The Prison as a Laboratory: Medical Testing on Death Row Inmates

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Human Participants in Research

- Necessary to show safety of unproven medical therapies in non-human animals
- Identification of vulnerable groups
  - Women
  - Children
  - Prisoners
  - Persons of color
  - Persons with cognitive impairments

Laws and Regulations

- 8th Amendment (ratified 1791)
  "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."
- The Nuremberg Code (1946)
  Written as a set of standards for judging physicians and scientists who conducted experiments on prisoners in concentration camps

Laws and Regulations (continued)

- Common Rule (1981)
  Federal regulations guiding human research, "conducted, supported, or otherwise subject to regulation by any Federal Department or Agency which takes appropriate administrative action to make the policy applicable to such research."
  - Office of Human Research Protections (OHRP)
  - Food and Drug Administration
  - Institutional Review Board (IRB)
Minimal Risk

- Risk is considered minimal "where the probability and magnitude of harm or discomfort anticipated in the proposed research are not greater, in and of themselves, than those ordinarily encountered in daily life or during the performance of routine physical examinations or tests" (45 CFR46).
  - Collecting hair and nail clippings, urine, or blood samples
  - Recording data using non-invasive procedures
  - Interviews and questionnaires

Abuse of Vulnerable Groups

- The Tuskegee Institute Study
- Inmates vs. University of Pennsylvania
- American Doctors in '40s through '70s
- Washington State prisoners
- BioLogic-HT System

Conflicts of Interest

- Department of Health and Human Services
  - Separation of OHRP
    - Doesn't keep track of failed trials
- Prison represents too captive of an environment
  - Not a sufficient sample size
- The Innocence Project
  - Medical testing done on re-released prisoners

Why do prisoners participate?

- Not actually voluntary consent
- Eager to do good to society
- Win favorable treatment
- Access to competent medical care
Testing Overview

- Several benefits from prisoner testing may include:
  - Faster drug approval process
  - Less animal testing
  - Human results – more accurate
  - Betterment of humanity
    - Prisoner and Public benefits
  - Nationwide decrease in costs
    - Money from research companies
    - Life sentences cost less than death sentences

Drug Approval Process

- Approximately 8 years consisting of:
  - Experiments in lab to determine possible drugs
    - Toxicity, etc.
  - Repeated animal testing
  - Years of clinical studies in humans
  - FDA approval
    - Drug available to public

Drug Approval Process

*The process of developing and testing a new drug is a lengthy one. The FDA estimates that it takes a little over 8 years to test a drug, including early laboratory and animal testing, before there is final approval for use by the general public. Various efforts, however, are underway to reduce the approval time.*

Faster Release of New Drugs

- Prisoners that agree to testing could agree to more harsh testing than available to the general public
- Fewer animal tests required before going to humans subjects (prisoners)
- Process time reduced and drugs can be pushed out faster

Prisoner’s Benefits

- Free experimental treatment for diseases that they suffer from
- Reduction of death sentence to a life sentence
- Opportunity to regain self-image

The High Cost of the Death Penalty

- “As a growing number of local governments are discovering, there is often a new twist on an old saying: Nothing is certain except the death penalty and higher taxes. . . . Just prosecuting a capital crime can cost an average of $200,000 to $300,000, according to a conservative estimate by the Texas Office of Court Administration. Add indigent-defense lawyers, an almost-automatic appeal and a trial transcript, and death-penalty cases can easily cost many times that amount. . . . To pay up, counties must raise taxes, cut services, or both.” (Wall Street Journal, 1/9/02)

Financial Facts About the Death Penalty

- “The Budgetary Repercussions of Capital Convictions,” by Katherine Baicker
- A study by Indiana’s Criminal Law Study Commission
- The most comprehensive study in the country found that the death penalty costs North Carolina $2.16 million per execution over the costs of a non-death penalty murder case with a sentence of imprisonment for life (Duke University, May 1993.)
- Enforcing the death penalty costs Florida $51 million a year above and beyond what it would cost to punish all first-degree murderers with life in prison without parole, according to estimates by the Palm Beach Post.
- The death penalty costs California $90 million annually beyond the ordinary costs of the justice system - $78 million of that total is incurred at the trial level (Sacramento Bee, March 18, 1988).
- In Texas, a death penalty case costs an average of $2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years. (Dallas Morning News, March 8, 1992.)
Developments

- Death Penalty Costs Concern State Leaders
- Kansas Officials Fear Costly Death Penalty Will Shortchange Community Safety
- California Governor Seeks $220 Million Death Row Facility

New Deterrence Studies

New studies on deterrence throw further doubt that there is any deterrent effect from sentencing people to death or executing people for homicide. The studies did find support for a brutalization effect. (RECAP Newsletter, National Death Penalty Developments, 12/99)

- Capital Punishment and Deterrence: Examining the Effect of Executions on Murder in Texas
- The Geography of Execution: The Capital Punishment Quagmire in America

High Death Penalty Expenses Could Be Used to More Effectively Fight Crime

States have been spending tens to hundreds of millions of dollars extra per year in order to pursue the death penalty, while crime fighting strategies that have been proven effective are starting to suffer as states face severe budget deficits. The New York Times recently collected some of the cutbacks to essential services:

- Multnomah County, Oregon
- Seattle’s police force
- John Welter, San Diego’s Police Chief
- New York City

Summary of Our Opinions

- We feel that some sort of testing should be done on the death row prisoners but only on a voluntary basis
- Some rules and regulations could use some revising in order to allow for testing that could increase the speed that new drugs are released