

**Report on Capital Juror Decision-Making
in
Pennsylvania**

for
Committee on Racial and Gender Bias in the Justice System
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Interviews with jurors who actually decided capital cases in Pennsylvania reveal evidence of discrimination in the decision-making process. This data was obtained from in-depth, structured interviews with 74 jurors in Pennsylvania, and is part of the fourteen-state Capital Jury Project funded by the National Science Foundation. Many of the findings in Pennsylvania replicate results found in analyses of the national sample of 1,155 juror interviews reported in an article recently published in the *University of Pennsylvania Journal of Constitutional Law* (Bowers, Steiner, and Sandys 2001).¹ Discussion of the results will focus on the Pennsylvania findings that are consistent with the national findings, as this replication buttresses our confidence in the validity of the results.

This report will first describe how the data was collected and summarize the characteristics of the data. Then the quantitative and qualitative results will be discussed. The answers to closed-ended questions have been analyzed statistically and the patterns will be presented that relate to how race, and to a lesser extent gender, affect the process. After this discussion of the quantitative results, excerpts from the narrative answers relating to bias will be presented. Finally, the results will be summarized and some recommendations based on these findings will be presented.

Methodology

The data analyzed here is from in-depth interviews with 74 jurors from 27 death penalty cases in Pennsylvania. It was collected as part of the Capital Jury Project, a fourteen state study sponsored by the National Science Foundation (grant # NSF SES-9013252). Dr. William Bowers (Northeastern University, Boston, MA) coordinated the data collection in this multi-disciplinary study, working with researchers in each of the individual states. In Pennsylvania, Dr. John Lamberth from Temple University began the interviews, and I assumed responsibility and oversaw the completion of the data collection in 1996 and 1997.

A three stage sampling design was employed. First states were chosen to represent the principal variations in capital statutes. Within each state, capital trials since 1988 were chosen to provide coverage of cases that resulted in verdicts of both death and life sentences. Finally, jurors were randomly selected from each case. Sample sizes for each state range from 30 to 151 juror interviews. A common structured interview instrument was used, with minor additions and deletions to reflect statutory differences in some states. The interviewers asked a wide variety of open and close-ended questions relating to juror decision-making, and the interviews took an average of three and one half-hours to administer. Additional details about the methodology can be found in Bowers, 1995.²

¹ Bowers, William J., Benjamin D. Steiner, and Marla Sandys. 2001. "Death Sentencing in Black and White: An Empirical Analysis of the Role of Jurors' Race and Jury Composition." 3 *University of Pennsylvania Journal of Constitutional Law* 171.

² Bowers, William J. 1995. "The Capital Jury Project: Rationale, Design, and Preview of Early Findings." 70 *Indiana Law Journal* 1043.

Pennsylvania Sample. Following this sampling procedure, the Pennsylvania sample resulted in 74 interviews from 27 cases. Forty-three (58%) interviews were from cases where the defendant was sentenced to death and 31 (42%) were from life cases. The interviews included a diverse cross section of jurors. Forty-two (57%) of the jurors were male, and 32 (43%) were female. Two jurors (3%) identified their race as "Other," 57 (77%) indicated they were white, and 15 (20%) indicated they were black. Juror ages ranged from 22 to 72 years old, and family incomes ranged from under \$10,000 (n=5) to over \$75,000 (n=6) with the modal response between \$50-75,000 (n=19).

Table 1: Characteristics of Pennsylvania Jurors by Percentages and Counts (n=74)

	Male	Female				
Gender:	57% (42)	43% (32)				
	White	Black	Other			
Race:	77% (57)	20% (15)	3% (2)			
	22-32	33-43	44-64	65 & over		
Age:	15% (11)	37% (27)	38% (28)	11% (8)		
	<\$10K	\$10K-30K	\$30K-50K	\$50K-75K	>\$75,000	No Ans.
Family Inc.:	7% (5)	27% (20)	19% (14)	26% (19)	8% (6)	14% (10)
	Death	Life				
Sentence In Case:	58% (43)	42% (31)				

Interviewing Jurors. Interviews were conducted by myself, and by trained law and graduate students. Answers to the structured interviews were written on the interview instruments and tape-recorded for subsequent transcription. Interviewers read verbatim the neutrally worded questions to avoid influencing the responses. The 75 page interview instrument asks about the case, the guilt trial and deliberations, the sentencing trial and deliberations, sentencing guidelines, the juror's sentencing decision and attitudes, the judges and lawyers, and the respondent's background. Extensive quantitative and qualitative data were collected in these face-to-face interviews.

Overview of Analyses. The analyses of the quantitative data³ consisted primarily of cross-tabulations to discern how different characteristics were related, for example to see if the percentage of death sentences was different for black defendants compared to white defendants. For the sake of brevity, the specific analyses will be discussed below when the results are presented.

Pearson chi-square statistics were calculated to determine whether variables are "independent." If the variables sentence and race were independent, for instance, than sentence would not be associated with race and any observed differences in the percentages would be chance variations. Probability levels were calculated to determine the statistical probability of getting the observed results by chance. In the social sciences, a result traditionally is considered statistically significant - or not a product of chance - if the probability or "p" is less than .05 (the likelihood of getting such a result by chance is less than 5%).

The Kendall's tau-b statistic also was calculated for some of the analyses because it provides additional information. The chi-square statistic only indicates that two variables are related, it does not reflect the strength or direction of the relation. Kendall's

³ The analyses of the quantitative data was done using SPSS.

tau-b was calculated when variables could take on more than two values and they varied in degree, or could be ordered, such as "strongly disagree," "disagree," "agree," "strongly agree." Again probability levels were calculated to determine whether results reflected real relations or just chance differences.

For 24 of the 74 interviews, the jurors' narrative answers to open-ended questions were transcribed into word processing files. The 24 were chosen based on the availability of the tape recordings rather than selection for any substantive reason. These word processing files were searched for the words: race, racism, black, white, prejudice, prejudiced, color, colored, bias, and discrimination. Excerpts from the transcribed interviews that suggest that race or gender influenced the jurors' decision-making are included in the report.

Results

Table 2 summarizes the characteristics of the 27 cases from which the jurors were drawn. All of the defendants in the sample are male, as are the vast majority of defendants tried in capital cases. This report will focus primarily on racial bias, as the lack of female defendants obviously makes it impossible to explore gender bias against defendants. However, a limited amount of the analyses will investigate whether there was any gender bias against female jurors in the decision-making process.

Table 2: Characteristics of Defendants and Victims in Pennsylvania Capital Cases (n=27)

	Death	Life		
Sentence:	63% (17)	37% (10)		
Race of Defendant:	Black	White	Hispanic	
	74% (20)	19% (5)	7% (2)	
Race of Victim:	Black	White	Hispanic	Asian
	56% (15)	37% (10)	4% (1)	4% (1)

It should be noted at the outset that the majority of the defendants (74%) are African American⁴ while most of the jurors are white (77%). As one of the excerpts from a juror interview included below describes it, there is a question of what we mean by a "jury of one's peers" when we see the dominance of white jurors on cases that nearly three-quarters of the time involve black defendants. Differences in life experiences of blacks and whites in our current society suggest that capital jury trials may not be fulfilling the spirit of providing a trial by one's peers. The associations between race and juror perceptions found in this study lend further credence to these doubts.

Juror Decision-Making:

Comparing the percentage of Blacks who got the death penalty with the percentage of NonBlacks⁵ who got the death penalty in Pennsylvania reveals that Blacks are more likely to receive a sentence of death. Table 3 presents the percentages getting

⁴ "Black" will be used in the remainder of the report for ease of presentation in the tables.

⁵ Much of the analysis involves dividing the defendants into Black and NonBlack or White and NonWhite to more evenly distribute the cases in the cross-tabulations.

each sentence for Blacks and NonBlacks based on the 74 juror interviews and 27 cases. Either way approximately two out of three Black defendants received the death penalty, while the percentage receiving death was lower for NonBlack defendants.

Because there happened to be a disproportionate number of interviews from jurors in cases where NonBlacks got Life, the percentages for NonBlacks are different when broken down by interview as opposed to case. As indicated by the chi square=4.749, p=.028, the racial difference in sentence is statistically significant when the 74 juror interviews are analyzed. A juror is more likely to have been on a jury that imposed Death when the defendant was Black. Although the percentage receiving death is still higher for Black defendants when analyzing the cases, the difference fails to reach statistical significance with only 27 cases.

Table 3: Percentages of Black and NonBlack Defendants Sentenced to Death by Juror Interview (n=74) and by Case (n=27)

By Juror Interviews:				
		<u>Race</u>		
		<u>Black</u>	<u>NonBlack</u>	
<u>Sentence</u>	<u>Death</u>	65.5%(36)	36.8%(7)	100% (43)
	<u>Life</u>	34.5%(19)	63.2%(12)	100% (31)
		100% (55)	100% (19)	N=74
Pearson Chi Square = 4.749, p=.028				
By Cases:				
		<u>Race</u>		
		<u>Black</u>	<u>NonBlack</u>	
<u>Sentence</u>	<u>Death</u>	67% (14)	50% (3)	100% (17)
	<u>Life</u>	33% (7)	50% (3)	100% (10)
		100%(21)	100%(6)	N=27

The Bowers, Steiner, and Sandys (2001) analysis of the national CJP data examined the role of race in three different types of cases. They started with a total of 1,155 juror interviews from 340 trials in fourteen states, and divided the sample into three groups depending on the race of the defendant and victim. They focused on cases in which 1) the defendant was black and the victim was white (B/W), both defendant and victim were white (W/W), and both defendant and victim were black (B/B). Nearly half of their 340 cases, 165 or 48.5%, were W/W, 74 or 21.8% were B/W, and 60 or 17.6% were B/B. The remaining 41 or 12.1% were a combination of cases with Hispanic defendants or victims, cases with white defendants and black victims, and cases in which racial information was missing.

It would be impossible to replicate exactly their analysis and results in Pennsylvania because we only have 74 interviews from 27 cases. Breaking the sample of cases into subgroups would result in too few cases in each category for meaningful analysis. The breakdown of cases also is very different in Pennsylvania as a much smaller percentage of the Pennsylvania sample involves White defendants and victims (19% in PA v. 48.5% in national sample). It should be noted that Pennsylvania

interviews involved cases with white defendants far less often than in any other of the fourteen states in the national sample.⁶

Table 4 summarizes the cases in Pennsylvania broken down three different ways. The top section divides the 27 cases into the four different groups used by Bowers et al. to facilitate comparisons to the national data. The cases are then broken down by NonWhite versus White, and Black versus NonBlack. Although the approach to analysis utilized by Bowers et al. would not be appropriate for the Pennsylvania cases because there are far fewer cases and such a disproportionate number of B/B cases, it is still possible to look for patterns in a sample of this size. A somewhat modified but logically analogous approach to analyzing the data from Pennsylvania yielded many of the same problems found in the national sample.

Table 4: Percentages of Cases with different Racial Combination of Defendant & Victim broken down by White v. Black, White v. NonWhite, and Black v. NonBlack (n=27)

White (W) v. Black (B) Defendant/Victim:				
	B/B	W/W	B/W	Other
	52% (14)	19% (5)	19% (5)	11% (3)
NonWhite (NW) v. White Defendant/Victim:				
	NW/NW	W/W	NW/W	
	63% (17)	19% (5)	19% (5)	
Black (B) v. Non Black (NB) Defendant/Victim				
	NB/B	B/B	NB/NB	B/NB
	4% (1)	52% (14)	22% (6)	22% (6)

"White Male Dominance Effect." Bowers et al. (2001) found what they called the "white male dominance effect" in interracial cases involving Black defendants and White victims. When there were five or more white male jurors there was a far greater chance of a death sentence in the 74 B/W cases from the national sample. Thirty percent of the B/W cases with less than four white male jurors resulted in a death penalty compared to 70.7% of those with five or more white males. They did not find this effect in the intraracial cases (W/W and B/B).

As there are only 5 B/W cases in Pennsylvania, it would not be meaningful to further divide those cases depending on the number of white male jurors. However, analysis of all 27 cases and all 74 interviews in Pennsylvania revealed a white male dominance effect.

The threshold was slightly higher in the analysis of Pennsylvania data but, as in the national sample, the chances of a death sentence went up significantly when there were more white males on the jury whether based on the cases or on the interviews (See Table 5). The results are very similar whether cases or interviews are used in the analysis, but it seemed advisable to examine the interviews along with the cases because

⁶ The fact that many of the interviews were from the Philadelphia area contributes to the disproportionate number of nonwhite defendants, but several of the other states in the national sample also were drawn from urban areas with significant nonwhite populations.

there were only 27 cases. All 8 (100%) of the cases with six or more white, male jurors resulted in a death sentence, while only 47.4% of those with less than six white males were death cases. In interviews with jurors from juries with six or more white males, all 16, or 100%, were from cases resulting in a death sentence. With fewer white males, 46.6% of the cases resulted in death (27/58). The chi square statistic was used here to determine whether jury composition was related to sentence. As suggested by the dramatic differences in the percentages, the chi squares were highly significant with $p=.011$ and $.000$ (chi squares=6.687 and 14.717, df 1 for both).

Table 5: Crosstabulation of Sentence in Case and in Juror Interviews by Proportion of White Male Jurors

		Proportion of White Male Jurors		
		6 or more	less than 6	
By Cases:				
<u>Sentence</u>	<u>Death</u>	100%(8)	47.4% (9)	100% (17)
	<u>Life</u>	0	52.6% (10)	100% (10)
		100% (8)	100% (19)	N=27
		Pearson Chi Square = 6.687, $p=.011$		
By Juror Interviews:				
<u>Sentence</u>	<u>Death</u>	100%(16)	46.6% (27)	100% (43)
	<u>Life</u>	0	53.4% (31)	100% (31)
		100% (16)	100% (58)	N=74
		Pearson Chi Square = 14.717, $p=.000$		

Premature Decision-Making. The Capital Jury Project interview asked jurors about their stand on punishment at four different points in the process to learn more about how juror decisions evolved. Jurors were asked what they thought the punishment should be (1) after guilt phase but before sentencing phase, (2) after sentencing instructions but before deliberations, (3) at first vote, (4) at final vote. Bowers et al. (2001) found that the patterns of decision-making varied depending on the defendant/victim racial combinations. Although there are not enough cases of each combination in Pennsylvania to discern patterns based on defendant/victim combinations, there is evidence that race of defendant is associated with how likely jurors are to prematurely decide the punishment should be death in this state.

When jurors were asked what they thought the punishment should be after the guilt phase but before the sentencing phase, they could answer "a death sentence," "a life sentence," or "undecided." At this point they had not heard any testimony or evidence about what the punishment should be or instructions on what they were to consider when making their sentencing decisions. About half the jurors in both the national and Pennsylvania samples indicated they had already decided the sentence. In Pennsylvania, 32% had decided death and 19% had decided life. The percentages were similar in the

national data. In their article on the national data, Bowers, Sandys, and Steiner (1998)⁷ refer to this as "premature decision-making," because jurors are deciding the sentence before the sentencing phase has even begun.

In both the national and Pennsylvania data, most of those who prematurely chose death indicated that they were "absolutely convinced" in a follow-up question, and most never wavered from their stance for death at the four points about which we inquired. In Pennsylvania the percentages were especially high with 92% of the early death jurors indicating they were absolutely convinced and 75% remaining consistent. Examining the percentage prematurely deciding death by race of the defendant reveals that race is associated with taking a premature stance (See Table 6). The differences in the percentages prematurely deciding death are similar whether defendants are divided into NonWhite versus White, or Black versus NonBlack. When jurors are deciding a case with a NonWhite defendant, 37.1 % take a premature stand for death, compared to 8.3% with White defendants. For Black and NonBlack defendants the percentages are 38.2 and 15.8, respectively. While only the former is statistically significant at the .05 level, the probability of the latter chi square occurring by chance is 6%, which almost meets the 5% standard. A similar pattern was found at first vote, with 66.1% of the jurors voting for death when the defendant was NonWhite, compared to 50% with White defendants (p=.042).

Table 6: Percentages of Jurors Who Decided Defendant Deserved Death Before Penalty Phase Even Began by Race of Defendant (N=74)

Race of Defendant		
<u>NonWhite</u>	<u>White</u>	Pearson Chi Square = 3.796, p=.046
37.1% (23/62)	8.3% (1/12)	
<u>Black</u>	<u>NonBlack</u>	Pearson Chi Square = 3.231, p=.061
38.2% (21/55)	15.8% (3/19)	

Juror Perceptions of Case:

In the national data, Bowers et al. (2001) found racial differences on three considerations relating to punishment: "(1) the jurors' lingering doubt about the defendant's guilt, (2) their impressions of the defendant's remorsefulness, and (3) their perceptions of the defendant's future dangerousness," (2001:203). Again Bowers et al. were able to examine interviews with different racial combinations of defendant and victim separately, which made it easier to detect some patterns that were especially pronounced in the Black Defendant/White Victim cases. However, even looking at the interviews all together in Pennsylvania revealed some of the same differences.

Lingering Doubt. Although lingering doubt about the defendant's guilt is not officially recognized as a mitigating consideration in capital sentencing, research has

⁷ Bowers, William J., Marla Sandys, and Benjamin D. Steiner. 1998. "Foreclosed Impartiality in Capital Sentencing: Juror's Predispositions, Guilt-Trial Experience, and Premature Decision-Making." *Cornell Law Review* 83(6):1476-1556.

shown that it may be the strongest "operative" factor in actually reducing the chances the defendant will be sentenced to death (Geimer and Amsterdam 1988; Bowers, Sandys, and Steiner 1998).⁸ The Capital Jury Project interview instrument asked jurors: "How important were the following considerations for you in deciding on what (DEF)___'s⁹ punishment should be?" For each of the listed considerations they could answer "Very," "Fairly," "Not Very," and "Not at All." One of these considerations was "lingering doubts about (DEF)___'s guilt."

Lingering doubt was not at all important in most of the Pennsylvania cases, as can be seen in Table 7. Only for White defendants did a substantial minority consider lingering doubt very (16.7%) or fairly (16.7%) important. Kendall's tau-b was .225, $p=.057$ (although this is slightly above the $p=.05$ level, it is reported because it is nearly significant and probably would have been significant if the sample was larger). The greater tendency to have doubts when the defendant is white rather than black or other minority may be a reflection of racial stereotyping. The fact that about a third of the jurors felt that lingering doubt was an important consideration at sentencing in cases with White defendants may help explain why White defendants were less likely to get the death penalty in Pennsylvania.

Table 7: Percentages and Counts of Jurors Indicating Lingering Doubt was an Important Consideration at Sentencing by Race of Defendant (n=71)

<u>Degree of Importance:</u>	<u>Defendant's Race</u>			
	<u>White</u>	<u>Black</u>	<u>Other</u>	<u>Total</u>
Very Important	16.7% (2)	1.9% (1)	0	4.2% (3)
Fairly Important	16.7% (2)	11.5% (6)	0	11.3% (8)
Not Very Important	0	3.8% (2)	0	2.8% (2)
Not At All Important	66.7% (8)	82.7% (43)	100% (7)	81.7% (58)
Kendall's tau-b = .225, $p=.057$				

Impressions of Defendant's Remorsefulness. In their analysis of the national data, Bowers et al. (2001) found that black jurors were more likely than white jurors to see the defendant as remorseful. Research has shown that when a defendant appears to be sorry for the crime, jurors are more likely to accept mitigating arguments and grant mercy to the defendant (Sundby 1998; Eisenberg et al. 1998).¹⁰

Table 8 shows that Black jurors in Pennsylvania also were more likely to think the defendant was sorry compared to White jurors. Jurors were asked "When deciding the

⁸ William S. Geimer and Jonathan Amsterdam. (1988). "Why Jurors Vote Life or Death: Operational Factors in Ten Florida Death Penalty Cases," 15 *American Journal of Criminal Law* 28; William J. Bowers, Marla Sandys, & Benjamin D. Steiner. 1998. "Foreclosed Impartiality in Capital Sentencing: Jurors' Predispositions, Guilt-Trial Experience, and Premature Decision Making." 83 *Cornell Law Review* 1476.

⁹ Whenever "DEF _____'s" appears in the interview instrument, the interviewer was to insert the defendant's name.

¹⁰ Scott E. Sundby. 1998. "The Capital Jury and Absolution: The Intersection of Trial Strategy, Remorse, and the Death Penalty," 83 *Cornell Law Review* 1557; Theodore Eisenberg et al. 1998. "But Was He Sorry? The Role of Remorse in Capital Sentencing," 83 *Cornell Law Review* 1599.

punishment, did you believe defendant was sorry for the crime?" The possible responses are listed in the first column of the Table. The small number of black jurors may explain why the Kendall's tau-b is slightly above the .05 level of significance, but the significance of the chi square statistic supports the conclusion that juror's race affected their perceptions of remorsefulness.

Table 8: Percentages and Counts Reflecting Juror Perceptions of Defendant's Remorsefulness by Race of Juror (n=70)

<u>Juror Response:</u>	<u>Juror's Race</u>			
	<u>White</u>	<u>Black</u>	<u>Other</u>	<u>Total</u>
Yes, sure def. was sorry	0	13.3% (2)	0	2.9% (2)
Yes, think def. was sorry	1.9% (1)	13.3% (2)	50.0% (1)	5.7% (4)
Not sure, def. acted sorry but it might have been a show	9.4% (5)	6.7% (1)	0	8.6% (6)
No, def. acted sorry, but it was a show	22.6% (12)	20.0% (3)	0	21.4% (15)
No, def. didn't even pretend to Be sorry	<u>66.0% (35)</u>	<u>46.7% (7)</u>	<u>50.0% (1)</u>	<u>61.4% (43)</u>
Percent (Count) within Juror Race	100% (53)	100% (15)	100% (2)	100% (70)
Pearson Chi Square = 18.598, p=.017				
<u>Kendall's tau-b = -.222, p=.082</u>				

Defendant's Future Dangerousness. The future dangerousness of the defendant has become an important, legally authorized basis for imposing the death penalty. Perceptions of future dangerousness have been challenged as being based on unreliable predictions and racial stereotypes, but interviews with jurors demonstrate that future dangerousness is nearly always an important consideration when they decide the sentence.

In Pennsylvania, 78.8% answered yes when asked if they thought there was a "probability that (DEF_____) would commit criminal acts of violence that would constitute a continuing threat to society." In a follow up question they were asked how sure they were, and 54.5% said "absolutely convinced." Over three-quarters (78.6%) of the jurors claimed "keeping defendant from ever killing again" was an important consideration at sentencing.

It is important to note here that although the alternative to death in capital cases in this state is life without parole (LWOP), 15-19 years was the median estimate of jurors in the Pennsylvania sample for how long a defendant would actually serve if he received a life sentence. Twenty-two percent of the jurors actually thought the defendant would be released in nine years or less. Pennsylvania is one of only two states with LWOP that does not require that the jury be told there is no parole with a life sentence in every capital case. As a result of *Simmons v. South Carolina*, 512 U.S. 154 (1994) the jury must be told there is no parole if the prosecution makes future dangerousness an issue, but prosecutors sometime avoid making that argument. When over three-quarters of the jurors claim they are concerned about future dangerousness, it appears that in fact it is nearly always an issue. The association between being NonWhite and considered

dangerous found in both the national and Pennsylvania data make this issue especially problematic for NonWhite defendants.

Bowers et al. (2001) found that white jurors were more likely than black jurors to see the defendant as dangerous in cases involving black defendants and white victims. Again, the Pennsylvania data cannot be subdivided by race of juror or racial combination of defendant and victim because of the relatively small number of interviews from white defendant cases. However, Table 9 shows that race of defendant and perceptions of dangerousness are related in the 74 interviews taken as a whole.

Table 9: Percentages and Counts of Jurors Considering "Keeping Defendant from Ever Killing Again" as an Important Consideration at Sentencing by Race of Defendant (n=70)

Degree of Importance	Race of Defendant			Total
	White	Black	Other	
Very	25.0% (3)	73.1% (38)	83.3% (5)	65.7% (46)
Fairly	25.0% (3)	9.6% (5)	16.7% (1)	12.9% (9)
Not Very	25.0% (3)	3.8% (2)	0	7.1% (5)
Not at All	25.0% (3)	13.5% (7)	0	14.3% (10)
Total Within Each Race	100% (12)	100% (52)	100% (6)	100% (70)

Kendall's tau-b = -.331, p=.002

The greater likelihood of being concerned about future dangerousness with Non White defendants combined with the jurors' erroneous assumptions about early release, makes the failure to inform jurors about the lack of parole with a life sentence especially pernicious for minority defendants.

Juror Perceptions of Jury:

In the national data, Bowers et al. (2001) found some differences between the way Black and White jurors perceived their experience on the jury, especially in Black defendant White Victim cases. However, there were very few racial or gender differences in Pennsylvania regarding how individual jurors perceived their experiences with the jury as a whole. Jurors were read eleven different phrases, and asked to rate whether each described the jury "very well," "fairly well," "not so well," or "not at all". The data was examined to determine whether there were racial or gender differences regarding whether jurors thought the jury

- saw things the same way,
- were intolerant of disagreement,
- were too quick to make a decision
- were friendly and respectful to one another,
- decided on guilt and punishment at same time,
- were dominated by a few strong personalities,
- got too emotionally involved in the case,
- were confused by judge's instructions,
- did not follow judge's instructions,
- kept making mistakes,
- made them feel like an outsider.

Gender. On nine of the eleven items there was not a significant difference between the impressions of the male jurors compared to the female jurors. None of the male jurors indicated there was a lack of respect but 9.4% of the females thought respect was lacking. The probability of getting this much of a difference by chance is 11.5%. This is greater than the five percent level of significance that is traditionally used, but it is mentioned because it suggests that female jurors may get less respect and the difference may have reached statistical significance if the sample was larger. The only statistically significant gender differences were that female jurors were more likely to say that the jury "decided on guilt and punishment at the same time" (45.2% v. 29.2%, $p=.049$) and "got too emotionally involved in the case" (35.5% v. 14.7%, $p=.030$).

Race. There were no significant differences between the way black and white jurors perceived the jury. The small number of black jurors (15) would make it difficult to get statistically significant results, but an examination of the breakdown of responses did not reveal patterns that might have been significant in larger samples. In other words, the percentages were very similar, regardless of race, with respect to how jurors perceived the jury in the Pennsylvania sample.

Juror Perceptions of Lawyers and Judges:

The jurors were asked numerous questions regarding their perceptions of the prosecutors, defense attorneys, and judges in the cases on which they sat as jurors. Perceptions that might reflect racial bias against the defendant were explored to determine whether these perceptions varied by race of the defendant or race of the juror. The breakdown by race was examined regarding whether the judge acted friendly towards the defendant, defense, or prosecution; whether the judge favored one side or the other; the prosecutor's and defense attorney's attitudes toward the defendant and presentation of the case; and their relative advantages regarding resources and commitment. There were few statistically significant relations found. The perceptions that varied by race are reported below.

Judges. One of the questions asked jurors whether they thought the judge was "more favorably inclined" towards the defense, prosecution, or neither. As can be seen from Table 10, the majority of the jurors said neither regardless of the defendant's race. The chi square statistic indicates that race of defendant and favoritism are not independent, but this result must be interpreted with caution because there are so few interviews involving white defendants, and in two of them the jurors refused to answer the question. These results are presented here primarily to illustrate that when favoritism was perceived, it was nearly always towards the prosecution. Of course it also must be noted that these are jurors' perceptions of favoritism rather than direct evidence of bias.

Table 10: Percentages and Counts of Jurors' Perceptions of Whether Judge Favored Prosecution or Defense by Race of Defendant (N=73)

More Favorably Inclined Towards:	Race of Defendant		Total
	NonWhite	White	
Defense	1.6% (1)	0	1.4% (1)
Prosecution	18.0% (11)	16.7% (2)	17.8% (13)
Neither	80.3% (49)	66.7% (8)	78.1% (57)
Refused to Answer	0	16.7% (2)	2.7% (2)
Total Within Each Race	100% (61)	100% (12)	199% (73)

Pearson Chi Square = 10.614, p=.014

Prosecutors. There were very few differences in perceptions of the prosecutor depending on the race of the defendant. One interesting difference was that jurors were less likely to perceive the prosecutor as hostile towards the defendant in cases involving Black defendants (20%) compared to NonBlack defendants (57.9%) (Chi Square = 9.709, p=.021). This may reflect an effort on the part of prosecutors to make sure they do not seem racist when the defendant is black.

No Differences in Case Characteristics by Race of Defendant

Various characteristics of the cases were examined to determine if there were racial differences between the cases that might explain some of the findings discussed above. It can be expected that juries would judge stranger homicides more harshly than those arising from interpersonal disputes, thus it was important to determine if there were significant differences in the types of cases that involved NonWhite defendants compared to White defendants. Jurors were asked whether the defendant and the victim were spouse or ex-spouse, family relations, neighbors, friends, acquaintances, strangers, lovers, co-workers, employer/employee, tenant/landlord. Responses also were examined to questions about the number of victims, the gender of victims, whether victims were made to suffer, and whether the victims' bodies were maimed or mangled. There were no statistically significant differences in the case characteristics by race, regardless of whether the defendants were categorized as Black versus NonBlack, or White versus NonWhite.

Because having six or more white males on the jury was associated with getting the death penalty, it was important to determine whether the increased chance of death for NonWhites was attributable to the fact that they might have come from cases with more white males on the jury. Just the opposite was found, as NonWhite defendants were less likely to have predominantly white juries. This is probably due both to the jury selection process and the fact that many of the Black defendants came from Philadelphia where there is more likely to be significant minority representation on the jury. Regardless of the reason, the increased risk of death for NonWhite defendants is not a coincidence arising from a greater likelihood of being tried by a jury dominated by white males as they are actually less likely to be tried by such a jury. Being a NonWhite defendant and "white male dominance" both independently increase the likelihood of a death sentence.

Evidence from narrative accounts

The jurors' narrative answers to open-ended questions were transcribed for 24 of the interviews. A review of these transcriptions provided some evidence of how attitudes about race and gender play a role in the jury decision-making process.

It should be noted that many jurors expressed concerns that something they might say about the process would become grounds for appeal in the cases they had decided. The fear of jeopardizing the finality of their cases, along with social pressures not to appear racist or sexist, would make it surprising to find much blatant evidence of bias in the narrative accounts. However, the excerpts included below suggest that racial and gender stereotyping may have had some influence.

The most explicit discussion of racism is provided by a 54 year-old black male juror who had served in a case that resulted in a hung jury. The defendant in that case killed 3 Asian restaurant workers in a robbery, and was given a life sentence because two of the female jurors refused to vote for death. This juror who perceived racism ultimately voted for death, thus he was not concerned that the defendant received an unduly harsh penalty, rather he was disturbed by the process. When asked "Can you think of anything more we haven't talked about yet that was important in understanding the jury's guilt decision?", this juror responded:

Probably the fact that there is always racial overtones. Because he's black, it was "automatic," You got six whites, six blacks and you got six whites out there and somebody in authority already told you what the black man has done, so automatically, he's done it. I don't think blacks think that way until they hear. White folks have a tendency, that once the charges are read - "he did it."

In response to "Can you think of anything more we haven't talked about yet that was important in understanding the jury's punishment decision, this juror stated:

They say you should pick peers - I don't know what that word means when they say "pick your peers," because you got people from all walks of life in there. People got their opinion before the trial actually starts. And it is a shame to say that but they have their opinions because everyone is from different walks of life. Like this guy, I told of earlier from North Philly, had a total different perspective on what happens in the inner city compared to the guy out in the suburbs who thinks anything about blacks, if it's a black thing, automatic guilty. The white woman says the same thing. The white woman from center city. She gets on the elevator with me, she got a problem. If something went down, the first thing that's gonna come out of her mouth, it was a black, it's an automatic thing. And it's a shame to think that way and when these jurors hooked up, they were

so disinterested, they were more concerned about what we're gonna have for lunch, and how long was lunch and when we're gonna get out of here... They were impatient and want to leave early to go home to their families, I guess. Not very understanding, and a hint of racism and closely knit group most of the whites that were there never was exposed to black folks, probably not even on their jobs, and they felt very uncomfortable, but I guess, when it came down to taking care of business, a lot of them made their decision before the trial started. Not to say a couple of blacks didn't make their decision either before the trial started. Seems like black mans on trial I should say, black person on trial, and you hear the DA running down the case, authority figure, then the guy is automatically guilty.

In the section where the juror was asked how much the discussion focused on various topics this juror added "basically his background, his upbringing, we dwelled on that - the black jurors did."

Although the interview instrument does not ask about racism, this juror raised the issue on his own at several different points in the interview. He repeatedly used the word "automatic" when describing how the white jurors decided the black defendant's fate. As mentioned earlier, his query regarding whether defendants are really judged by their peers is especially interesting in light of the fact that approximately 3/4 of the defendants in the Pennsylvania sample were black, while about 3/4 of the jurors who were interviewed were white.

It should be noted that the other three jurors who were interviewed in the same case, two black females and one white male, did not mention racism. The quoted juror also was the only one who indicated that the jury was too quick to decide the case in response to a question that specifically asked for an opinion on that issue. All four jurors agreed that that the killing was cold blooded and senseless and that the defendant was from a poor background, but the white male was the only one to say the defendant was not severely abused as a child.

A less obvious illustration of how racial attitudes may have played a role can be found in the comments made by a 58 year old white male juror who decided a case where a black defendant was given death for killing his aunt. Although the three other jurors interviewed from that case did not mention race at all, this juror made repeated references to race. When describing how the defendant assaulted the sheriffs in court, he stated:

And this guy was big, you know. And these big deputies are jumping all over him and he's just dragging them along, just like a gorilla, like Rodney King, you know the same situation. And from that point they had to chain him.

After questioning how the defense attorney "could look at himself in the mirror" this juror added "they played on our sympathies about his poor childhood, his poor this, his

poor that." When asked if there was anything else about the case that stuck in his mind, he stated:

It just illustrates what's going on in this country, right now. I'm not going to be racial about it, but you have to state the facts. The blacks are killing the blacks. And you don't do it gently, it's just brutal.

The issue of race was raised again when this juror was asked if there were main areas on which the jurors disagreed:

You hate to talk again like that but in today's society you would think that they (the black jurors) would side with him because he was a poor, black man no, no the one, the second day I think it was, he came in and say capital punishment, the death penalty.... It was amazing, I was amazed. We had a diversity of people of different ages, different backgrounds, different races.

This juror expressed very strong feelings when he described how he personally reached his punishment decision. "It should be a slow death as a matter of fact. Bring back the old Nazi piano wire." He went on to refer to another juror who had been a soldier in Vietnam. "We both agreed just give him to us, give me an hour with him. That's how bad we hated this person after we saw what he did to this woman.... It had nothing to do with his race, the fact that he was black. We didn't even look at him that way." He described how upset he was about what the defendant had done to the victim by saying "that's worse than what the Japanese and the Vietnamese did to our people," and he referred to the defendant as an animal.

When describing the victim this juror emphasized that she came from a nice integrated area that was similar to his own hometown and added "we've had colored people here since the 1700s." He also indicated that he was impressed that the victim's boss, "a white lady," testified that the victim was a good person.

In response to the question about whether he was influenced by the questions about death during jury selection, this juror gave a somewhat disjointed assurance of his objectivity:

Well I went in with an open mind, just because of his color, I have this thing about the black Muslim, but you know that's my own personal opinion, just because he had the hat on... look what happened at the 39th precinct, how many innocent people...you have to go in with your mind open.

Although this juror went out of his way to state that he was not influenced by race, his repeated protestations and references to skin color, along with his strong negative feelings towards the defendant and use of adjectives such as animal and gorilla, raise the question of whether he might have been influenced by racial stereotypes.

There also were examples from three other cases illustrating how the issue of race was raised, even though ideally it should not have been relevant. A 65 year old black female describes how the O.J. Simpson trial was discussed during deliberations in a case involving the shooting of a cabdriver. She stated:

I even said "this had nothing to do with O.J., some people said, black people think O.J.'s innocent and white people think he's guilty. And I said, I'm black and I think O.J.'s guilty. You can't judge people like that.

In another case where a black defendant was given the death penalty for setting fire to a house and killing a black female who had rebuffed him, a 60 year old white male juror was describing the difficulties he had in handing down a death sentence:

Taking a person's life is not easy. Whether or not it is taken at a later date, it is also not easy and whether he is black , white, indifferent, it is also not easy.

There was another case where a black defendant got the death penalty after killing a woman, this time a white female, who had refused to have sex with him after he had shared his drugs with her. A 50 year-old white female juror indicated that "first the race issue came up" and describes how it was defused:

There was two young black guys and the one made a remark about (sic) the other that our brother was out of his head on cocaine, and there was an older black man who was later picked as jury foreman who jumped all over them and said, it wasn't a matter of your brother or my brother, that was a person, black, white, pink, or green, and she was a woman, and he did a vile thing to this woman, and from then on that then, sort of cleared the air and people felt free to say what they felt.

Later in the interview she said: "I hate to say it, but again the black and white issue again came up and again it was said it's not a black and white issue."

The case involving the black defendant who killed the white woman who would not have sex with him also raised issues regarding attitudes towards women. The same 50 year-old female just quoted, indicated that after race, the other major point of disagreement had to do with whether the victim had "asked for it."

One gentleman said that she, not deserved it, but was as much to blame as he was for putting him in that position. That she made him. She went with him. It was quite interesting. I would have to say first the race issue came up and then the issue that she, not deserved it, but she wasn't a nice person and she sort of let herself in for that.

When describing how the jury reached its decision, she raised the same issue again.

Well, a couple people thought it was a crime of passion. And he was promised something, and he did not get it and went nuts on the... some gentleman in the jury proceeded to tell their own experiences and ah, like we really wanted to hear them, and a couple of ladies, they got a little nuts and said it doesn't matter, no is no, went back and forth like that.

The white male juror who had such strong feelings about the black male defendant convicted of killing his aunt also described how the jurors pressured one woman who was reluctant to vote for death for religious reasons.

The lady held out till the third day, and uh she had a problem and it was a religious problem...we were getting quite angry and very very frustrated because we felt that was going to be a hung jury we really did. All this time wasted for this animal and he's gonna walk. That's exactly how we felt we kind of ganged up on her and then we backed off and she went home that night so she came back like I said and she agreed finally.

The 65 year-old black female juror, quoted above from the case involving the cab driver, expressed a lot of reservations about the jury's decision. The cab driver was killed when the defendant and another man were arguing with a third man who had been with the defendant's girlfriend, the mother of his child. The new boyfriend was trying to leave in a cab, and the cab driver got shot. This juror did not believe that the evidence supported first degree murder: "We never established that (the defendant) had a gun or wanted to do the shooting." When asked how the jury reached its decision she indicated:

This fella was a bad influence on us. He said that someone dies, someone has to pay for it. If we would have decided on the third degree, I would have felt better. I don't believe the jurors were concentrating on this trial. They were reluctant at first, but got swayed. The evidence wasn't definite enough. The foreman had a strong influence over us and he wanted life imprisonment. He was down on gang members.

* * *

I think I was weak, I just followed the group. Someone got killed and someone had to pay, that swayed me. Yes the foreman got everyone to agree. Now the one girl wanted third degree but she changed it for some reason.

The quotations from the narrative accounts are consistent with some of the results of the quantitative analysis, and similar to what Bowers et al. found in their analysis of the national data (2001). Only one juror explicitly argued that there was racism, but his repeated references to the problem make it clear that he at least saw it as a serious issue in his case. His references to "automatic" assumptions about black defendants and jurors making their decisions too quickly may illustrate why "premature decision-making" was more of a problem with NonWhite Defendants. The pressure from male jurors, described both by a male and a female juror, may be examples of how "white male dominance" operated. The fact that both references referred to pressuring women is noteworthy considering that there was some evidence from the quantitative analysis suggesting that women are less satisfied than men with their experience with the other jurors. There also was evidence in the narrative accounts of female jurors' discomfort with the way some of the men discussed the victim's role in a rape/murder case.

Even though there was not evidence of blatant racism, these comments reveal that race was an issue in the mind of some of the jurors. Although the one white male juror emphasized he was not influenced by race, and the one black woman explained how the older black man in her case defused the issue of race, their comments indicate that race was an issue. Adjectives such as gorilla and animal, references to OJ and Rodney King, and the fact that jurors felt compelled to mention race when it should not be relevant, raise questions regarding whether some jurors are completely race neutral when deciding capital cases.

Summary and Conclusion

The quantitative and qualitative analyses of interviews with capital jurors in Pennsylvania provide numerous examples of racial bias. Over two thirds of the Black defendants received the death penalty compared to half the NonBlack defendants. Analysis of the case characteristics failed to reveal differences in the types of cases by race that could explain the difference in sentencing outcomes. However, the fact that approximately three quarters of the defendants were black, while roughly the same percentage of jurors were white, may have resulted in juries that are less likely to relate to, or empathize with, the defendants who were black. One of the black jurors went further than this in his interview, and claimed that white jurors just "automatically" assume the worst about black defendants.

Finding some of the same decision-making patterns in Pennsylvania as were found in the national data by Bowers et al. (2001) provides further insight into the process. Defendants in general are over twice as likely to get the death penalty when there are six or more white, male jurors on the jury. Jurors are more likely to prematurely decide the defendant deserves death, before the sentencing phase even begins, when the defendant is Black or NonWhite. Most of them are absolutely convinced of their premature stance and maintain their position through and including the final vote.

The racial differences in jurors' perceptions found in both the national and Pennsylvania interviews provide additional understanding of why Black defendants are more likely to get the death penalty. When the defendant is White, jurors are more likely to have "lingering doubts" about his guilt and say these doubts are an important consideration at sentencing. Black jurors are more likely than White jurors to believe the

defendant was sorry for what he did. Jurors are much more likely to think the defendant will be dangerous in the future and consider this in sentencing when the defendant is not White. Although there were almost no racial differences in juror perceptions of the prosecutor, defense attorney, and judge, when bias was detected it was almost always in favor of the prosecution.

There could be no analysis of gender bias towards the defendants as all the defendants were male, and the study was not aimed at detecting gender bias, however there is a small amount of evidence suggesting female jurors were more dissatisfied with the jury experience. Female jurors were more likely to say that the jury decided guilt and punishment at the same time and got too emotionally involved in the case. In the narrative accounts there were complaints by a female juror, and references to female jurors, about males pressuring the females during the decision-making process. The minimal amount of evidence here suggests that gender bias in the jury room may warrant further study.

Recommendations

If juries are to be used to decide whether or not a defendant should be sentenced to death, the following recommendations are offered based on the findings discussed in this report:

- 1. Inform jurors in every capital trial that a life sentence in Pennsylvania means life without the possibility of parole.*
- 2. Intensify efforts during voir dire to minimize the over representation of white males on the jury.*
- 3. Intensify efforts during voir dire to reveal juror attitudes towards race and strike for cause any jurors who are suspect.*
- 4. Emphasize at the outset how important it is that jurors wait until the sentencing phase to make their penalty decision.*
- 5. Make sure jurors understand what factors they are supposed to be considering at sentencing to minimize the chance that they are basing their decisions on personal prejudice.*

Inform jurors in every capital trial that a life sentence in Pennsylvania means life without the possibility of parole.

The easiest, and perhaps most important, improvement in the process would be to make sure jurors realize that a life sentence means life without parole (LWOP). Every other state with LWOP but one requires such an instruction. CJP data shows that future dangerousness is an issue in the minds of the overwhelming majority of jurors, whether the prosecution explicitly makes that argument or not. The data also shows that Pennsylvania jurors erroneously assume that life does not really mean life. As mentioned earlier, the median estimate of the time a defendant would serve if he did not receive death was 15-19 years. This is especially pernicious for non white defendants as jurors are more likely to see them as threatening. Making sure jurors realize capital defendants

receiving life will not be paroled will reduce the impact of racial stereotypes relating to dangerousness.

Intensify efforts during voir dire to minimize the over representation of white males on the jury.

Perhaps through training of defenders or closer oversight of voir dire by the trial judges, the chances of white, male dominated juries could be reduced. The dominance of white males increases the chances of a death sentence and may contribute to undue pressure on female jurors.

Intensify efforts during voir dire to reveal juror attitudes towards race and strike for cause any jurors who are suspect.

The observed tendency to decide on death prematurely and perceive more future dangerousness and less lingering doubt with non white defendants suggests that individuals with suspect attitudes regarding race are making it on to our juries. Again, training of defenders and closer monitoring of voir dire by judges may be able to more effectively eliminate potential jurors who are biased.

Emphasize at the outset how important it is that jurors wait until the sentencing phase to make their penalty decision.

The tendency of jurors to prematurely decide the penalty should be death and maintain that position through and including the final vote is especially problematic with non white defendants. Perhaps pre-existing prejudices are increasing the tendency to take a stand for death with non white defendants and better screening for racism suggested above will help address this problem as well. In addition, perhaps defenders and the judge could try to emphasize the importance of delaying the punishment decision until the penalty phase of the trial so that jurors are more likely to base their decision on the statutory factors they are supposed to consider. The more they are basing their decision on legal variables, the less likely bias should influence the result.

Make sure jurors understand what factors they are supposed to be considering at sentencing to minimize the chance that they are basing their decisions on personal prejudice.

It also should be helpful to enhance juror understanding of sentencing instructions because, as argued immediately above, maximizing the extent jurors base their decision on statutory considerations should reduce the influence of racial bias. Although it was not discussed here because it does not relate directly to racial bias, there is evidence from the national data and the Pennsylvania data that many jurors do not understand the

sentencing instructions (Foglia and Schenker 2001; Foglia 2001).¹¹ Many do not realize that aggravating circumstances are limited to those listed in the statute and must be proven beyond a reasonable doubt to all the jurors. There is even more widespread misunderstanding when it comes to mitigating factors. Many jurors do not realize that they can consider anything that they personally believe is mitigating by a preponderance of the evidence. Again, training for defenders and greater efforts by the judges may be able to lessen these misunderstandings and reduce the room for bias to influence the decision.

The findings discussed here, as well as other results of the Capital Jury Project, raise serious questions about the capital jury process. The quantitative and qualitative results discussed in this report replicate what was found by Bower et al. (2001), and demonstrate that the decision-making process is biased against non-white defendants. Perhaps some of the recommendations may help to reduce the observed discrimination in capital sentencing.

¹¹ Wanda D. Foglia and Nathan M. Schenker. 2001. "Arbitrary and Capricious After All These Years: Constitutional Problems With Capital Jurors' Decision Making," Vol. XXV *The Champion* 26; Wanda D. Foglia. 2001. "They Know Not What They Do: Unguided and Misguided Decision-Making in Pennsylvania Capital Cases," under consideration for publication in *Justice Quarterly*.