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“Troy Davis, the death penalty, and the African American community: Toward an activist agenda for Black psychologists and others.

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“Troy Davis, the death penalty, and the African American community: Toward an activist agenda for Black psychologists and others.

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“Life is the great primary and most precious and comprehensive of all human rights . . . whether it be coupled with virtue honor, and happiness, or with sin, disgrace and misery, the continued possession of it is rightfully not a matter of volition; . . . [it is not] to be deliberately or voluntarily destroyed, either by individuals separately, or combined in what is called Government”

Frederick Douglass, Anti-Capital Punishment Resolution (October 7, 1858) Rochester, New York

Abstract: The NAACP, Amnesty International, and other groups led hundreds of thousands in an effort to save African American defendant Troy Davis from execution. However, Troy Davis was killed by the State of Georgia 9/21/11. This article discusses the Davis case in the broader context of the death penalty, the African American community, and research on wrongful conviction. We present historical and current evidence of racial bias in death sentencing as well as doubt regarding Davis’ guilt. This article also describes various roles for Black psychologists (community education, case consultation, and research) in opposing state executions consistent with the National Association of Black Psychologists 2012 death penalty abolition resolution.

Key words: death penalty, Troy Davis, African American, wrongful conviction, racial bias, death sentencing, death penalty abolition resolution, National Association of Black Psychologists

Despite the efforts of the NAACP, Amnesty International, other organizations, and hundreds of thousands of individuals (Leslie, 2011; Severson, 2011), Troy Davis was killed by the State of Georgia on 9/21/11. Troy Davis was an African American man from Savannah, Georgia convicted of killing a white police officer in 1989. While death penalty abolitionists were in the forefront seeking relief for Davis, many others joined the campaign due to concerns about racial bias in death sentencing as well as the evidence suggesting Davis was innocent of the charges

(Bynum, 2011; Severson, 2011; Richey, 2011). The Davis case illustrates many problems inherent in the death penalty in the US.

We assert here, through review of research findings, historical sources, and analysis of the Troy Davis case, that the death penalty is fundamentally objectionable for a variety of reasons. Death is an ultimate, final, and irreversible penalty, yet the processes that lead to state executions are influenced by bias and prone to error (Ogletree & Sarat, 2006; Harmon, 2004). State execution is a cruel, inhumane, and torturous penalty (Abu-Jamal, 1991; Abu-Jamal, 1995). The prosecutor's decision to seek death as a penalty as well as the jury's decision to sentence the condemned to death is not a matter of morality or justice but rather a matter of politics (*McClesky v. Kemp*, 1987; *Gregg v. Georgia*, 1976 Marshall dissenting). In many cases the evidence to support guilt and justify a death sentence is not discovered as much as it is 'manufactured' (see below). There are less severe and more viable alternatives to death as a penalty and there is no persuasive evidence that capital prosecutions or death sentences deter crime (Peterson & Bailey, 2003).

The critical analysis of the death penalty presented here is one component of a broader critique of the impact of the criminal 'justice' system on the African American people. Other components of the larger picture are focused on mass incarceration (Alexander, 2010), felony disenfranchisement (King, 2008; Blackmon, 2010), 'stop and frisk' procedures (*Floyd, et al. v. City of New York, et al.*, 2008), and the role of race in wrongful conviction (Free & Ruesink, 2012; Johnson, Griffith, & Barnaby, in press).

In 1976 US Supreme Court Justice Thurgood Marshall stated, "The American people, fully informed as to the purposes of the death penalty and its liabilities, would, in my view, reject it as

morally unacceptable” (*Gregg v. Georgia*, 1976 Marshall dissenting). Our discussion is focused on clarifying these liabilities. The current status of the death penalty and African Americans is presented along with relevant historical considerations. Also the impact of the death penalty on people other than the condemned inmate will be discussed as well as Biblical justifications for execution. The evidence presented by the State of Georgia in its case against Davis will be viewed in light of the research on race and wrongful conviction. Finally we will present and describe the roles African American psychologists can contribute in challenging the death penalty.

The Death Penalty and the Black Community Today

Distinguishing features of the US criminal ‘justice’ system are the heavy reliance on incarceration as well as the use of the death penalty (Death Penalty Information Center, n.d.). The burden of both these features falls disproportionately on African Americans (Alexander, 2010; Muhammad, 2010). Internationally ninety countries have abolished the death penalty and thirty others have not used it in 10 years (Fulero & Wrightsman, 2009). In *Furman v. Georgia* (1972) the US Supreme Court banned the death penalty noting it was “cruel and unusual” due to the arbitrary and discriminatory imposition, that is, concern that race and other forms of bias were determining who was sentenced to death. However in the 1976 *Gregg v. Georgia* decision, the US Supreme Court allowed states to resume capital prosecutions with separate (bi-furcated) guilt and sentencing proceedings, meaning defendants who were found guilty in capital cases would have a separate sentencing trial to determine if death was the appropriate penalty. At present 34 of the 50 US States have a death penalty and there is also a death penalty for certain federal crimes and in the US military. Since 2007 five states (New Jersey, New Mexico, Illinois,

Connecticut, and Maryland) have abolished the death penalty (see Applebome, 2012; Winter, 2013).

Blacks comprise 12% of the US population yet 42% of the country's death row inmates (Free & Ruesink, 2012). Research findings indicate racial disparity in US incarceration rates remains even when studies control for racial differences in offending (Free & Ruesink, 2012). The disproportion of African Americans on death row in many states is dramatic. For example the population versus death row percentages of Blacks in Arkansas, Colorado, Louisiana, Pennsylvania, Texas, and Washington are 3.30/62.50, 4.00/75.00, 32.00/65.16, 10.80/59.20, 11.80/40.38, 3.60/44.44, respectively (Death Penalty Information Center, n.d.).

[insert Table 1 about here]

The State of Georgia's racial disparity in death sentencing was demonstrated in the US Supreme Court *McClesky v. Kemp* (1987) decision. African American defendant Warren McClesky was convicted of killing a white police officer in the course of a robbery. Defendant McClesky presented undisputed statistical evidence that, even when controlling for features of the crime, defendants in white victim cases had substantially increased chances of receiving a death sentence as compared to Black victim cases. Furthermore there was an interaction effect wherein Black defendant/white victim cases were 6 times more likely to get a death sentence than white defendant/Black victim cases (Fulero & Wrightsman, 2009). In a 5-4 vote the US Supreme Court rejected McClesky's argument that Georgia's record of death penalty sentencing violated the equal protection clause of the US Constitution. It is relevant to note that the pattern of racial bias in death sentencing has been found in multiple studies throughout the US (United States General Accounting Office, 1990; Harmon, 2004). Also noteworthy is research by

African American social psychologist Jennifer Eberhardt (Eberhardt, Davies, Purdue-Vaughns, & Johnson, 2006). This research indicated that among the 600+ death penalty eligible cases in Philadelphia from 1979-1999, in white victim cases Black defendants who were more 'stereotypically Black' in appearance were more likely to receive a death sentence.

In recent decades broad and diverse opposition to the death penalty has been expressed by African American community leaders such as Supreme Court Justice Thurgood Marshall (*Gregg v. Georgia*, 1976); esteemed murder victim family member Coretta Scott King (1981); journalist and former death row inmate Mumia Abu-Jamal (1991); activist/professor Maulana Karenga (2008; 2011a; 2011b); capital defense attorney Christina Swarns (2004); NAACP Executive Director Benjamin Jealous (Winter, 2013); lawyer and human rights activist Bryan A. Stevenson (2002); Harvard law professor Charles Ogletree (Ogletree & Sarat, 2006); and many others.

The Death Penalty and the Black Community Historically

Racial bias in the application of the death penalty has been common knowledge in the Black community for generations. Many view current anti-death penalty sentiment among African Americans as an extension of the anti-lynching campaigns championed by Ida B. Wells, W.E.B. Du Bois, Mary B. Talbert and others. After federal troops were withdrawn from the old confederate states, lynching, mob violence, and other tactics were used to terrorize and politically disenfranchise the African American population (Allen et al, 2000; Civil Rights Congress, 1951). Lynchings also occurred in northern and western states. African American journalist, Ida B. Wells emerged as a prominent anti-lynching advocate. She personally investigated many lynchings and reported that rape allegations were often used to conceal violence against Black social and economic advancement. Wells also traveled abroad to raise

funds and support for the anti-lynching campaign (Wells, 1997; Wells, 1970; Schiff, 2005). The NAACP, and the affiliated women's group the Anti-Lynching Crusaders, (A Million Women United to Stop Lynching, n.d.) organized campaigns, demonstrations, and lobbying efforts to combat lynching. The exposure of the lawlessness and barbarity of white lynch mobs led to the introduction of anti-lynching legislation in the US House of Representatives in 1918. The proposed legislation made lynching a federal offense for perpetrators, as well as for law enforcement officers who failed to protect victims. The bill passed in the House of Representatives but failed to pass the US Senate. In 2005 the US Senate officially apologized to the victims of lynching and their descendants (Senate Resolution 39, 2005-2006).

Another illustrative milestone was the 1931 Scottsboro (Alabama) case, where the concern was not extra-judicial acts of lynch mobs but rather 'legal lynching' conducted via state judicial systems. Nine Black youths, ranging in age from 12 to 19, were charged with the rape of two white women. In three brief trials over the course of two days, the defendants (except the 12 year-old) were convicted and sentenced to death. The racial bias at trial was blatant in the jury instruction, "There is a very strong presumption under the law that she [a white woman] would not and did not yield voluntarily to intercourse with the defendant, a Negro" (Somerville, 2004 p. 217). At that time execution was a penalty for rape in many states though it was typically reserved for Blacks accused of raping whites (US Department of Justice, 1969; Civil Rights Congress, 1951). Although the US Supreme Court reversed the initial Scottsboro convictions and death sentences (*Powell v. Alabama*, 1932; *Norris v. Alabama*, 1935) several of the youths served lengthy prison terms. The Scottsboro case is characteristic of many similar cases that received less publicity. During later challenge about race bias in death sentencing for rape, the US Supreme Court banned the death penalty as a punishment for rape (*Coker v. Georgia*, 1977).

Wrongful Conviction Research

Though wrongful convictions have been studied for generations (Borchard, 1932) findings have become increasingly compelling in the past two decades with the application of DNA science to criminal investigation (Gross, Jacobby, Matheson, Montgomery, & Patel, 2005). Several major studies have noted the disproportionate representation of African Americans among the wrongfully convicted (Free & Ruesink, 2012; Garrett, 2011; Gross et al, 2005). For instance Garrett (2011) found that among the first 250 DNA exonerations in the US, there were 155 African American defendants. Garrett (2011), as well as Free & Ruesink (2012), notes that this over-representation exists even where there are controls for differences in conviction rates.

Case characteristics associated with wrongful conviction have been identified, such as eye-witness misidentification, flawed ‘scientific’ testimony, coerced false confessions, official misconduct, ineffective defense counsel, all-white juries, informant (incentivized) testimony, and hue & cry pressure on the police and prosecutors (Garrett, 2011; Johnson, Griffith, & Barnaby, in press; Gross et al, 2005). The leading single contributor to wrongful conviction is eye-witness misidentification, and African Americans face unique vulnerability due to cross-racial identification error (Smith & Stinson, 2008). Several of these factors (eye-witness misidentification, official misconduct, incentivized testimony, and hue & cry pressure) are relevant to the analysis of the Troy Davis case.

A variety of sources of eye-witness misidentification (errors as well as intentionally false identifications) have been identified in the research literature (Garrett, 2011; Free & Ruesink, 2012; Gross et al, 2005; Innocence Project, n.d.). ‘Estimator’ sources of eye-witness misidentification refer to error related to the witness’ visual ability and the conditions at the time

of the initial viewing (lighting, distance, duration, and the circumstances of the observation such as stress, weapons focus, cross-racial identification). ‘System’ sources (also called ‘preventable’ sources of error) refer to how police interact with and interview witnesses (instructions, procedures, and feedback provided during line-ups, photo spreads, show-ups, and investigative interviews) which can affect the accuracy of the identification as well as the witness’ memory and confidence in the identification. As discussed below, the reliability of much of the eye-witness evidence in the Troy Davis case is compromised by both estimator and system sources.

Another relevant feature identified in the wrongful conviction literature is ‘multiple mis-identification’. This refers to the cases where multiple eye-witnesses identify the same innocent person. It has been found in 38% of the confirmed eye-witness misidentification wrongful convictions (Innocence Project, n.d.). Multiple mis-identification error was a feature in four cases of African Americans wrongly convicted of sexual assaults against whites (Johnson et al, in press) and also found in the high profile wrongful convictions of both Kirk Bloodsworth (Innocence Project, n.d.; Junkin, 2005) and Fernando Bermudez (People v. Bermudez, 2009), and clearly relevant to examination of the Troy Davis conviction.

The Troy Davis Case

As noted above, the convergence of concern regarding racial bias in sentencing, evidence of Davis’ innocence, and opposition to state executions resulted in more than 600,000 US and overseas petitioners seeking relief for Troy Davis (Severson, 2011). Several sources (Hill, 2011; Amnesty International, 2007) have summarized the evidence in the prosecution’s case that raises doubt about Davis’ guilt. Prior to discussion of the issues of dispute, there is value in establishing certain undisputed facts. In Savannah, Georgia on August 19th 1989, Police Officer

Mark McPhail was shot (three times) and died shortly after mid-night in the parking lot of a Burger King restaurant. The officer was off-duty and working as a security guard at the adjacent Greyhound Bus Station. A conflict emerged between a homeless man (Larry Young) and one of three other men. Young tried to walk away toward the Burger King parking lot. One of the three men pulled out a gun and struck Young in the head. The injured Young fled toward the drive-through window and sought help from the occupants of a van. Officer McPhail, responding to Young's call for help, ordered everyone to stop. As the officer approached the group, one of the three men shot him once and then this person fired two more shots into the body at close range. This occurred around mid-night in a parking lot with the attendant circumstances of contrasting lighting compromising visual clarity. According to Hill (2011; also see Amnesty International, 2007) seven of the nine trial witnesses who identified Davis as the shooter of Officer McPhail subsequently changed their accounts. These recantations deserve serious review as well as the testimony of the two witnesses who maintained their trial testimony that Davis was the shooter. Further, the recantations warrant consideration given the accumulated scientific data noting the limited reliability of eye-witness identification (Gaulkin, 2010), the role of eye-witness misidentification in numerous confirmed wrongful convictions (Innocence Project, n.d.), and the specific allegations in the post-conviction recantation affidavits that emerged in the Davis case. As Amnesty International (2007, p. 3) summarized, "...alleged police coercion is a common theme that emerges from the affidavits that various witnesses have provided..." The prosecution's case against Davis illustrates how evidence can be 'manufactured' and the processes that can result in multiple eye-witness mis-identification.

As noted above, Larry Young was the homeless man who was harassed and assaulted shortly before the fatal shooting of Officer McPhail. At the 1991 original trial Young reported that based on his recollection of the clothing worn, the assailant was Davis (Amnesty International, 2007). But in a 2002 affidavit Young reported that at the time of the offense, he was bleeding from a considerable wound on his face. He was forcefully detained and handcuffed by the police subsequent to a three hour interrogation. “I couldn’t honestly remember what anyone looked like or what different people were wearing (Amnesty International, 2007 p. 19)”. According to Young he had been drinking and his requests for medical treatment were ignored by the police interrogators. “They suggested answers and I would give them what they wanted (Amnesty International, 2007 p. 19)”. Young subsequently signed the typed statement identifying Davis.

Harriett Murray was another witness at the scene. Her 2002 affidavit was also at variance with her trial testimony (Amnesty International, 2007; Hill 2011). She was a friend of Young’s and also homeless. At trial she named Davis as the person who fired the gun. However at a pre-trial hearing and in her later (2002) affidavit she only specified “a Black man” struck Young in the face with a gun prior to shooting the officer. She noted two other Black men were nearby but not next to the shooter. Murray has subsequently deceased.

Darrell Collins (a 16 year-old) was among the three men, one of whom had argued with Young. Collins reported he was intimidated when 15-20 police officers came to his home the day after the shooting. In his affidavit Collins states he was threatened with prosecution if he did not give a statement implicating Davis (Amnesty International, 2007).

Antoine Williams, a Burger King porter, was arriving for the night shift during the time when Officer McPhail was shot. At trial Williams testified that Davis shot Officer McPhail. In a 2002 affidavit Williams recanted his trial testimony. He reported that upon hearing a shot, he ducked under his car dashboard. He added it was dark and his car windows were tinted. Williams stated he was directed by police to sign a statement implicating Davis (though he cannot read).

Williams explained his in-court identification of Davis was based on where Davis was sitting in the court room (Amnesty International, 2007).

Dorothy Ferrell was staying at a hotel across the street from the Burger King at the time officer McPhail was shot. At trial she identified Davis as the shooter. However after her testimony, she admitted (while jurors were absent) she had written to the prosecutor seeking his help with her legal problems (Amnesty International, 2007). The defense moved for a mistrial but it was denied by the judge. In a 2000 affidavit Ferrell stated she did not see who fired the gun. Ferrell explained that on the night of the offense she was questioned at length. She was pregnant, on parole, and feared she could be returned to prison if she did not cooperate. According to Ferrell, at a later date a police officer visited her with a photo of Davis and told her he had been identified by other witnesses. This was the basis of her trial testimony.

Two other witnesses who testified against Davis at trial also subsequently recanted their testimony. Kevin McQueen and Jeffrey Sapp were not eye-witnesses to the assault but rather testified that Davis had later confessed to shooting Officer McPhail. McQueen served time with Davis in 1989 (Hill, 2011; Amnesty International, 2007). In a 1996 affidavit, McQueen stated his trial accusation was not true, he provided the testimony as a grudge against Davis. In a 2003

affidavit Jeffrey Sapp stated his trial testimony against Davis was the result of police coercion. Sapp explained that in the aftermath of the shooting, he was pressured by police to say Davis confessed to him. As the trial date approached he was warned by police that his testimony must remain consistent with his prior statement.

The two state witnesses who did not recant their trial testimony were Stephen Saunders and Sylvester Coles. Saunders was in the van (along with two other Air Force officers) at the drive-through where Young sought help after being struck with a gun. At trial Sanders testified that Davis assaulted Young and shot officer McPhail. However, in his original statement given to the police he identified the perpetrator as a “black man in his twenties” noting he would not recognize the men in the group again (Hill, 2011). According to Amnesty International (2007), Davis’ attorneys were unable to reach Saunders for further clarification and the other two occupants of the van were unable to make identifications.

Sylvester Coles was one of the three men (along with Davis and Collins), one of whom assaulted Young and one of whom shot Officer McPhail (not necessarily the same person). Coles testified that he did argue with Young but it was Davis who struck Young with the pistol. Further, Coles testified that he started to run but stopped when ordered by Officer McPhail. According to Coles, McPhail ran past him towards Davis and Young. There was a gunshot and Coles ran to his sister’s home. The following day Coles and his brother secured a lawyer, and with the lawyer went to the police to give a statement. Clearly Coles would be a suspect were it not for his cooperation with the police in making Davis the main suspect. Also other witnesses have pointed out Coles as the person who shot Officer McPhail (Amnesty International, 2007; US

Supreme Court, 2009; *In Re Troy Anthony Davis*, 2010). This is relevant given the Gross et al (2005, p. 532), comment on the wrongful conviction of death row inmates noting the, “extreme incentives for the real killers to frame innocent fall guys when they are facing the possibility of execution”. While this evidence may not establish Davis’ innocence it does illustrate a circumstance where identifications were uncertain due to several ‘estimator’ factors (lighting, stress, weapons focus) but molded via ‘system’ processes into multiple identifications of Davis. Thus evidence of Davis’ guilt could be “manufactured” through the false testimony of the actual perpetrator combined with a process of police influence upon uncertain witnesses producing multiple witness mis-identifications. Reasonable observers are likely to be concerned about this doubt where the state seeks the ultimate penalty.

Davis’ Final Hearing -

The federal court for the Southern District of Georgia was directed by the US Supreme Court to hold hearings on the matter of Troy Davis’ innocence (*In re Troy Anthony Davis*, 2010). Review of the court’s lengthy ruling is instructive for several reasons. First, as directed by the US Supreme Court, the Southern District Court of Georgia considered not only the prior record but also held hearings and heard live testimony. Second, this court ruled against Davis so this opinion is clearly critical of the evidence to support Davis’ innocence. As such it provides a skeptical view of Davis’ appeal rather than a supportive lens as can be claimed for other sources cited above (Amnesty International 2007; Hill, 2011). However even with this skeptical perspective, doubt about Davis’ guilt emerges from the record.

After considering at length the jurisprudence and conceding (the obvious) that it would be unconstitutional to execute an innocent person, the Southern District Court of Georgia reviewed arguments regarding the appropriate standard for establishing innocent. The court adopted an

“extraordinarily high” standard stating, “Mr. Davis must show by clear and convincing evidence that no reasonable juror would have convicted him in the light of the new evidence” (*In Re Troy Anthony Davis*, 2010, p. 119). With this high bar set, the court noted several reasons why recantation evidence is generally given less weight than original trial evidence. The court noted this is particularly the case when the recantation is provided in affidavits which are not accompanied by live testimony. Relying on these standards the court held that three of the seven recantations were less than persuasive because the witnesses failed to testify (one was deceased and two others were not called by counsel for Davis). The court did accept Kevin McQueen’s recantation (but it did not accept the motive for the original flawed testimony was prosecution inducements). The remaining three recantations were regarded by the court as less than full recantations and/or lacking in credibility. In each case where a witness cited police/prosecution pressure influencing the earlier trial testimony the court rejected the proposition. The court held the testimony was not likely coerced because it only provided limited support for the prosecution’s case or that an officer(s) appeared and testified to the contrary.

The court’s reasoning here was limited in certain respects. First it fails to recognize that police (via system factors) may have influenced testimony though not dictated testimony. Second, the record suggests there was uncritical acceptance by the court of police officers’ testimony that there was no coercion (arguably remarkable in a case that involved the investigation of a homicide of an officer). With this said the court found that Davis’ recantation (and other) evidence, was insufficient to challenge the “balance of proof” that led to his conviction. The court stated the evidence merely, “...casts some additional minimal doubt on his conviction” (*In re Troy Anthony Davis*, 2010 p. 170). Thus Davis’ appeal for relief from execution was denied.

Roles for Black Psychologists

African American psychologists can make unique contributions to the campaign against the death penalty via community education and advocacy, trial and case consultations, and also conducting relevant research. Drawing on their knowledge of community resources and social networks Black psychologists can provide critical education and advocacy to oppose state executions. As suggested by Justice Thurgood Marshall's above quote, as the public is better informed about the death penalty there will be less support of state executions. It has been a consistent finding that African Americans are more critical of the death penalty than whites. In a study that matched the race of the interviewer and respondents, Peffley & Hurwitz (2007) found 50% of Blacks compared to 65% of whites support the death penalty. Of course support is also influenced by the framing of the question. A challenge is that many African American communities are burdened by disproportionate violent offending which fosters a 'tough on crime' orientation. What is not widely known is the death penalty does not contribute to effective crime deterrence policy (Peterson & Bailey, 2003). In fact it draws resources away from effective crime prevention and services for crime victims (New Jersey Death Penalty Study Commission, 2007). Psychologists can play a key role in getting this information to the community. During the campaign to abolish the New Jersey death penalty, the state chapter of the Association of Black Psychologists organized community and campus forums in coalition with New Jerseyans for Alternatives to the Death Penalty, the NAACP, the People's Organization for Progress, faith communities, exonerees, and murder victim family members (Johnson, 2006). These and other organized efforts led to greater access to, and influence upon, state legislators who eventually abolished the New Jersey death penalty in 2007 (Martin, 2010). Some special issues that inform the death penalty debate in the Black community are religious appeals to support executions, secondary (collateral) harm from state executions, and the role of

the press and prosecution in generating hatred toward capital defendants. Christianity is the predominant religious orientation in the Black community in the US, and religious faith and practice are significant in African American life. Biblical scripture (i.e. 'an eye for an eye') has been cited by politicians and prosecutors to support the death penalty (Recinella, 2004). The Biblical scholarship surrounding this issue is beyond the scope of the current discussion, however Recinella (2004) points out that supporters of US slavery also selectively quoted Biblical passages to justify an institution that is now universally condemned. No greater authority on matters of faith in the context of murderous violence than Coretta Scott King (1981) stated, "An evil deed is not redeemed by an evil deed of retaliation. Justice is never advanced in the taking of a human life. Morality is never upheld by a legalized murder".

Another issue likely to emerge in the context of advocating death penalty abolition in the Black community is the matter of secondary or collateral harm. While the legal formulation of a capital case is presented as the state versus an individual defendant, the secondary trauma/collateral harm literature documents adverse effects on a range of parties beyond the defendant. Pickett (2003), drawing from his experience as chaplain at the Texas execution chamber, asserted that executions create "another set of victims" based on his observation of adverse effects suffered by prison employees, other inmates, as well as family members of both the condemned and the murder victim. Vandiver (2003) also examined the unique as well as common harms shared by family members of death row inmates along with family members of homicide victims. Gil, Johnson, and Johnson (2006) and Adcock (2010) summarized the literature on secondary/collateral effects in arguing for the death penalty debate to consider harm and trauma experienced by parties other than the condemned inmate. In addition the public is often unaware of organized opposition to the death penalty by murder victim family members (such as Murder

Victim Families for Human Rights www.mvfr.org and Murder Victim Families for Reconciliation www.mvfr.org) who have united to oppose executions in the name of their deceased loved ones (King, 2005). There are many African American families active in these groups.

Prosecutors often use the press to inflame hatred towards defendants targeted for capital prosecution. For instance African American defendant Byron Halsey was charged with double child murders and sexual assault in 1985. At the press conference announcing his intention to seek the death penalty, the prosecutor produced medical reports indicating the perpetrator had driven nails in one child's skull (Messick, 1985). As a prosecutor it was his responsibility to highlight the gravity of the offense in order to justify the ultimate penalty (organize and lead the conspiracy to kill the defendant). In this case, Halsey was convicted of lesser offenses at trial and spared a death sentence. He served 22 years in prison before he was exonerated by crime scene DNA that was matched to a man who testified for the prosecution at trial. At the time of Halsey's exoneration this man (Clifford Hall) was serving a sentence for other sexual offenses (Kelley, 2007). Fortunately Halsey was not killed by the state but the prosecutor was only 'doing his job' in generating hatred toward the capital defendant.

Black Psychologists can also contribute their expertise and voice to clemency campaigns on behalf of death row prisoners. African American defendant Robert Gattis was sentenced to death in 1992 for the murder of his girlfriend. With all of his appeals exhausted Gattis was scheduled to be killed by the State of Delaware on January 20, 2012. In a final effort his attorneys appealed to the Governor for clemency. The appeal included a letter from mental health experts noting that Gattis had been a victim of chronic sexual abuse during his pre-adolescence (Gattis mental health letter, 2012). This aspect of his history had not been presented during the penalty phase of

his trial. This factor coupled with reports that Gattis was a model prisoner, who helped prevent institutional violence, contributed to the Governor's decision to commute Gattis' death sentence (*New York Times*, 2012). The Gattis case also highlights how someone can commit a horrible crime yet still make honorable contributions in the subsequent course of their life.

African American psychologists can contribute by providing consultations, examinations, and expert witness testimony in death penalty cases. There are various legal issues that are informed by psychological findings in pre-trial, guilt phase, sentencing phase, or post-conviction death penalty litigation (Eisenberg, 2004). The need for Black psychologists is illustrated by two recent cases from Texas. When a defendant is convicted in the guilt phase of a capital trial, a penalty phase trial follows to determine whether execution or some lesser punishment is appropriate. The states have some discretion in determining which factors to consider in such a judgment. One factor considered in the State of Texas is 'future dangerousness'. Psychologist Walter Quijano testified in at least seven cases that being Black increases the likelihood of future dangerousness until the Texas attorney general acknowledged the error on appeal and granted defendants new trials (Fernandez, 2011; Hart, 2011). Had Black psychologists been involved as expert witnesses such biased testimony would likely have been challenged earlier.

A second Texas case involved racial bias of a different sort. In *Atkins v. Virginia* (2002), the US Supreme Court ruled the execution of the mentally retarded was unconstitutional but it allowed each state to determine how mental retardation was defined. Texas psychologist George Denkowski examined a number of defendants who had histories of mental retardation based on standard IQ scores. Denkowski then used his personal examination methods to determine these defendants were eligible to be executed because they only appeared to be handicapped due to their social and cultural background (Grissom, 2011). Denkowski was eventually fined,

reprimanded by the Texas Board of Psychological Examiners, and agreed to cease conducting mental ability examinations in criminal cases. When African American psychologists are engaged as expert witnesses, racially biased testimony is likely to be discovered and challenged more readily.

Black psychologists can also contribute through conducting research that challenges aspects of the death penalty process. As noted above Eberhardt et al (2006) demonstrated that in white victim cases, African American defendants who appeared more stereotypically Black were more likely to be sentenced to death. Gil et al (2006) presented the research on secondary trauma from executions at the New Jersey Department of Corrections hearings and also before the State Death Penalty Study Commission. Adcock (2010) further developed this line of research and argued for consideration of the adverse effects in future policy related to the death penalty.

Summary

We introduced this article by noting Troy Davis was killed by the State of Georgia on 9/21/11. But who actually killed Troy Davis? Was it the prosecutor, the jurors, the execution team members, or ‘society’ at large? Most murder prosecutions do not become capital cases. In certain US states there is no death penalty. In states where there are state sanctioned executions, the decision to seek the death penalty in a homicide case is at the discretion of the prosecutor. While the decision is purportedly based on the circumstances of the offense, the prosecutor’s career aspirations, public passions about the offense (often influenced by racial narratives), and other arbitrary factors affect the decision. Even when defendants are convicted of murder most are not sentenced to death. Most defendants who are sentenced to death are not executed. Some

benefit from appellate relief, clemency appeals or pardons, and most die of natural causes on death row (Fulero, 2009).

Just as systems of political, cultural, and psychological legitimation supported slavery, Jim Crowe, and the political disenfranchisement of African Americans in the past, similar systems today legitimize the government's authority to determine which offenders will be killed. As Supreme Court Justice Marshall stated, death as a penalty is excessive and contrary to human dignity. The legitimate penal objectives of retribution and deterrence can be achieved by life imprisonment (*Gregg v. Georgia*, 1976 Marshall dissenting). African American psychologists can make substantial contributions by critically challenging notions that support state executions. With active focused engagement psychologists can intervene effectively via community education, case consultation, as well as through research and scholarship. The National Association of Black Psychologists (2012) recently adopted a resolution calling for the abolition of the death penalty. The resolution includes not only a call for abolition but also a commitment to carry out work toward abolition. Abolition of the death penalty is just one of several goals toward building a more justice-focused system of criminal procedure and adjudication. There is a compelling need for research and theory to challenge and reverse mass incarceration, felony disenfranchisement, discriminatory and ineffective drug laws, as well as to improve re-entry initiatives, prevent wrongful convictions, and abolish state executions.

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Table 1

Blacks in state population versus on death row

| State | % in population | % on death row |
|--------------|-----------------|----------------|
| Arkansas | 3.30 | 62.50 |
| Colorado | 4.00 | 75.00 |
| Louisiana | 32.00 | 65.16 |
| Pennsylvania | 10.80 | 59.20 |
| Texas | 11.80 | 40.38 |
| Washington | 3.60 | 44.44 |