was available, other courts have attempted to use these details as limiting facts to prevent the extension of the "death row phenomenon" doctrine. [n29]

Although no American court to date has adopted a "death row phenomenon" argument, a similar argument (the pain of delay on death row) was actually the basis for abolishing California's death penalty in 1972. [n30] More recently, Supreme Court Justices Breyer and Stevens have indicated in several opinions that they believe the length of time prisoners spend on death row before execution is an important matter for constitutional consideration. In his dissenting opinion in Foster v. Florida, Justice Breyer referenced an 1890 decision, In re Medley, in which the court held that a combination of long delays between sentencing and execution, and a prisoner's uncertainty, could result in "horrible feelings" and "an immense mental anxiety amounting to a great increase in the offender's punishment." Notably, the delay described in In re Medley was only four weeks. [n31] In Lackey v. Texas, [n32] Justice Stevens encouraged lower courts to explore the possibility that the growing delay between sentence and execution might violate the Eighth Amendment. Justice Breyer, dissenting in Knight v. Florida and Moore v. Nebraska, spoke of "the astonishingly long delays" in capital cases, [n33] an opinion in which he found it "difficult to deny the suffering inherent in a prolonged wait for execution." [n34]

There are, however, important differences between the use of the "death row phenomenon" concept in an international extradition-related capacity and in a national one. While the Soering decision and others were based on the potential for harm to an individual in the future (a breach of international law "by reason of its foreseeable consequences"), use of the concept in an American court would most likely require "proof of specific harm" in order to demonstrate an Eighth Amendment violation. [n35] In other words, it is not enough under current American legal standards to document the horrors of death row phenomenon; instead, to provide a persuasive constitutional claim, one must show evidence that the experience has some specific, harmful consequence.

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III. Death Row Syndrome

While the term "death row phenomenon" refers to the particular experience of confinement under harsh conditions, the term "death row syndrome" has been used to describe the resulting psychological harms of that experience, or the set of psychological effects for inmates that can result from extended periods of time spent on death row, in harsh conditions, coupled with the unique stresses of living under sentence of death. [n36] According to journalist David Wallace-Wells, death row syndrome is a "vaguely defined term that refers to the dehumanizing effects of living for a prolonged period on death row." [n37]

Despite its conceptual limitations and a dearth of scientific evidence documenting its actual existence, "death row syndrome" came to American consciousness in February of 2005, when the execution date of Connecticut death row inmate Michael Ross was postponed. [n38] Ross, who had purportedly attempted suicide on three separate occasions while on death row, indicated repeatedly that he wished to waive his state and federally mandated appeals and "volunteer" for execution. [n39] Suggesting that waiver under these circumstances might not be legitimate, the judge in the case allegedly encouraged attorneys to investigate the possibility that Ross was incompetent. [n40] Media coverage of

the case predicted attorneys would argue that Ross suffered from "death row syndrome," or a negative psychological response to long-term incarceration on death row under difficult conditions, in combination with the psychological uncertainty of living under sentence of death. [n41] In fact, "the much anticipated 'death row' syndrome or 'segregated housing unit' syndrome never materialized in this case." [n42] Following a determination that he was indeed competent to **[*243]** waive his appeals, Ross was executed on May 13, 2005, after having spent eighteen years on Connecticut's death row. [n43]

While the shift in terminology from "death row phenomenon" to "death row syndrome" may seem subtle, it is significant. Unlike the word "phenomenon," the word "syndrome" connotes a clinically definable set of recognizable signs or symptoms. Despite the difference in their meaning, however, some people have come to use the two terms interchangeably - linguistic confusion which illuminates the lack of precision inherent in the terms themselves. [n44] And although the term "death row syndrome" implies that this construct is recognized in the mental health field, neither "death row syndrome" nor "death row phenomenon" is a recognized psychological concept. [n45] At this time, neither term is accepted by the American Psychiatric Association or the American Psychological Association, and neither term appears in the Diagnostic and Statistical Manual of Mental Disorders-IV (DSM-IV), a clinical handbook used widely in these professions. [n46] The exclusion of these concepts is likely driven by the complete lack of psychological research relating to the issue. Until psychologists have a deeper understanding of these constructs and the factors that distinguish them, their formal recognition and classification cannot advance. Although invoking this idea of death row syndrome in connection with death row experiences may make sense for attorneys seeking to bridge the gap between extradition cases and capital appeals, this shift in language appears to have thrust the legal concept forward much more quickly than the fields of psychology and psychiatry were prepared or able to follow. Notably, psychological research to substantiate the existence of "death row syndrome" lags far behind the legal usage of the term. Scientific data would assist in development of the concept, particularly in light of the minimal psychiatric and clinical literature **[*244]** involving death row inmates. [n47] Such data would help to determine whether certain patterns of experience or circumstance actually constitute a separate structural phenomenon or syndrome, or if that which has been described as "death row syndrome" merely represents a unique assembly of condemned individuals' personal circumstances.

IV. Current Knowledge About Death Row Experience

While legal scholars have speculated on a national and international level about the existence of "death row phenomenon" and its effects in the form of a "death row syndrome," these are purely legal terms: none of the psychological research to date - even research involving a condemned population - explicitly examines these concepts. In fact, the number of studies involving condemned inmates in any way is severely limited. Cunningham and Vigen recently reviewed what they called the "paucity of research" on death row inmate characteristics, adjustment, and confinement. [n48] In their review, they describe three types of studies: those utilizing demographic data to describe trends in capital punishment, clinical studies of individual death row inmates, [n49] and studies providing analyses of inmate statistics and records of violent prison infractions. [n50] Only a handful of additional academic publications address the experience of living on death row or use death row inmates as participants.

Despite the small number of studies, social scientific writings related to the experience of individuals who have been sentenced to death provide interesting and relevant information. A handful of interview studies reveal a wealth of valuable information about condemned inmates' life experiences. [n51] Perhaps most relevant to death row syndrome are the studies that have identified consistent patterns of coping with confinement in condemned inmates. Analyses of nineteen clinical case studies in New York were used to discern three "defenses" utilized by the inmate participants: denial, projection, and obsessive **[*245]** rumination. [n52] Similarly, Johnson described the psychological implications of death row confinement based on open-ended interviews with thirty-five of the thirty-seven inmates on Alabama's death row in 1978. [n53] He identified three psychological dimensions which emerged within and across the inmate interviews: powerlessness, fear, and finally "emotional emptiness" or a sense of death that emerges in the form of loneliness, apathy, passivity and decay. [n54] These patterns are echoed in other case studies. For example, interviews with an individual who lived on death row in South Africa for two years before being unexpectedly released revealed

experiences consistent with these patterns, such as suicidal fantasies, Post Traumatic Stress Disorder symptoms, guilt and anxiety, and a "psychic numbing" experienced as emotional numbing and social detachment. [n55]

The majority of the psychological investigations involving condemned individuals are clinically focused. These studies include the nineteen clinical case studies of Bluestone and McGahee, [n56] an evaluation of the adjustment of eight condemned men based on psychiatric interviews and psychological testing over two years, [n57] and an analysis of Minnesota Multiphasic Personality Inventory ("MMPI") scores for death row inmates as compared to a representative prison population sample. [n58] For the most part, however, these clinical studies focus on the flaws and presence or absence of pathologies of inmates, [n59] rather than on external circumstances or situational experiences. For example, it has been documented that many death row inmates suffer from psychological disorders, though the origin of these disorders is unclear. [n60]

In addition to psychological research, several works provide additional details about the experience of living on death row. For example, Lewis's exceptional interview-based study profiles eighty-three inmates on death row in Florida, describes a typical week on death row, and explores the pros and cons of **[*246]** capital punishment. [n61] Similarly, Magee provides detailed information about living on death row based on twelve interviews with inmates. [n62] A handful of published reports offer a more journalistic perspective. For example, Shirley Dicks, a family member of an individual on Tennessee's death row, conducted interviews with several inmates. [n63] Her interviews focus primarily on the circumstances of individuals' lives up to the time of their incarceration and on the details of the crimes of which they have been accused. [n64] Several condemned inmates have published their own stories. [n65] Two emotionally compelling photo collections also address the experience of life on death row. [n66] Several archival studies, most based on analysis of records and case files rather than on interactions with individuals, focus on the lives and experiences of these individuals prior to their incarceration, and on their legal appeals. [n67] Additionally, a recent compilation of administrator surveys provides information about the physical conditions of life on America's death rows. [n68]

While these studies offer rich and valuable information about life on death row generally, we are limited in our ability to extend these studies' lessons to "death row syndrome" for several reasons. [n69] However, because the concept has **[*247]** emerged in public consciousness and in the legal arena, it is important to build upon our existing knowledge to determine whether this "syndrome" exists. If it exists, the existing rhetoric and scholarship would suggest that "death row syndrome" is likely to be a complex response to the three distinct components of death row phenomenon: the temporal, the physical, and the experiential. In other words, while each of these three components individually may cause mental suffering or harm, it is the combined psychological response to all three of these components that would result in "death row syndrome." This conceptualization, however, is based almost entirely on speculation. Without further research, it is impossible to know whether the "syndrome" exists at all, and if it does, what facets or components comprise its core. Speculation about the possible effects of such a syndrome is similarly limited. Although it is impossible to know the true nature of the death row experience without additional research, the relevant psychological framework and corresponding expected psychological **[*248]** response to each of those likely components is described briefly below.

A. The Temporal

A century ago the expected wait between conviction and execution in the United States was typically days or weeks. In 2000, the average wait between sentence and execution was 11.42 years, [n70] and some death row inmates today spend two decades or more awaiting execution. [n71] As Lombardi, Sluder and Wallace acknowledge: "Conditions of confinement for most capital punishment prisoners have been changed little over the past several decades. Today, however, the temporal nature of the capital punishment process is much different than was the case even three decades ago." [n72]

While legal scholars describing death row phenomenon emphasize the importance of this temporal component, there is a lack of understanding regarding the psychological effects of the amount of time spent on death row. Existing research has not yet linked the temporal component of death row phenomenon to psychological theory in order to

predict or understand its psychological effects. This link, though, is not far-fetched. For example, learning theory and psychological research on habituation suggest that condemned inmates may become more accustomed to their situation over time. In support of this theory, some studies of long-term inmates in a general prison population (not sentenced to death) have demonstrated an improved adaptation to conditions. [n73] For example, in one longitudinal study, Zamble documented changes in emotional state, decrease in stress, and increased involvement in structured activity. [n74] On the other hand, some studies have documented negative changes in inmate attribution styles over time, suggesting development of a type of "learned helplessness" which can be related to depression, loneliness, and physical illness. For example, Schill and Marcus found that "individuals incarcerated for at least five years showed more internal, stable and global attribution for negative events than did the recently-incarcerated, even when controlling for **[*249]** age and sentence length." [n75] Recent work in Terror Management Theory suggests that individual responses to mortality change over time, [n76] and may lend support to the prediction that the psychological experience of condemned inmates worsens over time. Echoing the seemingly contradictory impact of time in general prison populations, in one of the few longitudinal studies of men on death row, Gallemore and Panton conducted evaluations of eight men sentenced to death over a period of two years, and found that five of the men seemed to "adjust" to living under sentence of death, while three participants became "significantly less functional." [n77]

Because the evidence is unclear and very limited, more research is needed to investigate the psychological effects of the temporal component of death row phenomenon. While it seems likely that there will be measurable changes in the psychological effects of this experience over time, the direction of these changes is unknown and may not be linear.

B. The Physical

Nearly all existing documentation suggests that individuals under capital confinement experience difficult living conditions. Over twenty-five years ago, Robert Johnson described America's death rows as "imposing, stark, and austere." [n78] A recent summary of death row policies and conditions from a survey of thirty-seven state and federal facilities supports this conclusion even today, stating that:

While there is some variability in policy from state to state, death row conditions nationally are characterized by 'rigid security, isolation, limited movement, and austere conditions.' Not surprisingly, there is evidence that these bleak confinement conditions impact the psychological adjustment of death row inmates - most of whom spend many years in this status. [n79]

Social psychologists and, more recently, environmental psychologists, have documented the fact that environment significantly impacts behavior and well-being. In one striking example, the well-known Stanford Prison Study documented "another instance in support of Mischel's social-learning analysis of the **[*250]** power of situational variables to shape complex social behaviour." [n80] Indeed, Cognitive Social Learning Theory specifically "emphasizes the interdependence of behavior and conditions." [n81] Environmental psychologists studying the psychological effects of prison conditions and many other researchers have shown that conditions such as overcrowding, [n82] architectural design, [n83] and isolation [n84] impact inmate psychological well-being and behavior in negative ways. [n85]

Because it is important to understand psychological responses specific to death row confinement, more research is needed to document the psychological effects of the physical component of death row phenomenon. It is predicted that the psychological consequences of incarceration on death row will be negative.

C. The Experiential

It has been said that "the permanent fear of being forced to die at the hands of another is an exquisite psychological

torture that creates severe emotional, mental, and also physical suffering." [n86] A similar sentiment is clear in Camus' "Reflections on the Guillotine," in which he writes: "As a general rule, a man is undone by waiting for capital punishment well before he dies. Two deaths are inflicted on him, the first being worse than the second." [n87] While scholars and writers have long speculated about the experience, in order to transform the legal concept into one that meets the criteria of rigorous scientific support, it is important to obtain a grounded understanding of the actual psychological experiences of those about whom we speculate.

Terror Management Theory (TMT) suggests that an awareness of death and mortality creates anxiety for individuals, and its proponents suggest that much **[*251]** of our behavior as humans is motivated by a desire to decrease that anxiety. [n88] Terror Management Theory is primarily focused on the mechanisms that reduce anxiety, such as the embracing of cultural norms or systems. [n89] For example, TMT predicts that as mortality salience (awareness of death) increases, belief in a just world also increases, as do defense mechanisms allowing for maintenance of those beliefs. [n90] While no published research has utilized death row inmates to explore TMT, they represent a uniquely situated group in which to examine the effects of death salience.

In a different area of research, the complex psychological responses of individuals with terminal illness may be informative as well, providing us with additional understanding of the experience of those living under state-imposed sentence of death. For example, research examining the experience of individuals living with cancer has documented a myriad of responses to the disease and its implications - physical, psychological, and behavioral - including the desire for suicide in response to terminal illness. [n91] Work with HIV/AIDS patients explores similar issues, while providing additional insights into the implications of social stigma in the face of death. [n92] Research in both of these areas explores the role of uncertainty in otherwise certain death, particularly in light of medical developments over time, [n93] and bears potentially powerful links to **[*252]** the experiences of those currently awaiting execution.

At a minimum, it seems likely that individuals awaiting execution experience some kind of powerful psychological reaction to knowing death is imminent. Our understanding of mortality, death, and dying would certainly broaden by further exploration of death row inmates' experiences.

V. Implications

Although we know that many individuals today live on death row, under sentence of death for many years, [n94] we do not know whether there is a measurable psychological response to the set of conditions present on death row. In other words, we do not know whether a "death row syndrome" actually accompanies the experience or "phenomenon." Although psychological research supports the idea that each component of death row phenomenon may have harmful effects, to date there is no documentation of these effects in a condemned population. Furthermore, while it is possible to make predictions about the potential effect of each individual component (temporal, physical, and experiential), no study has explored the complex interactions between the three.

This current disconnect between psychology and the law relating to "death row syndrome" introduces highly problematic discord into an already complex and murky legal arena. The legal issue is ripe: two Supreme Court justices have called for its investigation, [n95] and the issue has both national and international implications. [n96] The limitations of our current knowledge must be addressed and the framework through which the relevant legal issues are to be examined must be clarified.

The examination and development of the concept have direct relevance to several legal issues. First, "death row syndrome" has become inextricably linked with the idea of volunteering for execution in the United States, partly because of the Ross case, and is relevant to determinations of competence to waive appeals. [n97] As stated above, the widely-recognized practice of volunteering permits death row inmates to exercise some control in the legal process by electing to waive their state and federally mandated rights to appeal - and this practice appears to have become increasingly common. [n98] According to the **[*253]** Death Penalty Information Center, in 2004 sixteen percent of the people executed in the United States had waived their appeals, up from about eleven percent over the previous three

decades. [n99] Regardless of the possible explanations for this trend, it is important to note that it seems to parallel the national trend toward longer periods of death row confinement between the time of sentencing and execution. [n100]

As in the Ross case, some scholars have suggested that an individual who volunteers to be executed may be incompetent to do so by reason of "death row syndrome." [n101] Without any scientific understanding of the actual experience of this "syndrome," however, the only signal of incompetency appears to be the decision to volunteer itself, which is insufficient to support such a conclusion. Even if the experience of living on death row creates some discernable pattern of psychological responses, volunteering for execution is likely only one of many possible outcomes, and these may or may not bear a relationship to competence determinations relating to volunteering or execution. Documentation of the psychological effects of death row phenomenon is required in order to understand its implications.

Beyond competence, the relationship between "death row syndrome" and volunteering has constitutional implications. If a phenomenon created by our justice system has the effect of somehow causing individuals to waive their constitutional rights, this may amount to coercion. Such a claim could support an Eighth Amendment argument about the constitutionality of the volunteering phenomenon or the effects of conditions on death row. [n102] Documentation of the experiences of those living on death row, however, is necessary before American courts will examine the type of claims successfully advanced in the international realm, which suggest that even if the death penalty itself is not unconstitutional, the manner in which it is currently being administered may be.

It should be noted that, if further research bears out the existence of death row syndrome, some might view its existence as making a case for hastening executions. However, despite concerted efforts over the years by lawmakers and a powerful victims' rights lobby to streamline the process, notably in the passage of the Anti-Terrorism and Effective Death Penalty Act in 1996, the long waiting periods between sentence and execution appear to be a fixture, perhaps due to the growing controversy over the death penalty in general, concerns about issues relating to documented cases of innocence on death row, and improvements in post-conviction representation for the condemned. If death row syndrome exists, however, a case can also be made for amelioration of the **[*254]** living conditions of condemned prisoners, since a negation of any one of the three elements comprising the syndrome might negate it.

As we currently pause to re-evaluate the procedures and methods surrounding execution in the United States today, the potential psychological impact of the time between sentence and execution is another issue that calls for evaluation. Regardless of personal beliefs about capital punishment, considerations of fairness and a clear understanding of the meaning and implications of our actions should be important to us all.

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Legal Topics:

For related research and practice materials, see the following legal topics:
Criminal Law & ProcedureSentencingCapital PunishmentCruel & Unusual PunishmentCriminal Law & ProcedureSentencingCapital PunishmentMitigating CircumstancesCriminal Law & ProcedurePostconviction ProceedingsImprisonment

FOOTNOTES:

n1. Stevie Smith, Not Waving but Drowning, in Collected Poems 301, 303 (1983).

n2. Michael Wayne Hunter, California's Death Row, in Writing for their Lives 78, 87 (Marie Mulvey-Roberts ed., 2007).

n3. Marie Deans, Working Against the Death Penalty, in Writing for their Lives 59, 61 (Marie Mulvey-Roberts ed., 2007).

n4. Death Penalty Information Center, Facts About the Death Penalty 2 (2008), http://www. deathpenaltyinfo.org/FactSheet.pdf.

n5. Death Penalty Information Center, Time on Death Row, http://www.deathpenaltyinfo. org/article.php?&did=1397 (last visited March 19, 2008).

n6. Death Penalty Information Center, supra note 4.

n7. See infra notes 14-21.

n8. Id.

n9. Liz Austin Peterson, Texas Death Row Inmate Commits Suicide, S.F. Gate, Feb. 4, 2008, http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2008/02/04/national/a172416S00. DTL; Second Condemned Texas Death Row Inmate Commits Suicide, Dallas morning News, Feb. 4, 2008, http://www.dallasnews.com/sharedcontent/dws/news/texassouthwest/stories/020508dntexsuicide.8de34544.html.

n10. See David Lester and Christine Tartaro, Suicide on Death Row, 47 J Forensic Sci. 1108-1111 (2002)(reporting death row suicide rates at 113 per 100,000); National Center for Health Statistics, http://www.cdc.gov/nchs/fastats/suicide.htm, (last visited April 2, 2008)(reporting a rate of 11 suicides per 100,000 in the general population in 2004); Bureau of Justice Statistics, http://www.ojp.usdoj.gov/bjs/glance/shipj.htm (last visited April 2, 2008)(reporting prison suicide rates in 2003 at 16 per 100,000 and jail suicide rates at 43 per 100,000). See also, Tartaro & Lester, An Application of Durkheim's Theory of Suicide to Prison Suicide Rates in the United States, 29 Death Studies 413-422 (2005).

n11. Blume, J.H. Killing the Willing: "Volunteers," Suicide and Competency, 103 Mich. L. Rev. 939-1009 (2005).

n12. See infra notes 14-24

n13. See infra notes 36-37.

n14. Soering v. United Kingdom, App. No. 14038/88, 11 Eur. H. R. Rep. 439 (1989); Richard B. Lillich, Harmonizing Human Rights Law Nationally and Internationally: The Death Row Phenomenon as a Case Study, 40 St. Louis U.L.J. 699, 704 (1996); Florencio J. Yuzon, Conditions and Circumstances of Living on Death Row - Violative of Individual Rights and Fundamental Freedoms?: Divergent Trends of Judicial Review in Evaluating the "Death Row Phenomenon", 30 Geo. Wash. J. Int'l L. & Econ. 39, 57 (1996); Avi Salzman, Killer's Fate May Rest on New Legal Concept, N.Y. Times, Feb. 1, 2005, at B6.

n15. Soering v. United Kingdom, App. No. 14038/88, 11 Eur. H. R. Rep. 439 (1989).

n16. Id. at 475-476.

n17. Pratt v. Attorney General for Jamaica, (1994) 2 A.C. 1 (Privy Council 1993)(Jamaica); Natalia Schiffrin, Current Development: Jamaica Withdraws the Right of Individual Petition Under the International Covenant on Civil and Political Rights, 92 Am. J. Int'l L. 563, 565 (1998).

n18. Patrick Hudson, Does The Death Row Phenomenon Violate A Prisoner's Human Rights Under International Law?, 11 Eur. J. Int'l L. 833, 846 (2000)(describing Francis v. Jamaica, 1994).

n19. U.S. v. Burns, [2001] 1 S.C.R. 283.

n20. Mirna E. Adjami, African Courts, International Law, and Comparative Case Law: Chimera or Emerging Human Rights Jurisprudence?, 24 Mich. J. Int'l L. 103 (2002); Lillich, supra note 14.

n21. Joachim Herrmann, The Death Penalty in Japan: An "Absurd" Punishment, 67 Brook. L. Rev. 827, 848 (2002).

n22. Hudson, supra note 18, at 836.

n23. See, e.g. Soering v. United Kingdom, App. No. 14038/88, 11 Eur. H. R. Rep. 439, 474-75 (1989)(describing the "anguish and mounting tension of living in the ever-present shadow of death"); Saby Ghoshray, Tracing the Moral Contours of the Evolving Standards of Decency:The Supreme Court's Capital Jurisprudence Post-Roper, 45 J. Cath. Leg. Stud. 561, 612 (2007).

n24. Bureau of Justice Statistics, Prison Statistics, http://www.ojp.usdoj.gov/bjs/prisons.htm (last visited April 2, 2008).

n25. See, e.g., Laurence E. Rothenberg, International Law, U.S. Sovereignty, and the Death Penalty, 35 Geo. J. Int'l L. 547, 568-570 (2004); Tung Yin, Can "Death Row Phenomenon" Be Confined to Death Row Inmates? U. Iowa Legal Stud. Res. Paper No. 05-11 (2005), http://ssrn.com/abstract=673464.

n26. Lillich, supra note 14.

n27. See, e.g., Dwight Aarons, Can Inordinate Delay Between a Death Sentence and Execution Constitute Cruel and Unusual Punishment?, 29 Seton Hall L. Rev.147 (1998); Richard E. Shugrue, "A Fate Worse Than Death": An Essay On Whether Long Times On Death Row Are Cruel Times, 29 Creighton L. Rev. 1 (1995); Michael P. Connolly, Better Never Than Late: Prolonged Stays On Death Row Violate the Eighth Amendment, 23 New Eng. J. Crim. & Civ. Confinement 101 (1997); Jessica Feldman, A Death Row Incarceration Calculus: When Prolonged Death Row Imprisonment Becomes Unconstitutional, 40 Santa Clara L. Rev. 187 (1999); Ryan S. Hedges, Note, Justices Blind: How The Rehnquist Court's Refusal To Hear a Claim for Inordinate Delay of Execution Undermines Its Death Penalty Jurisprudence, 74 S. Cal. L. Rev. 577 (2001); Harold I. Schwartz. Death Row Syndrome and Demoralization: Psychiatric Means to Social Policy Ends. 33 J. Am. Acad. Psychiatry & Law 153 (2005).

n28. Soering v. United Kingdom, App. No. 14038/88, 11 Eur. H. R. Rep. 439 (1989); Lillich, supra note 14, at 703.

n29. Id. at 705.

n30. People v. Anderson, 493 P.2d 880, 894-95 (Cal.1972).

n31. Foster v. Florida, 123 S. Ct. 470, 471 (2002)(mem.)(Breyer, J., dissenting)(quoting In re Medley, 134 U.S. 160, 172 (1890)).

n32. Lackey v. Texas, 514 U.S. 1045 (1995)(mem.).

n33. Knight v. Florida, 120 S. Ct. 459, 461 (1999)(mem.)(Breyer, J., dissenting).

n34. Id. at 462.

n35. Soering v. United Kingdom, App. No. 14038/88, 11 Eur. H.R. Rep. 439, 468 (1989); Wilson v. Seiter, 501 U.S. 294 (1991); Yuzon, supra note 14 at 69.

n36. Ghoshray, supra note 23, at 612; Carol S. Steiker & Jordan M. Steiker,: A Tale of Two Nations: Implementation of the Death Penalty in "Executing" Versus "Symbolic" States in the United States, 84 Tex. L. Rev. 1869, 1919 (2006); J.C. Oleson, Swilling Hemlock: The Legal Ethics of Defending a Client Who Wishes to Volunteer for Execution, 63 Wash & Lee L. Rev. 147, 222 (2006).

n37. David Wallace-Wells, What Is Death Row Syndrome?, Slate, Feb 1, 2005, http://slate.msn.com/id/2112901.

n38. For discussion, see Schwartz, supra note 27.

n39. State v. Ross, 2005 Conn. Super. LEXIS 1116, at 11 (Conn. Super. Ct. Apr. 22, 2005); Ross Case Highlights "Death Row Syndrome", National Coalition to Abolish the Death Penalty, Feb. 1, 2005, http://www.democracyinaction.org/dia/organizations/ncadp/news.jsp?key=1198&t (last visited May 2, 2008)(reprinting Associated Press article).

n40. Andrew Cohen, When a Killer Wants to Die, CBS News, Feb. 2, 2005, http://election.cbsnews.com/stories/2005/02/02/opinion/courtwatch/main671161.shtml (last visited April 2, 2008).

n41. Avi Salzman, Killer's Fate May Rest on New Legal Concept, N.Y. Times, Feb. 1, 2005, at B6; Connecticut Execution Puts the Spotlight on 'Death Row Syndrome', Associated Press, Feb. 1, 2005.

n42. Connecticut v. Ross, 2005 Conn. Super. LEXIS 1116, at 16 (Conn. Super Ct. April 22, 2005).

n43. Death Penalty Information Center, Execution Database, http://www.deathpenaltyinfo. org/getexecdata.php (last visited April 2, 2008); State of Connecticut v. Michael Ross, 873 A.2d 131, 133 (Conn. 2005).

n44. See, e.g., Saby Ghoshray, supra note 23; John B. Wefig, Wishful Thinking by Ronald J. Tabak: Why DNA Evidence Will Not Lead to the Abolition of the Death Penalty, 33 Conn. L. Rev. 861, 868 (2001).

n45. Dr. Stuart Grassian, one of the experts who testified in the Ross competency hearing, is said to have developed the concept, based on his study of inmates at Walpole prison (Mass.) in the late seventies. It is important to note, however, that the Walpole study did not involve condemned inmates, and the term "death row syndrome" does not appear in resulting publications. Stuart Grassian, Psychopathological Effects of Solitary Confinement, 140 Am. J. Psychiatry 1450 (1983); Stuart Grassian & N. Freidman, Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement, 8 Int'l J.L. & Psychiatry 49 (1986). While Grassian's systematic examinations of such topics

are incredibly valuable to understanding the experience of those incarcerated, there remain no published studies which systematically utilize social scientific methodology to examine the legal concepts outlined here.

n46. Wallace-Wells, supra note 37; see Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders-IV (4th ed. 1994).

n47. Shugrue, supra note 27, at 18; Jeremy A. Blumenthal, Law and the Emotions: The Problems of Affective Forecasting, 80 Ind. L.J. 155, 195, 200 (2005).

n48. Mark D. Cunningham & Mark P. Vigen, Death Row Inmate Characteristics, Adjustment, and Confinement: A Critical Review of the Literature, 20 Behav. Sci. & L. 191, 208 (2002).

n49. Id. Specifically, in this category Cunningham and Vigen describe thirteen studies conducted over the past thirty-five years which provide individual appraisals through file review or interviews.

n50. Id. at 192-94.

n51. See Bruce Jackson & Diane Christian, Death Row (1980); Robert Johnson, Condemned to Die: Life Under Sentence of Death (1981); Doug Magee, Slow Coming Dark: Interviews on Death Row (1980); Robert Johnson, Under Sentence Of Death: The Psychology of Death Row Confinement, 5 Law & Psychol. Rev. 141 (1979); Robert Johnson, Warehousing For Death: Observations on the Human Environment of Death Row, 26 Crime & Delinq. 545 (1980).

n52. Harvey Bluestone & Carl L. McGahee, Reaction to Extreme Stress: Impending Death by Execution, 119 Am. J. Psychiatry 393, 395 (1962); see also Charles E. Smith & Richard Felix, Beyond Deterrence: A Study of Defenses on Death Row, 50 Fed. Probation 55 (1986).

n53. Johnson (1979), supra note 51, at 148.

n54. Id.

n55. Lloyd Vogelman, Sharon Lewis & Lauren Segal, Life After Death Row: Post-Traumatic Stress and the Story of Philip Takedi, 24 S. Afr. J. Psychol. 91 (1994).

n56. Bluestone & McGahee, supra note 52.

n57. Johnnie L. Gallemore & James H. Panton, Inmate Responses to Lengthy Death Row Confinement, 129 Am. J. Psychiatry 167 (1972).

n58. James H. Panton, Personality Characteristics of Death-Row Prison Inmates, 32 J. Clinical Psychol. 306 (1976).

n59. See, e.g., Julius Debro, et al, Death Row Inmates: A Comparison of Georgia and Florida Profiles, 12 Crim. Just. Rev 41 (1987).

n60. See, e.g., Cunningham & Vigen, supra note 48; Abdul H. Hussain & Seymour Tozman, Psychiatry on Death Row, 39 J. Clinical Psychiatry, 183 (1978).

n61. Peter W. Lewis, Killing the Killers: A Post-Furman Profile of Florida's Condemned, 25 Crime & Delinq. 200 (1979).

n62. Magee, supra note 51.

n63. Shirley Dicks, Death Row: Interviews with Inmates, Their Families and Opponents of Capital Punishment (1990).

n64. Id.

n65. See, e.g., Caryl Chessman, Trial by Ordeal (1955); Caryl Chessman, The Face of Justice (1957); Jarvis Jay Masters, Finding Freedom: Writings from Death Row (1997); Undoing Time: American Prisoners in Their Own Words (Jeff Evans, ed., 2001); Michael Ross, It's Time for Me to Die: An Inside Look at Death Row (1998), http://www.ccadp.org/michaelross-timeforme.htm.

n66. Lou Jones & Lorie Savel, Final Exposure: Portraits from Death Row (1996); Ken Light & Suzanne Donovan, Texas Death Row (1997).

n67. Katya Lezin, Finding Life on Death Row: Profiles of Six Death Row Inmates (1999).

n68. Death Row and the Death Penalty, 24 Corrections Compendium 6 (1999).

n69. Of those studies that do exist, nearly all suffer from one or more of three primary shortcomings: lack of up-to-date research; lack of breadth; and lack of methodological focus or rigor. First, much of the research concerning death row inmates was completed immediately after the Supreme Court reinstated the death penalty in the 1970's. See, e.g., Johnson (1979), supra note 51; Lewis, supra note 61; Magee, supra note 51; Jackson & Christian, supra note 51. However, this limitation is problematic in light of the potential temporal component of "death row phenomenon." To be more specific, it is precisely the twenty to twenty-five year span since many studies were conducted, during which years the length of time between sentence and execution has become longer and longer still, that may be part of the process we seek to understand.

A second methodological concern is that almost none of the studies published to date provide comparative information. This limitation occurs in several different forms. For example, even the studies with goals most similar to those proposed here (e.g., Johnson's work) are limited on the dimensions of time and breadth of location and context. Many studies examine inmates in one facility within a short period of time. For example, Johnson's interviews all occurred in Alabama, during one month in 1979. Similarly, Bluestone & McGahee, supra note 52, offer an analysis based entirely on patterns drawn from twelve case studies in New York. Even Lewis's study provides information only about one facility. Lewis, supra note 61. Similarly, the work of Magee provides an incredible depth of information about participants based on twelve interviews with inmates, but is limited in regional scope and provides little information about methodology. While the resulting data provide an excellent starting point for analysis, there is no way to distinguish more general "death row" characteristics from the specific effects of one particular facility, state, or type of facility under this model. Even Cunningham and Vigen point out that "wide variations in death row incarceration conditions and policies may present difficulty in generalizing from one state to another." Cunningham & Vigen, supra note 48, at 194.

Similarly, in many of the previous studies, no inmates had been executed recently or were set to be executed in the immediate future. For discussion, see Johnson, supra note 51. This factor may well have an impact on the experience of death row inmates in such facilities, compared to those in facilities in which executions are common occurrences. The ability to make comparisons across states and regions may allow us to understand for differences in the psychological experiences of individuals being housed on death row in different facilities. Our ability to make such comparisons is also limited at this time because many available studies or writings describe the situation of only a single

inmate in case study format, see, e.g., Vogelman et al, supra note 55, or come in the form of personal written accounts of experiences on death row, supra note 65.

The final limitation of many existing studies with relation to death row syndrome is a lack of methodological rigor or focus on issues identified here as relevant. For example, some research on death row inmates is based on archival analysis, rather than on interactions with the individuals themselves, see, e.g., supra notes 58 & 70, and therefore provide little information about the psychological experiences of the individuals living under sentence of death. For all of these reasons, new research in this field is critically important, particularly in light of the changing circumstances of confinement.

n70. Cunningham & Vigen, supra note 48, at 195.

n71. Death Penalty Information Center, supra note 5.

n72. George Lombardi, Richard D. Sluder & Donald Wallace, The Management of Death-Sentenced Inmates: Issue, Realities, and Innovative Strategies 8 (1996), available at http://www.doc.missouri.gov (follow "Adult Institutions" hyperlink; then follow "The Management of Death-Sentenced Inmates: Issues, Realities, and Innovative Strategies" hyperlink)(paper presented at the annual meeting of the Academy of Criminal Justice Sciences (March 1996)).

n73. See, e.g., Edward Zamble & F. Porporino, Coping, Behavior and Adaptation in Prison Inmates (1988); J. Bonta & P. Gendreau, Reexamining the Cruel and Unusual Punishment of Prison Life, 14 Law & Hum. Behav. 347.

n74. Edward Zamble, Behavior and Adaptation in Long-Term Prison Inmates: Descriptive Longitudinal Results, in Long-Term Imprisonment: Policy, Science, and Correctional Practice 138, 140-44 (Timothy J. Flanagan ed., 1995).

n75. Richard A. Schill & David K. Marcus, Incarceration and Learned Helplessness, 42 Int'l J. Offender Therapy & Comp. Criminology 224, 224 (1998).

n76. Clay Routledge & Jamie Arndt, Time and Terror: Managing Temporal Consciousness and the Awareness of Mortality, in Understanding Behavior in the Context of Time: Theory, Research, and Application 59, 60 (Alan Strathman & Jeff Joireman, eds., 2005).

n77. Gallemore and Panton, supra note 57.

n78. Robert Johnson, Warehousing For Death: Observations on the Human Environment of Death Row, 26 Crime & Delinq. 545, 546 (1980).

n79. Cunningham & Vigen, supra note 48, at 204 (citations omitted).

n80. Craig Haney, Curtis Banks & Philip Zimbardo, Interpersonal Dynamics in a Simulated Prison, 1 Int'l J. Criminology & Penology 69, 90 (1973).

n81. Walter Mischel, Toward a Cognitive Social Learning Reconceptualization of Personality, 80 Psychol. Rev. 252, 279 (1973).

n82. See, e.g., R. H. Anson & B.W. Hancock, Crowding, Proximity, Inmate Violence, and the Eighth Amendment, 17 J. of Offender Rehab. 123 (1992); J. Farbstein & R. E. Wener, Evaluation of Correctional Environments, 14 Environ. & Behav. 671 (1982); Claire Lawrence & Kathryn Andrews, The Influence of Perceived Prison Crowding on Male Inmates' Perception of Aggressive Events, 30 Aggressive Behav., 273 (2004).

n83. See, e.g., Joseph C. Johnston, A Psychological Perspective on the New Design Concepts for William Head Institution, 3 Forum on Corrections Res. 14 (1991).

n84. For an overview see Craig Haney, Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement, 49 Crime & Delinq. 124 (2003).

n85. For discussion of mental illness in prisons see Terry Kupers, Prison Madness: The Mental Health Crisis Behind Bars and what we must do about it (1999).

n86. Herrmann, supra note 21, at 848.

n87. Albert Camus, Reflections on the Guillotine, in Resistance, Rebellion, and Death 173, 205 (J. O'Brien, trans., 1960).

n88. Jeff Greenberg,Tom Pyszczynski & Sheldon Solomon, The Causes And Consequences of a Need for Self-Esteem: A Terror Management Theory, in Public Self and Private Self 189 (Roy F. Baumesiter, ed. 1986); Tom Pyszczynski, Jeff Greenberg & Sheldon Solomon, The Machine in the Ghost: A Dual Process Model of Defense Against Conscious and Unconscious Death-Related Thought, in Social Motivation: Conscious and Unconscious Processes 40 (Joseph Forgas, et al.eds., 2005).

n89. See The Machine in the Ghost: A Dual Process Model of Defense Against Conscious and Unconscious Death-Related Thought, supra note 88, at 42.

n90. Id.

n91. See, e.g., Krystyna De Walden-Galuszko, Prevalence of Psychological Morbidity in Terminally-Ill Cancer Patients, 5 Psycho-Oncology 45 (1996); B. Kelly et al., Factors Associated with the Wish to Hasten Death: A Study of Patients with Terminal Illness, 33 Psych. Med. 75 (2003); Peter M. Marzuk, Suicide and Terminal Illness, 18 Death Stud. 497 (1994); Linda J. Muzzin et al., The Experience of Cancer, 38 Soc. Sci. Med. 1201 (1994); Hayley Pessin, Barry Rosenfeld, & William Breitbart, Assessing Psychological Distress near the End of Life, 46 Am. Behav. Scientist 357 (2002).

n92. See, e.g., Angelo A. Alonzo & Nancy Reynolds, Stigma, HIV and AIDS: An Exploration and Elaboration of a Stigma Trajectory, 41 Soc. Sci. & Med. 303, 310 (1995)(describing the ways in which stigma and illness interact to impact both physical and psychological well-being).

n93. Like the condemned inmate who may find both hope and disappointment in the legal appeals process that can stretch over many years, individuals struggling with illnesses previously considered to be terminal whose lives have been extended through medical developments may struggle with the uncertainty of death, even when seemingly given new life. See, e.g., Dale E. Brashers, J.L. Neidig, L.W. Cardillo, L.K. Dobbs, J.A. Russell, & S.M. Haas, 'In an Important Way, I Did Die': Uncertainty and Revival in Persons Living with HIV or AIDS, 11 AIDS Care 201 (1999); Merle H. Mishel, Uncertainty in Acute Illness, 15 Ann. Rev. of Nursing Res. 57 (1997).

n94. The factual existence of this set of circumstances is perhaps evidence in itself that a "phenomenon" exists, as a phenomenon is presumably nothing more than a collection of documented circumstances.

n95. See cases cited supra notes 31-34.

n96. See supra notes 14-27.

n97. Schwartz, supra note 27.

n98. M. T. Norman, Standards and Procedures for Determining Whether a Defendant Is Competent to Make the Ultimate Choice-Death: Ohio's New Precedent for Death Row 'Volunteers,' 13 J. of Law & Health 103 (1998-99); Blume, supra note 11.

n99. Id.

n100. Death Penalty Information Center, supra note 5.

n101. See, e.g., Stephen Blank, Killing Time: The Process of Waiving Appeal: The Michael Ross Death Penalty Cases. 14 J.L. & Pol'y 735 (2006).

n102. Oleson, supra note 36.