The Death Penalty in Mississippi: An Analysis of its History, Current Inmates, and Counties

Haley Kuhnert

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THE DEATH PENALTY IN MISSISSIPPI: AN ANALYSIS OF ITS HISTORY, CURRENT INMATES, AND COUNTIES

by
Haley Kuhnert

A thesis submitted to the faculty of The University of Mississippi in partial fulfillment of the requirements of the Sally McDonnell Barksdale Honors College.

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ABSTRACT

HALEY KUHNERT: The Death Penalty in Mississippi: An Analysis of its History, Current Inmates and Counties
(Under the direction of William W. Berry III)

This thesis analyzes uses and prevalence of the death penalty in Mississippi through an analysis of the history, inmates and counties. To gather this information, I looked at the patterns of use throughout the history of Mississippi’s death penalty, the facts of all thirty-nine inmate’s cases, and the demographics of every county that has sentenced someone to death. The main findings are that the death penalty is applied arbitrarily between inmates because even cases with similar underlying felonies have different factual backgrounds that make them more or less heinous. A minority of counties have sentenced people to death. The majority of the counties that have sentenced someone to death have predominantly white populations, which supports the finding that counties with higher nonwhite populations seek the death penalty less often than counties with predominantly white populations. My conclusion is that the state should abolish the death penalty because of its arbitrary application and lack of use.
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Introduction

This honors thesis explores the Mississippi death penalty and examines its current usage and future trajectory. It fills a gap in the literature by closely examining the thirty-nine cases of death row inmates in Mississippi, and assessing the use of the death penalty county-by-county. What is striking about these cases is the sparse number of them as compared to the number of murders in the state, and the absence of a clear pattern of results across the State.

To be sure, the Mississippi death penalty replicates many of the problems present nationally. The death penalty is expensive, and cost is a factor in prosecutorial decisions. Innocent individuals have been exonerated from death row. Race-based jury selection practices have violated the constitutional rights of criminal defendants. Issues in obtaining lethal injection drugs have created additional problems. And the selection of individuals for the death penalty seems arbitrary, random, and inconsistent. Further, if the Mississippi Supreme Court applies the same standard under state constitutional law that the U.S. Supreme Court applies in its cases under the Eighth Amendment, then the Mississippi death penalty is unconstitutional under state law (Berry).

After showing why all of these things are true, the thesis concludes that the State of Mississippi should abolish its death penalty. Even if it does not, however, the current trend in the state, as explained below, is toward the de facto abolition of the death penalty. Counties are rarely sentencing people to death, and the State has not executed anyone in almost a decade.
Chapter 1 of the thesis maps the progression of the death penalty in the United States and Mississippi. In Chapter 2, the thesis explores the use of the death penalty in Mississippi by cataloging the inmates and their characteristics. In Chapter 3, the thesis analyzes the Mississippi death penalty by county. Finally in Chapter 4, the thesis concludes by making the case for abolition, and explaining why de facto abolition is likely, even if de jure abolition does not happen.
Chapter 1: An Overview of The Death Penalty

A. The U.S. Death Penalty

The United States of America has had capital punishment from its creation. The execution methods have included the gas chamber, hanging, firing squad, electric chair, and most recently, lethal injection. Historically, executions were community events in which people gathered in the town square to watch hangings (Denno). Over time, executions became distasteful viewing, and states decided to look for more humane methods (Denno). In the 1890s, states adopted electrocution as a more humane method of execution (Denno). Over time, electrocution became disfavored, as stories of burning flesh made many conclude that electrocution was also inhumane (Denno). This contributed to the overall decline in executions in the United States, and from 1963-1977, there were no executions in the United States (Death Penalty Information Center).

During this period, inmates challenged the constitutionality of the death penalty. First, inmates in California and Ohio challenged the constitutionality of the death penalty under the Fourteenth Amendment in *McGautha v. California* in 1971 (Supreme Court of the United States 1971). The inmates argued that the procedures of capital trials violated their rights. They claimed that the failure to separate the guilt phase of the trial from the sentencing phase of the trial was unconstitutional. They also argued that the absence of guidance for capital juries at sentencing was unconstitutional. Indeed, the judge in capital cases provided no rules about what makes a
case serious enough for a death sentence. The Supreme Court, however, rejected these challenges and upheld the Ohio and California capital schemes.

In 1972, the Court heard a similar challenge to the death penalty in Georgia, but the constitutional challenge was under the Eighth Amendment instead of the Fourteenth Amendment (Supreme Court of the United States 1972). This case, *Furman v. Georgia*, decided that the death penalty was unconstitutional under the Eighth Amendment, which protects citizens against cruel and unusual punishment. Two of the justices in the five justice majority found that the death penalty was immoral, and was therefore a cruel and unusual punishment. Three of the justices, though, found that the death penalty was unconstitutional in the way states were using it.

These justices argued that the death penalty was applied in an arbitrary and random way. There was no pattern in which murderers and rapists got the death penalty, in large part because juries had no guidance at sentencing. Evidence of disproportionality based on race and geography also troubled the justices. Despite a large number of individuals committing the same kinds of crimes, only a handful received death sentences. Justice Potter Stewart likened the distribution of death sentences to being “struck by lightning.”

The decision in *Furman* voided all of the state death penalty statutes and commuted the sentences of over six hundred prisoners on death row. Many believed that this marked the end of the death penalty in the United States (Lain). The states, however, had other ideas. Thirty-eight states passed new statutes after the *Furman* decision and attempted to fix the issues of random and arbitrary imposition described by the Court. For example, some states, like North Carolina and Louisiana, tried to address the issue of unconstitutionality in unguided jury discretion by mandating capital punishment for all of the people convicted of capital crimes. Other states, like Georgia and Mississippi, created a system of aggravating and mitigating circumstances designed
to guide juries at capital sentencing. Texas adopted its own system where it based the sentencing decision on the perceived dangerousness of the murderer.

At the end of the 1975-76 Supreme Court term, the Court decided challenges to several of these new statutes on the same day. The Court held that mandatory death sentences were unconstitutional in *Woodson v. North Carolina* and *Roberts v. Louisiana* because it did not allow for the individual characteristics of the defendant to be considered during sentencing (“Legal Background on Arbitrariness”). The Court upheld the Texas scheme in *Jurek v. Texas*, which was perhaps the most consequential decision. Texas is responsible for almost forty percent of the executions since *Furman* (Death Penalty Information Center).

The Court also upheld the Georgia scheme of aggravating and mitigating circumstances in *Gregg v. Georgia*, which is the scheme most states, including Mississippi ultimately adopted. To address the issues from *Furman*, the state implemented separate hearings on the guilt and penalty phases of the trial, statutory guidelines for the exercise of discretion, and mandatory appellate reviews. The statute addressed the concerns of arbitrariness and discrimination, so the Supreme Court ruled 7-2 that Gregg had properly been sentenced to death. This ruling affirmed Georgia’s death penalty statute. With thirty-eight states passing capital statutes, it seemed that reviving the death penalty was the will of the people. The passage of *Gregg, Jurek,* and *Proffitt* was the beginning of the effort by the Court to civilize and rationalize the death penalty (Garland).

Nevertheless, the issue of arbitrariness has to do with the individual differences in each case. While they are important because no case is 100% the same, they also cause the death penalty to be applied randomly. Individual differences include mitigating factors, aggravating factors, and the race and sex of the defendants and victims. On an even larger scale, differences
also include the region in which a defendant was convicted because the South has carried out 82% of executions since 1976, how wealthy the county bringing the charges is because the more wealthy counties are able to fund long legal proceedings, and access to effective counsel.

Another categorical limitation in regards to the death penalty was in the case of *Coker v Georgia* which banned the death penalty for the rape an adult woman. In a 7-2 decision, the Supreme Court decided that a death sentence for rape was disproportionate under the evolving standards of decency in the United States and therefore unconstitutional under the Eighth Amendment. The ruling in this case largely limited the scope of the death penalty even though the majority of states had already outlawed the death penalty for non-homicide crimes (Supreme Court of the United States 1977). Just one year after the death penalty was reinstated in *Gregg*, a huge limitation was placed on what crimes are eligible. This suggests that there was already a national consensus that rape was not an egregious enough crime to put the offender to death.

Following *Coker* were the cases of *Enmund* and *Tison* which dealt with the culpability of an accomplice in a murder whom did not do the actual killing. In the 1982 case of *Enmund v. Florida*, the petitioner and the codefendant were sentenced with the first-degree murder and robbery of two elderly persons and were sentenced to death. The record showed that the petitioner was in the car during the killings waiting for the codefendant and another to finish so that they could swiftly escape. The Florida Supreme Court upheld this decision stating that the petitioner was an aider and abettor to the crimes and therefore a principal in the crime of first-degree murder in which he was eligible for the death penalty. The Supreme Court of the United States reversed this ruling stating that is was disproportionate under the Eighth Amendment, and there was a national consensus against the sentence of death for a person who was involved in the crime of murder but did not take or intend to take a life. They stated that the
culpability for the petitioner was different from that of the codefendant because he did not take a human life or intend to do so (Supreme Court of the United States 1982). This case brings into focus the intent or the mens rea of an accomplice when they commit a crime and exhibits the Supreme Court trying to civilize the death penalty. This decision suggests that the only people eligible for the death penalty are the ones who physically committed the crime and who had a malicious intent to take a human life.

The next case of Tison v. Arizona changes the meaning and application of the intent of an accomplice in a crime. Whereas before, in Enmund, it mattered whether or not the accomplice intended to take a human life. Tison established that it does not matter if the accomplice intended to take a life but only if they acted with a reckless indifference to human life. In this case, two brothers helped their father and another felon escape from jail. They snuck guns into the prison where he was being held and gave him and another convicted murderer weapons to help them escape. After escaping, the brothers helped their father abduct and rob a family of four. Then, the brothers left to get some water and came back to the family dead at the hands of their father and the other felon who had shot them all. The brothers did nothing to help the family, and they all ran away from the scene. The Arizona Supreme Court held that they could be sentenced to death under Arizona’s felony murder and accomplice liability statutes. In post conviction proceedings, the petitioners demanded reversal under Enmund. The State Supreme Court held that they should be sentenced to death because Enmund required an “intent to kill” and interpreted that phrase to mean it includes situations where the defendant intended, contemplated, or anticipated that lethal force would be used, or that death might result from accomplishing the underlying felony. The Supreme Court of the United States held that while they did not intend to kill the victims, the record could support that they had a culpable mental state of reckless indifference to human life.
They stated that the Eighth Amendment does not consider death disproportionate in a situation where the defendant’s role in a felony that results in murder is major or whose mental state is one of reckless indifference (Supreme Court of the United States 1987). This ruling is important because it allows accomplices, who may not have taken part in the physical murder of a person, to be sentenced to death.

The next categorical limitation was in 2002 with *Atkins v Virginia*. The Supreme Court held that the death penalty for people found to be intellectually disabled was unconstitutional under the Eighth Amendment. This ruling overturned the 1989 decision in *Penry v Lynaugh* that did not find the death penalty unconstiutional for a person deemed intellectually disabled. In the majority opinion written by Justice Stevens, he wrote that at the time when *Penry* was decided, only two states, Georgia and Maryland, had enacted prohibitions against executing someone who is intellectually disabled. Those two states plus the fourteen states that banned the death penalty were not enough to prove a national consensus against the use of death penalty for the intellectually disabled. After the decision in *Penry*, in the 1990s, there was a move across the nation for legislation that banned the use of the death penalty for the intellectually disabled. Because of the amount of states barring these executions and the consistency in the direction of change, the Supreme Court held that the standards of decency had changed since the ruling in *Penry*. There was a question of whether the retribution and deterrence aspects of a death sentence applied to those who are intellectually disabled because it is proven that they have a diminished capacity to process information and learn from experience (Supreme Court of the United States 2002). Once again, the Supreme Court moved to civilize the death penalty. They focused on the culpability of an intellectually disabled person and the opinions of the nation in regards to
executing a mentally disabled person, which was reflected in the state statutes that had been passed.

On March 1, 2005, the Supreme Court decided in *Roper v Simmons* that executing minors (those under the age of eighteen) was unconstitutional. This case reversed the decision in *Stanford v Kentucky* (1989) that did not find the execution of minors, specifically people sixteen years of age and younger, to be unconstitutional. At the time of *Standford*, twenty-two of thirty-seven death penalty states allowed the execution of people sixteen years old, and twenty-seven death penalty states allowed the execution of people seventeen years old. Therefore, there was no national consensus against the use of the death penalty for those between the ages of sixteen to eighteen. Since *Standford*, and at the time of *Roper*, thirty states exempted juveniles from the death penalty including twelve states that banned the death penalty and eighteen states that had a death penalty statutes but did not allow minors to receive a death sentence. The Supreme Court decided that the standards of decency had changed since that case because there was a national consensus (after the case of *Atkins v Virginia*) against the use of the death penalty for minors. Like those who are intellectually disabled, juveniles are considered less culpable (Supreme Court of the United States 2005). In the United States, juveniles under the age of eighteen cannot vote, buy or drink alcohol, nor serve in the U.S. military. They are considered less culpable for their actions and do not have the same decision making capacity as adults.

These reasonings do not even begin to also cover what scientific research has since learned about the development of juvenile’s brains. The frontal lobe controls the executive functions of our brain which includes decision making. The leading cause of death in the United States for people between the ages of fifteen to twenty-four is unintentional injury suggesting that poor decision making is a factor in the deaths of people in this age group (“Leading Causes
of Death”). In the state of Kentucky, in the case Commonwealth v Bredhold, the trial court’s opinion was that scientific research in the last twenty years has shown that people between the ages of eighteen to twenty lack maturity in decision making in the same way that people under the age of eighteen years old do, and that executing them would be in violation of Roper v Simmons. On September 4, 2017, the Fayette Circuit Court of Kentucky heard testimony from Dr. Laurence Steinberg, who is an expert in the development of the adolescent brain, and he testified to the maturational difference between adolescents under the age of twenty-one and adults. From his own research, he stated that adolescents are more likely to misperceive risk, are more impulsive and are less able to regulate their behavior so they become more easily emotionally aroused. Most importantly, he stated that they are more capable of change. He also explained how these differences are exacerbated in the presence of peers and under emotionally stressful situations (Steinberg). He gave the opinion that if Roper were heard again today, the same standards that apply to juveniles under the age of eighteen would apply to people between the ages of eighteen to twenty-one (Fayette Circuit Court, Seventh Division).

The information stated here is important because if the same evidence used to limit the death penalty to people over the age of eighteen were used to limit the death penalty to people over the age of twenty-one, a large group of inmates would be eligible for a lesser sentence. This case also backs up the national downward trend in the use of the death penalty.

On June 25, 2008, the Supreme Court of the United States decided in Kennedy v. Louisiana that the death penalty for raping a child was unconstitutional in violation of the Eighth Amendment. The Louisiana Supreme Court held that even though Coker v. Georgia banned the death penalty for the rape of an adult women, that did not apply to children under the age of twelve because of their level of vulnerability. This court tried to use the same logic that the
Supreme Court employed in Atkins and Roper. They decided that since five states still allowed the death penalty for the rape of a child that it was constitutionally valid. The Supreme Court decided that it was not valid because there was a national consensus against the use of the death penalty for child rape (Supreme Court of the United States 2008). This decision is surprising because as established in Roper, juveniles are less culpable for their actions which suggests that they are more vulnerable than adults. This would also suggest that they will be impacted more by being raped.

The more recent case of Russell Bucklew made it to the Supreme Court in 2019. Bucklew was convicted of murder and sentenced to death in Missouri, and after his conviction, he challenged the states method of lethal injection. Missouri only uses one drug, and that is pentobarbital. Bucklew presented a challenge to the Eighth Amendment stating that he has a rare medical condition in which the drug pentobarbital would cause him severe pain. While the Eighth Amendment protects citizens against cruel and unusual punishment, it does not guarantee a prisoner a painless death. The Eighth Amendment has tolerated many execution methods, such as hanging, that do not guarantee the prisoner will not feel pain. However, it is deemed cruel when the method of execution “superadds” to the terror, pain or disgrace of the death sentence. To establish that the method “superadds” to the terror, pain or disgrace the petitioner must show an alternate and readily-available method to use it its place. While Bucklew did give the alternative of nitrogen hypoxia, he did not prove that it was readily available to be implemented. On top of this, he did not show that nitrogen hypoxia would significantly reduce the risk of pain, therefore, the Supreme Court affirmed the judgement of the court of appeals that he did not fulfill the Baze v. Glossip test and prove that it “superadds” pain and that there is a readily available alternative (Supreme Court of the United States 2019).
This history is important because it demonstrates how much the standards of decency have evolved in this modern nation from the origin of this country. Over the last forty-five years since Gregg, the national consensus is slowly moving towards abolition of the death penalty. As stated above, in the early years of the formation of the United States, one could receive a death sentence for treason, rape, stealing, and other non-homicide crimes. Now, one can only receive a death sentence for capital murder, and this only applies in twenty-seven states at this point in time (including the three states with gubernatorial moratoriums). The Supreme Court has tried their best to rationalize, civilize, and democratize the death penalty, through many categorical limitations seen above, but it is a dying practice. The whole country can see that it is dying because the death penalty is prevalent in mainstream media and mindsets of Americans are transforming to where they want to see reform and less punishment.

This thesis studies Mississippi specifically because since 1976, when the death penalty was reinstated, the South has carried out 83% of the executions. There are many reasons for this overwhelming percentage including that after the Furman case was decided in 1972, the death penalty became an issue of states rights, which is an issue many people, especially Southerners, have been fighting for since the institution of slavery was abolished across the country. Another reason would be the bigger divide in the South between races and classes, specifically between white and black or African American people, and wherever there is a larger gap between these two groups, there is more likely to be more people sentenced to death because they do not identify with each other (Garland). The lack of identification between these two groups stems from the institution of slavery, and the racial tension that stems from that time is still felt by many people across the country to this day.
The following section explores the history of Mississippi’s justice system, as well as the racism embedded in this system from the Jim Crow era to today in 2021. The lack of identification between white and black people plays a role in Mississippi death sentences. As explored in Chapter 3, a person is more likely to be sentenced to death in Mississippi in a county with a predominantly white population. Another reason this thesis explores the death penalty in Mississippi is because of the lack of use as compared to other states in the South suggesting that it is a dying practice and will be abolished in the future.

B. History of the Death Penalty in Mississippi

The history of the death penalty in Mississippi is similar to the death penalty the rest of the country. Mississippi joined the union in 1817 and since then, several different forms of execution have been used. Hanging was the first form of execution used and the state continued to use that until October 1940. Hilton Fortenberry became the first prisoner to be executed in the electric chair in the state. Between 1940 and 1952, Mississippi executed seventy-five prisoners in the electric chair. In 1954, the state installed a gas chamber in the Mississippi State Penitentiary. The first prisoner to be executed by lethal gas was Gerald Gallego. Over the next thirty-four years, thirty-five inmates were executed by lethal gas. The last person executed in the gas chamber was Leo Edwards on June 21, 1989. In July of 1984, Mississippi amended lethal gas as its form of execution, and the new amendment provided that people who committed capital crimes from the date the amendment passed would be executed by lethal injection. Finally, in March of 1998, the state amended the method of execution and removed lethal gas as an alternate form of execution, so lethal injection was the only option. Although this is the official history of the different execution methods used in Mississippi, this does not include the
lynchings of black people by white mobs across the South during the Jim Crow era (“Mississippi”).

Post-World War II, in the 1950s and 1960s, many modern nations were moving towards abolition of the death penalty. At this time, life imprisonment and life without parole (in the states that permitted it) became more routinely used, and homicide was reclassified as capital and noncapital. During the 1960s, leading up to the *Furman* case, the civil rights movement had gained a lot of strength. Considering that the death penalty was (and still is) given disproportionately to black people over white people, it became known as a “legal lynching”. The National Association of the Advancement of Colored People’s Legal Defense Fund (LDF) decided to take up three death penalty cases, including the *Furman* case. Originally, the LDF did not fight the death penalty until it was seen as a civil rights issue. In the 1960s leading up to the *Furman* case there were more people opposed to the death penalty than for it, and from 1963-1976, there were no executions. This decline in enthusiasm among constituents is a great example of how American’s mindsets became more liberal leaning before *Furman*. However, this halt did not last forever (Garland).

The death penalty was struck down in 1972 after the *Furman* case, but because of political unrest during the civil rights movement of the 1970s and the connection between the break down of law and order in the country and the uprising of civil rights activists, the Supreme Court brought back the death penalty when it ruled that Georgia, Texas, and Florida’s death penalty statutes were constitutionally valid (Garland). Following the affirmation of these death penalty statutes, states starting amending their own death penalty statutes to address the issue of arbitrariness. Mississippi addressed the arbitrariness concerns by explicitly listing in the statute what underlying felonies would allow someone to be sentenced to death.
Mississippi defines capital murder as the killing of a human being without the authority of law in the cases of killing a peace officer or fireman while such officer or fireman is on duty and the perpetrator knows they are a peace officer or fireman, murder committed by a person who is under sentence of life imprisonment, murder committed by use or detonation of a bomb or explosive device, murder committed by any person who has been offered or has received anything of value for committing the murder, and in the following cases (when done with or without any intention to cause death, by any person engaged in the commission of or attempting to commit the crime) of rape, burglary, kidnapping, arson, robbery, sexual battery, unnatural intercourse with any child under the age of twelve or nonconsensual unnatural intercourse with mankind, and felonious abuse and/or battery of a child. It also includes murder committed on educational property, and murder committed by the killing of any elected official of a county, municipal, state or federal government with knowledge that the victim was a public official (MS Code § 97-3-19 [2013]).

The most recent update to the death penalty statute is House Bill 638. Before 2017, Mississippi’s method of execution was lethal injection, which consisted of three drugs. State law describes its chosen form of the death penalty this way, “The manner of inflicting the punishment of death shall be by continuous intravenous administration of a lethal quantity of an ultra short-acting barbiturate or other similar drug in combination with a chemical paralytic agent until death is pronounced” (Dreher and Khayyam).

The state had struggled to comply with this law because it was unable to attain the drugs listed in the statute. The state has struggled to find an “ultra short-acting barbiturate” or a similar drug to use in its place. It proposed using Midazolam in its place, a benzodiazepine, which has raised many legal challenges. Attorneys challenging the death penalty argue that it is not a
substitute for a pentobarbiturate, which is a sedative, and that it is in a completely different drug class than the state statute requires for the first drug of the three in the series for lethal injection. House Bill 638, however, proposed changing the wording of the statute to state that any appropriate sedative or anesthetic may be used in the first step of the three drugs (Mississippi). The bill passed on April 5, 2017. With its passage, the appeals in Mississippi regarding the use of lethal injection as cruel will no longer be valid, and therefore, the death penalty in Mississippi will persist until a new challenge to the statute or method of execution is presented.

C. Discrimination in Mississippi Capital Punishment

As stated above, the racial tension across the country that stems from the institution of slavery is still felt to this day, especially in Southern states, such as Mississippi. Throughout the Jim Crow era, there were many black people lynched to death by white mobs, all of whom would be found not guilty during their trials by an all white jury. One specific and disheartening example of this situation is the murder of Emmett Till. In August of 1955, Till was murdered by two white men while he was visiting some of his family members in Money, Mississippi. On August 24, 1955, Till was standing outside a country store bragging to some of his friends that his girlfriend back home was white. His friends dared him to walk into the country store and flirt with the woman working behind the desk. There were no witnesses in the store, but Carolyn Bryant stated that he grabbed her, made advances toward her, and whistled at her as he was walking out of the store. When Carolyn’s husband returned from his work trip a few days later, she told him this story about Till. Carolyn’s husband (who will be referred to as Bryant) and his half-brother went to the home of Till’s great-uncle, Mose Wright, and requested to speak with Till. Wright pleaded with the men, but they ended up forcing Till into their car. They drove him to the Tallahatchie River where they proceeded to force him to carry a seventy-five pound cotton
gin down to the river, beat him nearly to death, gouge out his eyes, and shoot him before tying his body to the cotton gin and throwing him in the river. Both Bryant and his brother were handed down a sentence of not guilty during their trials because the jury said the state failed to prove the identity of Till’s body (“Emmett Till is Murdered”).

While the story of Till is just one example of the many lynchings that happened in Mississippi during the Jim Crow era, it makes sense why the modern death penalty is considered a legal lynching. Since 1973, 185 people have been exonerated from death row, five of which are from Mississippi. The reasons for exoneration include false confessions (usually made after being intimidated during interrogation), official misconduct, inadequate legal defense, insufficient evidence, and false or misleading forensic evidence (“Innocence Database”). These are issues that two of Mississippi’s recently exonerated members of death row have faced. In the following cases of Howard and Flowers, two black men, they were both convicted of the murders of white victims in small towns in Mississippi by predominantly white juries. The whitewashing of juries, as seen in the following cases, presents the issue of the Mississippi justice system miscarrying justice.

One recently exonerated inmate from Mississippi’s death row is Curtis Flowers. In 1996, he was accused of killing four people, three of whom were white, at the Tardy Furniture Store in Winona, Mississippi. Over the course of the next twenty-four years, in four of Flowers’s six trials, the jury sentenced him to death, and each death sentence was overturned by a higher court. In the initial three trials, he was convicted each time, but the Mississippi Supreme Court overturned each conviction due to prosecutorial misconduct in the first trial, and using peremptory strikes of black jurors in a racially motivated way in the second and third trials. Each party (defense and prosecution) typically has a specified number of jurors they can strike without
giving a reason, which are peremptory strikes. These strikes are problematic in cases such as Flowers’s because it is hard to prove that the strikes were used in a racially motivated way, and this information is important considering that Flowers is an African-American. The fourth and fifth trials ended in mistrials due to hung juries. In the sixth trial, he was convicted again and Flowers’ attorney found that the state used peremptory strikes in a discriminatory way in violation of *Batson v Kentucky*. The Mississippi Supreme Court upheld the conviction, but the United States Supreme Court granted Flowers *certiorari* on the *Batson* question and reversed the conviction. The opinion from the United States Supreme Court stated that in all the six trials combined the state employed its peremptory challenges to strike forty-one of the forty-two black prospective jurors that it could have struck. Also, in the most recent trial, the State exercised peremptory strikes against five of the six black prospective jurors. Then, at the sixth and last trial, the State engaged in dramatically disparate questioning of black versus white prospective jurors, in an obvious effort to find pretextual reasons to strike black prospective jurors. Lastly, the State then struck at least one black prospective juror, Carolyn Wright, who was similarly situated (meaning she answered the prospective juror questionnaire similarly) to white prospective jurors who were not struck by the State (Supreme Court of Mississippi 2019).

By acknowledging the fact that in all of Flowers’s trials the state used peremptory challenges to strike all but one prospective black juror, the Supreme Court acknowledged the presence of racism in these trials. What is also so troubling about this case is that Winona is a small town made up of around 5,000 people, but 53% of the population is black. Winona is in Montgomery County, Mississippi, and black or African American people make up 44.8% of the population in the county. This case is eerily similar to the case of Emmett Till because Flowers is a black man from a small town in Mississippi accused of killing three white people and one
black person. He was put on trial in front of a predominantly white jury. Doug Evans, a white
man, was the prosecutor in all six of Flower’s trials. It is clear that he intentionally used his
peremptory challenges to strike black jurors in a prejudicial manner, so the white jurors would
have the final say in Flowers's fate. This case has gained a lot of attention from the public
because of the outward racially motivated tactics employed by District Attorney Evans. There is
currently a petition on change.org to have Evans disbarred with over 3,000 signatures. Evans
recused his office of the case in January of 2020, and the Mississippi Attorney General’s office
was appointed by the Mississippi Supreme Court to take over the case. After reviewing the case,
Attorney General Lynn Fitch asked the court to dismiss the charges against Flowers on
September 4, 2020 (“After 23 years”). To day this, Evans is still in good standing with the
Mississippi Bar Association.

Another recently exonerated member of Mississippi’s death row, as of December 2020, is
Eddie Lee Howard who spent twenty-six years in prison awaiting his execution. He was
sentenced to death in 1994 in Lowndes County for the rape and murder of an 82-year-old white
woman named Georgia Kemp. The autopsy showed she had died from two stab wounds, but no
visible bite marks were found. Forensic odontologist Dr. Michael West claimed to have found
bite mark evidence on her body under ultraviolet light which matched Howard’s dental
impressions. A jury sentenced him to death in 1994, but the Mississippi Supreme Court
overturned the ruling because of issues with the trial court's handling of pro se representation. In
other words, he had inadequate representation and ended up representing himself at trial. The
retrial took place in 2000, and again the state used bite mark evidence to convict him and
sentence him to death. Dr. West was a part of the American Board of Forensic Odontology
(ABFO), which once supported the use of bite mark analysis. The state has banned the type of
bite mark testimony that Dr. West gave at Howard’s trial and suspended him from the board because of his misuse of bite mark evidence. During Howard’s post-conviction evidentiary hearing in 2016, his attorney provided DNA evidence, none of which connected Howard to the crime. There were no semen samples on the victim’s clothing connected to Howard, and the DNA found on the gun that was found on the scene did not match his DNA either. Nonetheless, the trial court upheld his conviction and the Mississippi Supreme Court reversed it stating that the bite mark identification that was used in Howard’s trial would be prohibited under revised ABFO guidelines. The Mississippi Innocence Project stated that the Mississippi Supreme Court’s decision made Howard the 34th person to be wrongfully convicted by the use of bite mark evidence and testimony (“Convicted by False Forensic Evidence”).

This is yet another example of the prevalence of racial bias in Mississippi’s justice system. The Lowndes County police did not have any reasonable suspicion that Howard was a suspect or any witnesses to the crime. Howard even had an alibi and several alibi witnesses that he was at his sister’s house during the murder. After the rape and murder of Kemp, her house was burnt to the ground by the perpetrator. At Howard’s trial, the State used “expert” arson testimony to narrow the timeframe in which the crimes could have occurred, therefore undermining Howard’s alibi. The records and trial testimony have since been analyzed by one of the country’s top arson investigators who said that the burn time used to convict Howard had no basis in known research or data (“Eddie Lee Howard”). The prosecution developed a story from that beginning that a ruthless black man had murder and innocent, elderly white woman, and they stuck with that for twenty-six years. This also has the same underlying racial bias as in the case of Till. Black people in the southern part of the United States are more vulnerable, and the prosecution in this case took advantage of it.
A study titled “Race and Wrongful Convictions in the United States” by Gross, et al. examined the disparity of race exonerations in three different types of crime: murder, sexual assault, and drug crimes. They found that half of defendants convicted of murder and exonerated are African American even though they only make up 13% of the population. The study found that misconduct and delay were two of the greatest factors in explaining the larger number of murder exonerations for African Americans. Misconduct is found more often in the cases of exoneration of black defendants than of white defendants, and exonerations of black defendants takes longer than the exoneration of white defendants. Misconduct includes the concealment of exculpatory evidence (evidence that would help prove a defendant’s innocence), witness tampering (including threatening witnesses and asking them to lie), and perjury by an official. They also found that for black defendants, exonerations take on average 14.2 years, but for white defendants, exonerations take on average 11.2 years (Gross). Both misconduct and delays were seen in the cases of Howard and Flowers. The death penalty is the most irreversible form of punishment, and with the amount of human error still prevalent in the justice system, it is hard to justify the continued use of it.

After reading the stories of Curtis Flowers and Eddie Lee Howard and how they were almost executed even though there was evidence demonstrating their innocence, it is extremely probable that there have been many innocent people executed in the past. In Justice Breyer’s dissent in *Glossip*, he discussed the unreliability in application of the death penalty. He noted that in the 2002 case of *Atkins*, the Supreme Court used the word “disturbing” to describe the amount of people that had been sentenced to death and then later exonerated (Breyers). The cases of Flowers and Howard are also disturbing.
A study by James Liebman et al. titled, “A Broken System: Error Rates in Capital Cases, 1973-1995” examined the exonerations over this twenty-three year period and the reason for the exonerations. They state, “Capital sentences do spend a long time under judicial review. As this study documents, however, judicial review takes so long precisely because American capital sentences are so persistently and systematically fraught with error that seriously undermines their reliability” (Liebman). In this study, they found serious, reversible error in 68% of the cases. The reasons for these errors are incompetent assistance of counsel and the suppression of evidence by police and prosecutors. Errors such as these led to 82% of the capital cases they studied being overturned in post-conviction proceedings, and they found that the 82% of cases deserved less than a death sentence (Liebman). Once again, as this study proves, it is disturbing how many people are sentenced to death and later exonerated, especially considering that half of the exonerees are African American as found in the study by Gross.

While Howard and Flowers were finally exonerated, others on death row in Mississippi did not have the same luck. Mississippi has executed twenty-one people, and with consideration to the years in which these people were executed, there is no real pattern. Between 1990 and 2001 there were no executions in Mississippi. Slowly, throughout the 2000’s the number of executions each year started to rise. There were two executions in 2002, one execution in 2005 and then another in 2006. After 2008 the amount of executions started creeping up again, and there were two executions that year. There were another three executions in 2010. There were two in 2011, and then 2012 six people were executed. It is peculiar that Mississippi went from six executions in one year to none over the last nine years.

The first person to be executed in 2012 was Edwin Turner, a white man, for the murder of two black males. The second was Larry Pucket, a white man, for the murder of a white female.
The third was William Mitchell, a black man, for the murder of a white woman. The fourth was Henry Jackson, a black man, for the murder of two black men and two black women. The fifth was Jan Brawner, a white man, for the murder of three white females and one white male. The sixth, and last prisoner executed in Mississippi was Gary Simmons, a white man, for the murder of a white man (“Executions Database”). What is important to note here is that four out of the six people that were executed had white victims. The Baldus study that examined racial discrimination in Georgia’s use of the death penalty proved that defendants with white victims were 4.3 times more likely to receive a death sentence than defendants with black victims, which also means they are more likely to be executed (Baldus). This finding is consistent with the six people executed in 2012.

What is important to note is that 2012 was an election year. In the journal titled “Lethal Elections: Gubernatorial Politics and the Timing of Executions”, Jeffrey Kubik and John Moran discuss the impact an election year has on the amount of executions a state carries out. They examined the years 1977-2000 and through their research, they found that the occurrence of a gubernatorial election increases the probability of a state execution by 25%. They also found that during election years, an African American defendant is more likely to be executed than a white defendant. This finding is not consistent with the executions in Mississippi in 2012, but they also examined the likelihood of an execution in a state in the South versus the rest of the country during an election year. In the fifteen southern states, over half were more likely to have an execution in an election year than in a non-election year with the biggest differences being in Louisiana, Mississippi, Delaware, and Maryland (Kubik).

On top of being discriminatory against African Americans, the death penalty in Mississippi is used as a tool during elections. Mississippi is a majority Republican state, and the
Republican party’s platform on the death penalty, as of the 2020 election, condemns the Supreme Court of the United States for trying to take away people’s right to enact the death penalty because the party is firm on law and order (“Political Party Platforms”). In capital cases, the district attorney brings the charges against the defendant, and this position is an elected position. In this state, that means that the district attorney needs to please their constituents by carrying out executions, which is exactly what happened in 2012. This fact also helps make sense of the seemingly endless trials that Flowers and Howard endured. In Flowers’ case, District Attorney Evans relentlessly pursued the case for twenty years, but the term for a district attorney is four years, which means he was reelected multiple times.

To reinforce the idea that the death penalty is an election tool, here is the prosecutorial history of Richard Jordan’s case, the oldest member of Mississippi’s death row. Jordan was convicted and sentenced to death for the first time in 1976. Then, the law pertaining to death penalty proceedings changed (in response to Gregg), and Jordan's conviction and sentence were vacated until 1977 in which Jordan was retried in a bifurcated trial and was once again convicted and sentenced to death. Later the Fifth Circuit U.S. Court of Appeals vacated his death sentence due to unconstitutional penalty-phase instructions. The Fifth Circuit remanded the case for a new sentencing trial, and in 1983, Jordan was again sentenced to death. Once again his death sentence was vacated and he then entered into an agreement with the State whereby he accepted a sentence of life imprisonment without parole in exchange for not contesting his sentence again. In 1994, the Supreme Court of Mississippi invalidated that agreement under then Miss.Code Ann. § 97-3-21 (1987) in which life without parole was not a sentencing option at the time he committed the murder. The Supreme Court of Mississippi agreed that the only options were death and life with parole, so Jordan’s case was reversed and remanded for another sentencing
hearing. Jordan sought life with parole in his next sentencing hearing, but considering he invalidated his agreement with the prosecution, the prosecutor granted him no more plea agreements for life with parole. The prosecution sought death once again, and on April 24, 1998, Jordan was again sentenced to death. The Supreme Court of Mississippi affirmed that sentence in 2001 (Supreme Court of Mississippi 2005).

In his post-conviction appeal in 2014, the two of the three judges of the Fifth U.S. Circuit Court of Appeals rejected his argument of prosecutorial vindictiveness and ineffective assistance of counsel. The third judge, James L. Dennis, said Jordan should get to appeal prosecutorial vindictiveness. Dennis stated that the prosecutor made a risky decision asking Jordan to accept a life without parole sentence without challenge. When Jordan did make a challenge, the prosecutor no longer felt that any type of life sentence was enough and decided to seek death (“Mississippi’s Oldest Death Row Inmate”).

The prosecutor, Joe Sam Owens, served as the Assistant District Attorney under the District Attorney Albert Necaise, and after leaving the district attorney’s office, he was appointed special prosecutor to prosecute Jordan’s case. He prosecuted the case from the original hearing in 1976 until at least 2001. In an interview with a local new station in Gulfport in December of 2000, he stated that even though it had been twenty-four years since he began prosecuting the case, he wanted to see it properly finished (“Prosecutor Recalls 24-Year Old Murder”). To this day, Jordan is still on death row, which undermines the penological purposes of the death penalty and demonstrates how the death penalty in Mississippi is merely symbolic to prove that the states wants law and order.

The following chapter will examine the individual members on death row in Mississippi. Looking at the demographics of the members and the cases gives more in depth insight on what
it means to be sentenced to death in Mississippi. While the state spells out the underlying felonies that will lead a person to be sentenced to death, there is much variation in these individual cases and even in the underlying felonies suggesting that death sentences are at times applied arbitrarily.
Chapter 2: The Inmates

A. Demographics of the inmates

There are currently thirty-nine people on death row in Mississippi. Out of the thirty-nine people, only one is a woman and the rest are men. 53.8% of them are black or African American and 43.6% are white. This is an interesting statistic considering the demographics of Mississippi are 59.1% white and 37.8% black or African American. The average age of these inmates when they committed the crime that landed them on death row is twenty-six years old, and the average amount of time they have been on death row is just over nineteen years. Richard Jordan has been on death row since he was first convicted in 1976 as seen above. The inmate sentenced most recently to death row is Tony Terrell Clark who was sentenced to death in Madison County in 2018.

Only nine of the thirty-nine inmates have been sentenced to death in the last ten years. Thirty-three out of eighty-two counties in Mississippi are responsible for every person sentenced to death row since 1976. What these numbers show is a decline in the death penalty in Mississippi, and suggests that the state has never fully embraced the death penalty, at least in a practical way.

The evolving standards of decency doctrine of the Supreme Court suggests that over time, attitudes toward punishment will change and move in a more civilized direction. Methods of execution have followed this pattern, moving from hanging to electrocution to lethal injection (Denno). The types of cases eligible for the death penalty have moved in a similar direction as
discussed in Chapter 1. Part of the justification for narrowing the death penalty under the Eighth Amendment relates to the number of states that have abolished a particular practice. If most states have banned the juvenile death penalty, then it becomes unconstitutional under the evolving standards of decency.

This same reasoning could be applied to Mississippi in assessing its death penalty under the state constitution. The state constitution prohibits cruel or unusual punishments similar to the Eighth Amendment. If only one third of the counties has used the death penalty, the evolving standards under the state constitution could bar the death penalty. The state supreme court has not ever assessed this reasoning, but it is interesting that the prevailing standard in most counties is not to use the death penalty.

This is becoming true throughout the state. With only nine new death sentences in the past decade, almost all of the counties are choosing not to use the death penalty. Again, the standards of decency seem to have evolved toward de facto abolition. Finally, the state has not executed anyone since 2012, almost ten years ago. This is further evidence that Mississippi is abandoning the death penalty.

In light of this current status quo, it is instructive to explore who has received the death penalty and for what crimes. The following section lists each inmate and the manner in which they killed their victim(s), as well as the demographics of their victim(s).

B. Mississippi Capital Crimes

There is a wide variety of types of killings among these inmates. Below, Table 1 lists each inmate and how they killed their victim(s).

<table>
<thead>
<tr>
<th>Inmate:</th>
<th>Type of killing:</th>
</tr>
</thead>
</table>

28
<table>
<thead>
<tr>
<th>Name</th>
<th>Action/Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ambrose, Addur Rahim</td>
<td>Beat victim to unconsciousness and stabbed them</td>
</tr>
<tr>
<td>Batiste, Bobby</td>
<td>Beat victim</td>
</tr>
<tr>
<td>Bennett, David</td>
<td>Abused child which lead to the child being in a coma from which they never woke</td>
</tr>
<tr>
<td>Billiot, James</td>
<td>Bludgeoned three people</td>
</tr>
<tr>
<td>Blakeney, Justin</td>
<td>Negligence of child; ignored life threatening injuries</td>
</tr>
<tr>
<td>Brown, Joseph Patri</td>
<td>Shot victim</td>
</tr>
<tr>
<td>Brown, Xavier</td>
<td>Shot victim</td>
</tr>
<tr>
<td>Carr, Anthony</td>
<td>Shot victims</td>
</tr>
<tr>
<td>Carrothers, Caleb</td>
<td>Shot victims</td>
</tr>
<tr>
<td>Chamberlain, Lisa Jo</td>
<td>One victim killed from blunt force trauma to head and the other blunt force trauma to head and asphyxiation</td>
</tr>
<tr>
<td>Chase, Ricky</td>
<td>Shot victim</td>
</tr>
<tr>
<td>Clark, Tony Terrell</td>
<td>Shot victim</td>
</tr>
<tr>
<td>Cox, David</td>
<td>Shot victim; victim left to slowly bleed out</td>
</tr>
<tr>
<td>Crawford, Charles Ray</td>
<td>Raped and stabbed victim</td>
</tr>
<tr>
<td>Dickerson, David</td>
<td>Shot victim</td>
</tr>
<tr>
<td>Evans, Timothy Nelson</td>
<td>Strangled victim</td>
</tr>
<tr>
<td>Galloway, Leslie</td>
<td>Raped and ran over victim with a car</td>
</tr>
<tr>
<td>Grayson, Blayde</td>
<td>Stabbed victim</td>
</tr>
<tr>
<td>Howell, Marlon</td>
<td>Shot victim</td>
</tr>
<tr>
<td>Hutto, James Cobb</td>
<td>Victim died from severe injuries to head and neck</td>
</tr>
<tr>
<td>Jordan, Kelvin</td>
<td>Shot victims</td>
</tr>
<tr>
<td>Jordan, Richard</td>
<td>Held victim for ransom and then shot them</td>
</tr>
<tr>
<td>Name</td>
<td>Description</td>
</tr>
<tr>
<td>---------------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>Keller, Jason Lee</td>
<td>Shot victim</td>
</tr>
<tr>
<td>Knox, Steven</td>
<td>Strangled victim</td>
</tr>
<tr>
<td>Le, Thong</td>
<td>Beat and strangled victims</td>
</tr>
<tr>
<td>Loden, Thomas</td>
<td>Raped, suffocated, and strangled victim</td>
</tr>
<tr>
<td>Manning, William</td>
<td>Shot victims</td>
</tr>
<tr>
<td>Moffett, Eric</td>
<td>Sexually abused and battered victim</td>
</tr>
<tr>
<td>Pitchford, Terry</td>
<td>Shot victim; he was the accomplice</td>
</tr>
<tr>
<td>Powers, Stephen</td>
<td>Attempted rape and shot victim</td>
</tr>
<tr>
<td>Ronk, Timothy</td>
<td>Stabbed victim and left them to die in their burning house</td>
</tr>
<tr>
<td>Scott, Kevin</td>
<td>Shot victim</td>
</tr>
<tr>
<td>Simon, Robert</td>
<td>Shot victims</td>
</tr>
<tr>
<td>Smith, Clyde</td>
<td>Shot victim</td>
</tr>
<tr>
<td>Thorson, Roger</td>
<td>Raped and shot victim</td>
</tr>
<tr>
<td>Underwood, Justin</td>
<td>Shot victim</td>
</tr>
<tr>
<td>Walker, Allen Dale</td>
<td>Raped, strangled and drowned victim</td>
</tr>
<tr>
<td>Walker, Derrick Demond</td>
<td>Stabbed victim</td>
</tr>
<tr>
<td>Wilbanks, Steven</td>
<td>Shot victim</td>
</tr>
</tbody>
</table>

As is evident from the chart about the majority of cases were cases in which the victim was shot to death. Twenty-one out of thirty-nine, or 53.8%, involve the shooting of the victim(s). Five, or 12.8%, involve beating the victim(s). Five, or 12.8% involve strangulation of the victim(s). Four, or 10.3%, involve the stabbing of the victim(s).

Another part of the crimes to look at is the demographics of the victims. Table 2 will look at the number and sex of the victims, as well as the age group in which the victim falls (in parenthesis). For the purpose of the chart, infant means the victim was under the age of two,
*minor* means that the victim was under the age of 18, *adult* means any victim between the ages of 18 and 64 or if it does not specify whether they are older or younger than 65 years of age, and *elderly* means the victim was over the age of 65.

<table>
<thead>
<tr>
<th>Inmate:</th>
<th>Number and Sex of Victims (Age group)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ambrose, Addur Rahim</td>
<td>1 male (adult)</td>
</tr>
<tr>
<td>Batiste, Bobby</td>
<td>1 male (adult)</td>
</tr>
<tr>
<td>Bennett, David</td>
<td>1 male (infant)</td>
</tr>
<tr>
<td>Billiot, James</td>
<td>1 male (adult)</td>
</tr>
<tr>
<td></td>
<td>2 females (adult and minor)</td>
</tr>
<tr>
<td>Blakeney, Justin</td>
<td>1 female (minor)</td>
</tr>
<tr>
<td>Brown, Joseph Patri</td>
<td>1 female (adult)</td>
</tr>
<tr>
<td>Brown, Xavier</td>
<td>1 female (adult)</td>
</tr>
<tr>
<td>Carr, Anthony</td>
<td>2 males (adult and minor)</td>
</tr>
<tr>
<td></td>
<td>2 females (adult and minor)</td>
</tr>
<tr>
<td>Carrothers, Caleb</td>
<td>2 males (adults)</td>
</tr>
<tr>
<td>Chamberlain, Lisa Jo</td>
<td>1 male (adult)</td>
</tr>
<tr>
<td></td>
<td>1 female (adult)</td>
</tr>
<tr>
<td>Chase, Ricky</td>
<td>1 male (elderly)</td>
</tr>
<tr>
<td>Clark, Tony Terrell</td>
<td>1 male (minor)</td>
</tr>
<tr>
<td>Cox, David</td>
<td>1 female (adult)</td>
</tr>
<tr>
<td>Crawford, Charles Ray</td>
<td>1 female (adult)</td>
</tr>
<tr>
<td>Dickerson, David</td>
<td>1 female (adult)</td>
</tr>
<tr>
<td>Evans, Timothy Nelson</td>
<td>1 female (elderly)</td>
</tr>
<tr>
<td>Galloway, Leslie</td>
<td>1 female (minor)</td>
</tr>
<tr>
<td>Grayson, Blayde</td>
<td>1 female (elderly)</td>
</tr>
<tr>
<td>Howell, Marlon</td>
<td>1 male (adult)</td>
</tr>
<tr>
<td>Name</td>
<td>Description</td>
</tr>
<tr>
<td>-------------------------</td>
<td>---------------------------------</td>
</tr>
<tr>
<td>Hutto, James Cobb</td>
<td>1 female (elderly)</td>
</tr>
<tr>
<td>Jordan, Kelvin</td>
<td>2 males (adult and minor)</td>
</tr>
<tr>
<td>Jordan, Richard</td>
<td>1 female (adult)</td>
</tr>
<tr>
<td>Keller, Jason Lee</td>
<td>1 female (adult)</td>
</tr>
<tr>
<td>Knox, Steven</td>
<td>1 female (elderly)</td>
</tr>
<tr>
<td>Le, Thong</td>
<td>3 females (1 adult, 2 minors)</td>
</tr>
<tr>
<td>Loden, Thomas</td>
<td>1 female (minor)</td>
</tr>
<tr>
<td>Manning, William</td>
<td>1 male (adult)</td>
</tr>
<tr>
<td></td>
<td>1 female (adult)</td>
</tr>
<tr>
<td>Moffett, Eric</td>
<td>1 female (minor)</td>
</tr>
<tr>
<td>Pitchford, Terry</td>
<td>1 male (adult)</td>
</tr>
<tr>
<td>Powers, Stephen</td>
<td>1 female (adult)</td>
</tr>
<tr>
<td>Ronk, Timothy</td>
<td>1 female (adult)</td>
</tr>
<tr>
<td>Scott, Kevin</td>
<td>1 male (elderly)</td>
</tr>
<tr>
<td>Simon, Robert</td>
<td>2 males (adult and minor)</td>
</tr>
<tr>
<td></td>
<td>2 females (adult and minor)</td>
</tr>
<tr>
<td>Smith, Clyde</td>
<td>1 male (adult)</td>
</tr>
<tr>
<td>Thorson, Roger</td>
<td>1 female (adult)</td>
</tr>
<tr>
<td>Underwood, Justin</td>
<td>1 female (adult)</td>
</tr>
<tr>
<td>Walker, Allen Dale</td>
<td>1 female (adult)</td>
</tr>
<tr>
<td>Walker, Derrick Demond</td>
<td>1 male (adult)</td>
</tr>
<tr>
<td>Wilbanks, Stephen</td>
<td>1 male (adult)</td>
</tr>
</tbody>
</table>

Twenty-six of the thirty-nine crimes, or 67%, were committed against women, and twenty-five, or 64%, of those cases were committed by men against women. Eighteen, or 46%, of the crimes were committed against men. Sixteen of those seventeen crimes, or 41%, were
committed by men against other men. It is clear that there is a disparity here in terms of the gender of the victims considering 67% of these crimes involve women as the victim whereas only 46% involve the killing of men. The United Nation Office on Drugs and Crime report that in the United States men make up 78% of murder victims. This suggests that you are more likely to receive the death penalty in Mississippi when your victim is a woman than if your victim is a man. This outcome is consistent with the stereotype that the United States remains a patriarchal society in which women are seen as more innocent and vulnerable than men. As a result, juries could take more pity on the victim when it is a woman and see the crime as more heinous. In turn, they are more likely to sentence the defendant to death in these cases.

The following section will discuss the facts of individual cases of members of Mississippi’s death row.

C. Sample of Cases

The most common aggravating factor among the thirty-nine death row inmates is robbery with twenty-one of the thirty-eight including robbery as the underlying felony that moved their sentences from life imprisonment to death. To look more closely at the cases and their various aggravating factors, two cases of Mississippi death row inmates for each aggravating factor will be described below. Even the most objective reader will see how two cases with similar underlying felonies are different. This sample of cases gives insight into what it looks like to be charged of capital murder in Mississippi. Like Justice Stephen Breyer stated in his dissent in Glossip, there are three constitutional defects in the way the death penalty is applied today. He stated that it is unreliable, arbitrary in its application, and the extremely long delays undermine the penological purpose. In the following cases, while having similar underlying felonies, the
facts are very different, and therefore prove that the death penalty is not always given to the worst-of-the-worst criminals in Mississippi. These cases prove Justice Breyer’s three points and also undermine the Mississippi state Constitution that bars cruel and unusual punishment similar to the United States Constitution.

Starting with robbery, James Billiot bludgeoned to death his mother, stepfather, and stepsister on December 2, 1982 in Harrison County and received a death sentence. The jury unanimously found the aggravating factor of robbery and that the murder was committed in an especially heinous, cruel and atrocious manner. It was assumed that Billiot was in the process of robbing his stepfather before he murdered his family because his stepfather’s wallet was lying next to his body and $60 had been stolen out of his wallet (United States Court of Appeals 1998). In the case of Billiot, robbery entails stealing $60 which is very different from the following cases in monetary value. Mississippi’s felony robbery statute states the crime of robbery is when the offender feloniously takes the property of another while using violence or threatening the victim(s) with a weapon (MS Code § 97-3-79 [2013]). While this did happen in Billiot’s case and in the following cases, the level of heinousness between stealing $60 and stealing multiple, pricey items is different.

Two cases that coincide and fall under the aggravating factor of robbery are the cases of Anthony Carr and Robert Simmons Jr. They were convicted of four counts of murder and sentenced to death. The aggravating factors in this case were robbery, burglary, arson, and intercourse with someone under the age of 12 years old. The facts of the case are as follows: On February 2, 1990, Carl Parker, his wife, Bobbie Jo, and their two children, Gregory (12 years old) and Charlotte (nine years old) were seen leaving the Riverside Baptist Church in Clarksdale around 9:00 p.m. that night. At around 11:00 p.m., Billy King was driving past their house and
saw that it was on fire, so he drove to their neighbors house to call the police. Fireman Jerry Wages was the first to arrive at the scene. He entered the house and recovered the body of Carl Parker and subsequently recovered the bodies of Gregory and Charlotte. He noted that Carl and Gregory were bound at their feet and ankles and their wrists tied behind their backs. There were remnants of bindings on Charlotte’s wrists as well, and she was undressed from the waist down under the dress she was wearing. Bobbie Jo’s body was recovered last and burnt beyond recognition. Quitman County Sheriff Jack Harrison arrived at the scene and notified authorities that Carl’s red Silverado pickup truck was missing. The truck was later found near the home of Robert Simon’s mother-in-law. There was a shotgun found in the Parker’s truck that belonged to the Parkers and a fingerprint found on it belonging to Carr. Pathologist Dr. Steven Haynes, testified to the cause of death of each of the Parkers. Carl, Gregory, and Bobbie Jo died of gunshot wounds. Charlotte was shot three times and died of smoke inhalation. There was evidence of sexual battery to Charlotte (Supreme Court of Mississippi 2017).

First, to analyze the cases with the underlying felony and aggravating factor of robbery, the cases listed above of Billiot and Carr and Simmons have very different scenarios involving robbery. In the case of Billiot, the only item he stole was $60 from his father’s wallet, and this act counts as robbery under the Mississippi statute, which made him eligible for a death sentence. On the other hand, Carr and Simmons stole multiple items from the Parker family’s home including appliances, jewelry, weapons, and their truck. It is clear that the robberies are very different because of the monetary value of items stolen in each situation, but under the statute, they are both felony robberies. If the underlying felonies are what causes these offenders to be given the death penalty, then it is clear it was applied arbitrarily. These cases also prove Justice Breyer’s point that the long delays undermine the penological purposes. Billiot has been
on death row for almost forty years, and Carr and Simons have been on death row for just over thirty years. There is no deterrent or retributive purpose in these cases, and at this point they are merely symbolic. The state continues to pursue these cases to make the point that it is hard on crime, but it is not. If it were, these three men would have already been exonerated or executed.

The second most common aggravating factor is rape with nine of the thirty-nine inmates having committed this crime in the course of murdering the victim. For the purpose of this paragraph, the aggravating factors of rape and unnatural intercourse with a person under the age of 12 are combined even though they are stated as two separate felonies in the Mississippi felony murder statute. One case involving rape is the case of David Cox. In August of 2009, Cox was sent to jail for nine months on charges from the statutory rape, sexual battery, and child abuse of his step daughter, as well as, for charges of possession of precursors and possesson of methamphetamine. While he was in jail, he would talk to his cellmates about how much he hated his wife Kim, who he had separated from prior to being put in prison, and he would tell his cellmates that he was going to kill her when he was out of prison. Kim feared for her life and moved herself and their three kids into her stepsister’s house. When Cox was released from the Pontotoc County jail in April of 2010, he started working as a commercial truck driver. In May of 2010, he decided to buy a .40 caliber gun and look for Kim and their children. He found the home of Kim’s stepsister and shot his way into it. Her stepsister and one of their children escaped to call for help, but Kim and two of their kids remained hostage to Cox for eight hours. During those eight hours, Cox shot Kim twice, once in the arm and once in the abdomen, and insisted on watching her die a slow painful death. He also sexually assaulted his stepdaughter three times after shooting Kim, forcing her to watch. Police officers and hostage negotiators tried to convince Cox to release Kim for medical treatment, but he said he wanted to watch her die.
There were many times he threatened to shoot his step daughter in the head if anyone entered the home and tried to save them. At 3:23 a.m. on May 15, a SWAT team was able to enter the dwelling and take Cox into custody, but Kim was already dead. He was indicted in Union County on one count of capital murder, two counts of kidnapping of their two children, one count of burglary, one count of firing into a dwelling, and three counts of sexual battery of his step daughter (Supreme Court of Mississippi 2016).

Another case involving rape is the case of Stephen Powers. In June of 1998, Powers met Elizabeth Lafferty for the first time and proceeded to have a cookout at her house with her and some friends. Their friends left that evening, and Powers and Lafferty were alone. At 1 a.m. the following morning, Lafferty was found dead in the hallway of her house with multiple gunshot wounds. Her body was found in a position that suggested Powers raped or attempted to rape her. Powers asserted that the evidence of attempted rape was circumstantial, but through his admission that he and Lafferty struggled with the gun before he shot her and that he had left her in the position in which she was found, it found this evidence proved there was an attempt and direct ineffectual act to commit rape (Supreme Court of Mississippi 2003).

To compare these cases, Cox has been on death row for over ten years, and Powers has been on death row for around twenty years which undermines the penological purpose of the death penalty. In Mississippi in 2017, there were 245 murders and 1,091 reported occurrences of rape, so there is no case supporting that putting these two men on death row has deterred anyone from raping or killing a person. Also, the use of rape as an aggravating factor was applied arbitrarily between these cases. The cases of Cox and Powers are different because although they both have underlying felonies of rape, one is a confirmed repeated act of rape against a minor and the other is an attempted act. Both cases are bad, but the aggravating factors in Cox’s
case are more elaborate and worse than the aggravating factors in Powers’ case. The unreliability in sentencing plays a part here because, as Justice Breyers pointed out, there is a qualitative difference between a sentence of death and life without parole because death is permanent. While the state is certain Powers attempted to rape Lafferty, they do not have DNA evidence or eye witnesses to prove it happened. There is much human error in investigating and sentencing, and if Powers is executed, he might someday end up on a list of people wrongfully executed.

The next most common aggravating factor is kidnapping with eight of the thirty-nine inmates having committed this crime. The case of Thomas Loden is one case exhibiting kidnapping as one of the aggravating factors. Loden, thirty-five years old at the time, kidnapped sixteen-year-old Leesa Marie Gray. On June 22, 2000, Loden found Leesa on the side of the road with a flat tire and stopped to help her. While Loden helped Leesa, he asked her if she had ever thought about being a marine. She responded that she had not and that it was the last thing she would want to do with her life. Her words extremely angered him, so he ordered her to get in his van. Over the span of about four hours from 10:45pm on June 22 to 2:30am on June 23, he admitted to committing repeated acts of sexual assault and battery on Leesa before murdering her by suffocation and manual strangulation. To make this situation even more heinous, he videotaped portions of the sexual assault. Later that afternoon, on June 23, authorities found him lying on the side of the road with the words “I'm sorry” carved into his chest and self-inflicted lacerations on his wrist. He motioned for a psychiatric examination of himself, which would ensure he was able to understand the charges against him and understand the consequences of his actions. The forensic evaluation of him at the Mississippi State Hospital found that he had a rational and factual understanding of the proceedings against him and had average to above average intelligence. The report from the hospital stated that Loden’s alleged physical and sexual
abuse as a child, combat-related trauma, and job and life-related stresses at the time that he killed Leesa do not rise to the level of statutory mitigation (Supreme Court of Mississippi 2007).

Richard Jordan also has a case in which he murdered a woman in the course of kidnapping her. In January of 1976, Jordan traveled from Louisiana to Gulfport and called the Gulf National Bank asking for the name of someone who worked there. He got the name of Charles Marter and found the address of Marter’s home. Jordan went to Marter’s residence to kidnap his wife and hold her for a ransom of $25,000. It is disputed what exactly happened when he took Mrs. Edwina Marter from her home into the woods, but at some point, he shot and killed her. Jordan’s defense says he shot her accidentally as she was running away from him in an attempt to fire a warning shot, but the prosecution holds that he shot her execution style as she kneeled in front of him. Marter left money for Jordan, and when Jordan arrived to take the money, he was caught by the police and confessed to his crimes. The prosecution used blood spatter evidence to prove that the wife was shot execution style as she was kneeling in front of him and not while she was in the process of running away from him (Supreme Court of Mississippi 2005).

The Mississippi kidnapping statute states that a crime shall be considered kidnapping when a person seizes another person against their will with the intent to keep them confined or imprisoned (MS Code § 97-3-53 [2013]). The cases of Loden and Jordan are similar because they both seized someone against their will with the intent to keep them confined. What separates these cases is the other aggravating factors and the manner in which they went about kidnapping their victims. Loden kidnapped a woman who was a minor, repeatedly sexually assaulted her, and murdered her through suffocation and manual strangulation. His victim undoubtedly suffered a great deal when he killed her. On the other hand, Jordan shot his victim in
the back of the head, and she most likely died immediately without suffering. That does not justify the murder, but it demonstrates how these cases are two different scenarios. These cases once again prove an arbitrary application of the death penalty in Mississippi.

Heinous and cruel are two terms used to decide which cases are so severe that the offender deserves to be sentenced to death, but these terms are also subjective. There is no set line between a normal crime and a crime that is heinous and cruel. It is easier to look at this as a continuum with normal crimes on one side and heinous and cruel crimes on the other. It is clear from the cases above, when divided by aggravating factors and underlying felonies, one of the two cases in each section was more heinous than the other. The cases of Carr and Simon, Cox, and Loden are certainly more heinous than the crime to which they were compared. The connection between them is that they have multiple underlying felonies, whereas their counterparts had one underlying felony. The cases of Billiot, Powers, and Jordan are certainly terrible crimes, but if they were put on this continuum, they would be much closer to the end of normal crimes than the end of heinous and cruel crimes where the other three cases would fall. With all of this being said, the application of the death penalty in Mississippi is arbitrary.

The following chapter examines every county that has sentenced someone to Mississippi’s death row. It is important to see that a minority of counties have ever sentenced someone to death row, but also, the demographic pattern within these counties.
Chapter 3: The Counties

A. Summary of Counties that have sentenced current members of Mississippi’s Death Row

This picture is a visual representation of every county in Mississippi that has sentenced inmates to death and whose inmates are still on death row. A total of twenty-two out of eighty-two counties are represented in this chart, which is only 26.8% of counties in Mississippi. The counties are sporadic and not concentrated in any specific region of the state. The next few paragraphs are factual summaries of each county that has sentenced someone to death row that is still on death row. What is especially important to look at is the race demographics, and median household incomes in each county. These facts are important to recognize the patterns in the state where people are sentenced to death, or to see if there is no pattern at all, and it is random. In Justice Breyer's dissent in *Glossip*, he cited two studies that found racial composition of a county plays an important role in who is sentenced to death, and death-sentencing rates were
lower in counties with higher nonwhite populations, and therefore higher in counties with higher white populations (Breyers). For comparison, here are demographics from the U.S. Census Bureau about Mississippi. The median household income is $45,081. The demographics of race are 59.1% white, 37.8% black or African American, and 3.1% other races. The percent of people twenty-five years of age and older that graduated from high school is 84.5%.

Harrison County has sentenced the most people to death with six people currently on death row having been sentenced in this county. These six include Abdur Rahim Ambrose, James Billiot, Leslie Galloway, Jason Lee Keller, Timothy Ronk, and Roger Thorson. It is on the gulf coast and has a population of 208,080 people. The median household income is $47,894. The demographics of race in this county are 67.8% white, 25.9% black or African American, and 6.3% other races. The percentage of people twenty-five years of age and older that graduated from high school is 88.3% (U.S. Census Bureau). This county has sentenced six people to death row, which is consistent with the study above that found counties with higher white populations seek the death penalty more often. It is important to take note in the following counties which ones have predominantly white populations.

Lafayette County has sentenced three people to death. These people include Caleb Carrothers, Charles Crawford, and Steven Wilbanks. Lafayette County lies in the northern region of Mississippi and has a population of 54,019 people. The median household income is $50,272. The demographics of race are 72.4% white, 23.7% black or African American, and 3.9% other races. The percentage of people twenty-five years of age and older that have graduated high school is 90.4% (U.S. Census Bureau). This county has sentenced the second most people to death that are currently on death row and has a predominantly white population.
Every other county has sentenced two or less people to death. Copiah County has sentenced two people to death that currently sit on death row including Ricky Chase and David Dickerson who both had underlying felonies of robbery. Copiah County is in the southwest region of Mississippi and has a population of 28,065 people. The median household income is $42,151. The race demographics are 46.3% white, 51.9% black or African American, and 1.8% other races. The percentage of people twenty-five years of age and older that graduated from high school is 80.2% (U.S. Census Bureau).

Forrest County has sentenced two people to death including Lisa Jo Chamberlain and Stephen Powers. Forrest County lies in the southwest region of Mississippi and has a population of 74,897 people. The median household income is $39,840. The race demographics are 59.2% white, 37.8% black or African American, and 3% other races. The percentage of people twenty-five years of age and older who have graduated from high school is 87.4% (U.S. Census Bureau).

Hinds County has sentenced two people to death row, including James Hutto Cobb and Eric Moffett. It has a population of 231,840 and lies in the southwest region of Mississippi. The median household income is $44,625. The race demographics in Hinds County are 25.1% white, 73.1% black or African American, and 1.8% other races. The percentage of people twenty-five years of age and older that have graduated high school is 87.5% (U.S. Census Bureau).

Jackson County has sentenced two people to death including Richard Jordan and Thong Le. This county is in the southwest region of Mississippi on the gulf coast and has a population of 143,617 people. The median household income is $51,657. The race demographics are 73.3% white, 21.7% black or African American, and 5% other races. The percentage of people
twenty-five years of age or older that have graduated from high school is 88.7% (U.S. Census Bureau).

Madison County has sentenced two people to death including Tony Terrell Clark and Justin Underwood. This county lies in the central region of Mississippi and has a population of 106,272 people. The median household income is $71,824. The race demographics are 57.5% white, 38.3% black or African American, and 4.2% other races. The percentage of people that are twenty-five years of age or older and have graduated high school is 91.7% (U.S. Census Bureau). Tony Clark was sentenced to death in 2018 making him the most recent addition to Mississippi’s death row.

Oktibbeha County has also sentenced two people to death, including Bobby Batiste and William Manning. This county is in the northeast region of Mississippi and has a population of 49,587 people. The median household income is $40,453. The race demographics are 57.5% white, 37.6% black or African American, and 4.9% other races. The percentage of people that are twenty-five years of age and older and have graduated high school is 90.7% (U.S. Census Bureau). William Manning has recently been found innocent of the 1992 killings of two women in Starkville, but still remains on death row for being accused of two other murders in 1993.

Quitman County brought the charges against Anthony Carr and Robert Simon, Jr. They were not sentenced in this county, but this county is paying for the legal proceedings. Quitman County is in the northeast region of Mississippi and has a population of 6,792 people. The median household income is $25,283. The race demographics are 26.5% white, 71.7% black, and 1.8% other races. The percentage of people twenty-five years of age and older that have graduated high school is 71.3% (U.S. Census Bureau).
Union County has sentenced two people to death including Marlon Howell, and David Cox. Union County is in the northeast region of Mississippi and has a population of 28,815 people. The median household income is $45,754. The race demographics are 81.3% white, 15.4% black or African American, and 3.4% other races. The percentage of people twenty-five years of age and older that have graduated high school is 78.1% (U.S. Census Bureau).

Every other county has sentenced one person to death that is currently on death row. In parenthesis, the first word written is the predominant race in the county, and the second is whether the county is above or below the median household income in Mississippi. These counties include Adams (black, below), Clarke (white, below), Franklin (white, below), George (white, above), Grenada (white, below), Hancock (white, above), Itawamba (white, below), Lamar (white, above), Lee (white, above), Leflore (black, below), Rankin (white, above), and Warren County (black, above).

What is consistent between these counties is that sixteen of the twenty-two counties that have sentenced people that are still on death row is that they have predominantly white populations, which supports the finding that counties with higher white populations seek the death penalty more than counties with higher nonwhite populations. The population does not make a difference whether the county will bring more death penalty charges. For example, Harrison County and Hinds County have similar populations and median household incomes. Harrison County has sentenced six of the current inmates on death row and Hinds County has sentenced two of the current members of death row. The main difference is that Harrison County has a predominantly white population at 67.8%, and Hinds County has a predominantly nonwhite population (only 25.1% white). The following section will look at all of the counties
that have sentenced people to death, including the counties that no longer have inmates on death row.

B. Summary of All Counties that have Sentenced People to Death

Mississippi has carried out twenty-one executions since 1976 making up only 1% of executions. This state uses the death penalty significantly less than a state like Texas that has carried out 38% of the countries executions. When a person is sentenced to death, the county that brought the charges is the county that pays for the legal proceedings. Studies show that poorer counties will be less likely to seek the death penalty than wealthier counties because they do not make enough money in tax revenue to cover the cost of the lengthy legal proceedings (Dieter). The picture above in green is a visual representation of all the counties that have sentenced someone to death. The darker shades of green indicate that the county has sentenced more than one person.

The fact that only twenty-nine of eighty-two counties in Mississippi have brought death penalty charges brings up the question of whether or not money is a factor in death sentencing in Mississippi. Only twelve of the twenty-nine counties are above the median household income in Mississippi. Five of the twelve have brought death penalty charges against more than one person,
and only two of these five are above the median household income including Lee and Jackson County.

While money is not a significant factor in who is sentenced to death in Mississippi, it would be inaccurate to say it plays no role in who is sentenced to death. Harrison County has sentenced seven people to death, which makes it the county that has sentenced the most people to death since 1976 and has a median household income above the Mississippi median. Twelve of the nineteen counties that have sentenced one person to death are below the median household income in Mississippi, which suggests that they do not have the money to sentence more than one person.

Of the seven counties that have sentenced more than one person to death, four are below the median household income. One of these counties is Quitman County. This county is one of the poorest in the state with a median household income of $25,283, and has not sentenced anyone to death since these cases. The Los Angeles Times wrote an article about the murder of the Parker family by Anthony Carr and Robert Simon, Jr. in Quitman County in 1990. The article is titled “Poor County Forced to Finance Killers’ Appeals”, and overviews the financial burden that has come upon Quitman County after the lengthy court and appeals processes that have come with sentencing the two men to death. The article states:

Quitman County had to raise taxes and take out a loan to cover the nearly $250,000 cost of their trials and automatic appeals granted to all death row inmates. Now the county must hike taxes again or cut services to afford to hire lawyers for their second round of appeals after a February decision by the Mississippi Supreme Court. The cost, estimated at up to $30,000 a year for each case, may seem small, but every public dollar counts in
this Mississippi Delta county, where unemployment is around 14% and 91% of the schoolchildren get free lunches. (“Poor County Forced”)

This county sought the death penalty for Anthony Carr and Robert Simon, Jr., but has not sought the death penalty since these cases because of the obvious financial burden that has been causes by these sentences. While this situation is not as obvious in Mississippi because the majority of counties that have sentenced more than one person to death are below the median household income level, this situation has happened in many counties across the country. Counties with smaller populations and limited resources typically have to weigh all aspects of a death sentence when they have a defendant eligible for the death penalty. In his journal article “Statewide Capital Punishment: The Case for Eliminating Counties’ Role in the Death Penalty”, Adam M. Gershowitz writes:

The District Attorney in of Victoria County, Texas (population eighty-six thousand) has stated that “he must consider many factors, including strategy, time and cost when deciding if he’ll seek the death penalty.” In Hamilton County, Ohio, a Cincinnati prosecutor defended a plea bargain for a man who opened fire inside a business and killed two people because “it spared the victims the trauma of a trial and saved the taxpayers thousands of dollars”. (321)

This money disparity is not as evident in Mississippi as in other states considering the majority of counties that have sentenced more than one person to death are below the median household income in Mississippi. What is important though is that fact that the whole state of Mississippi has a median household income below the national average ($45,081 compared to $62,843 in the United States), which does demonstrate why a minority of counties overall in Mississippi have sentenced people to death.
The following chapter will explore the evolving standards of decency in the United States and how this affects which states and counties carry out death sentences. It will also explain how a minority of counties in Mississippi use the death, and therefore it should be abolished.
Chapter 4: Capital Punishment is not Justice

A. Evolving Standards of Decency

The Eighth Amendment to the Constitution bans the use of cruel and unusual punishment, but the language of the Constitution is vague and does not give a definitive definition of what constitutes “cruel and unusual.” What is considered cruel and unusual can evolve over time with the continuous evolution of the standards of decency. Using the evolving standards of decency, the Supreme Court decides which practices violate the Eighth Amendment. The Court takes into consideration state legislatures and what these legislatures allow, and with these guidelines, the Court sees how often the punishment at hand is used to determine if it is unusual. (Supreme Court of the United States 2002).

For example, when the Supreme Court ruled in Atkins to ban the use of the death penalty for the intellectually disabled, it first looked at the amount of states that still allowed this practice. At the time of the 1989 decision in Penry that allowed the execution of intellectually disabled people, only sixteen states prohibited the practice. At the time of the decision in Atkins in 2002, sixteen more states had enacted legislation in that twenty-three year period banning the execution of the intellectually disabled. The Supreme Court noted the rate of change that had occurred and found that the execution of the intellectually disabled was excessive in violation of the Eighth Amendment because of the evolving standards of decency (Supreme Court of the United States 2002). The Supreme Court justices applied the same logic in their decision in Roper. In their 1989 decision in Stanford v. Kentucky, they found that executing juveniles
between the ages of sixteen to eighteen was not excessive. *Roper* argued that the standards of decency had changed since then. In 2005 at the time of Roper, eighteen states prohibited the use of the death penalty for minors under the age of eighteen and twelve states had no death penalty at all. His attorney also noted that since the decision in *Stanford*, five states had raised their minimum age to eighteen, but none had lowered it below eighteen (Supreme Court of the United States 2005). Between *Atkins* and *Roper*, the Supreme Court used the logic that if a majority of states banned the use of the death penalty in these specific situations or do not use the death penalty at all, it is excessive under the Eighth Amendment and therefore constitutionally invalid.

With these guidelines of evolving standards of decency, the Supreme Court can find the punishments that are outliers or are rarely used. At this point in time, the death penalty is an outlier. The scope in which the death penalty can be applied is becoming increasingly small. It can only be applied to defendants who committed crimes at the age of eighteen or older and if there were underlying felonies or aggravating factors. Also, only twenty-seven states still have a death penalty. Out of these twenty-seven states, ten states have not executed anyone since 2011, and fourteen states have not executed anyone since 2016. Below, Table 3 shows the states that still have the death penalty but have not carried out an execution in the last ten years, and it shows the last time each state executed someone. The number in parenthesis is the amount of people the state has executed in the past. California, Oregon, and Pennsylvania currently have governors imposing moratoriums on executions. Considering the information from this chart, only fourteen states have carried out executions in the last ten years, which is evidence that capital punishment is becoming an outlier in the Unites States.

<table>
<thead>
<tr>
<th>Jurisdictions With the Death Penalty</th>
<th>Last Execution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</table>


<table>
<thead>
<tr>
<th>State</th>
<th>Death Penalty Count</th>
<th>Execution Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>13</td>
<td>January 17, 2006</td>
</tr>
<tr>
<td>Indiana</td>
<td>20</td>
<td>December 11, 2009</td>
</tr>
<tr>
<td>Kansas</td>
<td>0</td>
<td>Before 1976</td>
</tr>
<tr>
<td>Kentucky</td>
<td>3</td>
<td>November 21, 2008</td>
</tr>
<tr>
<td>Louisiana</td>
<td>28</td>
<td>January 7, 2010</td>
</tr>
<tr>
<td>Montana</td>
<td>3</td>
<td>August 11, 2006</td>
</tr>
<tr>
<td>Nevada</td>
<td>12</td>
<td>April 26, 2006</td>
</tr>
<tr>
<td>North Carolina</td>
<td>43</td>
<td>August 18, 2006</td>
</tr>
<tr>
<td>Oregon</td>
<td>2</td>
<td>May 16, 1997</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>3</td>
<td>July 6, 1999</td>
</tr>
<tr>
<td>Utah</td>
<td>7</td>
<td>June 18, 2010</td>
</tr>
<tr>
<td>Wyoming</td>
<td>1</td>
<td>January 22, 1992</td>
</tr>
<tr>
<td>U.S. Military</td>
<td>0</td>
<td>Before 1976</td>
</tr>
</tbody>
</table>

What makes the death penalty even more of an outlier is that fact that since the death penalty was reinstated in 1976, only 15% of counties across the United States have carried out executions. Death sentences are disproportionately carried out in the South with the South having
carried out 82% of all executions. Nevertheless, it is hardly accurate to say that the whole South is responsible for the majority of death penalty cases. It comes down to just a few counties within each state that sentence people to death. Texas alone has carried out 38% of the nation’s executions, or 576 out of 1532, which is why it is considered the capital of capital punishment. Not even the whole state is to blame because four counties in Texas account for half of their executions. These four counties are some of the most populous counties in the state, but they make up only 38% of the population in Texas (Dieter). The minority of counties that make up the majority of executions indicate that the death penalty is an outlier throughout the entire state.

Just like in the United States, the death penalty is an outlier in Mississippi. The Mississippi states constitution bans the use of cruel or unusual punishment (Miss. Const. art. III, § 28). What is important is the word “or”. This means that a punishment could be cruel without being unusual. This also means that a punishment can be unusual without being cruel. It does not have to be both to violate the state constitution. Applying the same logic from *Atkins* and *Roper*, the death penalty in Mississippi is only used in twenty-nine out of eighty-two (35%) counties, which makes it an unusual punishment to be used in this state. The states courts would not have to find the death penalty to be cruel under the wording of the constitution. The fact that it is unusual is enough to prove that it should be abolished (Berry).

The picture to the below shows every county that has sentenced someone to death that has been executed. The counties in darker shades of red show the counties that have sentenced more than one person to death that has been executed. The twenty-one executed inmates in Mississippi received their death sentence from fourteen counties (17%). This proves that the death penalty is an outlier in this state, and it has not become an outlier over the forty years since *Gregg*. It has always been an outlier. Besides the fact that the state has rarely used it in the past,
hardly anyone is being sentenced to death anymore. Only nine of the thirty-nine inmates have been sentenced to death in the last ten years, and there have been no executions since 2012.

Mississippi is becoming a de facto abolition state. De facto abolition states technically have the death penalty, but it is so rarely imposed that the practice is considered unusual. The counties in this state are not looking to execute inmates. The median household income in Mississippi is $20,000 below the national median making it the poorest states in the Union. Despite what many people believe, the death penalty is actually much more expensive than sentencing someone to life without parole. As stated above, the average amount of time the inmates in this state have been on death row is nineteen years, which means on average, counties that have handed out death sentences are paying for the legal proceedings for nineteen years. This fact explains why the state has only executed twenty-one people. Counties are not looking to execute people because they cannot afford it.

Because of the public attention gathered from mainstream media about the death penalty, it is not just the professionals in the legal system that know it is unjust. Normal people with no real legal knowledge also understand that it is unjust. A podcast named “In The Dark” featured
the case of Curtis Flowers in their second season. The *Clarion Ledger* wrote an article in 2020 about how the podcast helped free Flowers. The host of the show talked about how she wanted to look not only at the crime, but at the powerful prosecutor behind the crime, and the social implications of the prosecutor’s role. In her podcast, she talked about how prosecutor Evans had a history or prosecutorial misconduct and how his office had a history of keeping black people off of juries (Zhu). This case reached not only the local newspaper but a popular podcast with thousands of subscribers. People around the country and world are able to listen to the podcast and learn about the injustices in Mississippi’s justice system. The decline in the death penalty now is very similar to the decline pre *Furman*. At that time, people were outraged at the inhumane methods of the death penalty. The same public support for abolishing it then is happening again now, especially with cases, such as Flowers’s and Howard’s circulating through the media.

Public opinions are clearly powerful, but if the public no longer supports the death penalty, and it does not serve its penological purposes, there is no reason to use it. Based off the evidence that the death penalty is applied arbitrarily and that a minority of counties in Mississippi use it, it will abolished in Mississippi in the future if not from de facto abolition then de jure abolition.
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