An inmate's right to die

legal and ethical considerations in death row volunteering

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Abstract

There is a considerable body of literature about the death penalty across a variety of disciplines. However, a newer body of literature has emerged examining the phenomenon of elected executions, also known as death row volunteering. To date, 138 (nearly 11%) of the 1300 death row executions have come from volunteers. This issue has been particularly controversial due to a number of legal and ethical considerations that have been raised by the scholarly, legal, and public communities. Such issues include a capital defendant's competency to volunteer; ethical and moral dilemmas for capital defense attorneys, the states, and medical and mental health professionals; whether death row volunteering equates to 'state-assisted suicide'; and finally, how these considerations impact the public's support for capital punishment. This paper reviews the existing literature pertaining to death row volunteering through the lenses of these various considerations. Recommendations for future research in this area are also offered.

Introduction

Although the death penalty itself has been a hot-button issue for both politicians and researchers since its inception, discontinuation, and subsequent reinstatement, a more recent development in the debate among researchers (e.g. Blume, 2005; Bonnie, 2005; Casey, 2002; Chandler, 1998; Dama, 2007; Harrington, 2004; Johnson, 1980; McClellan, 1994; Milner, 1998; Norman, 1998; Rackley, 2005; Smith, 2008; Strafer, 1983; White, 1987) concerns the issue of death row volunteering, also referred to as 'elected execution' or 'state-assisted suicide'. A key point of the debate is the inmate's mental competency and ability to decide whether to terminate their appeals and expedite their execution. From there, additional literature has been introduced to examine ethical issues for lawyers who represent these inmates (e.g. Eisenberg, 2001; Garnett, 2002; Harrington, 2000; Oleson, 2006; Williams, 2006) as well as for medical and mental health professionals (Johnson, 1980; Milner, 1998; Oleson, 2006). This paper examines this growing body of research on both of these issues, as well as proposing directions for future research.

A brief history of the death penalty and elected executions

The death penalty has a long and storied history, dating as far back as the eighteenth century B.C. and the Code of Hammurabi (Death Penalty Information Center, n.d.). In the USA, the first execution occurred in colonial Virginia in 1608, the result of Britain's influence (Bohm, 2011; Norman, 1998; Rackley, 2005). The death penalty for the majority of crimes was repealed as early as 1794.[1] Though a few selected states (e.g. Rhode Island and Wisconsin) terminated the death penalty for all crimes in the mid-1800s, it was the early 1900s when this movement gained momentum. Beginning in 1907, the death penalty was prohibited in certain states by state laws (Bohm, 2011).[2] However, five of the six states that outlawed the death penalty between 1907 and 1917 had reinstated it by 1920. In the late 1960s, there were several landmarks where US Supreme Court cases (see, e.g. Witherspoon v. Illinois, 1968 or Crampton v. Ohio, 1971) sought to declare the death penalty as unconstitutional with respect to the Fifth,[3] Eighth,[4] and Fourteenth[5] Amendments. However, it was not until the 1972 decision in Furman v. Georgia[6] that the death penalty was temporarily suspended when the Supreme Court declared Georgia's law to be in violation of the Eighth Amendment of 'cruel and unusual punishment'. This decision invalidated 40 death penalty statutes and commuted 629 sentences for death row inmates (Death Penalty Information Center, n.d.).

In order to comply with the Supreme Court's decision in Furman, 34 states, led by Florida, sought to write new death penalty statutes during the moratorium. In 1976, the Supreme Court approved new sentencing guidelines pertaining to both judge and jury discretion when deciding whether a death sentence should be imposed. This critical decision, Gregg v. Georgia (1976),[7] held that new death penalty statutes were constitutional in Georgia, Florida, and Texas. Further, Gregg v. Georgia (1976) affirmed that the death penalty was constitutional under the Eighth Amendment.

On 17 January 1977, Gary Gilmore became the first person executed after the Gregg decision. However, Gilmore's execution presented new challenges for the legal system. Gilmore was on death row in Utah for murdering two people just 17 days after the Gregg decision was handed down. Though his execution was originally set for November 1976, several stays of execution were granted based on efforts brought forth by the American Civil Liberties Union and the intervention of his mother, standing as a 'next friend' (Gilmore v. Utah, 1976; see also Casey, 2002; Dama, 2007; Garnett, 2002; Johnson, 1980; Norman, 1998). However, Gilmore repeatedly requested that his execution continue as planned. In their per curiam opinion, the Court rejected the next friend standing, citing that 'the State's determinations

[1] In 1794, the death penalty was repealed in Pennsylvania for all offenses except first degree murder. By 1798, Virginia and Kentucky also discontinued the death penalty for all offenses except first degree murder and New York and New Jersey abolished the death penalty for all crimes except murder and treason. Michigan eradicated the death penalty in 1846 for all crimes except treason (Bohm, 2011).

[2] Six states completely excluded the death penalty and an additional three states limited the death penalty sentence to treason or first degree murder of a law enforcement officer (Bohm, 2011).

[3] The Fifth Amendment protects individuals from potential abuses of government authority, including the deprivation of 'life, liberty, or property' (US Const. amend. V).

[4] The Eighth Amendment protects individuals from 'cruel and unusual punishments' (US Const. amend. VIII).

[5] The Fourteenth Amendment provides individuals the rights to due process and equal protection by their state (US Const. amend. XIV).

[6] The Furman decision also included the cases of Jackson v. Georgia (1972) and Branch v. Texas (1972).

[7] The Gregg decision also included the cases of Jurek v. Texas (1976) and Proffitt v. Florida (1976).

of [Gilmore's] competence knowingly and intelligently to waive any and all such rights were firmly grounded' (Gilmore v. Utah, 1976, p. 1013). The stay for the January 17 execution was overturned and Gilmore was executed by firing squad at 8:07 am.

Table 1 presents death row executions by state, spanning the years of 19772012. Including Gilmore's execution, a total of 138 inmates have been executed voluntarily, representing nearly 11% of the 1300 death row executions that have been carried out nationwide since the Gregg decision (Death Penalty Information Center, 2012). Texas had the highest number of elected executions out of any state (28), followed by Nevada (11), and Florida (9). However, other states including Nevada, Kentucky, and Washington have a higher volunteer-to-execution ratio (91.7, 66.7, and 60%, respectively).

Table 1. Death row executions by state, 1977-2012.*

State	First execution	Most recent execution	Total executions	Elected executions (N)	Elected executions (%)
Alabama	22 April 1983	20 October 2011	55	6	10.9
Arkansas	18 June 1990	28 November 2005	27	4	14.8
Arizona	6 April 1992	27 June 2012	32	4	12.5
California	21 April 1992	17 January 2006	13	2	15.4
Colorado	13 October 1997	13 October 1997	1	0	0.0
Connecticut	13 May 2005	13 May 2005	1	1	100.0
Delaware	14 March 1992	20 April 2012	16	5	31.3
Florida	25 May 1979	12 April 2012	73	9	12.3
Georgia	15 December 1983	21 September 2011	52	0	0.0
Idaho	6 January 1994	12 June 2012	3	1	33.3
Illinois	12 September 1990	17 March 1999	12	2	16.7
Indiana	9 March 1981	11 December 2009	20	5	25.0
Kentucky	1 July 1997	21 November 2008	3	2	66.7
Louisiana	14 December 1983	7 January 2010	28	1	3.6
Maryland	17 May 1994	6 December 2005	5	1	20.0
Missouri	6 January 1989	9 February 2011	68	4	5.9
Mississippi	2 September 1983	20 June 2012	21	0	0.0
Montana	10 May 1995	11 August 2006	3	1	33.3
North Carolina	16 March 1984	18 August 2006	43	4	9.3
Nebraska	2 September 1994	2 December 1997	3	0	0.0
New Mexico	6 November 2001	6 November 2001	1	1	100.0
Nevada	22 October 1979	26 April 2006	12	11	91.7
Ohio	19 February 1999	18 April 2012	47	7	14.9
Oklahoma	10 September 1990	1 May 2012	99	7	7.1
Oregon	6 September 1996	16 May 1997	2	2	100.0
Pennsylvania	2 May 1995	6 July 1999	3	3	100.0
South Carolina	11 January 1985	6 May 2011	43	9	20.9
South Dakota	11 July 2007	11 July 2007	1	1	100.0
Tennessee	19 April 2000	2 December 2009	6	1	16.7
Texas	7 December 1982	26 April 2012	482	28	5.8
Utah	17 January 1977	17 June 2010	7	4	57.1

* As of 17 July 2012. List compiled from http://www.deathpenaltyinfo.org/views-executions

Of the 138 executed voluntarily, only three were females, although one of the females was an extremely high-profile case that received more attention than many of the males (Aileen Wournos). The racial breakdown of the volunteers was 85% white, 5% black, 8% Latino, 1.5% Native American, and 0.5% Asian. Interestingly, all of the females executed voluntarily where white. The youngest person (at the time of execution) was 22-years-old and the oldest was 62-years-old. Over half of the volunteers (56%) were between the ages of 22- and 39-years-old. The majority of volunteers were killed by lethal injection (90%), though several were killed by electrocution (6%), firing squad (1.5%), gas chamber (2%), or hanging (0.5%).

Why volunteer?

There are a number of conditions that can lead to death row inmates dropping habeas corpus appeals and expediting their own executions. One main factor is the conditions they must face each day (Blume, 2005; Casey, 2002; Dieter, 1990; Johnson, 1980; Oleson, 2006; Smith, 2008; Urofsky, 1984). Death row inmates typically live their lives in virtual complete isolation - eating meals alone in their cells, being confined to their cells for 23 h a day, being separated from the general prison population, and having exercise and other prison rehabilitation programs withheld (Milner, 1998; Strafer, 1983; Urofsky, 1984; White, 1987). These conditions have been referred to as the 'death row phenomenon' (Smith, 2008, p. 240) or 'death row syndrome' (Oleson, 2006, p. 222).[1] These conditions can lead to stress, depression, hopelessness, and even suicidal tendencies (Blume, 2005; Garnett, 2002; Johnson, 1980; McClellan, 1994; Norman, 1998; Oleson, 2006; Urofsky, 1984). This can cause an inmate to prefer death to life in prison (Blume, 2005; McClellan, 1994; Milner, 1998; Urofsky, 1984; White 1987).

Beyond the conditions of death row that may lead inmates to want to end their suffering, several other factors may cause them to seek execution. In some instances, inmates may wish to die with what they perceive to be dignity and grace (Bonnie, 2005; McClellan, 1994; Milner, 1998; Smith, 2008; Strafer, 1983). They may also wish to end the suffering that their appeals can bring to both their and their victims' families (Johnson, 1980; McClellan, 1994; Norman, 1998; Strafer, 1983). In some cases, death row inmates may exhibit traits of bravado, desiring to leave this world in a 'blaze of glory' (Strafer, 1983, p. 875, supra note 56; see also Garnett, 2002; McClellan, 1994; White, 1987).

Several researchers (Blume, 2005; Bonnie, 2005; Dama, 2007; Eisenberg, 2001; Johnson, 1980, Milner, 1998; Urofsky, 1984) have discussed capital defendants' desires to die in the context of suicide, or more specifically, state-assisted suicide.[2] Dama (2007) compares competent capital defendants who elect executions to terminally ill patients who reject extraordinary, life-saving measures or seek physician-assisted suicide (see also Johnson, 1980; Milner, 1998). Others (Eisenberg, 2001; Harrington, 2000, 2004; Johnson, 1980) also discuss death row volunteering in the context of euthanasia. Blume (2005) suggests that were it not for the deteriorating conditions of death row, capital defendants may not otherwise seek to deliberately end their own lives (see also Urofsky, 1984). As such, capital defendants seeking to cease their appeals and elect execution must show that such a request is not motivated by suicidal ideologies (Blume, 2005).

Death row volunteering can also present a number of challenges for the state (Casey, 2002; Johnson, 1980; McClellan, 1994; Milner, 1998; Rackley, 2005). In some cases (see, e.g. Lenhard v. Wolff, 1979 or Gregg v. Georgia, 1976), capital defendants may refuse to allow their counsel to present mitigating evidence because they wish to pursue elected execution (Casey, 2002). Preserving life and preventing suicide is another such overriding concern for the state (Casey, 2002; Johnson, 1980; McClellan, 1994; Milner, 1998; Rackley, 2005). While the state should respect the inmate's right to die, McClellan (1994) also suggests that the state has an obligation to require a mandatory review of the case when the appeals process is waived (see also Casey, 2002; Johnson, 1980; Milner, 1998; Rackley, 2005; Urof- sky, 1984). Further, Norman (1998) points out that as there are no Supreme Court decisions defining how competency should be assessed; discretion for such decisions typically falls to state courts. Additionally, that state also has the responsibility to ensure that only death-deserving defendants actually receive

[1] Oleson (2006) argues that this term applies to international death row cases but has not yet gained credence in the American discourse.

[2] Dama (2007) likens state-assisted suicide to physician-assisted suicide in her discussion of death row volunteering and the Fourteenth Amendment.

the death penalty (Milner, 1998; Rackley, 2005). Since 1973, over 130 people have been released from death row due to their innocence (Amnesty International, n.d.). In other cases, innocent people have been wrongfully executed, although it is unclear just how many (Amnesty International, n.d.).

Determining mental competency in volunteering

A vast number of capital defendants express their desire for a death sentence rather than life in prison, although this defies most reasonable expectations of what a defendant would select (Eisenberg, 2001; Garnett, 2002; Milner, 1998; White, 1987). Under current legal standards, capital defendants may waive their right to appeals and request to expedite their execution, if and only if they are found to be mentally competent (Blume, 2005; Bonnie, 2005; Chandler, 1998; Garnett, 2002; Johnson, 1980; Milner, 1998; Norman, 1998; Strafer, 1983; Urofsky, 1984). The issue of competency has long been debated in the legal arena, beginning with questions of competency to stand trial (see, for instance Dusky v. United States, 1960). Arguments have been raised that any defendant who elects execution over continuing appeals should automatically be declared incompetent (Chandler, 1998, p. 1924; McClellan, 1994; see also Dusky v. United States, 1960). The courts have since rejected this notion (McClellan, 1994).

The case of Rees v. Peyton (1966) was the first in which the Supreme Court examined a defendant's competency to waive habeas corpus appeals (see also Johnson, 1980; McClellan, 1994; Strafer, 1983; Urofsky, 1984). Melvin Rees Jr. was sentenced to death in 1962 after being convicted in the state court of Virginia of murder (Rees v. Peyton, 1966). A month after his counsel filed a petition for certiorari in 1965; Rees requested that the appeals be halted (Rees v. Peyton, 1966). In response to this request, Rees' attorneys advised the court that they could not cease the appeals process because they believed that the defendant was not mentally competent to make such a decision (Rees v. Peyton, 1966). The psychologist who initially examined Rees declared him to be incompetent, but further examination by state-appointed psychologists suggested otherwise (Rees v. Peyton, 1966). Consequently, the Supreme Court decided to determine whether Rees had the

> capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether he [was] suffering from a mental disease, disorder, or defect which may substantially affect his capacity in the premises. (Rees v. Peyton, 1966, p. 314)

The Rees decision subsequently became the precedent by which a condemned prisoner must be tested for incompetence before being allowed to refuse counsel or terminate legal proceedings (Milner, 1998; Strafer, 1983).

One of the main arguments stemming from Rees pertained to the language used within the decision. Terminology such as 'rational' has left a considerable amount of room for interpretation (Harrington, 2000). For instance, given the wording in Rees, which is considered comparable to prior decisions on competency to stand trial, even a person suffering from extreme mental illness can still stand trial as long as he exhibits 'a rational as well as factual understanding of the proceedings against him' (Dusky v. United States, 1960, p. 402, italics added; see also Blume, 2005; Bonnie, 2005; Chandler, 1998; Harrington, 2000; Milner, 1998; Urofsky, 1984; White, 1987).

Conversely, even if the defendant is declared competent, he or she may still lack the ability to make what constitutes a rational choice given the duress resulting from life on death row (Bonnie, 2005; Milner, 1998; Norman, 1998; Oleson, 2006; Strafer, 1983; Urofsky, 1984). As such, both evaluations to determine competency and the courts must also determine 'whether the defendant has made a knowing, intelligent, and voluntary waiver of the right to sentence review' (McClellan, 1994, pp. 237-238; see

also Blume, 2005; Bonnie, 2005; Johnson, 1980; Milner, 1998; Strafer, 1983; White, 1987). As Chandler (1998) summarizes, 'short of rabid insanity, incompetence is a difficult burden to meet and mental disability rarely precludes a finding for competent decision making' (p. 1915).

Furthermore, there are a number of additional issues stemming from evaluations of competency. Strafer (1983), for instance, notes that such evaluations may not be accurate due to improperly administered examinations. These instruments may be flawed as a result of poor definitions of terms like 'rationality' and 'disease' (Harrington, 2000; McClellan, 1994). Determinations of mental competence further rely on the opinions of medical professionals; this in itself presents a dichotomy of challenges. Medical professionals are bound by the Hippocratic Oath to work toward the benefit of the patient (Johnson, 1980; Milner, 1998; Oleson, 2006); in death row volunteering, this benefit can be delivering the decision of competence that will allow capital defendants to volunteer for earlier execution and provide them a reprieve from the conditions of death row. Conversely, physicians are also required to exhibit beneficence and avoid (knowable) harm to patients, even in cases where such harm is essentially requested by the patient (Milner, 1998; Oleson, 2006). This disparity continues to plague discourse about inmates' rights to autonomy, compassion, and death with dignity, as well as opposing arguments pertaining to the sanctity of life, risk of error, and the slippery slope of widening practices of intentional life termination (Oleson, 2006, see pp. 187-190; see also Milner, 1998; Williams, 2006).

Issues for lawyers of death row inmates

Representing capital defendants, especially those who prefer to be executed rather than spend their lives in prison, poses a moral and ethical dilemma for attorneys (Chandler, 1998; Dieter, 1990; Harrington, 2000; Johnson, 1980; Oleson, 2006; Rackley, 2005; White, 1987). In many cases, attorneys who represent capital clients have elected to do so because they are in personal opposition of the death penalty (Chandler, 1998; Harrington, 2000; White, 1987). When their client requests to drop appeals and move forward with the execution, this can present a conflict of interests for defense attorneys (Harrington, 2000; Rackley, 2005; White, 1987). Besides family and friends, these attorneys are the only people to oppose a defendant's decision to hasten the execution (Chandler, 1998).

Chandler (1998) proposes two potential models in which such conflict may arise from a capital defendant electing execution. The first, a paternalistic model, relies on the attorney guiding the defendant towards what he or she believes to be within the client's best interest (Chandler, 1998). Also considered to be in the client's 'best interest', the paternalistic model risks overriding the wishes of the client, especially in cases where the attorney believes that life in prison is a better outcome than execution (Chandler, 1998; White, 1987). The second model focuses on the autonomy of defendants and provides them with greater decision-making power (Chandler, 1998; see also Milner, 1998; Williams, 2006). If in fact the attorney believes that the best outcome for a client is life in prison, this autonomy can create a conflict between the attorney's personal beliefs and responsibilities to the client (Chandler, 1998; see also White, 1987).

The line between an attorney's rights and responsibilities to a client may sometimes be blurred by ethics and situational factors. For instance, if the attorney believes that a client is incompetent or incapable (due to mental or physical conditions) to make the decision to waive habeas corpus appeals, there are ethical obligations to not follow the client's wishes to suspend such appeals and notify the courts (Harrington, 2000; McClellan, 1994). However, if mental incompetence is not a mitigating factor, the attorney has the duty to abide by the client's wishes (Dieter, 1990; McClellan, 1994). In either case, defense attorneys have the duty and obligation to 'zealously represent their clients' (Harrington, 2000, p. 856; see also Oleson, 2006; Rackley, 2005; White, 1987).

In such circumstances where conflict arises between the beliefs and responsibilities of the defense attorney, there are several ways in which the situation may be addressed. The attorney may press forward, against the defendant's wishes, with the appeals process but risk the defendant appealing this process, citing ineffective counsel (Dieter, 1990; see also Chandler, 1998; Garnett, 2002; Milner, 1998; Oleson, 2006; Rackley, 2005).[1] The attorney may also utilize persuasion tactics, whereby, for example, they may play on the defendant's discomfort with the conditions of death row and suggest a life sentence to be served among the general prison population (Chandler, 1998; Dieter, 1990; Eisenberg, 2001; Garnett, 2002; Harrington, 2000; Milner, 1998; Oleson, 2006; White, 1987). In extreme circumstances where the attorney and defendant reach an impasse - the attorney cannot in good conscience proceed knowing that execution will be voluntary and the defendant is declared mentally competent - the attorney may opt to withdraw from the case (Chandler, 1998; Dieter, 1990; Harrington, 2000). This, however, may leave the client with no counsel (Dieter, 1990). A final strategy would be for the attorney to call the defendant's

[1] See for example Rumbaugh v. Procunier (1985), where the defendant's counsel refused the defendant's request to cease pursuing appeals. In response, Rumbaugh appealed directly to the court to have all motions withdrawn, and the courts complied (see also Chandler, 1998; Urofsky, 1984).

mental competency into question, by citing 'mental retardation, insanity, [or] incompetency not rising to the level of insanity' (Dieter, 1990, p. 814; see also Chandler, 1998; Garnett, 2002; Harrington, 2000).[2]

Moving beyond the standard ethical guidelines discussed in scholarly articles (e.g. Dieter, 1990; Garnett, 2002; White, 1987), Harrington (2000, 2004) sought to gain a deeper insight about the effects of representing a client electing execution had on defense attorneys. She conducted 20 in-depth interviews with defense attorneys who had represented at least one client in elected execution cases.[3] Harrington's 2000 study examined professional ethics concerning death row volunteering cases. She found that all of the attorneys felt there are flaws in death penalty legislation, that there is a lack of case law and ethical standards guiding their representation of death row volunteers, and that it is their moral and ethical obligation to try to dissuade clients from volunteering (Harrington, 2000). However, discourse among the attorneys showed disparities in opinions about their personal ability to deal with the demands of representing death row volunteers, how they resolved moral dilemmas, and whether their approach was considered to be client-centered[4] or cause-centered[5] (Harrington, 2000). Of the attorneys Harrington (2000) interviewed, 40% (n = 8) considered themselves to be client-centered while 10% (n =4) believed themselves to be cause-centered. The remaining 40% (n = 8) identified in the middle of the two extremes, with goals and ideas expressive of both sides (Harrington, 2000).

As noted, when conflict arises between the belief and responsibilities of the defense attorney, the capital defendant can seek to remove their attorney from the case when the attorney refuses to cease post-conviction challenges. In addition to the capital defendant needing to prove competency to cease any post-conviction challenges, they must also demonstrate competency to waive counsel (Strafer, 1983). This, however, requires that the defendant needs to understand the severity of the rights they are waiving, specifically when constitutional rights are at stake (Strafer, 1983; see also Westbrook v. Arizona, 1966[6]). Many attorneys argue that such decisions cannot be made competently (Dieter, 1990; Harrington, 2000; Strafer, 1983), and as such, they keep fighting for their clients even after they are fired (Urofsky, 1984).

Terminating appeals and firing counsel presents a clear conflict of interest for capital defense attorneys, specifically those that consider themselves to be 'causecentered'. Cause-centered attorneys focus on ending capital punishment, thereby 'contesting the state's determinations to carry out executions' (Attorney # 3, as quoted in Harrington, 2000, p. 865). They believe that executions are never acceptable, regardless of whether or not the decision is made competently or voluntarily (Harrington, 2000). Therefore, many of these attorneys refuse to withdraw or give up, even when fired, because they view it as 'let[ting] go of the hand of a drowning person' which conflicts with their moral duties (Attorney # 17, as quoted in Harrington, 2000, p. 869).

In a follow-up study, Harrington (2004) examined how this same panel of capital defense attorneys addressed the issue of death row volunteering in the context of euthanasia. Building on Goffman's (1974) early seminal work, Harrington (2004) examined the discourse among defense attorneys over

[2] In Penry v. Lynaugh (1989), the Supreme Court ruled that the execution of a person who was declared mentally retarded was not in violation of the Eighth Amendment. Dieter (1990), however, suggests that this standing could minimize a defendant's ability to make a sound decision about electing execution and thus may require the intervention of the defense attorney. In Ford v. Wainwright (1986), the Supreme Court ruled that insane defendants could not be executed so long as they exhibit continued illness. In Westbrook v. Arizona (1966), the Supreme Court found that defendants who were mentally competent to stand trial might still be incompetent to decide about waivers of constitutional rights.

[3] See Harrington (2000) and (2004) for full methodology and extended discussion of the history of the participants in death row volunteer cases.

[4] Harrington (2000) notes that client-centered attorneys 'tend toward ultimately respecting the client's decision if effective persuasion fails' (p. 865).

[5] Conversely, cause-centered attorneys reject any attempts by their clients to carry out voluntary execution because it supports capital punishment (Harrington, 2000).

[6] In Westbrook v. Arizona (1966), a murder conviction was overturned when the lower court failed to determine that the defendant was competent to act as their own counsel, despite that they had been found competent to stand trial.

two competing frames - vol- unteering[7] and suicide.[8] She examined the attorney's perceptions about clients' competency to volunteer for execution (thus an adaptation on the Rees standard) as well as how the term rationality is defined among the attorneys (Harrington, 2004). As with her 2000 study, Harrington (2004) again found variation among her panel. While there was strong, unanimous support for the process of competency hearings, the attorneys were divided in their perceptions of the reliability and validity of such results (Harrington, 2004). One attorney even pointed out that

> The problem with forensic psychiatry ... is that it's designed for competency and sanity evaluations. ... in a noncapital context. And so it's very much a snapshot of the person's mental condition and not of their mental health history. A lot of the psychiatrists that do competency and sanity evaluations meet with the person for less than an hour. (As quoted in Harrington, 2004, p. 1128, Attorney #6)

With respect to the framing of death row volunteer cases, the attorneys believed most cases were a form of 'depression-based suicide' (Harrington, 2004, p. 1132). However, Harrington (2004) conversely noted that framing elected executions as volunteering, particularly in the media, has helped to perpetuate support for the death penalty and provide capital defendants with a false sense of dignity.

[7] Harrington (2004) suggests that the volunteering frame focuses on the inmate's personal autonomy as reasoning for why the execution should be carried out.

[8] In this context, suicide refers to 'a desire to waive final appeals ... [it] is a troubling reflection of psychological crisis' (Harrington, 2004, p. 1122).

Conclusion

Researchers (Blume, 2005; Bonnie, 2005; Casey, 2002; Chandler, 1998; Dama, 2007; Eisenberg, 2001; Garnett, 2002; Harrington, 2000, 2004; Johnson, 1980; Milner, 1998; Norman, 1998; Oleson, 2006; Rackley, 2005; Smith, 2008; Strafer, 1983; Urofsky, 1984; White, 1987; Williams, 2006) have presented a number of considerations surrounding the death row volunteering debate. However, such considerations of the impact of elected executions must extend beyond the capital defendant, their attorneys, and medical professionals assigned to declare competency to make such a decision. A proportion of these studies (e.g. Blume, 2005; Casey, 2002; Chandler, 1998; Dama, 2007; Johnson, 1980; McClellan, 1994; Milner, 1998; Oleson, 2006; Rackley, 2005; Strafer, 1983; White, 1987; Williams, 2006) look beyond these three players and note the importance of protecting public interests and confidences in the criminal justice system as well as those of private and political organizations. As noted in the beginning of this paper, the death penalty has and continues to be a hot-button issue nationwide. While a 2011 Gallup poll shows support for the death penalty at its lowest level since the 1972 Furman decision, 61% of respondents still showed to be in favor of it (Newport, 2011).

As such, researchers should continue to examine the effects of death penalty cases on the public sector. One important consideration is through the effects of the media. Although two studies (see Harrington, Reece, & Muschert, 2011; Muschert, Harrington, & Reece, 2009) have begun to examine how stories of death penalty cases are framed within the media, this area remains understudied. Future research can further benefit from examining how the intersection of the media and its consumers affects the public opinion of death penalty cases, and in particular, those involving elected executions.

Another area that would benefit from further research pertains to the racial discrepancies among death row volunteers. Harrington (17 July 2012, personal communication) notes that in her interviews with capital defense attorneys, a number of concerns were raised as to why nonwhites rarely contemplate volunteering as seriously as white. This would be especially important giving the proportion of nonwhites on death row. Additionally, it may be interesting to examine why certain states (e.g. Kentucky, Nevada, Utah, and Washington) have a much higher volun- teer-to-execution ratio as compared to other states. Finally, research would benefit from an examination of the instrumentation tools used to determine an inmate's competency to volunteer, an issue that has been nearly as controversial across the legal community as death row volunteering.

Back Matter

Notes on contributors

Jaclyn Schildkraut is a doctoral student in the School of Criminal Justice at Texas State University. Her research interests include homicide trends, elected executions, mediatization effects, school shootings, and crime theories.

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