

Juror Race and Capital Sentencing

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*This article provides a summary of dissertation research conducted at the University of Nevada, Reno. The larger work can be found in Edelman, B.C. (2006). *Racial Prejudice, Juror Empathy, and Sentencing in Death Penalty Cases*. New York: LFB Scholarly.*

Race has been shown to have an impact on jurors' sentencing decisions in capital cases. This article describes a model for juror decision-making that helps explain the subtle effects of race on capital jurors' sentencing decisions, and offers recommendations to limit these effects. The model was developed and tested using data provided by the Capital Jury Project. The Capital Jury Project has interviewed over 1,100 capital jurors from 340 capital trials.

THE SENTENCING PHASE OF A CAPITAL TRIAL

The discretion granted to prosecutors to introduce non-statutory aggravating evidence (e.g., victim impact statements) in support of a death sentence has broadened significantly since the death penalty system was revamped in 1976. The shift toward the admissibility of such evidence has increased the complexity of the sentencing task. Before deciding upon sentence, capital jurors must first declare the defendant "death eligible" by unanimously finding the presence of at least one statutory aggravating factor. Only then is the jury free to weigh the victim-oriented evidence, which supports a death sentence.

However, jurors are given little instruction on what evidence is off limits when deciding on the presence of an aggravating factor. As a result, evidence, which has been ostensibly presented by the state for the sentencing decision, may be inappropriately used to determine "death eligibility." For example, the Florida criminal code allows victim impact statements to be admitted into evidence strictly for the purpose of deciding upon sentence. However, this emotionally charged evidence may be incorrectly used by a juror to establish the presence of ambiguous aggravating factors such as: "The capital felony was especially heinous, atrocious, or cruel." Emotional expressions of loss by a victim's family member may enhance the perceived cruelty of the crime, and as a result prove the existence of the aggravator. It is in this emotionally charged environment where race-of-victim effects are most likely to occur.

THE IMPACT OF RACE ON SENTENCING

There have been over forty studies documenting the effects of illegitimate factors – including race – on sentencing decisions in the capital punishment system. Taken as a whole this body of research has shown that: *Murderers of white victims suffer a higher probability of being sentenced to death than murderers of blacks* (see the GAO 1990 Report).

An effort was made to develop a model of juror behavior that explains why murderers of whites are more likely to be sentenced to death than murders of blacks. The model is built around a victim evaluation process that is largely influenced by empathy. When jurors empathize with the victim, they are more likely to evaluate the victim positively and support a death sentence. Non-legal factors, including race, are expected to have an impact on jurors' empathy toward the victim, particularly in cases where the defendant is black and the victim is white. When the victim is categorized as a member of the same racial group (in-group) as the capital juror, he will perceive himself to be similar to the victim. This should lead to more positive affect, and the ability to take the perspective of the victim and his family. When these conditions occur, capital jurors will evaluate the victim more positively and favor a death sentence at higher rates in comparison to instances where the victim is a member of a different racial group (out-group).

FINDINGS

The proposed model was tested using data provided by the Capital Jury Project. Empathy was found to play a larger role in influencing jurors' sentencing decisions than expected. Not only did empathy toward the victim have a direct impact on how jurors evaluated the victim, but it also affected white jurors evaluations of black defendants. In addition, empathy toward the victim had an effect on how jurors used mitigating evidence. Mitigating evidence was more likely to be rejected or used as aggravating evidence when victim empathy was high. In contrast, empathy toward the defendant had no influence on how jurors used mitigating evidence.

Race had a subtle influence on jurors' sentencing decisions that operated through its impact on victim empathy and victim evaluations. White jurors empathized more with white victims and evaluated them more positively than black victims. As a result, white jurors were more likely to reject mitigating evidence that would justify a life sentence when the victim was white. In addition, killers of white victims were evaluated less positively than killers of black victims. As a result, white jurors were more likely to support a death sentence when a black defendant was convicted for murdering a white victim.

DISCUSSION AND RECOMMENDATIONS

These findings have several important implications pertaining to a defendant's constitutional rights to a trial free of racial bias and prejudice. Over the last 30 years, the Supreme Court has expanded the types of evidence the prosecution can present in support of a death sentence. The inclusion of

highly emotional victim-oriented evidence may exacerbate the effects of non-legal factors. Because defendant and mitigating evidence evaluations appear to be affected by empathy toward the victim, evidence that cultivates this type of empathy will ultimately limit the impact of the defendant's life circumstances on jurors' sentencing decisions.

In the trial of Scott Peterson, Sharon Rocha testified for over thirty minutes. Sitting in front of a picture of her daughter, she brought legal experts, journalists, and jurors to tears. Ms. Rocha berated the defendant for leaving his wife at sea knowing she often experienced motion sickness, "You knew she would be sick for the rest of eternity and you did that to her anyway" (Murphy, 2004). This type of emotional testimony is likely to cultivate juror empathy and shift the focus away from the defendant. When this occurs, the status of the victim may become the deciding factor between a life and death sentence.

In *McCleskey v Kemp* (1987), the Supreme Court ruled that an appellant must provide evidence of intentional and purposeful discrimination to prove successfully that his Fourteenth Amendment rights have been violated. Data from the current study show that race has a subtle impact on capital jurors' sentencing decisions, which is unlikely to meet this standard of proof.

The results from this study provide some guidelines for how the defense should approach the sentencing phase of a capital trial, particularly in interracial homicides.

The defense should aggressively move to limit the admission of non-statutory, victim-oriented evidence that is likely to shift the focus away from the defendant and toward the victim. In addition, the defense should seek to bifurcate the sentencing phase into two components: 1) a death eligibility phase, and 2) a sentencing phase. In this first phase, the jury would only hear evidence relevant to determining the presence of an aggravating factor. Only after the jury has deliberated on this issue would the prosecution be allowed to present evidence in support of a death sentencing, including victim impact statements. This approach should help reduce the risk that jurors will inappropriately use victim-oriented evidence to determine the presence of aggravating factors.

References

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