

**Are Capital Jurors Willing To Serve Again?
Investigating Race And Perceptions Of Procedural
Fairness In The Deliberation Room**

by
Megan Denver

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INVESTIGATING RACE AND PERCEPTIONS OF PROCEDURAL
FAIRNESS IN THE DELIBERATION ROOM**

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Megan Denver

Approved: _____
Benjamin Fleury-Steiner, Ph.D
Professor in charge of thesis on behalf of the Advisory Committee

Approved: _____
Ronet Bachman, Ph.D
Chair of the Department of Sociology

Approved: _____
Tom Apple, Ph.D
Dean of the College of Arts and Science

Approved: _____
Debra Hess Norris, M.S.
Vice Provost for Graduate and Professional Education

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TABLE OF CONTENTS

ABSTRACT	iv
INTRODUCTION	1
WILLINGNESS TO SERVE ON A JURY	2
<i>Why citizens may be unwilling to serve as jurors</i>	3
<i>What differentiates satisfaction and willingness to serve again?</i>	5
RACE AND PROCEDURAL FAIRNESS	9
<i>Race and perceptions</i>	9
<i>Applying the sense of injustice and group position models to capital juries</i>	10
<i>Procedural justice in the deliberation room</i>	11
THE PRESENT STUDY	13
DATA AND METHODS	17
<i>Dependent variables</i>	18
<i>Independent variables</i>	19
<i>Control variables</i>	20
<i>Analysis plan</i>	21
RESULTS	22
<i>Correlations</i>	22
<i>Race, procedural justice, and other factors</i>	22
DISCUSSION	24
<i>Mediating effects of procedural justice</i>	24
<i>Mediating effects of emotion</i>	26
<i>Other considerations for willingness to serve again</i>	28
<i>Limitations and future research</i>	30
CONCLUSION	32
REFERENCES	36
APPENDICES	44

LIST OF TABLES

TABLE 1	OLS AND ORDINAL REGRESSIONS	23
TABLE A.1,	DESCRIPTIVE STATISTICS.....	44
TABLE A.2,	CORRELATION MATRIX	45
TABLE A.3,	CROSSTABULATIONS.....	46
TABLE A.4,	ORDINAL REGRESSION MODELS FOR SPLIT MODELS	46
TABLE A.5,	QUESTIONS FROM JUROR INTERVIEW INSTRUMENT	48

ABSTRACT

The purpose of this thesis is to determine whether race (a juror's race, racial composition of the jury, race of the jury foreperson, and defendant-victim racial composition) and perceptions of procedural justice affect capital jurors' willingness to serve again. The hypotheses all assume a mediating effect, with race influencing perceptions of fairness, and these perceptions then impacting willingness to serve again. Using ordinary least squares and ordinal regressions, data from 699 capital jurors are analyzed. Results suggest that procedural fairness may have some mediating effect between race and willingness to serve again. However, when the model is divided into two subsamples (white jurors only and black jurors only) race has a direct effect on willingness to serve again. Specifically, white jurors are less willing to serve again when the jury foreperson is black and when the defendant in their trial is black; black jurors are less willing to serve when the defendant and the victim in their trial are white. Both the full model and split models suggest emotion mediates procedural fairness and willingness to serve again. Implications for future research are suggested.

INTRODUCTION

In the last few decades we have learned a significant amount about how people view justice and how these perceptions influence attitudes and behavior. Distributive justice theories, which analyze perceptions of fair outcomes, were popular explanations for interpreting justice until the 1970s (Tyler and Blader 2000). However, limitations with distributive justice theories led to a shift to procedural justice, or the belief that if the process and procedures are fair, the outcome (even when it is unfavorable) will be viewed as acceptable (Lind and Tyler 1988). Procedural fairness has become an increasingly popular explanation for a range of criminal justice issues, such as domestic violence reporting and court experiences (Hickman and Simpson 2003; Gover, Brank, and MacDonald 2007), rape survivors' involvement in sentencing (Konradi and Burger 2000), and correctional officials' job satisfaction (Lambert, Hogan, and Griffin 2007).

When looking specifically at capital punishment, there is a considerable amount of empirical research that demonstrates procedural problems, such as DNA evidence revealing a defendant's innocence, racial biases in the system, and concerns about death sentences being arbitrarily imposed (e.g., Huff 2004; Marshall 2002). While most capital punishment research focuses on large-scale issues of procedural fairness, how individuals involved in the decision making view the process is a more recent area of empirical inquiry. Specifically, whether issues of procedural fairness during a trial influence whether a capital juror would or would not want to serve again have been overlooked.

In this thesis I examine how race and perceptions of procedural fairness during jury deliberations affect jurors' willingness to serve on future capital cases. First I will

discuss and distinguish juror satisfaction and willingness to serve again. Next I will merge the relevant capital jury research on race and procedural justice, the two factors believed to have the strongest impact on future willingness to serve. Using data from the Capital Jury Project (CJP), I will then test whether race influences perceptions of procedural fairness, and if these perceptions affect jurors' willingness to serve on a jury.

WILLINGNESS TO SERVE ON A JURY

Although jury service is involuntary, negative experiences may influence attempts to avoid future jury service (Diamond 1993). Dote (2006:7) notes that when jurors fail to appear or when they request exemptions, this shapes the venire (or group of potential jurors to be questioned for jury service) and ultimately creates a jury that "may be more likely to reflect the characteristics of those more willing to serve, rather than a cross-section of the community." The importance of both jury duty and jurors' satisfaction with jury service is often stressed, as seen in Munsterman et al.'s (1991:1) description of "jury system performance" as:

...the willingness of people to serve, that is, the public responsiveness to the summons to serve; the representativeness of jurors who do serve; the satisfaction of those serving; and the hardship endured due to jury service both by the individual serving and by his/her employer.

While jurors openly report negative aspects of serving on a jury (such as jury duty being "inconvenient" and not feeling "glad to receive summons"), most also agree that serving on a jury is important for civic responsibility and provides a voice to the public (Losh, Wasserman, and Wasserman 2000). In a national study of 1,029 adults, the American

Bar Association (2004) reported that most Americans believe serving on a jury is an important civic duty (84%), do not believe it is a burden (75%), and would prefer a jury over a judge (75%)¹. Importantly, those who serve on trials tend to have increased positive views of the court system (Rottman 1998; Diamond 1993; American Bar Association 2004).

Why citizens may be unwilling to serve as jurors

Although there are generally positive views of juries, previous explanations for why jurors do not report to court when summoned include the lack of motivation (and the avoidance tactics that accompany this), the inability to serve (which considers human capital, such as time available and childcare), and social capital (such as class status or education) (e.g., Munsterman et al. 1991; Losh, Wasserman, and Wasserman 2000; Dote 2006; Taylor et al. 2007). While these studies are a mixture of civil and criminal trials, they have not yet explored capital trials, so it is unclear if the factors that influence willingness to serve again in cases with less serious charges will be the same (or to the same degree) as in capital murder cases. However, recent studies have expanded to incorporate how fairness in court procedures affects satisfaction and willingness to serve again.

¹ Interestingly, Rose, Ellison, and Diamond (2008) find racial and ethnic disparities in preferences of juries over judges. In their study, African American and Hispanic respondents had less of a preference for a jury (than a judge) compared to non-Hispanic whites – especially when asked to imagine themselves as a defendant. These authors suggest this may be related to broader views of distrust with the criminal justice system.

Procedural justice theory would argue that jurors who experience unfair processes or procedures during a trial would be less willing to serve again in the future. Tyler and Blader (2000:75) explain that procedural justice is not only concerned with the acceptance of decisions, but also in the desire to engage in groups since “people’s general willingness to cooperate in groups is shaped by their judgments about the fairness of the procedures within the group.” Many procedural justice studies focus on groups in the workplace, and dependent variables tend to be attitudes and values (commitment, satisfaction, loyalty, legitimacy), and cooperative behavior (compliance, extra-role, in-role, deference) (see Tyler and Blader 2000). Similarly, researchers who study juries are also interested in jurors’ satisfaction, although satisfaction is often used as an indirect predictor of future participation.

Future participation is fundamentally important in jury research because the American jury system, even with its flaws, is a valuable and necessary aspect of our judicial process (Vidmar and Hans 2007). Likewise, the majority of death penalty states rely on lay jurors to make the guilt and punishment decisions. Currently, thirty states use juries, two states have juries review the evidence but judges decide the sentence, and three states use a jury but the judge may override the sentence (Death Penalty Information Center 2009a)². Therefore, capital punishment is dependent on citizens to respond to summons and serve as capital jurors.

² According to the Death Penalty Information Center (2009b), 36 states have the death penalty as of December 2008, but this source did not have information on whether judges or juries decide for Wyoming.

Satisfaction with the process and willingness to serve again are two common approaches for determining citizens' attitudes about serving on a jury. As Diamond (1993:283-84) points out, understanding what jurors think matters for several reasons. First, personal experiences may alter jurors' views of the legal system (which could lead to jurors choosing not to cooperate if past experiences were negative). Second, exploring negative perceptions creates awareness about problems with the system, which may enable lawmakers to enhance the jury process. Finally, jurors may share perceptions of their experiences with others, possibly affecting other citizens' perceptions of the legal system. While satisfaction with jury service is important for understanding citizens' attitudes about serving on a jury, prior research suggests that satisfaction is actually an indirect measure of willingness to serve again (Dote 2006).

What differentiates satisfaction and willingness to serve again?

While both satisfaction and willingness to serve are areas of inquiry in current research, satisfaction was the more common focus of past studies. Diamond (1993) reviewed literature on jury experiences from the 1970's to early 1990's, and concludes that jurors tend to have high levels of satisfaction. However, much of this research is conducted by courts for the purpose of reform, and is therefore difficult to access and not peer reviewed in scientific journals. For these reasons, researchers have called for the publication of unpublished jury satisfaction research that exists (Cutler and Hughes 2001). Recent research has attempted to address this issue by expanding the scope of potential factors involved. In a recent study that considered juror satisfaction, Hickerson

and Gastil (2008) found that demographic characteristics (such as race, gender, socioeconomic status, and education) are not strong predictors of juror satisfaction with jury deliberations. However, there was lower satisfaction when the case dealt with more serious charges, which is a “particularly worrisome” finding because it indicates “jurors’ concern about the justice being done by their juries” (Hickerson and Gastil 2008:298).

In a study that addressed willingness to serve again, almost all of the 159 jurors from a sample of 28 criminal and civil trials felt that both parties were treated fairly, and almost half of the jurors said they would even *try* to be selected for jury duty in the future (Bornstein et al. 2005). However, this study reported extremely high perceptions of the process as fair (98%) and the defendant’s trial as fair (99%). This highlights potential problems with general questions about fairness³, as they also found that 43% of respondents felt the same, worse, or much worse about “how our justice system works” after the experience (Bornstein et al. 2005). While these are examples of studies that consider either satisfaction or willingness, they both reference fairness or justice. Yet neither sets out to answer whether perceptions of fairness impact satisfaction or willingness to serve again.

Other research has assumed satisfaction and willingness are similar concepts at different stages of the process. Cutler and Hughes (2001) considered how jury service, inconvenience, aspects of the particular case, and several demographic characteristics

³ The questions were worded: “Before the trial began, the attorneys and/or judge questioned potential jurors (voir dire). In your opinion, was this process fair? [Yes/No/Not sure]” and “The defendant in your case received a fair trial. Strongly agree, agree, disagree, or strongly disagree?”

influenced jurors' satisfaction and willingness in North Carolina. Cutler and Hughes (2001:314) used willingness to serve again as one of the "measures of general satisfaction," in addition to a question asking venirepersons their opinion of the court. In other words, they considered satisfaction to be an appropriate question for those who are questioned, but not selected for jury duty, and willingness to serve again as an appropriate question for those who served as jurors. They found both high levels of satisfaction (n= 4,654 venirepersons) and high levels of willingness (n= 1,478 jurors) and there was not much variation when considering the respondent's race, sex, age, education level, income, or employment status (Cutler and Hughes 2001). While their research supports previous findings about attitudes towards jury service, they pose the question: but *why* are they satisfied or willing to serve again?

Rose (2005) addresses this important gap in the literature by exploring procedural and distributive justice to better understand what affects both satisfaction and willingness to serve again. Focusing on jury selection in felony criminal cases, Rose compares potential jurors' perceptions of procedural fairness on their satisfaction and willingness to serve. She considers privacy (e.g., "How much did the lawyers seem to care about protecting your personal privacy?"), fair treatment (asking how fairly the respondent was treated and felt others were treated), and perceptions of attorney behavior (such as how respectful and honest attorneys appeared to be) as indicators of their satisfaction and willingness. Interestingly, there are differences in what impacts satisfaction and willingness to serve again. Rose (2005) found that comfort with the questions asked, fair treatment, and fairness with the jury selection decision (in placing or not placing the juror

on the jury) were all significantly and positively related to satisfaction. On the other hand, only jury selection decisions and race were significant in the future participation model; those satisfied with the jury selection and white jurors were more willing to serve again⁴. This suggests that willingness should not be viewed as a general measure of satisfaction (as they were described by Cutler and Hughes [2001]), but as a distinct concept.

As Diamond (1993) emphasized, a main benefit of studying jurors' attitudes is the opportunity for reform in the jury system. Since a juror's resistance or refusal to serve again has more direct implications than feeling dissatisfied with an overall process (where it is unclear if the juror would attempt to avoid future jury duty), only willingness to serve will be considered for the purposes of this study. Understanding what causes capital jurors to report resistance or refusal to serve on a future capital case could provide insight to how the capital jury operates, who has a voice in the process, and the importance of fair procedures in the deliberation room. The next section reviews the literature on two main factors that may influence jurors' willingness to serve again: race and perceptions of procedural justice.

⁴ Rose (2005) split the regression models to look at both those who were questioned but not placed on a jury, and those who were selected as jurors from 13 court cases. Results reported here refer only to those who were selected for the jury (n=102). She also notes that 42% of black jurors she originally contacted were non-responsive and that almost all of the defendants in the trials were black.

RACE AND PROCEDURAL FAIRNESS

Race and perceptions

There are two dominant theoretical models in the criminal justice literature that help explain the relationship between race and perceptions of fairness and justice. The first is the sense-of-injustice (or racial-based inequality) model, which argues that negative perceptions of police influence negative views of the criminal justice system. This may be a result of black citizens being disproportionately punished by the criminal justice system and/or because they are also more likely to be a victim of violent crime and not receive police protection when it is needed (see Wu, Sun, and Triplett 2009 for an overview). Research has supported this finding that black citizens have a more negative view of the criminal justice system and are more likely to report prior negative experiences with police (Decker 1981; Flanagan and Vaughn 1996). Research has also extended to group perceptions, especially in neighborhoods. Even when controlling for neighborhood conditions (such as fear of crime, relationships with neighbors, disorder, etc.), black citizens still perceive more police injustice than white citizens (MacDonald et al. 2007), although others have argued that neighborhood class position may be most influential than individual class or group racial composition (Weitzer and Tuch 1999).

Some recent research indicates that these negative perceptions of police (as criminal justice gatekeepers) may also influence perceptions of courts (Sun and Wu 2006). In addition, broader views of equal (or unequal) opportunities in society can also lead to negative perceptions of the court experience (Sun and Wu 2006). Therefore, the

same theoretical indicators that cause black citizens to be skeptical of police officers (e.g., personal negative experiences and perceptions of racism and unequal treatment) may carry over into other areas of criminal justice, such as jury service.

The second theoretical perspective, the group-position model, suggests that a dominant in-group will attempt to maintain an established position, and will therefore have more positive opinions of criminal justice institutions than those who do not benefit from the system (Blumer 1958; Bobo and Hutchings 1996). For example, white citizens' support for the death penalty has been partially explained by white racism as seen through racial threat, stereotypes, and resentment (see Unnever and Cullen 2007 for an overview). From both the sense-of-injustice and group-position standpoints, a person's race is an important indicator of how he or she views legitimacy and fairness, especially in the criminal justice system. It is expected that these perceptions may then influence attitudes about participating in the criminal justice system, and specifically, how willing a juror is to serve again.

Applying the sense of injustice and group position models to capital juries

The effect of jurors' race on willingness to serve again is an important omission from capital jury research. Instead, the most relevant studies are only able to suggest that race and procedural justice are closely linked. For example, Bowers, Steiner, and Sandys (2001) exposed stark differences between white and black jurors' sentencing patterns in their analysis of 1,155 jurors from the Capital Jury Project. They found that in cases of black defendants and white victims, twelve person juries that had five or more white male

jurors had a higher likelihood of imposing a death sentence than juries with less than five white male jurors (63% compared to 23%, respectively). Juries that had even one black male juror dramatically changed the sentencing outcome – 72% of all white juries sentenced to death compared to 43% of juries with at least one black male juror (Bowers, Steiner, and Sandys 2001). They conclude that “there are also race-linked stereotypes that are likely to poison the deliberative process with mistrust and to undercut relations between black and white jurors” (Bowers, Steiner, and Sandys 2001:265). Fleury-Steiner (2003:132) also suggests that capital jurors “have *less than* uniform beliefs towards the criminal justice system, especially when viewed through the lens of race” (emphasis in original). These studies propose that a juror’s race may influence perceptions of fairness and justice, and the racial composition of the jury or the defendant-victim case composition may affect the overall sentencing decision.

Procedural justice in the deliberation room

Analyzing interactions between jurors of different races in the deliberation room may provide a better sense of what leads to these sentencing disparities. A study based on a small sample from the CJP data (n= 89 jurors from 25 black defendant/white victim cases) compared all white (and male dominated) juries to juries that had at least one black male. In this research, Bowers, Sandys, and Brewer (2004:1532) discovered that juries consisting of all white males tend to “describe the work of the jury in terms of unity, agreement, and speaking for [their community]” and ignore mitigating evidence. They also found that when at least one black male juror is present, there tends to be increased

conflict and tension in the deliberation room, in addition to increased discussion about mitigating evidence and recognition of how race impacts jurors (Bowers, Sandys, and Brewer 2004). Connell (2006) found that jurors who had positive feelings about their group were more likely to vote for death. This suggests that jurors who do not have the same views or “fit” into the otherwise uniform group (which are likely to be black jurors) may have different perceptions of justice and fairness in the process. On the other hand, it may be that all jurors in diverse juries (no matter the individual’s race) feel the process lacks fairness because there is increased conflict.

Sandys’ (1995) findings further address perceptions of procedural fairness in the jury process by analyzing why some jurors change their sentencing vote. She examined a subset of CJP interviews from that consisted of sixty-eight capital jurors from thirty-one cases (in which sixteen had a final outcome of a life sentence) in Kentucky. Debating a switch from a life to death vote, one juror explains that he was originally holding out for a life without parole (for thirty years) sentence, but “At the same time, I felt the jury had deliberated honestly, and I did not want it to be a, I didn't know whether it could become a hung jury on the penalty phase of the trial or not. So, it kind of gradually came down to that” (Sandys 1995:1217). Other jurors switched their votes due to pressure in the deliberation room. One juror described the change from life to death: “One or two kind of balked a little bit but when we explained the testimony they went right along. *We had to clarify and put it into words they could understand*” (Sandys 1995:1213; emphasis added in original). Unfortunately, the race of the jurors was not included, so it is unclear which jurors in her study compromised and which were pressured.

Although capital jury sentencing patterns, interactions among jury members, and perceptions of the deliberations process all suggest racial disparities in capital cases may be influenced by how capital jurors view the process, procedural justice is not explicitly mentioned in these studies of capital jurors. In addition, is it unknown whether friction and conflict in diverse juries affects future participation. The next section describes the present study, which extends previous capital jury research by looking specifically at willingness to serve again on a capital case.

THE PRESENT STUDY

While capital jurors' perceptions of fairness and the role race plays in these jurors' perceptions could be measured in numerous ways and in various stages of the trial, this paper will focus on the deliberation process. Even though individual jurors bring their own experiences and values to the deliberation room, they are also impacted by "jury climate," which Connell (2006:10) describes as "the quality of interactions that occur during deliberations and the way that the individual jurors interpret their experiences as part of a group." What occurs during the decision making process and how those interactions affect jurors' willingness to participate again in a capital trial are of special interest. In fact, eight of the ten variables that comprise Connell's (2006:113) group climate scaled variable are related to procedural fairness and are included in the

present study⁵. While there may be different criteria for “fairness” (Tyler 1988; Lind and Tyler 1988⁶), the following four aspects will be considered for the capital jury: having a voice in the process, feeling included in the jury, having a friendly and welcoming environment, and having and following clear procedures during deliberations.

The selected measures of fairness are also guided by prior research. Tyler, Rasinski, and Spodick (1985) and Tyler (1987) argue that the opportunity to have a voice in the process (even if people do not believe what they are saying will necessarily change the outcome) increases perceptions of procedural fairness. Although this study considers fairness among fellow jurors, and not an official authority figure, informal power structures and representation in a jury are also important. Having a jury foreperson of the same race may lead a juror to feel more represented in the deliberation process, since the foreperson is often recognized as an “influential” juror by others in the deliberation room (York and Cornwell 2006:464).

Feeling represented and included in the jury matters because interpersonal relations have an effect on how people perceive procedural fairness. In a study of perceptions of police profiling, for example, Tyler and Wakslak (2004) found that citizens are more likely to believe they have been profiled by police officers when they are not treated with respect and dignity. Tyler and Blader (2000:111) argue that the

⁵ Whether the jury was “too quick to make a decision, in a hurry” and whether the group became too emotionally involved in the case were not included. She used group climate to predict sentencing decisions in her study (not willingness to serve again).

⁶ See Table A-1 in Lind and Tyler (1988) for various measures that have been used in past studies.

quality of treatment within a group affects honesty and trust in relationships – especially when a group is trying to resolve a problem – because it has an impact on self-identity and perceived status in the group. For example, a juror in Sandys’ (1995:1196) study commented that when voting, “it’s nice to have everybody have their say. You don’t want to have anybody feel left out.” Interestingly, someone else on the same jury who switched her vote said she “still believe[s] [the defendant] deserved [the] death penalty” and she “didn’t get what I wanted because of the jury,” which she described as dominated by a few strong personalities (Sandys 1995:1196). A broader look at capital jurors’ experiences may help explain why two jurors in the same deliberation room had conflicting views of procedural fairness. The final aspect of fairness, which focuses on whether the decision making procedures were fair and clear, is guided by research that argues when groups decide justice, “people are most strongly influenced by...the fairness of the group’s procedures” (Tyler and Blader 2003:355).

The following hypotheses are based on a potential relationship between individual jurors’ race, the racial composition of the jury, and perceptions of procedural fairness in the deliberation room. They all assume a two-step process, where race influences perceptions of procedural fairness, and these perceptions then influence willingness to serve again. Since the sense-of-injustice theory proposes black citizens disproportionately perceive processes to be unfair and procedural justice theory suggests that perceptions of an unfair process will decrease future participation, I posit:

Hypothesis 1: Black jurors will be less willing than white jurors to serve again on a capital trial.

This can be further narrowed to consider certain circumstances where black jurors may feel more represented on the jury, and therefore will be more willing to serve again on a capital trial.

Hypothesis 2: When black jurors are more represented in the process (when there are other black jurors or a black jury foreperson), these jurors will be more willing to serve again.

Using measures of jurors' interactions and experiences in the deliberation room, four hypotheses will be tested for procedural fairness. The first two hypotheses consider whether jurors feel they have a voice in the process and are being heard by others in the group:

Hypothesis 3: Those who considered the jury "dominated" by a few strong personalities are more likely to be black jurors, and these jurors will be less willing to serve again.

Hypothesis 4: Those who perceive the jury as "close-minded" during deliberations are more likely to be black jurors who will be less willing to serve again on a capital trial.

The next hypothesis focuses on the importance of being involved in the jury:

Hypothesis 5: Those who felt like an "outsider" are more likely to be black jurors who will be less willing to serve again.

The final hypothesis considers the fairness of group procedures:

Hypothesis 6: Those who felt their jury had difficulty following procedures (continuously made mistakes, was confused by jury instructions, or did not follow

jury instructions) are more likely to be black jurors and will be less willing to serve again on a capital trial.

DATA AND METHODS

To test these hypotheses, data from the Capital Jury Project (CJP) will be used. The CJP is an ongoing collection of in-depth interviews with jurors who have served in a capital trial that involved both the guilt and sentencing phases. Social scientists and legal researchers conducted three to four hour interviews in fourteen states⁷. Whenever possible, four jurors were randomly selected from each trial, were compensated twenty dollars for participating, and were assured all responses were confidential. The study was designed to have half of the jurors serving on juries that voted life and half on juries that voted death. There are more jurors from cases that decided death in the original CJP dataset (58.6%), although the sample used in this paper is closer to half (53% voted death)⁸.

Overall, there were 1,198 jurors interviewed from 353 trials. Due to unanswered and skipped questions, several variables had issues with missing data. Instead of adjusting certain variables to account for missing data, every case with missing information (for the necessary dependent, independent, and control variables) was

⁷ Alabama, California, Florida, Georgia, Indiana, Kentucky, Louisiana, Missouri, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia.

⁸ See Bowers (1995) for a more detailed explanation of the specific methods used in data collection. Updated information and a list of publication reports are also available on the CJP website: <http://www.albany.edu/scj/CJPwhat.htm>.

removed from the analysis. Respondents did not appear to systematically refuse to answer any of the questions, and the final sample for this study is 699 cases. Since the hypotheses assume a two-step process (race affects procedural justice, which then affects willingness to serve again), the next part will describe the two dependent variables, the regression models that will be used, and any differences in the selection of independent variables for the separate models.

Dependent variables

The first dependent variable is procedural justice. There were originally six questions that describe procedural justice and are specific to the deliberation room: whether the jury was close-minded, if a few jurors dominated discussions, if the respondent felt like an outsider, and whether the jury was confused, made mistakes, and did not follow jury instructions. Each question used the same Likert response options, which were recoded as an increasing scale (not at all, not so well, fairly well, and very well). These six measures are included because they describe having a voice in the process, quality of treatment, feelings of exclusion, and how well the decision making procedures were followed. [See Table A.5 in the appendix for the specific wording for each original variable].

These variables have a Cronbach's alpha of .651 on a reliability analysis. They were therefore condensed into one variable by adding each score (1-4) for each of the six variables for every respondent. This will be referred to as the "procedural justice"

variable. This ranges from 7 to 22, where a higher score reflects higher perceptions of injustice. Therefore, an ordinary least squares regression model will be used.

The second dependent variable is willingness to serve again. To measure how willing respondents were to serve again on a capital trial, the question “How would you feel if you were asked to serve on another death penalty case?” is used. The question continues, “Would you...” and provides four options: “refuse to do so,” “try to get out of it,” “do so reluctantly,” or “welcome the opportunity.” Nine percent of respondents said they would refuse to serve again, 15.2% would try to avoid it, 42.2% would reluctantly serve, and 33.2% would welcome the opportunity. An ordinal regression will be analyzed for this model.

Independent variables

Race/ethnicity of the juror was originally coded as a categorical variable. 86.7% (n= 1001) of the original sample is white, 9.8% (n= 113) is black, 1.9% (n= 22) is Hispanic, and .3% (n= 3) is Asian. Due to the low sample sizes for Hispanic and Asian jurors, only black and white jurors will be considered for this analysis. In the reduced dataset, 624 (89.3%) of the jurors are white and 75 (10.7%) are black. The race of the jury foreperson is recorded as recalled by respondents, and was coded as white (1) or minority (2) (this includes the twelve percent that were the jury foreperson of their trial). The number of black jurors was determined by adding the number of black men and the number of black women on the jury, as reported by the respondent. The respondent was

instructed to include him or herself, so the possible range is 0-12 (with an actual range of 0-11).

Finally, a variable was created that categorizes court cases based on the race of the defendant and victim. This defendant-victim variable (which will be referred to as “case composition”) will be divided into black-white, white-white, white-black, and black-black. These will be dummy variables in the analyses and white-white cases are the reference category. Case composition is considered to be important because research has found that black jurors serving on black-white cases were more likely to feel like an outsider, report not being talkative, and were more likely to regret not saying or doing more during deliberations (Bowers, Steiner, and Sandys 2001). The only additional independent variable for the second regression (where willingness to serve is the dependent variable) is the procedural justice variable.

Control variables

The same set of control variables will be used throughout the study. Age ranges from 20 to 85, and a juror’s sex is coded as male (1) and female (2). Previous experiences serving on any trial is measured as no (0) or yes (1), and the amount of responsibility the respondent believes individual jurors have is a five point increasing scale (from least to most). Whether the juror found the experience to be emotionally upsetting is dichotomous (no/yes). Family income for each juror was previously coded into the following categories: less than \$10,000; \$10,001-20,000; \$20,001-30,000; \$30,001-50,000; \$50,001-75,000; and over \$75,000 a year. A juror’s education is broken

into the following categories: less than high school completion, high school degree, some college, college completion, and post college.

The final control variable is juror's current employment status, which was originally divided into seven categories: full time, part time, student, retired, homemaker/child rearing, disabled, and laid off from a strike. All of the categories except disabled and laid off (which only had 19 cases when combined) were included as dummy variables in the original regression models, using full time work as the reference category. This was to assure that retired individuals were accounted for, since previous research indicates that retired citizens are more likely to appear for jury duty than those who are employed (Losh, Wasserman, and Wasserman 2000). However, none of the employment variables were significantly related to willingness in chi-square tests in these initial regressions, and the employment variable was collapsed for the final regression models into full time, part time, and other (which consists of student, retired, and homemaker/child rearing). Full time employment is the reference category for the final analyses. The descriptive statistics for each variable are provided in the appendix (see Table A.1).

Analysis plan

To test whether procedural justice is a mediating factor for race and willingness to serve, three models will be used in this analysis. First, several race variables (juror's race, number of black jurors on the jury, case composition, and the race of the jury foreperson) will be regressed on procedural justice. In the second model, control

variables will be added to account for other factors (besides race) that may affect perceptions of procedural justice. Finally, race, procedural justice, and control variables will be regressed on willingness to serve again⁹. The purpose of this three step design is to see whether race is significant in the earlier models, and if it is also a significant predictor of willingness to serve again (or if procedural justice mediates the effect of race).

RESULTS

Correlations

Surprisingly, although many variables were theoretically similar, none were highly correlated. The race variables had the highest correlations, but these were all below .5. Therefore, the only variables that were scaled or reduced were the procedural justice indicators, as mentioned above. [See Table A.2 in the appendix for the correlation matrix].

Race, procedural justice, and other factors

In the first model, the number of black jurors on the jury is a significant predictor of perceptions of procedural justice, with more black jurors increasing perceptions of injustice for this mostly white sample. Adding in control variables in Model 2, a

⁹ This model was also broken into steps, starting with control variables, adding in race, and then adding in procedural justice. Since there were no statistical differences, only the full model is reported.

respondent's sex, emotional experience, and age also affect perceptions of procedural justice in capital cases. In other words, male jurors, those who report feeling emotionally upset, and younger jurors were more likely to perceive higher levels of injustice. In Model 3, neither race nor procedural justice is a significant indicator of willingness to serve again. In fact, only those who felt emotionally upset about their experience, those who felt less personal responsibility for the decision, and jurors who work part time (when compared to full time employees) are all less likely to want to serve again. The results are displayed below.

TABLE 1 OLS AND ORDINAL REGRESSIONS

	Model 1		Model 2		Model 3	
	B	St. Error	B	St. Error	B	St. Error
Number of black jurors	.180**	.059	.175**	.059	.033	.043
Race of jury foreperson	.140	.372	.231	.371	-.459	.269
BW cases	.135	.253	.113	.252	-.303	.184
WB cases	.381	.667	.394	.665	.504	.498
BB cases	.329	.275	.280	.272	.093	.200
Race of juror	.124	.345	.199	.350	-.221	.256
Sex of juror	-----		-.496*	.206	-.016	.152
Emotionally upsetting	-----		.602**	.208	-1.55***	.164
Juror's education	-----		-.028	.070	-.015	.051
Previous trial experience	-----		-.037	.228	-.192	.166
Felt personal responsibility	-----		.002	.079	.159**	.058

TABLE 1 CONTINUED

	Model 1		Model 2		Model 3	
	B	St. Error	B	St. Error	B	St. Error
Age of juror	-----		-.029**	.009	-.008	.007
Juror's income	-----		.043	.086	-.007	.063
Part time work	-----		-.234	.364	-.508*	.264
Other work	-----		.409	.274	.031	.201
Procedural justice	-----		-----		-.035	.028
Model fit information		.027**		.066***		1608.03***

Notes: n= 699 for all models. Models 1 and 2 report the r-square; model 3 uses -2 Log Likelihood to describe the model. Unstandardized coefficients are reported for all models.

*= p<.05, **= p<.01, and ***= p<.001.

DISCUSSION

Mediating effects of procedural justice

An initial look at the results suggests race and procedural justice do not affect a juror's willingness to serve again, but these findings may be complicated by indirect effects. The disappearance of race may actually be a result of procedural justice mediating race and willingness to serve again. Baron and Kenny (1986) developed a set of guidelines for determining whether a variable has a mediating effect. This method,

which has been used in recent procedural justice research (see Murphy and Tyler 2008), involves the following four steps:

- 1) First, the independent variable (race) and mediating variable (procedural justice) must be significantly related¹⁰. Crosstabs demonstrate that race of the juror ($p < .05$; chi-square value 8.73), race of the jury foreperson ($p < .05$; chi-square value 7.13), and the number of black jurors on the jury ($p < .05$; chi-square value 12.87) are all significantly related to procedural justice¹¹. [See Table A.3 in the appendix for crosstabulations]. As Model 1 and 2 also show, the number of black jurors is still related to procedural justice when controlling for other factors.
- 2) Next, the dependent and independent variables (race and willingness to serve again, respectively) need to be related. Two of the race variables, race of the juror ($p < .01$; chi-square value 13.86) and race of the jury foreperson ($p < .05$; chi-square value 10.75), are significantly related to willingness to serve again in crosstabs.
- 3) The third requirement is that the mediating and dependent variables must also be related. This is fulfilled because procedural justice and willingness to serve again have a significant relationship ($p < .01$; chi-square value 16.80).

¹⁰ In testing for mediating effects, usually only use one (very specific) independent variable is used. Due to the related nature of the race variables, all are treated as independent variables in testing for a mediating effect.

¹¹ For the purposes of crosstabs, string variables were recoded into categories. The number of black jurors was divided into three categories: 0-3, 4-7, and 8-11 black jurors. Procedural justice was also divided into three categories: 7-11, 12-16, and 17-22 units of procedural justice/injustice.

- 4) Finally, to truly have a mediating effect, the dependent variable's significance must disappear when the mediating variable (procedural justice) is included in the analysis. In this case, none of the race variables are significantly related to willingness when controlling for procedural justice (see Model 3).

In other areas, research has shown that procedural justice has a mediating effect for promotion decisions and organizational commitment (Bagdadli, Roberson, and Paoletti 2006), as a mediator for participation in decision making and satisfaction (Roberson, Moye, and Locke 1999), and as strongly mediating the effects of decision-making procedures on trust in team leaders (and as partial mediators for other factors, such as decision commitment and group attachment) (Korsgaard, Schweiger, and Sapienza 1995). Likewise, the present study also suggests procedural justice could be a potential mediating factor when considering group interactions and decision making.

Mediating effects of emotion

Another interesting finding is that although procedural justice is not significant in Model 3, when emotion is removed from the analysis, procedural justice becomes significant ($p < .03$). Emotion was an extremely powerful variable throughout the analyses, and although a capital jury experience may have been emotionally upsetting for a variety of reasons, any effects that emotion may have had on a juror's perception of procedural justice are important to note. Recent research has found emotion to be a mediating effect for procedural justice and compliant behavior when using the four step

process above (Murphy and Tyler 2008)¹². In other words, the effects of procedural justice on workplace compliance were no longer significant in their analysis when they controlled for emotion. The authors concluded that “people’s emotional state at the time of making justice judgments can determine whether or not they perceive an encounter with an authority to be procedurally fair or not” (Murphy and Tyler 2008:652). Applying Baron and Kenny’s (1986) standards for mediation to emotion for this analysis:

- 1) In crosstabs, the independent (procedural justice) and mediating (emotion) variables are significantly related ($p < .01$; chi square value 11.79).
- 2) As mentioned above, procedural justice and willingness are related, which are the independent and dependent variables (respectively).
- 3) Next, the mediating and dependent variables are related, since emotion and willingness are significant ($p < .001$; chi square value 73.23). These variables are also strongly related ($p < .001$) in regressions.
- 4) Finally, the effects of procedural justice on willingness to serve again disappear when emotion is included in the regression model.

In other words, emotions may influence perceptions of procedural justice. This contributes to empirical findings that emotion is an important control variable for how juries understand their experiences (Hickerson and Gastil 2008) and suggests that

¹² In their study, emotion was determined by condensing questions about anger (e.g., “felt resentful” and “full of bitterness”) in one test and happiness (e.g., “my job is a source of pleasure” and “I am happy where I work”) in a second test. In the present study, the reason(s) a respondent may have felt emotionally upset is not specified, and a qualitative analysis would provide more detail in this area.

emotion should be incorporated into procedural justice studies (Murphy and Tyler 2008; Gordijn et al. 2006).

Other considerations for willingness to serve again

While my hypotheses referred to an individual juror's race influencing perceptions of fairness (e.g., "Those who felt like an 'outsider' are more likely to be black jurors who will be less willing to serve again"), the racial composition of the jury has a more noticeable indirect influence on perceptions of fairness. Representation in a jury (both the number of black jurors and the race of the jury foreperson) appears to be an important consideration in how jurors' perceptions of fairness in the deliberation process are shaped.

In addition to emotion, personal responsibility and part time work were important predictors of a juror's willingness to serve again. There have been conflicting interpretations of responsibility in the capital jury literature. Some research argues that capital jurors reject responsibility and distance themselves from the decision (and potential consequences of the decision) as a coping mechanism (Haney 1997), while other research suggests feeling emotionally upset may actually be evidence that jurors do feel responsible (Eisenberg, Garvey, and Wells 1996). Researchers have also found contradictions within studies, with some jurors expressing an enormous amount of pressure and responsibility and others reporting that they are "just answering the questions" (Costanzo and Costanzo 1994:162).

The present study finds that those who feel more individually responsible for the sentencing decision are actually *more* willing to serve than people who do not feel responsible. Levels of perceived responsibility may be related to having a voice in the deliberation room or having an active role in the decision making process, and exploring this further in qualitative interview questions could contribute to our understanding of what responsibility means to jurors. Part time employment was also significantly different than full time employment. Some possible explanations could be that full time employees are more likely to be salaried instead of hourly workers (which may impact compensation for days off) or they may just have a more flexible schedule.

However, it should be noted that what is important was also affected when the dataset is divided into subsamples based on the race of the respondent. In the white juror model (n= 624), responsibility and emotion were still significant (and in the same direction). However, employment was no longer significantly related to willingness to serve. Instead of a potential mediating effect, the race of the jury foreperson and case composition were now directly related to willingness to serve again. Specifically, white jurors are less willing to serve if the jury foreperson is not white; white jurors are also less willing to serve on black-white cases than white-white cases.

In the black juror model (n= 75), emotion and part time employment were still significantly related to willingness to serve in the expected directions, but responsibility was not significant. Interestingly, the case composition also became a significant (direct) predictor of willingness to serve. Black jurors serving on black-black cases were more willing to serve again than those on white-white cases. This suggests that jurors may feel

more comfortable with deciding a death penalty case for a defendant of their own race. Although the models were significantly fit, the black model should be interpreted with caution due to the low sample size. [See Table A.4 in the appendix for these results].

Limitations and future research

There are several limitations that are important to discuss. First, the data are unable to control for other potential reasons jurors may not want to serve besides those included. Other issues that may affect willingness to serve again include family obligations, lack of motivation, or the inconvenience of transportation (Munsterman et al. 1991). The present study is also unable to determine which jurors were originally willing to serve on the capital case for which they were interviewed (and due to the post-interview design, it may have been difficult to obtain reliable answers for that question). Therefore, it is unknown whether jurors' attitude toward capital jury service changed after the experience. In addition, perceptions of procedural justice may not have been as influential on willingness to serve because fairness was tested indirectly.

Another limitation with this study is that jurors may have memory recall issues, as with any interview conducted after an event. In the sampling design of the CJP, more recent trials were purposely chosen in each state to reduce problems with juror memory recall, although older trials were occasionally chosen over recent trials to "enhance the diversity of the sample" (Bowers 1995:16). Bowers (1995:19) also explains that most capital jurors reported remembering all stages of the trial "very" or "fairly" well, and he comments that jurors commonly mention that serving on the trial was a "truly memorable

experience” that they “would never forget.” As unique and significant experiences in which jurors have an active role, the intensity of capital trials may reduce some common memory recall problems (Connell 2006), although accuracy is certainly a potential limitation.

There are also several directions for future research in this area. First, direct measures of fairness (e.g., “Do you think the way the jury deliberated was fair?”) would strengthen a test of procedural justice. For the purposes of this study, indirect measures were useful for understanding which specific aspects of the deliberation are problematic. For example, if asked an open-ended question about fairness in the deliberation room, a juror might only think about procedures (i.e., not following jury instructions). By asking about more specific characteristics of the jury and jury interactions, jurors are able to express perceptions about other relevant issues. However, the use of direct questions about fairness would be beneficial in future studies, or as a comparison to indirect measures of procedural fairness.

In addition to different types of procedural fairness questions, a detailed exploration of specific perceptions of fairness would be useful to better understand how the jury shapes perceptions. For example, when the procedural justice variable was divided into the original six variables (the jury was dominated, the jury was close-minded, the respondent felt like an outsider, the instructions were confusing, the jury did not follow instructions, and the jury made mistakes), outsider was the only significant variable in the model. In other words, jurors who feel like an outsider are less willing to

serve again compared to jurors who do not feel like an outsider ($B = -.501$; $p < .01$ ¹³). Exploring why feeling like an outsider was such a strong indicator of unwillingness to serve (especially compared to similar concepts, such as dominated or close-minded) would also further our understanding of procedural fairness in capital cases. Also, future capital jury research would benefit from a gender analysis of procedural fairness in capital trials. The dynamics in the deliberation room (e.g., whether women disproportionately feel discussions are dominated or close-minded or if female jury forepersons have any effect on perceptions of fairness) would be a useful contribution.

CONCLUSION

The goal of this thesis was to test whether race and perceptions of fairness impact capital jurors' willingness to serve again on a capital case. The decision to serve again on a capital case is useful for understanding how procedural justice (or injustice) may affect not only the perceptions of a particular capital case, but also the jurors' broader views of the system when they leave the courtroom. Specifically, a proposed relationship between race, procedural justice, and willingness to serve questioned whether procedural justice has a mediating effect on race and willingness. I found some support for this mediating effect, and the data also suggest that emotion may play a mediating role between procedural justice and willingness to serve again. In other words, perceptions of

¹³ This model was statistically appropriate to use ($-2LL = 1595.48$; $p < .001$).

procedural fairness may influence a juror's emotional reaction, which may affect willingness to serve again.

However, an assumption in the hypotheses was that a juror's race would impact perceptions of fairness (which would then influence willingness to serve), but there were mixed results for what aspect of race is the most meaningful in the full model. In addition, race has a direct effect on willingness to serve again when the models are split into a black juror model and a white juror model. Surprisingly, procedural justice was not important as hypothesized, which may be affected by the indirect questions used. While procedural justice is a useful theory for studying race and justice in capital trial experiences, race and the impact emotion may have (especially in situations that are known to be emotionally charged) may be more important.

Overall, these findings support the group-position model in the full (mostly white) statistical model. Following Bowers, Steiner, and Sandys' (2001) finding that there is more conflict and tension when there are more black jurors on a jury (compared to all white juries), a diverse jury may be increase perceptions of injustice (and ultimately decreasing willingness to serve again) because these jurors have different interactions in the deliberation room than all white juries. Therefore, there may be resistance to competing ideas in an institution that has been repeatedly documented as having racially biased practices (Baldus, Woodworth, and Pulaski 1990; U.S. General Accounting Office 1990).

In addition to moral and legal reasons for diversity in the deliberation room, past research argues that citizens may also have more confidence in the system (since

perceptions of fair representation in the jury system affects perceptions of legitimacy), and the presence of minority jurors may suppress some prejudiced views from being voiced (Sommers 2008; Hans and Vidmar 1986). Sommers (2006:608) underscores the importance of diverse juries, and his empirical study finds that “racially diverse groups may be more thorough and competent than homogeneous ones.” Phillips, Liljenquist, and Neale (2008) have an especially interesting finding: diverse groups tend to perform better but feel less confident about the effectiveness of their performance. They argue that when considering both the discomfort group members feel and the end result, “the pain is worth the gain” (348).

While resistance to diversity in the jury stems from deep rooted social problems and is not easily remedied, possible suggestions include strengthening the jury’s group identity and providing increased assistance with jury instructions to reduce confusion. For example, Dovidio et al. (2004) found that in-group status mediates race and procedural justice, and they suggest subtle interventions (such as reminding participants to be objective and reinforcing group identity) can reduce prejudices. Capital juries arguably already share much in common, and are known to be fairly consistent in their views on capital punishment. For example, those who qualify to serve on a capital jury are characterized as “conviction-prone” (Haney 1984:151) and as “believ[ing] in the infallibility of the criminal justice process” (Butler and Moran 2007:58). As death qualification standards continue to narrow the pool of eligible jurors (see *Uttecht v. Brown* 2007 for a recent Supreme Court decision), a major concern is that the more uniform juries become, the less they will encounter different or conflicting views. While

conflict and tension may not seem like desired characteristics of a jury deliberation, the democratic nature of juries insists that different views and conflicting opinions are necessary – especially when a jury must make a life or death decision.

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Uttecht v. Brown 451 F. 3d 946 (2007)

APPENDICES

TABLE A.1, DESCRIPTIVE STATISTICS

	Minimum	Maximum	Mean
# Black jurors	0	11.00	1.8984
Race of foreperson	1.00	2.00	1.0844
White-white cases	0	1.00	.568
Black-white cases	0	1.00	.218
White-black cases	0	1.00	.023
Black-black cases	0	1.00	.192
Race of juror	1.00	2.00	1.1073
Sex of juror	1.00	2.00	1.5165
Emotionally upsetting	0	1.00	.6109
Juror's education	0	5.00	2.7225
Previous trial experience	0	1.00	.2918
Felt personal responsibility	1.00	5.00	2.5866
Age of juror	20.00	85.00	45.5608
Juror's income	1.00	6.00	4.0286
Full time job	0	1.00	.695
Part time job	0	1.00	.086
Other (job)	0	1.00	.219
Procedural justice	7.00	22.00	9.8670

TABLE A.2, CORRELATION MATRIX

		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Emotion	1	---																
Education	2	.046	---															
Previous trial	3	-.081*	-.108**	---														
Black jurors	4	-.037	.005	.021	---													
Foreperson	5	.000	.005	-.093*	.276**	---												
Serve again	6	-.349**	-.014	-.014	-.017	-.069	---											
Responsibility	7	-.003	-.019	.019	.005	.002	.103**	---										
BW	8	-.013	.054	.020	.094*	.064	-.059	-.003	---									
WB	9	.024	.064	-.056	-.061	.022	.022	.043	-.081*	---								
BB	10	.046	.012	-.033	.264**	.140**	-.007	-.040	-.257**	-.075*	---							
Age	11	-.064	-.115**	.290**	-.098**	.000	-.029	.009	.035	.070	-.046	---						
Income	12	.044	.418**	-.028	-.048	-.022	.011	.012	.031	.040	-.019	-.047	---					
Procedural Justice	13	.093*	.011	-.050	.156**	.062	-.082*	.005	.021	.008	.080*	-.143**	.011	---				
Part time	14	-.028	-.018	.050	.042	.017	-.063	.036	-.062	-.047	.032	.054	-.042	-.056	---			
Other work	15	-.060	-.179**	.132**	-.070	.001	.016	.006	.023	.035	-.020	.411**	-.239**	-.011	-.162**	---		
Juror sex	16	.232**	-.055	-.002	.032	.088*	-.108**	-.046	-.045	-.024	.035	.049	-.108**	-.072	.153**	.028	---	
Juror race	17	-.017	-.054	.011	.369**	.144**	-.042	.052	.086*	-.053	.043	.002	-.226**	.068	.009	.018	.030	---

TABLE A.3, CROSSTABULATIONS

	Willingness to serve	Procedural justice
Willingness to serve	-----	17.12**
Emotion	96.47***	14.14**
Juror's race	14.32**	7.37*
Race of foreperson	9.29*	5.50
# of Black jurors	11.24	14.28**
Case composition	7.76	9.26

*= p<.05, **= p<.01, and ***= p<.001.

TABLE A.4, ORDINAL REGRESSION MODELS FOR SPLIT MODELS

	White Jurors		Black Jurors	
	B	St. Error	B	St. Error
Number of black jurors	.028	.049	.087	.113
Race of jury foreperson	-.746*	.312	.585	.631
BW cases	-.385*	.199	.499	.544
WB cases	.489	.502	----	
BB cases	-.102	.215	2.036**	.719

TABLE A.4 CONTINUED

	White Jurors		Black Jurors	
	B	St. Error	B	St. Error
Sex of juror	-.010	.163	-.483	.521
Emotionally upsetting	-1.518***	.175	-2.099***	.585
Juror's education	-.007	.055	.083	.189
Previous trial experience	-.231	.177	-.056	.596
Felt personal responsibility	.168	.062**	.212	.196
Age of juror	-.011	.007	.023	.022
Juror's income	-.003	.068	-.169	.220
Part time work	-.453	.281	-2.26**	1.01
Other work	.030	.216	-.604	.673
Procedural justice	-.028	.030	-.068	.080
Model fitting information	1410.38***		165.47**	
	n= 624		n= 75	

Notes: The white-black case composition in the black juror model is not reported because there were not enough cases for statistical interpretation. Unstandardized coefficients are reported for both models.

*= p<.05, **= p<.01, and ***= p<.001.

TABLE A.5, QUESTIONS FROM JUROR INTERVIEW INSTRUMENT

The procedural justice variable was created by condensing the following six descriptive phrases about the jury. Respondents were provided with four options for each description, which were reverse coded as “not at all,” “not so well,” “fairly well,” and “very well.” The interview instrument states:

In your mind, how well do the following words describe the jury?

- Closed-minded, intolerant of disagreement
- Dominated by a few strong personalities
- Was confused by judge’s instructions
- Did not follow judge’s instructions
- Kept making mistakes
- You felt like an outsider