

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

By Paul Gera

Jennifer Greene

John Jara

Mentor: Dr. A. J. Rader

1 July 2003

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

The drug approval process is estimated by the FDA to take about 8 years from beginning research until the drug is available to the general public. By getting prisoners to volunteer for experimental treatments, it can reduce the time for animal testing and begin on human subjects earlier, thereby decreasing the total time for approval. Death penalty trials are very costly relative to county budgets. The counties are able to manage these high costs by reducing their expenditures on highways, police, and tax increase. Several studies on deterrence throw further doubt that there is any deterrent effect from sentencing people to death or executing people for homicide. This combined with the amount of time it takes to approve a drug suggests that if death row inmates were allowed to volunteer for testing of new therapeutic drugs, everyone will ultimately benefit.

Although some feel as though we can do without it, human participation in research is quite vital in order to produce therapeutic agents for human beings. Animal testing should only be thought of as a guideline for these studies. It is not until those animal studies have been confirmed in humans that their results are truly meaningful. In the past several groups have been identified as being vulnerable groups. Those include women, children, prisoners, persons of color, and persons with cognitive impairments. For the purposes of this forum, we have selected the topic of death row inmates as medical testing subjects. Although it is legal to conduct testing on prisoners, there are some guidelines. One of the first laws that protects a prisoner's rights is the 8th amendment, ratified in 1791. It states that no cruel and unusual punishment shall be inflicted on any person. As a result of the horrific studies done on Holocaust victims, the Nuremberg Code of 1946 was written in order to judge physicians and scientists who conducted experiments on prisoners in concentration camps. Even as recent as 1981, the Common Rule was put in place in order to have federal jurisdiction on any medical research involving prisoners. One of the most controversial issues concerning prisoners as test subjects is what qualifies as minimal risk. The Institutional Review Board (IRB) which was created as a result of the Common Rule states that there should be no more risk incurred while conducting medical research than "encountered in daily life or during the performance of routine physical examinations or test".

Although various rules have been put into place in order to govern research involving human subjects, i.e. prisoners, there are still occurrences of abuse. During the earlier half of the 20th century, medical abuse on prisoners was quite common in the United States. However, even as recent as 2000, prisoners are filing suit against various universities and states for abuse. This makes one wonder if using prisoners is even a good idea. The OHRP, which is a branch of the Department of Health and Human Services, does not keep track of failed trials as it should. This means that medications with adverse effects could still be used on patients in trials. Or what about the prisoner that is later exonerated by DNA evidence, such as those who belong to the Innocence Project? And some have even argued that prison does not have a sufficient sample size and represents too captive of an environment. And more importantly, the reason why prisoners participate in these studies needs to be reevaluated and whether or not consent of the prisoner is actually voluntary also needs to be revisited.

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

Bibliography

Baicker, Katherine. "The Budgetary Repercussions of Capital Convictions," October 2002.

Alan Berkman, "Prison Health: The Breaking Point," *American Journal of Public Health*, Vol. 85, No. 12 (1995).

C.A. Butzin, S.S. Martin & J.A. Inciardi, "Evaluating Component Effects of a Prison-based Treatment Continuum," *Journal for Substance Abuse Treatment* 22(2):63-9, March 2002.

Cook, PhD., Philip J., Slawson, M.A.J.D., Donna, and Gries B.B.A., Lori A. "The Costs of Processing Murder Cases in North Carolina," May 1993.

Lucery, Lindy K. and Bernhardt, Jeffrey P, "Thirty-first Annual Review of Criminal Procedure: VI. Prisoners' Rights," *Georgetown Law Journal* 90 (May 2002): 2005.