ABSTRACT

Title of Document: DOES THE GROUP MAKE A DIFFERENCE? A LOOK AT THE FACTORS THAT IMPACT PERCEPTIONS OF GROUP DELIBERATIONS AND SENTENCING OUTCOMES IN CAPITAL TRIALS

Nadine Marie Connell, PhD
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Directed By: Professor Raymond Paternoster
Department of Criminology and Criminal Justice

Traditional research into the mechanisms by which jurors in capital cases make punishment decision focuses on one of two relationships: the relationship between a juror's individual characteristics and a sentencing outcome or the relationship between trial level characteristics and a sentencing outcome. Many significant findings have come from this type of research, most notably that arbitrariness still exists in the application of capital punishment. This arbitrariness takes on various forms, including poor comprehension of sentencing instructions (Bowers and Foglia, 2003; Foglia, 2003), racial bias in sentencing decisions (Baldus et al,. 1998; Bowers et al., 2001; Bowers et al., 2004), and a homogenization of the jury pool through the process of death qualification (Haney. 1984). What this research has failed to address, however, is the role that the act of deliberation may have on the relationship between these individual and trial level characteristics and their ensuing impact on sentencing outcomes. The current study addresses this shortcoming by focusing on the role that the process of deliberation has on

the juror's perception of the group functioning, measured here through the construct of group climate. The predictors of group climate are examined and the subsequent impact of group climate on sentencing outcomes is explored. The results suggest individual juror level characteristics do not have a direct effect on sentencing outcome; rather, the level of group climate acts as a mediating variable between individual characteristics and sentencing outcomes. Trial level characteristics, however, both directly predict to sentencing outcome and indirectly operate through the level of group climate. Group climate is the strongest predictor of sentencing outcome, with juries who have more positive perceptions of group climate more likely to return the death penalty. These results and their implications are discussed in detail, as are suggestions for both future research and the future of capital punishment.

DOES THE GROUP MAKE A DIFFERENCE?
A LOOK AT THE FACTORS THAT IMPACT PERCEPTIONS OF GROUP DELIBERATIONS AND SENTENCING OUTCOMES IN CAPITAL TRIALS

By

Nadine Marie Connell

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Advisory Committee:
Professor Raymond Paternoster, Chair
Professor Gary LaFree
Professor Jean Marie McGloin
Professor Kevin O'Grady, Graduate Representative
Professor Sally Simpson

Dedication

This work, as well as all past and future works, is dedicated to the two people who always let me know that they believed in me and that I could accomplish anything I set out to do; without them, none of this would have been thinkable, let alone possible.

To Joan and Tim Connell:

Thank you Mom and Dad, for everything! I love you!

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I am also extremely grateful for the support and encouragement that I have gotten from my family and friends over the years. The graduate school process is a long and arduous one that can only be successfully completed with the knowledge that there are people around who want you to succeed. In my life, those people have always been my parents, Timothy and Joan Connell. I am convinced that throughout the years, they are the only two people who have never doubted my ability to succeed in any way and for that I will never stop being thankful. I would not have made it where I am today without their unconditional love, praise, and encouragement; words do not accurately convey the love and gratitude that I feel towards them in return. They have instilled in me a sense of purpose, dedication to hard work, and the faith needed to sustain me through this journey. They have celebrated the successes, mourned the bumps in the road, and have always given me the strength I have needed to keep moving forward. This and all other accomplishments in my life are a tribute to their unfailing support; I have been blessed with the best parents in the world, so thank you Mom and Dad!

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Chapter 1: Introduction

Introduction

In 1971, the United States Supreme Court ruled in *McGautha v California*[1] that giving sentencing bodies unlimited discretion in capital cases was not a violation of a defendant's right to due process as described in the 14th Amendment. The Court supported this ruling based on the fact that it was reasonable for the State to assume that its citizens would "act in due regard for the consequences of their decision[2]." The majority opinion pointed out that listing an appropriate set of circumstances under which the death penalty should be imposed would only serve to inhibit, not expand, the possible factors to be utilized by judges and juries during sentencing, as it would be impossible to create a complete list. The Justices also argued that past attempts to formulate jury instructions had only served to interfere with the entire process of letting juries decide punishment[3]. Just one year later, however, the Court realized that the consequences of such unfettered discretion were not what had been anticipated by the *McGautha* ruling, as an examination into the pattern of death penalty sentences had Justice Stewart remarking that the issue at hand was one where the death penalty was being "so wantonly and so freakishly imposed[4]." Indeed, no discernible pattern appeared to exist. So, in the 1972 landmark decision, *Furman v. Georgia*[5], the United States Supreme Court deemed that

[1] McGautha v. California, 402 U.S. 183 (1971)
[2] ibid.
[3] ibid. Citing Winston v. United States, 172 US 303 (1899).
[4] Furman v. Georgia, 408 U.S. 238 (1972)
[5] ibid.

the application of capital punishment as it was currently being practiced was unconstitutional.

This decision was based on several facts; chief among them was the issue that the imposition of a capital sentence seemed, at best, to be an uneven process. The Court pointed to many instances where like cases were not receiving like sentences as evidence of the ways that the sentencing structure was irrational. If anything, such irregular application appeared to be aimed primarily at minority and lower-class citizens, a penalty, suggested by the Justices, meted out against the "powerless and the hated[6]." Such arbitrariness, the Justices concluded, had to be the result of the unfettered discretion that the sentencing body, judge or jury, had over the outcome. The decision to sentence a defendant to death, especially in light of the fact that the sentence is irrevocable once carried out, was too important to be made without guidance and direction, a door that the Court left open for the states to improve.

Because the *Furman* ruling did not conclude that the death penalty itself was unconstitutional, but rather its application, many states took their cue from the Court and rewrote their death penalty statutes in order to provide some semblance of guidance and direction to the sentencing body (judge or jury). The ways in which the states responded to the ruling varied in their specifics, but generally legislatures passed statutes to limit the types of homicide that would be eligible to be tried as a capital case, enacted laws that directed juries to determine the balance between aggravating and mitigation factors, and saw to it that capital cases received expedited appellate review. Questions remained, however, about the validity of these statutes, until the Court, ruling on *Gregg v. Georgia*[7],

[6] Cited in the judgment of Justice Douglas, quoting former Attorney General Ramsey Clark (408 US 238).
[7] Gregg v Georgia, 428 U.S. 153 (1976)

and its companion cases *Proffitt v. Florida*[8] and *Jurek v. Texas*[9], helped lend clarity to the issue. The Court held that the statutes enacted by the three aforementioned states, modeled in part after the American Bar Association's Model Penal Code, would aid in the standardization of death penalty sentences and the entire process would no longer exhibit the uneven distribution that the Court was concerned about in the *Furman* ruling. In a related ruling, the Court also determined that those statutes that attempted to reign in the discretion of the jury by imposing a mandatory death penalty for the crime of first degree murder were a violation of a defendant's eighth and fourteenth amendment rights. In the *Woodson v. North Carolina*[10]decision, the Court concluded that a mandatory death sentence was a violation of an individual's eighth and fourteenth amendment rights because it did not allow the jurors to take into consideration the specific circumstances unique to each defendant; the Court acknowledged that prevailing standards of decency require that each death sentence be imparted only when it has been "exercised within the limits of civilized standards[11]." The Court further affirmed this stance in the *Roberts v. Louisiana*[12] decision, where they recognized the mandatory death penalty statutes took away a defendant's ability to ask for mercy from the court or the jury. These decisions have paved the way for states to enact their own forms of guided discretion statutes in an attempt to make the application of the death penalty less "arbitrary and capricious."

The statutes enacted by the states in response to the favorable rulings in *Gregg* and its companion cases generally include a provision about the types of homicides that are deemed "death eligible," where legislatures denote certain types of circumstances to

[8] Proffitt v Florida, 428 U.S. 242 (1976)
[9] Jurek v Texas, 428 U.S. 262 (1976)
[10] Woodson v. North Carolina, 428 U.S. 280 (1976)
[11] Ibid.
[12] Roberts v. Louisiana, 428 U.S. 325 (1976)

be considered worthy of capital punishment. Generally, these circumstances include: the killing of a law enforcement officer in the line of duty; the killing of a person while in the commission of another felony; and, a killing that is especially heinous. Such statutes direct that the decision to be made about whether a defendant is eligible for the death penalty be left to the local district attorney, who makes the final decision about whether or not to try a case as a capital case.

Once the decision has been made to try a case as a death penalty case, all states then engage in a bifurcated trial/sentencing process, whereby an initial trial is held to determine the guilt or innocence of the defendant and then, should a verdict of guilty of a capital crime be rendered, a second sentencing trial is held to determine the punishment. Depending upon the procedures within the state, at times the same jury serves for both the guilt and sentencing stages, whereas in other states a new jury is empanelled for the punishment stage of the trial. Before they begin deliberation, the jury is instructed by the sentencing judge on the guidelines used by that state to direct sentencing deliberations. While the guidelines vary by state, they generally fall into three categories: 1) balancing statutes; 2) threshold statutes; and, 3) directed statutes (Bowers and Foglia, 2003). Balancing statutes require that jurors consider both the aggravating and the mitigating factors applicable to the case and return a death sentence when the aggravating circumstances outweigh the mitigating circumstances. All members of the jury should agree upon the weights that are to be assigned to each type of circumstance. Threshold statutes require that a jury find that at least one aggravating factor be present. The jury must also consider any mitigating factors that may be present. Once they have done this, they are free to determine if a death sentence is warranted under in the case without

further guidance. Directed statutes require that all of the jurors must answer specific questions in the affirmative before they can impose a death sentence. The state of Texas, for instance, requires that jurors answer yes to three questions before they can return a death sentence; the questions pertain to the defendant's future dangerousness, criminal responsibility for the killing, and whether there are any mitigating factors that would cause the jury to impose a life sentence (Bowers, 1995).

In most states, the jury's sentencing decision is binding. Traditionally, however, some states, such as Florida, have operated under an advisory type of system, where the jury would only give a sentencing recommendation to the judge, who would then go on to make the final decision (Bowers, 1995). This process, where juries would recommend a sentence to the judge, has since been examined and changed. In a recent decision by the United States Supreme Court, *Ring v. Arizona*[13], the Court ruled that all crucial facts of a case, including the presence of aggravating and mitigating circumstances, must be decided on by the jury. The Court asserted that a defendant's sixth amendment right to trial would be violated if the law did not encompass the fact-finding necessary to put him (or her) to death in the same way that it encompassed the fact-finding necessary to charge him (or her) with a greater offense[14].

Since the enactment of the post-*Furman* statues, the Court has set forth several other provisions to help guide jurors through the capital sentencing process. The Court has determined, for instance, that jurors cannot fail to deliberate on mitigating factors[15] and that in addition to those aggravating factors described in State statutes, they may

[13] Ring v. Arizona, 000 U.S. 01-488 (2002)
[14] Ibid.
[15] Lockett v. Ohio, 438 U.S. 586 (1978)

consider aggravators not mentioned in the statute,[16] such as a defendant's prior criminal record. Juries may, furthermore, consider the issues of future dangerousness and the defendant's ability to adjust to prison life when trying to determine whether death is the most appropriate punishment[17], although it is inappropriate for them to consider the possibility that their sentence may be overturned pending appellate review[18].

Despite the fact that the U.S. Supreme Court has held that these types of guidelines offer enough instruction for juries to, if not easily, at least systematically, reach a decision about whether or not to sentence the defendant to death, research on the decision-making processes of capital juries has found that many of these efforts to curb the aforementioned unfettered discretion of jurors have been in vain. This line of research suggests that attempts to control discretionary death penalty application through legal proscriptions may have caused it to operate through a different process, with jurors making decisions about death sentences using criteria not controlled by the law (for examples, see Sommers and Ellsworth, 2000; Thompson, Cowan, Ellsworth, and Harrington, 1984). This is consistent with the general trend of discretion within the criminal justice system; attempts to remove discretion from one part of the process generally results in it being moved to another (Walker, p. 12). Zimring and his colleagues (Zimring, Hawkins, and Kamin, 2003), for instance, find that in a study of three California jurisdictions both before and after the implementation of three-strikes legislation, judges were using their discretion to change felony charges given to defendants who were at either their second or third strike; charging is generally a process

[16] Barclay v. Florida, 463 U.S. 939 (1983)
[17] Skipper v. South Carolina, 476 U.S. 1 (1986)
[18] Caldwell v. Mississippi, 472 U.S. 320 (1985)

left to prosecutors but those judges interviewed felt that the application of their personal discretion would help serve the court system more so than would keeping the charges.

Discretion within the criminal justice system tends to be based in personal decision-making; as such it can be a difficult construct to measure. Such difficulties are amplified in the study of the discretion of jurors, as so much of the process of jury decision-making is hidden from anyone outside of the jury room. To date, research into the discretion of jurors has generally consisted of interviewing the jurors after they have deliberated on a capital case and asking them about the processes in which they were engaged. Several disturbing trends have emerged, many of which only further validate similar investigations that have been conducted using mock-trial and jury simulation experiments.

Among the problems of capital jury sentencing identified, Bowers and Foglia (2003) list seven that are especially egregious in light of the constitutionally based provisions that have been set forth by the United States Supreme Court. These seven errors include 1) the fact that jurors make premature sentencing decisions, coming to personal conclusions prior to the sentence deliberation phase (see also Foglia, 2003; Eisenberg, Garvey, and Wells, 2001); 2) the fact that there is bias in jury selection, with an overrepresentation of pro-death jurors (Butler and Moran, 2002); 3) a widespread failure of jurors to understand the sentencing instructions (see also Foglia, 2003; Brewer, 2004), especially in the ways that they related to aggravating and mitigating circumstances; 4) confusion about whether death is required if a defendant is convicted of a capital crime (Geimer and Amsterdam, 1988); 5) generalized refusal to take responsibility, either as an individual juror or a member of the group, in the sentencing

decision[19]; 6) racial influence in the decision-making process (see also Bowers, Steiner, and Sandys, 2001; Bowers, Sandys, and Brewer, 2004); and 7) an underestimation of the alternatives to the death penalty (see Foglia, 2003).

In general, what this line of research shows in that there is enormous variation in the ways that the jurors appear to follow capital sentencing guidelines. For instance, in her study of the jury deliberation process in Kentucky, Sandys (1995) found that in approximately half of the trials (48.5%), jurors discussed the appropriate punishment during the guilt deliberation phase of the trial. By violating both the spirit and the letter of the law of the bifurcated trial process and combining the punishment and the guilt deliberations, jurors are unable to correctly separate the aggravating circumstances that could lead a jury to a guilty verdict from those that should lead a jury to a sentence of death. Similarly, in a related study of jurors in six death penalty states, Bentele and Bowers (2001) found that jurors identified guilt-related topics to be the most prevalent ones discussed during punishment deliberations. For instance, respondents often used the strength of the evidence presented during the guilt phase of the trial as the reason that they voted for a death sentence. Others believed that because the defendant admitted to committing the crime, he deserved a death sentence. Many jurors also assumed that because the defendant was found guilty of a capital crime, the jury had to return a death sentence; this is, of course, directly contrary to the prohibitions against a mandatory death penalty as set forth by the United States Supreme Court in the *Woodson*[20] and *Roberts*[21] decisions. Such variation does not seem to be directly related to the type of capital

[19] This is especially problematic in light of part of the *Caldwell v. Mississippi* (472 US 320) ruling, which explicitly decided that any sentence of death could not be reliable if the jury believes that the ultimate responsibility for the penalty lay elsewhere.
[20] Woodson et al. v. North Carolina, 428 U.S. 280 (1976)
[21] Roberts v. Louisiana 428, U.S. 325 (1976)

sentencing guidelines employed by the individual states, as the problems with deliberation seem to occur under all derivations of guided discretion statutes. In fact, Bentele and Bowers (2001) made sure to include data from states with all three of the types of sentencing guidelines in their analysis.

Despite the variation in the ways that jurors are following the law, research does not suggest that there is a conscious process governing the unlawful behavior of either the individual jurors or the juries as an entity. The literature in fact suggests the opposite: jurors are not purposefully trying to circumvent the law. This leaves us to wonder what factors are influencing the deliberation process and thus what factors are contributing to the continuation of the uneven application of death penalty sentences. Researchers have specifically looked at two categories of potential explanations: juror level characteristics and case level characteristics. Juror level factors generally include demographic characteristics, such as juror race (Bowers et al., 2001), religion (Eisenberg, et al., 2001), social statues (Hastie, Penrod, and Pennington, 1983), and death-penalty attitudes (Butler and Moran, 2002). Case level factors include the race of both the defendant and the victim (Bowers et al., 2004), the seriousness of the crime (Brewer, 2004), and the actions of the attorneys (Brewer, 2003). While examining both of these types of potential explanations have been useful in helping researchers and legal officials alike understand the process by which death sentences are handed down, they both ignore the inherently group nature of jury deliberations. Jurors are tasked with working together to create a consensus judgment about the fate of the defendant; doing so requires them to discuss, debate, and ultimately, decide *as a group* what the appropriate punishment should be. By ignoring the group level processes that go into making this decision, many researchers are

ignoring the potential utility that such explanations have on helping us to further understand the process by which capital sentences are made and more importantly, helping us to further understand why such disparity still occurs during the process of capital punishment, despite the fact that many safeguards have been put into place in order to make the process fair and evenhanded.

This research is an attempt to begin to help fill the void in research about capital jury deliberation processes. Using data collected from jurors who have served on capital trials in fourteen states, I examine the role that the perception of the climate of jury deliberations has on sentencing outcomes. The climate of the jury, which will be explained in greater detail in later sections, can be most easily understood as the quality of the interactions that occur during deliberations and the way that the individual jurors interpret their experiences as part of a group. Because the jury deliberation process is one that by its very nature requires twelve people to come to consensus about an outcome, it is a unique experience where group processes will arguably be present. Due to the creation of what is essentially a forced working group, the assumption that the process of group deliberations would impact decision-making is one that makes logical sense. The assumption that group dynamics impact decision-making processes is one that has been shown to have merit in research that is devoted to group functioning in other fields, most notably business and organizational psychology. Building on this assumption and using language from these other fields, I hope to discover whether explanations based on group interactions during jury deliberations can help increase our understanding of the process by which jury deliberations impact capital sentencing outcomes.

The research to date on capital juries also suggests that racial divides exist between jurors, especially in cases where minority jurors are interacting with White jurors on trials with a Black defendant (see for example, Brewer, 2003; Bowers, Sandys, and Brewer, 2004; and, Fluery-Steiner, 2002). What this research has been less successful in determining is by what process such racial divides occur, especially in light of the shared experiences of the voir dire process in jury selection, which often homogenizes the jury so that all jurors have similar predispositions towards the death penalty (for a discussion of this phenomenon, see Haney, Hurtado, and Vega, 1994). In looking at the role that group climate plays in the decision-making process, I will also examine whether any differences of perception may occur along racial divides. Such analysis is necessary in order to help increase our understanding of why Black and White jurors report very different reactions when asked about their capital jury experiences (see Fluery-Steiner, 2002). The qualitative accounts from these reports, which will be described in the next section, offer some insight but do not allow for generalization; I offer more advanced statistical analysis in an attempt to help us understand these differences in ways that could be generalized to the capital jury experience of all jurors.

Chapter 2: Capital Jury Research: A Literature Review

The process of jury decision-making has long been one of interest to social scientists and current empirical endeavors can be traced back to the pioneering work of Kalven and Zeisel (1966). Their research was the first time that jurors and the process by which jury decisions were made were studied scientifically. Researchers started to learn about juries through observation of courtrooms and through the collection of data from primary actors within the courtroom, especially judges. It was the beginning of the phase where scientists sought to identify the factors that were important to jury deliberations and to verdict outcomes. Their work, known to many as the Chicago Jury Project, was the impetus for another generation of social science researchers to turn their attention to the normally hidden process of jury deliberation. Perhaps the most well-known take-off of the Chicago Jury Project is the recent collaboration of researchers in several states, who have taken on the task of interviewing jurors in fourteen states who have served on capital trials. This research, known as the Capital Jury Project (see Bowers, 1995) is one of the few jury studies to take an in-depth look at the mostly secretive, but highly legislated, process by which capital sentencing decisions are made. This section will discuss the research on capital punishment decisions from the context of the juror making those decisions. Beginning with the origins of the understanding that come from Kalven and Zeisel's (1966) seminal work and progressing through the most recent findings of the Capital Jury Project, the literature review will trace the research on whether capital jurors

do indeed follow the guidelines provided to them by the United States Supreme Court and state legislative bodies and make their decisions in the ways acceptable by law.

Early Jury Research

In their influential work on the ways in which juries make guilt and sentencing decision, Kalven and Zeisel (1966) point out that the jury as a guilt determining body had come under scrutiny by critics who contended that juries did not follow the law, both because they lacked the ability to understand it and because they did not wish to enforce it. In an attempt to address critics' concerns, Kalven and Zeisel undertook the task of completing the first scientific research study of jury decisions. Seeking to understand the process as it applied to criminal trials, the authors collected data on 3,576 criminal trials that took place in 1954, 1955, and 1958 (Kalven and Zeisel, 1966, p. 33). In an attempt to answer two questions, the first being whether the jury did understand the facts of the case and the second being whether the jury's decision was in line with the weight and direction of the evidence, the authors collected information on the 3,576 trials from 555 judges in several states, who each reported on the facts of the case, the jury's verdict, and the verdict he would have leveraged if it had been a bench trial.

The authors felt that the best way to measure whether the jury's decision was the correct one would be to assess the judge-jury agreement rate; therefore, in cases where the jury's verdict agreed with the judge's assessment of the case, the authors would conclude that the jury understood the facts of the case and came to the appropriate decision (p. 152). They posited that, on the other hand, if a jury did not understand the

facts of the case or the evidence being presented to them, they would be making a decision about a case that is different than the one the judge is deciding and therefore be returning an inappropriate verdict. The data collected from these cases showed that, overall, jurors did appear to understand the facts of the case, although simple analysis suggested that as the case became more complicated in nature (i.e. more expert testimony, less clear facts), judges did report that juries would ask more questions and deliberate longer (p. 154-155). Nonetheless, the amount of agreement between the judge and the jury, as measured by having the same verdict returned by both sentencing bodies, was about equal for the cases where the judge felt that the outcome was clear, regardless of whether the judge deemed the case to be easy or hard (p. 157). The authors felt that this was evidence not only that jurors understand the evidence presented to them, but that they also follow the direction of the evidence and made decisions that the judge agreed were the right decision (p. 159).

Despite the evidence that there does appear to be overall judge-jury agreement, there are several instances where disagreement between the two decision-makers was evident. The authors attribute approximately 14% of the disagreement to what they coined the "defendant factor," where the judge attributed the difference of opinion to the way that the jury interpreted the weight of specific characteristics of the defendant (p. 216). For instance, attractive defendants, those who showed remorse for their crimes, prior military service, and the family responsibilities of the defendant all appeared to favor the defense (p. 202-208). Conversely, cases with Black defendants seemed to elicit less favor (p. 210-211). Jurors favored defendants whom they thought had skilled counsel and whose attorney they considered to be personable (p. 365). In fact, in 4% of

the cases where the disagreement occurred because the jury was more sympathetic than the judge, the judge attributed the disagreement to the attorney's performance (p. 368-369).

Kalven and Zeisel (1966) were quick to point out, however, that these findings were only applicable to regular felony trials. Admitting that capital trials are a completely different experience, the authors went on to collect data on 111 capital trials, with both life and death outcomes (p. 435). Both the judge and the jury agreed that life in prison was the appropriate sentence in 68% (76) of the cases, with the two agreeing on a death sentence in 13% (14) of the cases. In the cases where the judge and jury disagreed, the jury was more sympathetic in 13% (14) of the cases and less sympathetic in the remaining six percent (7 cases) (p. 436). The authors noted that clear patterns existed in the cases where the judge and the jury agreed that the punishment should be death; most notably, those cases with multiple victims, victims defined as more defenseless (such as children), and cases where sex crimes were involved were more likely to be sentenced to death (p. 437). Disagreement occurred when there was a question about the mental and/or emotional stability of the defendant, in cases where there appeared to be a lack of sympathy for the victim, and in cases where the victim may have provoked the defendant (p. 439). Most often, the lack of sympathy for the victim was attributed to the victims being African-American or to the victims being women with bad reputations. These findings are especially pertinent, given that they are a precursor to much of the modern day jury decision-making research, which suggests that death sentences are more likely to be meted out in cases where the victim is White (see Baldus, Woodworth, and Pulaski,

1990; Baldus, Woodworth, Zuckerman, Weiner, and Broffitt, 1998; Bowers et al., 2001; King, 1993; Sommers and Ellsworth, 2001; Sweeney and Haney, 1992).

While Kalven and Zeisel (1966) did indicate that some bias may be occasionally operating in those capital trials where there was disagreement on the sentencing outcomes between the judge and the jury, especially in the few cases where the judge would be more likely to give a life sentence but the jury returned a death sentence, on the whole, the authors interpreted these results as suggestive of the fact that the jurors may indeed have been making decisions based on the facts of the crime and not based on outside influences. But as this research was being conducted in an era prior to when the United States Supreme Court had begun to identify and attempt to remedy the serious flaws inherent in the capital trial process, Kalven and Zeisel (1966) had little impetus and even less opportunity to delve more deeply into the subject. Using only a measure of discordance between jury sentences and judicial recommendations to look at the validity of jury sentences, the authors were unable to tap into many, if any, of the flaws that have since been identified in this process, such as the ability of jurors to understand the definitions of aggravating and mitigating circumstances or the impact that the defendant's character has on the jury's final decision. More recent research has attempted to fill in these gaps; much of the research on capital trials after Kalven and Zeisel's (1966) influential work has looked at several areas of potential problems, many identified by the U.S. Supreme Court. Pertinent topics include whether or not those individuals that have been chosen to sit on juries are truly qualified to return a verdict, the ability of jurors to understand the task that they have been assigned, issues of racial bias, questions about the quality of deliberation, and the impact of influence from other jurors. The research

findings for each of these modern-day issues will be discussed in detail in the following sections.

Death Qualification

One of the ways in which the United States Supreme Court has attempted to exert control over the process of capital sentencing is by the regulation of which citizens are allowed to serve on a capital jury. Recognizing that some individuals may possess attitudes that would prohibit them from fairly and impartially rendering either a guilty verdict or a valid sentencing decision in a capital case, the Court has traditionally given the lower courts guidance in determining which individuals would constitute "death qualified" jurors – those jurors who would be able to follow the instructions presented to them in order to come up with legally permissible verdicts and sentencing decisions. Traditionally, the Court recommended that any juror who exhibited "general scruples" against the death penalty be excluded from serving on a capital trial. This standard was re-evaluated in the 1968 *Witherspoon v. Illinois*[22] decision, which excluded potential jurors who were unalterably opposed to the death penalty. Over time, however, the standard has been shaped by both the *Wainwright v. Witt*[23] and *Morgan v. Illinois*[24] decisions, which have attempted to further clarify the circumstances by which an individual should be excluded from serving on a capital jury. All three cases will be discussed here, as will the effects that each of these standards have had on the process of jury decision-making in capital cases.

[22] Witherspoon v. Illinois, 391 U.S. 510 (1968)
[23] Wainwright v. Witt, 105 S.Ct. 884 (1985)
[24] Morgan v. Illinois, 60 LW 4541 (1992)

Witherspoon v. Illinois 1968

Known as the *Witherspoon* standard of death qualification, the decision set forth in the *Witherspoon v. Illinois* case excludes from capital jury service those individuals who felt that they would not, under any circumstance, vote for the death penalty. Such individuals could not take part in either the guilt deliberation phase of the trial or the penalty deliberation phase. In essence, the *Witherspoon* standard is a two part test. First, jurors were excluded if they felt that their attitudes towards the death penalty would prevent them from making an impartial decision about the defendant's guilt. If a juror passed the first part of the test, s/he could still be excluded if s/he felt that no amount of evidence could convince her/him to vote for the death penalty during sentencing deliberations. This standard of death qualification prevailed for almost two decades, despite scores of evidence that suggested that juries comprised of individuals who met the Witherspoon standard were not representative of the population as a whole (Fitzgerald and Ellsworth, 1984).

Much effort has been expended in trying to understand whether or not juries comprised of only those individuals who meet the *Witherspoon* standard are indeed impartial. In a telephone survey of 811 potentially eligible jurors in California, Fitzgerald and Ellsworth (1984) identified almost 20 percent of the sample (17.2%) who would be considered excludable under the *Witherspoon* criteria. From this sample, they were able to estimate that approximately seven out of every ten people who oppose the death penalty are eliminated from capital jury service through the process of death qualification. After determining which individuals would qualify for jury service, the authors next attempted to determine if there were any differences in attitudes between

those individuals who would be excluded and those who would be retained in the jury pool. They found that the excludable respondents were more likely than the death qualified respondents to have a "due process" orientation, meaning that they were more likely to emphasize the fallibility of the criminal justice process. For instance, *Witherspoon* excludable respondents were more likely to agree that it was better to let a guilty person go free than it was to convict an innocent person. Individuals who qualified for jury service under the *Witherspoon* standard, however, were more likely to choose punitive punishment options and believe in the strict enforcement of all laws. The authors also pointed out that Blacks were more likely than any other group to be excluded, noting that the process of death qualification disproportionately removes both minorities and women from the eligible jury pool (see also Cowan, Thompson, and Ellsworth, 1984). Such differences between the two groups raise serious questions as to how representative death qualified juries truly are.

Similar research addresses the question of whether death qualified and excludable jurors interpret the information presented to them during the trial differently. Cowan and her colleagues (1984) asked mock jurors to deliberate after watching a simulated homicide trial in an effort to understand the role that death qualification had both on the initial verdict preference and the quality of the deliberation. What they found was that death qualified jurors were more likely to convict the defendant at the initial (pre-deliberation) verdict and that the percentages stayed approximately the same for the post-deliberation verdict. Death qualified jurors also tended to be more favorable about the prosecution witnesses than were excludable jurors; conversely, the excludable jurors were less likely to rate the prosecutor as believable when compared to the death qualified

jurors. When death qualified jurors and excludable jurors were assigned to deliberate a case together, the researchers found that those juries were more likely to remember evidence presented at trial and also to rate the defendant's credibility as higher than those jurors who deliberated with only other death qualified jurors. The authors suggest that the presence of excludable jurors may actually stimulate more debate and discussion, even though there were no significant differences in pre and post deliberation voting changes between the two types of juries.

In an attempt to determine just how strongly jurors' death penalty attitudes, as measured by Witherspoon death qualification, impact behavior in the form of verdicts, Thompson and his colleagues (Thompson, Cowan, Ellsworth, and Harrington, 1984) found that those individuals who were death qualified were more conviction prone than their excludable counterparts. In a sample of 35 jury eligible individuals, the authors found that death qualified jurors were more likely to interpret the evidence in a simulated assault trial in favor of the prosecution. Similarly, the death qualified individuals had a lower threshold of conviction, meaning that they were willing to convict on a lesser certainty of guilt than were those individuals identified as excludable under the Witherspoon standard. When the same sample of individuals was asked about whether they would feel if they were responsible for returning an incorrect verdict, death qualified individuals were less likely to feel regret if they voted for a guilty verdict and the defendant was actually innocent (defined as harsh errors). Death qualified individuals were also more likely to express regret for the cases where an innocent verdict was returned and the defendant was guilty (defined as lenient errors). By contrast, excludable

jurors were more likely to express regret for harsh errors and less likely to regret the lenient errors.

The stark difference between death qualified and *Witherspoon* excludable jurors is very obvious in much of the research, begging the question of how death qualified individuals, a diverse group in their own right, can be so consistent in their attitudes and behaviors. Haney (1984) makes the point that the one thing that all death qualified individuals have in common is the process of voir dire. He argues that by going through the process of voir dire, potential jurors see that those individuals in opposition to the death penalty are punished by being taken out of the jury pool, leading them to the conclusion that both the attorneys and the judge want a pro-capital punishment jury. Haney even goes on to speculate that because individuals think that both the attorneys and the judge want a pro-capital punishment jury, they begin to see a death sentence as the only acceptable punishment. In a study of death qualified adults, subjects were assigned to one of two conditions. The experimental group watched a videotape of a voir dire process that included a segment on death qualification. The control condition watched the same voir dire process without the death qualification segment. Results indicated that those subjects in the experimental condition attributed a higher level of guilt to the defendant in a hypothetical penalty phase than did the control subjects. Furthermore, the subjects in the experimental condition were more likely to believe that the hypothetical defendant would be convicted of first-degree murder and that he would be sentenced to the death penalty. The subjects in the experimental group were also significantly more likely to vote for a death sentence during the penalty phase of the study.

Haney (1984) points out that the pro-death penalty attitudes of death qualified juries are not necessarily the result of putting together a group of death qualified individuals, but rather of having those individuals experience the process of death qualification during voir dire. The subjects in the experimental group, who watched a death qualification segment of voir dire, were more likely to believe that the law punished people who opposed the death penalty than were the subjects in the control group. Haney (1984) postulates several reasons for the differences between the seemingly similar groups, noting that persons in novel situations (such as the voir dire process) are likely to take their cue from authority figures. During the process of voir dire, the authority figures are very interested in death penalty attitudes and as a result, may make subjects believe that the death penalty is warranted in the situation at hand. The process of death qualification also forces individuals to take a public stand about their willingness to enforce the death penalty, perhaps increasing the likelihood that they will act on this willingness. Regardless of the reasoning, however, Haney (1984) acknowledges that several flaws exist in the voir dire process, further predisposing an already pro-death jury towards the death penalty.

Wainwright v. Witt 1985

Over time, the United States Supreme Court realized that the *Witherspoon* standard of death qualification was unintentionally creating juries who were predisposed to death, and just as some individuals would be unable to serve on a capital jury because of their strong opposition to capital punishment, other jurors could potentially be hindered in their duties because of their strong support for the death penalty. In what has

since been criticized as an extremely vague and unhelpful revision of the definition of death qualification (see Dillehay and Sandys, 1996; Sandys and McClelland, 2003), the Court decided in *Wainwright v. Witt* that any individual could be excluded from capital jury service if they held attitudes towards the death penalty that would "prevent or substantially impair the performance of his [or her] duties as a juror.[25]" This standard left the door open so that those jurors with strong opinions of both sides of the capital punishment debate could be excluded; meaning that both those jurors who would never vote for the death penalty under any circumstance and those jurors who would always vote for the death penalty under all circumstances could be disqualified.

Research on the impact that the *Witt* standard has had on capital juries shows consistently that death qualified jurors remain as different from excludables as they did under the Witherspoon standard. Ellsworth (1991) observes that regardless of both the standard employed in the research and the types of questions utilized to determine qualification, those individuals who are considered death qualified are always more conviction prone than those who are excludable. The research appears to support this conclusion. Dillehay and Sandys (1996; see also Sandys and McClelland, 2003) argue that the Witt standard is a more difficult one because the criteria by which a potential juror is to be judged becomes much more subjective, giving trial judges more discretion to determine an individual's behavior, instead of asking the individual to decide for him/herself how he/she would behave under certain circumstances. In an attempt to determine how the pool of eligible death qualified jurors had changed under the adoption of the Witt standard, the Dillehay and Sandys (1996) interviewed 148 former jurors from felony trials in Kentucky. Approximately one-tenth of the jurors would have been

[25] Wainwright v. Witt, 105 S.Ct. 884 (1985)

excluded under the *Witt* standard and those who were death eligible were more likely to report greater ease with performing the tasks that would be asked of a capital juror.

These findings are in line with those of Butler and Moran (2002), who used the Witt standard as a way to measure the likelihood of a potential jurors' receptivity to aggravating and mitigating factors. Jury eligible adults were classified as death qualified or excludable using the *Witt* standard and then asked to determine the validity of several statutory and non-statutory aggravating and mitigating circumstances. The authors found that those individuals who were identified as death qualified were more likely than *Witt* excludables to endorse statutory aggravating factors. Neither group endorsed the statutory mitigating factors, although the excludable group was more likely to endorse the non-statutory mitigating factors. Both of the groups did agree, however, that the statutory mitigating factors were valid reasons for choosing a life sentence over a death sentence. Given these results, the authors question the ability of both groups to fully understand the sentencing instructions that require jurors to give equal weight to both aggravating and mitigating factors. Despite the effects that the Court may have anticipated from the more relaxed *Witt* standard, the evidence is conclusive that the differences between the death qualified and excludable groups remain consistent, with death qualified individuals always more prone to choose the death penalty, regardless of the circumstances under which they are studied (see also Haney, Hurtado, and Vega, 1994; and Sandys and McClelland, 2003).

Morgan v. Illinois 1992

The *Witt* standard set the stage for the 1992 *Morgan v. Illinois* ruling, which was much more explicit about the exclusion of individuals from capital jury service if it appeared that their pro-death penalty attitudes would prohibit them from being able to perform their duties impartially, ensuring that all jurors chosen to serve on capital cases would be able to conscientiously vote for both a life or a death sentence. Those jurors excluded by both the *Morgan* standard and through certain interpretations of the Witt standard, often called "Automatic Death Penalty" (ADP) individuals (see Haney, Hurtado, and Vega, 1994), are the ones who would vote for a death sentence in every circumstance, a direct violation of the Fourteenth Amendment's due process clause. The *Morgan* decision was clear in its directive that the Fourteenth Amendment demands that a sentencing jury be impartial and must in good faith consider all aggravating and mitigating circumstances, as the sentencing instructions require. The Court, in *Morgan* rules that the defendant has a right to remove from his or her trial any jurors who will always vote for the death penalty, regardless of the individual circumstances, as failure to consider mitigating factors is also a failure to follow the law.

Many researchers have tried to estimate the impact that excluding the ADP jurors will have on jurors serving on capital trials. Many researchers believe that the eligible pool of jurors will decrease dramatically; Dillehay and Sandys (1996) estimated that almost thirty percent of their sample of former jurors in Kentucky felony trials would have been identified as ADP jurors. Haney and his colleagues (Haney, Hurtado, and Vega, 1994) were more conservative in their estimate of ADP jurors in a California sample. Using the *Witherspoon* standard, the authors identified almost six percent of the

sample as excludables. The application of the *Witt* standard brought the number of excludable individuals up to just over eight percent of the sample. The increase in the number of people who would be disqualified due to the ADP status, however, was smaller than that identified by Dillehay and Sandys (1996). The number of ADP excludables increased from just about one percent of the sample to almost three percent (Haney, Hurtado, and Vega, 1994). The authors point out, however, that while the point of the *Witt* and *Morgan* decisions may have been to expand the category of persons identified as excludable, they have not increased the size of the excludable category because more people than ever support the death penalty. This means that, relative of any other changes, the size of the category of individuals who are death qualified has actually increased.

Despite the legal changes that have been implemented over the years, however, the group of jurors that is considered eligible to serve on a capital trial remains significantly different than the excludable individuals on several dimensions, including legal attitudes, demographic characteristics, conviction proneness, and the ability to correctly interpret and apply sentencing instructions. As a result, the process by which jurors are supposed to return evenhanded and well thought-out verdicts and sentences, as envisioned by the United States Supreme Court, has been tainted and demands more attention.

Instructional Comprehension

Sitting on a capital jury is both an emotionally stressful experience and an intellectually taxing one. While states may differ in the specific laws that exist to guide juror discretion, each state still has many rules and guidelines to help jurors come to a legally binding decision. The scope of these guidelines is becoming larger all the time, as the United States Supreme Court is routinely modifying the rules by which jurors make decisions. Many of these updated guidelines revolve around issues of sentencing instructions, including the ability of the jury to consider any mitigating factors that they deem relevant[26], any aggravating factors not previously defined in statutes[27], and issues like the defendant's future dangerousness and adjustment to prison life[28]. The Court has also ruled that it is permissible to ask the jury not to be swayed either by sympathy for the defendant[29]. Such instructions are in addition to those specific to the sentencing guidelines of individual states and point to the complex issues surrounding the punishment decision. Research about a juror's understanding of these complex issues has left us with a sense that, while most jurors do try to take their position and the responsibilities that come with it extremely seriously, many are unable to accurately apply the sentencing schema in order to come up with a constitutionally sanctioned punishment decision.

The research on instructional comprehension generally looks at the ways that jurors' understand the application of aggravating and mitigating factors to a sentencing decision. Various circumstances can impact how a juror understands the judge's

[26] Lockett v. Ohio, 438 U.S. 586 (1978)
[27] Barclay v. Florida, 463 U.S. 939 (1983)
[28] Skipper v. South Carolina, 476 U.S. 1 (1986)

sentencing instructions, including the race of the juror (Brewer, 2004), the race of the defendant (Lynch and Haney, 2000), and whether a juror is considered "death qualified" (Butler and Moran, 2002). Most of the research on jurors' understanding of sentencing instructions can be broken into two categories: research using simulation exercises and research interviewing jurors after they have served on a trial. The results using both types of samples are consistent in their findings that jurors often misunderstand the ways in which they should use aggravating and mitigating factors in making their decisions. Findings from both types of research will be discussed for the sake of a comprehensive review.

Much of what we know about the ways that real jurors on capital cases make their decisions is based on interviews with jurors after they have completed serving on the trial. Many of these interviews are part of the Capital Jury Project (CJP), a multi-state research project that has been collecting data from interviews with jurors who have served on capital trials in 14 states since 1988. The states were chosen because they fell into one of the three categories of sentencing guidelines: 1) balancing statutes; 2) threshold statutes; and 3) directed statutes (Bowers, 1995). Balancing statutes require that jurors take into consideration both the aggravating and mitigating factors in the case; a death sentence can be returned only if the jury determines that the aggravating circumstances outweigh the mitigating circumstances. Some states, such as California, only read a list of factors to the jury, without identifying which are aggravating and which are mitigating. Others typically give jurors a list of both aggravating factors, such as the killing of a law enforcement officer in the line of duty, and mitigating circumstances, such as childhood trauma (Bowers and Foglia, 2003). Threshold statutes

require a jury to determine that at least one aggravating factor is present; most states have a statutorily accepted list of aggravating circumstances that are presented to juries for their deliberation. The jury must also consider any mitigating factors presented to them. Once they have done this, they are free to return a death sentence without further guidance (Bowers and Foglia, 2003). Directed statutes require that all of the jurors answer specific questions, about such things like the defendant's future dangerousness, in the affirmative before they can impose a death sentence (Bowers and Foglia, 2003). In the past, the jury's decision may or may not have been binding, depending on the state. In some states, such as Florida and Alabama, the jury returned a sentencing recommendation of either life or death to the judge. The United States Supreme Court decision in *Ring v. Arizona*[30], however, has changed this rule, so that now all states must require that the jury to be the only finder of fact in questions of aggravating and mitigating circumstances and therefore the jury's sentence must be binding (Bowers, 1995; Bowers and Foglia, 2003).

In their examination of the experience of South Carolina jurors, who were interviewed as part of the larger Capital Jury Project, Eisenberg and Wells (1993) found that jurors did not appear to understand the burden of proof necessary for finding the presence of both aggravating and mitigating circumstances. The South Carolina statute is considered a threshold statute; South Carolina law requires that if at least one aggravating circumstance is present, the jury has the option, although it is not required, to sentence a defendant to death. Furthermore, the presence of aggravating factors must be unanimous and must be proved using the "beyond a reasonable doubt" standard. The jury may also consider any statutory mitigating circumstances, such as lack of prior convictions for

[30] Ring v. Arizona, 000 U.S. 01-488 (2002)

violent crimes and the mental capacity of the defendant, although the presence of mitigating factors is not held to the "beyond a reasonable doubt" standard. Jurors, however, tended to infer from these instructions that the beyond a reasonable doubt standard also applied to mitigating circumstances and more than half of the jurors also thought that the presence of mitigating factors must also be unanimous. On average, those jurors who had lower comprehension were more likely to vote for death than those who understood the judge's instructions, leading the authors to conclude that the sentencing phase, which is already biased towards death, is so confusing that jurors end up voting for death by "default" (Eisenberg and Wells, 1993).

Findings from other Capital Jury Project sites are consistent with the South Carolina results. Using a qualitative approach to understand the responses of jurors involved in six Capital Jury Project states[31], Bentele and Bowers (2001) discerned two major trends with regards to juror comprehension of sentencing instructions. The first was that jurors incorrectly assumed that the presence of an aggravating factor required a death sentence. The second trend was that the jurors failed to understand, consider, or give weight to mitigating factors. While the amount of weight a juror must give to a mitigating factor is left up to the discretion of the individual juror, the U.S. Supreme Court has been clear that all mitigating factors must at least be considered. This trend was especially evident in the juror responses to the question about what topics were discussed during deliberation. Jurors overwhelming reported discussing guilt related topics, such as the evidence presented during trial, instead of the statutorily required aggravating or mitigating factors (Bentele and Bowers, 2001). When jurors do not

[31] The six states involved were California, Kentucky, Missouri, North Carolina, South Carolina, and Texas. Data from these states were utilized because there were interviews available for at least three jurors from each case.

consider the mitigating circumstances, they are more likely to think that a death sentence is a mandatory sentence once guilt has been established. Foglia (2003) found similar evidence in her study of jurors from the Pennsylvania site of the Capital Jury Project, which utilizes a balancing statute, where more than one-third of respondents thought that mitigating circumstances had to be proved beyond a reasonable doubt.

Haney and his colleagues (Haney, Sontag, and Costanzo, 1994) find similar results in their study of jurors serving on capital trials in both California and Oregon. California's sentencing guidelines, like Pennsylvania's, are considered to be balancing statutes. Jurors are expected to weigh the aggravating and mitigation factors presented to them, although the statute only lists which factors the jury can consider. The California statute does not, however, identify whether a factor is a mitigating or an aggravating factor; this is left to the determination of the jury. Oregon's sentencing guidelines are more along the lines of a directed statute, with jurors being asked three specific questions, the answers to which guide the penalty phase of deliberations. Two of the questions are answered during the guilt phase of the trial (one is whether or not the crime was committed deliberately, the other is whether the crime was provoked by the victim). The third question asks whether there is a probability that the defendant would be dangerous in the future, committing future acts of violence that would threaten society. Fifty-seven jurors, 30 in California and 27 in Oregon, from 19 capital trials (of which 10 were death sentences and 9 were life sentences) were questioned about the process by which the juries made their sentencing decision. Through interviews, the authors found that many of the California jurors cited the absence of any mitigating factors as their reason for voting for the death penalty, although many noted that they had tried to ask the trial judge

for clarification about the definitions of mitigating and aggravating factors, only to be told that the jury should figure it out amongst themselves. Oregon jurors were less likely than California jurors to accurately describe the sentencing instructions, although both groups showed considerable confusion. Only two Oregon jurors were able to accurately recall the instructions, compared to thirteen California jurors. Jurors in both states, however, reported that they doubted that their verdicts would be carried out, making them feel better about the sentencing phase of the trial, which many readily described as "more difficult" and "more emotional" than the guilt deliberation phase (Haney, Sontag, and Costanzo, 1994). This research points to the fact that a juror's inability to understand the sentencing instructions told to him/her does not appear to be a function of the type of sentencing guidelines employed by the state; jurors have trouble understanding the guidelines regardless of whether they are meant to be threshold, balancing, or directed statutes.

Research using student samples engaged in simulation exercises shows consistent results on the inability of individuals to adequately understand the concepts of aggravating and mitigating circumstances. In several examinations of the ways that college students interpret the California sentencing guidelines, Haney and Lynch (1994; 1997) find that a majority of the respondents had a more difficult time understanding and defining mitigating factors than they did aggravating factors, although the understanding of aggravating factors was still not as high as the authors expected from the college students. In one study, the respondents were read the California sentencing instructions and asked to correctly define both aggravation and mitigation. The results showed that only 8% of the students were able to correctly define both terms, although slightly more

students were able to define aggravating circumstances than were able to define mitigating circumstances (15% compared with 13%) (Haney and Lynch, 1994). The authors also found that most of the subjects used factors related to the circumstances of the crime in order to both understand and define both aggravation and mitigation. As a result, subjects did not take into consideration circumstances that the U.S. Supreme Court has identified as mitigating, such as the background and personal characteristics of the defendant. The same sample of students also misidentified several of the California specific factors, with between one-quarter and one-third of respondents choosing seven of the nine mitigating factors to be aggravating factors. The authors point out that, at least for the state of California, jurors are confused about the interpretations that they should be making about aggravating and mitigating circumstances, casting doubt on the sentencing decisions made under these circumstances (Haney and Lynch, 1994).

The authors conducted a follow-up study shortly after, in order to assess the progress of changes made to the California sentencing instructions in capital cases (Haney and Lynch, 1997). The penalty phase instructions had been revised in order to improve juror comprehension, by adding detailed definitions of both aggravation and mitigation. Despite the revisions to the state guidelines, the authors still found that the majority of their college student sample was unable to correctly define both aggravating and mitigating circumstances, with only 41% of subjects able to correctly define both terms. Most respondents also did not understand the weighing process necessary to come up with a death sentence; only half of the respondents knew that a life sentence was the necessary outcome when mitigation outweighed aggravation. Also of note is the fact that 41% of subjects thought that a death sentence was mandatory when aggravation

outweighed mitigation, despite the fact that it is unconstitutional for the death penalty to be the mandatory sentence under any circumstances. The authors concluded that the results of this study are indicative that the problems jurors have with sentencing instructions are greater than previously understood, as even the revised instructions did not increase comprehension to a place where it would inspire confidence with the current system (Haney and Lynch, 1997).

As mentioned previously, certain factors, such as death qualification, can also make a juror more or less receptive to the consideration of aggravating and mitigating circumstances, a sign that jurors are interpreting sentencing instructions from their own perspectives and not based upon the guidelines given to them. Further examination of this type of research shows that racial bias may be implicit in the ways that jurors understand and apply aggravation and mitigation, and it has been suggested that the lack of instructional comprehension may actually free a juror to act on his or her own stereotypes and biases. In an examination of the instructional comprehension of jury eligible adults in the state of California who participated in a simulated jury trial, Lynch and Haney (2000) found that respondents were more likely to sentence a Black defendant to death when their understanding of the sentencing instructions was low. This pattern appeared in both the cases where there was a Black defendant and a Black victim and the cases where there was a Black defendant and a White victim. Respondents also used mitigating evidence differently in the cases with Black and White defendants; subjects were more likely to discount evidence of substance abuse, evidence of child abuse, and evidence of being loved by family for Black defendants than for White defendants. This is in line with the findings by Baldus and his colleagues (1998), who found that jurors in

Philadelphia capital cases were more likely to find aggravating factors in cases with a Black defendant and a non-Black victim and that jurors were less likely to find mitigating circumstances in cases with a non-Black victim.

To further understand how the relationship between instructional comprehension and individual factors impacts jury decision-making, Brewer (2004) examined the interaction between the race and the gender of the jury members and their receptivity to mitigation. Using data from all fourteen states in the Capital Jury Project, he found that females were consistently more receptive to mitigation than males, as were Black jurors when compared to White jurors. Black jurors also appeared to be more receptive to mitigation when there was a non-White defendant and both Black and White jurors were more receptive to mitigating factors when they were of the same race of the defendant but not the victim. Similarly to the research looking at the ways in which death qualified jurors apply mitigation and aggravation, Brewer (2004) also found that jurors who held strong pro-death penalty attitudes were also less likely to be receptive to mitigation.

It should be noted that Foglia (2003) makes an interesting point about the impact that lack of instructional comprehension can have on sentencing outcomes. She points out that the majority of the Pennsylvania jurors made their punishment decision prior to the commencement of the punishment phase and prior to the review of sentencing instructions. This finding is consistent with other studies that have examined the timing of the punishment decision (see Bowers, 1995; Bowers and Foglia, 2003; Bowers, Sandys, and Steiner, 1998), which show that approximately half of the jurors make their punishment decision prior to the punishment phase of deliberation. If this is the case, and jurors are not basing their punishment decisions on statutory considerations, the bias

against the defendant due to lack of instructional comprehension may not be as large as previously thought. A majority of Pennsylvania jurors, for instance, make their punishment decision before the punishment phase commences and the sentencing instructions are reviewed. As a result, the direct impact of any instructional misunderstanding over sentencing instructions may be overestimated. Nonetheless, we still know that almost half of all jurors go into the penalty phase of the trial undecided (see Bowers and Steiner, 1999), and as such, the impact of sentencing comprehension on those jurors is still an important consideration.

This line of research clearly demonstrates that instructional comprehension does have at least some negative impact on capital case outcomes when jurors do not fully understand what they have been tasked with accomplishing. Bowers and Foglia (2003) point out that these findings are consistent regardless of the types of sentencing statutes used by the individual states, suggesting a fundamental problem with the administration of punishment instructions and not a problem with laws and procedures that could be specific to one state or another. As Haney and Lynch (1997) have pointed out, revisions of sentencing guidelines also do not appear to help increase comprehension. These two observations shed light on the fact that sentencing instructions may be inherently flawed, despite the hopes of the United States Supreme Court when they forced states to institute a bifurcated process as a way to ensure that the defendant had a fair opportunity to present evidence in his/her favor in order to avoid a death sentence.

Racial Bias in Jury Decision-Making

The issue of the impact of racial bias on jury verdicts has always been a convoluted one. Sommers and Ellsworth (2001) point out that the interpretation of bias has become more difficult over time, as social advancements have changed the way in which prejudicial behavior is actualized. Advancements in statistical techniques have also changed the way that researchers have attempted to measure the effects that racial bias may have on deliberations and on jury verdicts, making it difficult at times to trace the role that race has had on this process over time. Early research on the role that race played in the decision-making context suggested that White jurors were more likely to convict Black defendants (Johnson, 1985), Black jurors tend to give Black defendants the benefit of the doubt even when evidence is strong (Ugwuegbu, 1979), and that mock jurors were more likely to convict in a rape case when the victim was of their race (Miller and Hewitt, 1978). In an observational study of rape cases tried in Indianapolis during the early 1970s, LaFree (1998) also found that jurors were more likely to acquit in cases where the victim was a Black female (p. 219). This leads to questions not only about the credibility of the defendant, but also of the victim. LaFree's research suggests that many White jurors may have been willing to overlook testimony or evidence in cases where the defendant was Black because jurors tended to believe that Black women behaved more promiscuously than their White counterparts and were therefore less trustworthy (p. 220). Such convictions of the jurors interviewed in those trials points to the muddied nature of the issues of race and the legal system.

Over time the direction of the relationship between race and negative sentencing outcomes has remained the same, with more recent studies showing even more robust

findings for racial bias (see Sweeney and Haney, 1992). For example, Baldus and his colleagues (1998) point out that while the effects that the victim's race has on the outcome are generally well understood (i.e. cases with a White victim often get a harsher punishment than those with a non-White victim), the role that the race of the defendant plays in the decision-making process tends to be less understood. Recent research has attempted to bring more clarity to this issue.

While the mechanisms that control the impact that racial bias may have on outcome decisions are still not well understood, there is a general consensus among researchers that racial bias does in some way influence the capital sentencing process. In recent years, many studies with sound methodological techniques have been undertaken as a reaction to the United States Supreme Court case *McKlesky v. Kemp*[32], when the Court ruled that scholarly research[33] showing that racial discrimination existed in the application of the death penalty in the state of Georgia was not sufficient evidence to grant the petitioner's request to overturn his death sentence, since the evidence did not show that the discrimination was intentional nor did it in any way individually impact the petitioner's trial and subsequent sentencing. Such evidence of racial disparity has been identified at several stages of the capital trial process (for examples, see Baldus et al. 1990; Paternoster, 1991), but for the sake of brevity, only those examples that are specific to the issues inherent in juror decision-making and jury deliberation will be reviewed here.

In a meta-analysis examining the influence of race on sentencing outcomes, using all of the experimental mock-jury studies to date, Sweeney and Haney (1992) conclude

[32] McKlesky v. Kemp, 481 U.S. 279 (1987)
[33] The research cited by the Court is Baldus et al., 1983.

that three factors significantly contribute to racially biased sentencing outcomes. The first is the medium which the experiment employs; research designs that are more realistic were more likely to show racial bias in outcomes. The second and third factors were the race of the defendant and the race of the victim. Thirteen of the fourteen studies utilized for this meta-analysis were non-capital cases, making it difficult to generalize these findings to capital trials. The authors point out, however, that this racial bias is likely to be even stronger for capital cases and therefore cannot be ruled out as a potential factor in arbitrary sentencing. King (1993) suggests several ways that this bias can operate, such as in the tendency of jurors to use their own experiences to interpret the evidence; Black and White jurors may reach different conclusions based on the same evidence because they interpret that evidence based on very different life histories.

One study that has attempted to use increased statistical sophistication to better understand the role that racial bias plays in jury sentencing outcomes is Baldus and colleague's (1998) account of the decision-making process in Philadelphia's capital cases. The authors found that when case characteristics were accounted for, the presence of a non-Black victim enhanced the probability of a death sentence. Furthermore there was a minor enhancement effect for those cases with a Black defendant. Jurors were also more likely to find aggravating circumstances in cases with a Black defendant and a non-Black victim. In one part of the study, which looked at sentencing outcomes for over 300 capital trials in Pennsylvania, analysis indicated that once aggravating and mitigation circumstances were accounted for, being Black increased the defendant's odds of receiving a death sentence by a factor of 9.3. Baldus and colleagues (1998) also pointed out that the disparities that occur in Philadelphia are different than those that occur in

studies of capital trial sentencing outcomes in the South, where much of the discrimination appears to be a function of prosecutorial decisions to seek the death penalty. The authors suggest that the disparity works more subtly through the jury process in this northern city, a similar argument advanced by Sommers and Ellsworth (2001).

Sommers and Ellsworth (2001) argue that stereotypes are alive and well in society, despite the attempts of most Whites to maintain a non-prejudiced appearance. They postulate that this prejudice exhibits itself in the way that race influences jury verdict outcomes. In a study of mock jurors presented with trial transcripts of an interracial domestic battery (a Black defendant and a White victim), both Black and White defendants were less likely to act based on racial stereotypes when the issue of race was brought to their attention and made salient in the trial transcripts. The authors suggest that in cases where potential jurors are forced to address the issue of race, they are more likely to be evenhanded in their assessments of the evidence because they have been made aware that they should act in a racially neutral manner. In those cases where race was not made a salient part of the trial, however, racial bias was found on both the part of White and Black respondents. Sommers and Ellsworth (2001) argue that in these instances, respondents were free to act on racial stereotypes because they did not have to confront the issue of race. This study confirmed earlier findings by Sommers and Ellsworth (2000), where respondents chosen from an airline terminal waiting room were also more likely to exhibit bias towards different-race defendants, regardless of the respondent's race. The authors also found that Black jurors were more likely to see racial issues in the trial transcripts that were designed to be race neutral.

While these particular studies did not look explicitly at the way race influences capital cases, the results are consistent with research on the role of racial bias in both mock jury simulations and in interviews with jurors who have served on capital trials. In the Capital Jury Project, many of the findings point to several ways in which racial bias impact jury deliberations. In their examination of results from all fourteen states, Bowers and colleagues (Bowers et al., 2001) find that jurors are more likely to take a premature stand on punishment when the juror and the victim were of the same race. Same race jurors were also more likely to take an early punishment stand in favor of death. Furthermore, Whites and Blacks differed considerably on three punishment conditions: lingering doubts over guilt, impressions of defendant's remorsefulness and perceptions of future dangerousness. Blacks were more likely to doubt the guilt of a Black defendant, more likely to interpret the defendant's behavior at trial as remorseful, and less likely to believe that the defendant posed a future threat to society. These effects were especially pronounced in the cases with a Black defendant and a White victim.

Fluery-Steiner (2002) points out that racial bias will differ depending upon the identity of the individual juror employing such bias (see also Crenshaw, 1995). Focusing on only a subset of death cases with Black defendants from the larger Capital Jury Project, he found that more educated White jurors were more likely to express sympathy towards Black defendants and the circumstances of the crime. More educated Black jurors were also more likely to express sympathy towards the difficulties White jurors had in relating to the Black defendant. Less educated White jurors, however, were more likely to make explicit remarks about the "us versus them" mentality that is an indicator of prejudice and stereotyping. Less educated Black jurors, on the other hand, were more

likely to express frustration with racist White jurors. Race was just one aspect of the individual juror's identity that played into their overall interpretation of the racial facts that they were presented with; as Fleury-Steiner's (2002) work makes explicit, there is the potential for interactions between race and other mediating factors, such as social status.

Because many of the racial patterns identified appear to be rooted in the cases with a Black defendant and a White victim, further analysis of those cases is warranted. Looking at results from all of the states involved in the Capital Jury Project, Bowers and his colleagues (Bowers et al., 2001) found that White jurors were three times more likely than Black jurors in this circumstance to take a pro-death stand on punishment. They were also four times more likely than Black jurors to take the pro-death stand prematurely, namely, prior to both the sentencing phase of the trial and before sentencing instructions are explained. The authors also found that qualitative differences existed between the decision-making behaviors of Black and White jurors (Bowers et al., 2004). Black jurors were less likely to use negative attributions, such as cold-blooded and depraved, when asked to describe the crime. White jurors were also more likely to describe a case as being aggravated than Black jurors who served on the same trial. Black male jurors were also more likely on every dimension to identify with the Black defendant and Black jurors of both genders were more likely to have "found the defendant likable as a person," which the authors point out appears to discourage the dehumanization effect that is thought to be crucial to the ability of a jury to enter a death verdict.

Deliberation Errors

Premature Decision Making

One of the systemic problems identified with jury decision-making in capital trials is the tendency of jurors to make their decisions about what sentence the defendant should receive prior to hearing evidence during the sentencing phase of the trial and receiving the judge's instructions on the matter (Bowers, 1995; Bowers and Foglia, 2003). In making their sentencing decision prematurely, jurors are not as receptive to the evidence presented during the penalty stage of the trial, especially mitigating circumstances. The end result is that the jurors are not making their decisions in the way that was intended by the United States Supreme Court in the landmark decision *Gregg v. Georgia*. The Court pointed out in that case that the bifurcated trial process was necessary because the types of evidence offered during the punishment phase of the trial may unfairly prejudice a jury against a defendant if brought up during the guilt phase. By making their decisions prior to the punishment phase, jurors are effectively invalidating the constitutionally prescribed instructions.

Research findings from the on-going Capital Jury Project (CJP) have offered some of the most compelling evidence that jurors are making their punishment decision prematurely. In his initial preview of some of the earlier findings from this study, Bowers (1995) pointed out that approximately half of the jurors interviewed in fourteen states admitted to making a decision about punishment after the guilt phase but prior to hearing evidence during the sentencing phase of the trial. The results indicated that not only were these decisions made too early during the trial, but that the jurors also felt confident about their decision. Further analysis of the CJP data shows that regardless of

which punishment decision a juror made early on in the trial, for life or for death, the juror was unreceptive to any arguments or evidence presented after that decision was made, including mitigating circumstances described during the penalty phase of the trail (Bowers et al., 1998).

While premature decision-making is in its own right a violation of the ways in which jurors are expected to behave during the course of the trial, it also poses an additional risk to many defendants, as there is some evidence that indicates that racial bias may influence proceedings through early punishment decisions. In an extension of the work of the Capital Jury Project, Bowers and his colleagues (2001) found that Whites were more likely to take an earlier punishment stand than were Blacks, especially in cases where there was a Black defendant and a White victim. Whites were also more likely in this case to take a pro-death stance, making them less receptive to mitigating circumstances and therefore more likely to impose a death sentence in cases with Black defendants and White victims, without making attempts to individualize verdicts based on the facts of the case at hand.

Overall, the results indicate that half of the jurors in capital cases are making early sentencing decisions, oftentimes during the guilt deliberations (Foglia, 2003). These early decisions also have a permanent impact on the outcome of the trial, since more than half of those who make early pro-death decisions do not modify that initial position during the course of deliberations (Bowers and Foglia, 2003). They are unlikely to take into account mitigating circumstances during the course of the sentencing phase of the trial; in fact, estimates indicate that many of those who do change their position from

death to life do so only to avoid the prospect of a hung jury, further complicating the deliberation process (Bowers and Foglia, 2003).

Erroneous Belief That Death Is Required

One of the more problematic results of a juror's failure to understand the sentencing instructions set forth by the court is the tendency of many jurors to believe that death is a required sentence after guilt has been established. This seems to happen even when a juror is undecided about sentencing at the guilt phase or is favoring a life sentence at the outset of punishment deliberations (Bentele and Bowers, 2001). Geimer and Amsterdam (1988) described this phenomenon in their study of capital jurors in the state of Florida. The jurors reported feeling that they were required to return a death sentence unless they were convinced otherwise during the penalty phase of the trial.

In an analysis of data from eleven of the fifteen states participating in the Capital Jury Project, Bowers and his colleagues (1998) found that jurors who made premature pro-death decisions were more likely to believe that if a defendant is found guilty, he should be sentenced to death. Those jurors believed that proof of guilt was enough of a reason to justify a death sentence. The premature death jurors were also more likely to believe that when the crime was heinous in nature or there was evidence of future dangerousness, a death sentenced was required. Jurors who made early pro-life decisions, however, were more likely to recognize that the presence of mitigating factors should negate a death sentence, regardless of the other circumstances of the crime.

A corollary problem with jurors believing that death is the required sentence after guilt has been established is that it parallels the type of decision-making explicitly

rejected by the U.S. Supreme Court in the *Woodson et al v. North Carolina*[34] and *Roberts v. Louisiana*[35] decisions. In both circumstances, the defendants had been sentenced to death based on their respective states' mandatory death penalty statutes for individuals convicted of first-degree murder. In each case, the U.S. Supreme Court overturned the death sentence for the defendants, claiming that taking all discretion out of the hands of the jury was just as egregious as allowing the juries the unfettered discretion that ran rampant in the pre-*Furman* years. The Court ruled that because a mandatory death sentence does not give the jury the power to decide whether or not the circumstances of individual defendants warrant mercy, its application would be constitutionally unacceptable. Jurors needed to be given the opportunity to consider the unique culpability of each defendant, as well as the unique mitigating circumstances that may be present in each case; mandatory death statutes, however, do not allow for such individualized reasoning. The sentence of death, the Court reasoned, was qualitatively different from any sentence of imprisonment and therefore, greater consideration was necessary to mete it out properly. Proper application requires more information than just what is required for a conviction; the relevant characteristics of the defendant must also be taken into account for the punishment to be fair and reliable.

Evasion of Responsibility

In the *Caldwell v. Mississippi*[36] decision, the United States Supreme Court made it clear that one of the requirements for a legitimate death sentence is that the members of

[34] Woodson et al. v. North Carolina, 428 U.S. 280 (1976)
[35] Roberts v. Louisiana, 428 U.S. 325 (1976)
[36] Caldwell v. Mississippi, (472 U.S. 320) 1985

the jury take responsibility for the punishment. This means that a death sentence can only be valid if the jurors themselves feel a personal responsibility for both sentencing an individual to death and for the subsequent death of that defendant; passing off that responsibility to the judge or to some other actor would be directly contrary to the Court's proscriptions of how punishment decisions should be reached. Research as to whether or not that is happening has been mixed. In his review of the current issues facing capital juries, Haney (1995) points out that jurors may distance themselves from the decision in much the same way that the subjects in Stanley Milgrim's infamous obedience study distanced themselves from their actions. In her review of some of the Capital Jury Project findings, Hans (1995) points out that jurors in states where the jury decision is binding are more likely to acknowledge having some degree of responsibility in the death decision than those jurors in states where the jury's decision only serves as a recommendation to the judge. Her point, however, may not hold weight in the future, as the recent U.S. Supreme Court decision in *Ring v. Arizona*[37] has changed the process by which jurors can recommend a sentence to the judge in capital cases. The Court ruled that all capital cases must be sentenced by a jury, so recommendations to the judge are no longer allowed and all jury sentences are binding. Future research is needed to know whether this change will impact the way in which jurors view their own responsibility for a death sentence in those states that were affected by the ruling.

In a large-scale study of the way that capital jurors assumed responsibility for their sentences, Eisenberg and his colleagues (1996) used survey responses from the South Carolina Capital Jury site to examine whether or not jurors were taking responsibility for their sentencing decisions. The results suggested that different

[37] Ring v. Arizona, 000 U.S. 01-488 (2002)

circumstances lead to differing levels of acceptance of responsibility by jurors. Separating responsibility into two categories, role and causal, the authors sought to distinguish whether jurors were able to accept their legal obligations in returning a sentence (role responsibility) and whether they were capable of accepting that they individually factored into the death of the defendant when that was the recommended punishment. The authors noted that more jurors seemed prepared to accept their legal responsibility for the sentencing outcome than they were to accept the fact that they were individually responsible for sentencing a person to death. This was ascribed to the fact that a sense of causal responsibility, or accepting individual responsibility for the decision, depends heavily on the circumstances surrounding the case that are not easily changed, such as the conduct of the defendant; hence, jurors tend to feel limited in the amount of responsibility that they can accept.

The majority of jurors (approximately 59 percent) did take role responsibility however, stating that they were mostly or strictly responsible for the verdict, although the amount of responsibility that the jurors were willing to accept diminished as the number of options of who to ascribe responsibility increased. While it was difficult to determine why some jurors accepted responsibility and others did not, the authors did find that individual factors such as religiosity appeared to increase the likelihood that a juror would accept responsibility. Conversely, jurors active in politics tended to ascribe primary responsibility for the sentence to the judge. Case level characteristics also played a role in whether or not jurors accepted responsibility for the punishment decision. Jurors appeared to accept more responsibility when the killing was defined as vicious and that fact played a salient role during guilt and punishment deliberations. Jurors were also

more likely to accept responsibility when they believed that the defendant intended to kill the victim or was integral in the planning of the homicide (for those defendants that were not "triggermen"). Jurors were less likely to take primary responsibility in cases where the defendant exhibited extreme emotional distress or the defendant was female (although it should be noted that the defendant was female in only two of the cases, making any inference subject to extreme caution).

It should also be noted, given the previous discussion of the lack of understanding of the judge's sentencing instructions, that the authors found no relationship between acceptance of responsibility and a juror's understanding of the law. Many of the jurors in this sample were able to understand that there was no mandatory death sentence allowed under South Carolina law, but even those that did believe that a death sentence was mandatory were no more likely to shirk responsibility than other jurors. In fact, close to three-quarters of the jurors (103 out of 150 who answered the questions) told the interviewers that their capital jury experience was an emotionally upsetting one. The authors suggest that this can be interpreted as evidence that jurors were indeed taking responsibility for the punishment decision (Eisenberg, Garvey, and Wells, 1996).

Despite their findings of variability in the degree to which jurors accept responsibility for the punishment decision, the multivariate analyses of Eisenberg and his colleagues (1996) suggested that there was no relationship between the acceptance of responsibility and the case outcome. Haney (1997) would argue, however, that such a relationship is inherent in the ability of a juror to vote on the death penalty. He suggests that jurors find many different ways in which to disengage themselves from the responsibility of the act of sentencing another human being to death, including

convincing themselves that they are "following the law" (p. 1482), feeling that they are acting in a socially acceptable manner[38] (p. 1474), and through the dehumanization of the defendant (p. 1451). These differing opinions suggest that we are still far from advanced in our understanding of how individuals justify their sentencing decisions and how that justification impacts verdicts and sentences in a constitutionally prescribed way.

Underestimation of Non-Alternatives

Another element of decision-making that frequently comes up during deliberation is that of the alternatives to the death penalty, should the jury decide on a life sentence instead. On average, jurors who vote for the death penalty think that the defendant will serve a significantly less amount of time in prison than those jurors who vote for a life sentence. In their study of South Carolina jurors, Eisenberg and Wells (1993) found that the average death case juror thought that the defendant would serve approximately seventeen years in prison, whereas the average life juror thought that the defendant would serve almost twenty-four years. This difference was highly significant. Haney (1995) also points out that studies of California jurors and potential jurors find that more people do not believe that life without parole is truly a sentencing option, despite the fact that California is one state where this is the statutory mandated alternative to a death sentence. He speculates that respondent perceptions on death-penalty alternatives would be even worse in states where there is no life without parole options or in states where the

[38] As mentioned previously, the fact that the death penalty is the more socially acceptable punishment option is often times inferred by jurors who sit through the death penalty voir dire process, where they see fellow citizens being taken off the jury for opposing capital punishment (Haney, 1984).

sentencing instructions do not explicitly define the life without parole option for the jurors[39].

In her examination of the decision-making process of Pennsylvania capital jurors, Foglia (2003) found that jurors did not have accurate information about death penalty alternatives. She also found that jurors' understanding about death penalty alternatives was not improved after they had taken part in a capital trial. Those jurors who thought that the defendant who received a life sentence would be out in fifteen or fewer years were more likely to vote for death, compared to those jurors who estimated that defendants sentenced to life would receive longer sentences. In fact, for the Pennsylvania jurors in this study, the strongest prediction of a death sentence was whether the jury thought that the alternative to death was a short prison sentence. And while temporal order could not be established because the interviews took place after the fact, the author argues that it is possible that those jurors who underestimate the amount of time that a defendant would serve in prison if sentenced to life are also more likely to consider death the only acceptable punishment, which would then force them into a premature decision and ultimately skew them in favor of a death vote.

The tendency of capital jurors to underestimate the alternative penalties to death is also important in light of recent research suggesting that attitudes toward the death penalty change when individuals are given the option of choosing meaningful alternatives to death. In a multi-state study of American's attitudes about the death penalty, Bowers (1993) suggested that public support for the death penalty, which reached an all-time high

[39] The most recent data supplied by the Death Penalty Information Center (www.deathpenaltyinfo.org) shows that of the thirty-eight states with the death penalty, only New Mexico does not offer a life without parole sentencing option. Of the twelve states without the death penalty, only Alaska does not have a life without parole sentencing option.

in the mid to late 1980s, may have been misinterpreted. He suggests that people will abandon support for the death penalty if they are presented with a genuinely harsh and meaningful alternative. He found that a majority of respondents (up to 66%) in several jurisdictions (six states and one major city) who claimed that they "strongly" favored the death penalty were willing to support an alternative sentence of life without parole with a restitution component, which would force the defendant to work while in prison to earn money to be given to the victim's family. This is an important finding in that it helps place a context around the kinds of decisions made by jurors in capital cases. Just as Haney (1995) speculated, the process of deciding to sentence a defendant to death is only in part a function of the evidence before a jury – a large part of the process is also dependent upon the jurors' understandings of the alternative punishments. As Bowers' (1993) research makes clear, much of the public would be in favor of alternative punishments, making it even more important to educate jurors about their availability.

Group Dynamics in Deliberation

Much of the research to date about jury decision-making focuses on the jury as a collection of individuals and asks questions about how individual jurors respond to the different tasks that they are assigned (i.e. weighing aggravating and mitigating circumstances) or how they make their individual punishment decisions. Recently, researchers have begun to utilize a new approach to understanding capital jury decision-making, as they have begun to realize that the outcome of jury deliberations is much more than just the sum of the individual opinions. Watts (2004) points out that the

collection of individual components into a system oftentimes results in something altogether different than the sum of those individual components (p. 24). This characterization is particularly apt when discussing the collection of jurors into a jury; the jury, after all, is meant to be an entity which, through the course of deliberation, acts to sway individual opinions and create consensus. Haney and his colleagues (1994) acknowledge the creation of this entity when they point out that, because of the rules of the courtroom, the jury deliberation process is one of social isolation. Therefore, because service on a jury is an unfamiliar situation, the jurors must work together to understand the information given them, making them even more susceptible to any group processes that may result.

In their scientific study of the ways that jurors make decisions, Kalven and Zeisel (1966) suggested that final verdicts are generally the result of majority rule at first vote; in their estimation, in approximately 90% of juries, the first ballot is the same as the final verdict. Replication of their findings, however, has been difficult, as social science researchers have been barred from the jury room ever since their seminal work. As a result, their "majority rules" finding has been accepted at face value (see Devine, Clayton, Dunford, Seying, and Pryce, 2001), In recent years, however, scholars have been able to circumvent this problem by interviewing jurors at the completion of their jury service. Sandys and Dillehay (1995) interviewed 142 jurors who had served on felony trials in the state of Kentucky in an attempt to replicate Kalven and Zeisel's (1966) findings. Their analysis shows similar amounts of agreement between first ballot votes and final verdicts; in the sample of Kentucky jurors, the final verdict was the same as the initial majority in approximately 93% of the trials. The authors point out that this

percentage appears to be stable, regardless of whether juries take a first vote as soon as they begin deliberations (defined as verdict driven deliberations) or if the first vote was taken after a period of discussion and deliberation (defined as evidence driven deliberations). The authors caution, however, that first ballot preferences may not be indicative of pre-deliberation preferences, as many of the juries appeared to engage in some type of discussion before taking the first vote. These discussions may influence some of the jurors, showing that there is a need for more research to understand how group process impact individual decisions.

In an attempt to further understand how individual jurors are impacted by group deliberations, Sandys (1995) reports on the results of interviews with jurors who participated in the Kentucky site of the Capital Jury Project (CJP). She focused specifically on those jurors who changed their vote between the jury's first vote and the final verdict, either from life to death or from death to life. Sandys argues that any changes in voting behavior should be the result of the juror weighing the aggravating and mitigating circumstances discussed in the penalty phase of the trial. The results suggest that this is not the case. Jurors who reported changing their votes from a death vote to a life vote largely report doing so in order to avoid a retrial. Many jurors said that they felt very negative about the possibility of a re-trial and often worked consciously to avoid one. Some of the jurors who changed their votes from death to life also reported that there were a small number of very strong personalities on the jury who refused to vote for death, essentially forcing the death juror to change his/her mind or face a hung jury. The role that mitigating circumstances played in the decision of jurors to change their votes from death to life in these accounts was negligible. The patterns for life to death cross-

over jurors were slightly different. These jurors reported initially voting for a life sentence due to their personal beliefs, not because of mitigating circumstances presented at the trial. Many of those jurors reported wanting to follow the law and after deliberations, they felt that the lawful decision would be to change their vote to death. The author also points out that because these jurors thought that they had to vote for death to follow they law, they in essence did not believe that they could evaluate the mitigating circumstances, leading to one to doubt the ability of these jurors to understand the sentencing instructions.

Other research has attempted to understand how the group dynamics are affected by racial factors. Bowers and his colleagues (2001), expanded on past findings which suggest that Blacks and Whites have different reactions to jury service. Using data collected from interviews with 113 Black jurors who served on 83 capital trials in 14 states, Bowers and colleagues examined how the racial composition of the jury, combined with the race of the individual juror, may impact the jury's decision-making processes. What they found was that two consistent patterns emerged. The first was a "White male dominance" effect, which showed that the likelihood of a death sentence in a case with a Black defendant and a White victim (historically the most racially charged defendant/victim combination) increased when there were five or more White males serving on the jury. The second pattern that emerged was coined the "Black male presence" effect, which suggested that having one Black male serving on the jury decreased the likelihood of a death sentence in cases with a Black defendant and a White victim. These effects, furthermore, appear to be independent of one another. The presence of a Black juror on a jury with less than five White males yielded a death

sentencing rate of 30%, which subsequently declined to just over twenty percent (21.4%) when there were two Black jurors. The rate of death sentences is also lower when there are three or more Black female jurors, although the authors suggest that female jurors do not add anything of substance to the dynamics of sentencing deliberations. Conversely, on juries without a Black juror and with six or more White males, the death sentencing rate was almost ninety percent (87.5%). The authors attributed much of this difference to three main considerations: 1) Black jurors are more likely to doubt the guilt of the defendant and therefore do not want to vote for death; 2) Black jurors are more likely to believe that a Black defendant is showing remorse; and 3) White jurors are more likely to believe that a Black defendant will be dangerous in the future. Results in cases with defendants and victims of the same race showed that jurors who shared the race of the victim were more likely, when compared to other race jurors, to take a pro-death stance. Polarization, however, was much more likely in cases with a Black defendant and a White victim.

Because a capital trial with a Black defendant and a White victim tends to be the most racially charged, Bowers and his colleagues (2004) used the prior study as a starting point and, again using Capital Jury Project data, attempted to take a more in-depth look at the ways Black and White jurors contribute to jury deliberations. Several findings stand out. Among them is the fact that Black jurors were much less likely to attribute pejorative terms, such as cold-blooded and depraved, to Black defendants. Whites, furthermore, were more likely to consider the cases on which they served to be more aggravated than did the Black jurors with whom they served. Black jurors were also more likely to find the defendant "likable as a person," while White jurors were more

likely to think that the defendant did not act appropriately during the trial (i.e. he acted bored and/or did not wear appropriate attire). The authors also suggest that the "Black male presence" effect identified in earlier research (Bowers et al., 2001) can be explained by the fact that Black male jurors were more likely to identify with the defendant on several dimensions, including being able to identify with the defendant's situation and being reminded of someone by the defendant. The authors posited that the "White male dominance" effect, on the other hand, occurred because when several White males served on a jury together, they were able to reinforce each other's negative views of the defendant. White jurors were also less receptive to mitigation than were Black jurors in cases with a Black defendant and a White victim, although both Blacks and Whites were more likely to be receptive to aggravation than mitigation (see also Butler and Moran, 2002).

Such findings offer convincing evidence that the process of deliberation is one in which group dynamics matter, although much of the research to date has not been able to collect data from all of the individuals involved in deliberation. Even results from the Capital Jury Project, one of the most well developed and comprehensive studies on the decision-making processes of capital jurors, must be understood in the context by which they are offered; interviews are only conducted with a small number of jurors in each trial. As a result, Bowers (1995) is clear that one cannot take those experiences and generalize to the experiences of the jury as a whole. This limitation has been overcome by the work of Marcus and his colleagues (2000), who were able to interview between ten and twelve jurors serving on 8 jury trails in two Texas counties (seven felony criminal cases and one civil case). The authors sought to understand how the process of influence

impacted jury decision making; to do so, they employed a new statistical technique which allowed them to measure influence as a function of interaction between the jurors. They discovered that jurors with certain psychological traits, most notably high scores on measures of agreeableness and conscientiousness, were more likely to report having been influenced by their fellow jurors during deliberations. The jurors who were most likely to be rated as influential measured high on a measure of extroversion and were more likely to be tall. Male jurors were also more likely to be rated as influential when compared with female jurors, although the authors contend that this may be the result of the conservative location where the trials took place. More surprisingly, however, was the fact that there was a lack of consensus among jurors about which of their counterparts were determined to be influential. This offers a cautionary tale about the kinds of conclusions that can be made by only asking a small number of jurors about their perceptions of deliberations; in order to get the full picture of how group interactions impact outcomes, it is important to have information from all of the actors.

This line of inquiry opens up a new direction for understanding jury deliberations, namely a new focus which extends our analysis beyond the level of understanding the impact of individual juror characteristics on the decision-making process to understanding the impact that the group interactions will have on the jurors taking part in that process. This is an important extension, as jury deliberations do not occur in a vacuum and in fact, the main task of a jury is to work as a group to come up with a consensus, and indeed, in this case, a unanimous, decision. By extending our understanding of the capital jury deliberation process, we in turn can parcel out the differing impacts that both individual level characteristics (at both the level of the juror

and the trial) and group level dynamics can have on sentencing outcomes. This leads to the question of whether the assumption that individual level characteristics, such as juror race, can influence the ways in which jurors perceive the interactions of the group is indeed a valid assumption. This research will test this assumption, along with the testing whether group level dynamics can impact sentencing outcomes, net of other individual and case related variables. But in order to get to the point where group interactions can be examined, it is important to have the vocabulary necessary to discuss deliberations in terms of group interactions; the next chapter discusses the literature to date on the impact that groups, group interactions, and group climates can have on a decision-making process. Because this line of inquiry examines what is known about capital jury deliberations and the way that sentencing decision are made from both a legal perspective and a group psychology perspective, the next chapter will serve as an introduction to the literature that speaks to group decision-making processes.

Chapter 3: Group Process: A Literature Review

The Group as an Entity

Scholars in many diverse fields within the social sciences have recognized the independent importance of the group, as opposed to treating a group like the sum of its parts made up of individual people. Watts (2004) has even pointed out that the behavior of the group can be predicted without actually knowing anything about the individual characteristics of the people who make up the group (p. 26); in fact, it may be easier in many cases to predict group behavior than it is to predict individual behavior in the same circumstances. Groups are important in many aspects of life, especially when it comes to decision-making. Juries, for instance, are only important to the justice system because they are a group comprised of individuals, presumably individuals who are representative of society at large, who make a decision using a shared belief system. Defendants are, after all, allowed to have their fates decided by a judge, but only after they have successfully waived their rights to a jury trial because the American justice system recognizes the inherent importance of this group function.

Of course, the use of juries is not the only place where society has recognized the importance that group behavior can have on certain outcomes. Rioting behavior, for example, is one instance where society recognizes that group dynamics can have negative outcomes. And in the business world, managers recognize the importance of the group when it comes to functions such as brainstorming and problem solving. It is in the role of the workgroup from which much of our understanding of the role that group behavior

plays come. The remainder of this section will explore what little is known about how groups influence jury deliberations and will then expand into what we have learned from other fields about the ways that groups can influence decision-making processes.

The Impact of Deliberating Groups

In light of the inherent importance of the role of the group in jury deliberations, several researchers have undertaken to study the impact that group behavior has on trial and sentencing outcomes; for instance, Rotenberg and his colleagues (Rotenberg, Hewlett, and Siegwart, 1998) examined the role that individual level moral reasoning had in predicting jury outcomes. Using information gathered from 226 students who either read about or saw a simulation of a robbery trial, the authors found that those students who scored high on levels of moral reasoning were more likely to dominate deliberations, which in turn appeared to influence the verdict. While this finding comes from research done with mock jurors, and thus is not as robust as those findings from research conducted with actual jurors, its suggestion that jury deliberations may well be dominated by individuals who can influence group behavior lends credibility to the notion that the actions of the group consists of more than the additive nature of the actions of those individuals within the group.

Other mock-jury research that has also examined the impact that group deliberation has on trial outcomes suggests that some biases, specifically situational bias, may be eliminated by having jurors deliberate (Kaplan and Miller, 1978). Others also suggest that participation in group deliberation increases a juror's ability to consider alternative scenarios to those presented during trial by both the prosecuting and defense

attorneys (see Ellsworth, 1989; Kuhn et al., 1994). McCoy and her colleagues (McCoy, Nunez, and Dammeyer, 1999) suggest that the process of group deliberation will correct some of the shortcomings of an individual juror's reasoning. Using a videotaped first-degree murder trial and 104 undergraduate students, the authors tested the subjects' ability to reason prior to group deliberations, after group deliberations, and without group deliberations. Their findings indicate that jurors who were questioned after participating in group deliberations were more likely to consider alternative verdicts and more likely to critically assess the chosen verdict, which the authors interpreted as support for the fact that deliberation led to higher competence by the jurors. These jurors were also more likely than those questioned before deliberation or without deliberation to accept that not all of the evidence would fit their verdict, which the authors also interpreted as indicative of higher levels of reasoning skills for those jurors deliberating in groups.

While this line of inquiry makes it clear that the process of group deliberation has some sort of impact on the individual jurors and therefore, may impact verdict and sentencing outcomes, it does little to inform us as to what specific aspects of group deliberation are responsible for influencing outcomes. This is where we turn to the literature on organizational and industrial psychology, where scholars have more closely examined which aspects of group dynamics have the most influence over group outcomes, such as performance and satisfaction. While these outcomes are not directly analogous to the capital sentencing decision that must be made by juries, an understanding of how group processes work in these situations are a way to help gain insight into an area of research not previously applied to jury deliberations.

Understanding Processes Within Groups

In many work environments, working together as a group is a normal way to achieve outcomes and make decisions. As a result, much research has focused on the ways that working in groups may impact these outcomes and decisions. And more importantly, this research has focused on the specific processes within groups that can lead to outcomes of varying degrees of quality. Through this line of research, four types of group dynamics have consistently been identified as having an important influence over the climate, or the prevailing set of conditions, of the group relations and therefore, over the outcomes and decisions made by the group. These four constructs are cohesion, collaboration, conflict, and critical evaluation. Each of these four constructs will be described in detail below and their impact on group performance will be discussed.

Cohesion

The fields of industrial and organizational psychology have long explored the role that group cohesion has over the influence of group outcomes, especially in terms of group performance in the workplace and employee satisfaction. Seashore (1954) defines group cohesion as group solidarity, or an indicator of a group member's desire to remain in the group (p. 10; see also Dailey, 1977). To measure cohesion in the industrial workgroup, Seashore asked employees a set of five questions, including: whether they felt that they were really part of the work group; whether they would do the same work in another group or would prefer to stay in their current group; how well the group got along; how well the group "stuck together;" and, how well the men helped each other on the job (p. 36-37). Using this measure, he found that the length of time that a group

spends together positively increases the level of cohesiveness among the group, as is the size of the group, with smaller groups being more cohesive (p. 95-96). Furthermore, members of groups with high levels of cohesiveness were less likely to exhibit anxiety about group activities. Also of importance was the fact that cohesive groups were more likely to force uniformity among members (p. 97), something that has potential utility in explaining how juries come to a group decision. Seashore also noted that the degree of cohesiveness was a function of the attractiveness of the members of the group as determined by the degree of similarity among group members (p. 98), another potentially useful explanation as to why there appears to be a relationship between the racial composition of a jury and the sentencing outcome (see Bowers et al., 2001).

Others have gone on to explore the role of cohesion on group performance in greater detail. Stogdill (1972) suggests that productivity and cohesiveness are interrelated, helping to explain why cohesion can have such a strong impact on group performance and on satisfaction with group interactions. Dailey (1977) goes on to suggest that the reason cohesion has such an impact on work group performance is because it is interrelated with other types of group interaction, specifically collaboration. He suggests that the interaction between cohesion and collaboration increases the ability of the group to engage in problem solving, open communication, and risk-taking.

Several researchers have also updated Seashore's (1954) cohesion measure in order to better understand the role of group interactions in decision-making, especially in the workplace. Keller (1986) found that group cohesion was significantly related to project performance for work groups engaged in the process of research and design; in fact, group cohesiveness was the strongest predictor of project performance, even when

controlling for variables such as job satisfaction and innovation within the organization. These findings are in line with those of both Klein and Mulvey (1995) and Guzzo and Shea (1992), both of whom who looked at the role that group cohesion played in influencing group performance. Klein and Mulvey (1995) attempted to further the understanding of the impact of group processes as originally examined by Roethlisberger and Dickson (1939), who demonstrated that group processes can have a strong influence on group performance. In doing so, they (Klein and Mulvey, 1995) suggested that cohesion should have a positive effect on group goal setting and therefore, on group performance. Using Seashore's (1954) measurement of cohesion, Klein and Mulvey (1995) found that group goal setting mediated the effects of group cohesion on performance. More cohesive groups, therefore, were more likely to set and achieve difficult goals. Guzzo and Shea (1992), although they did not use the Seashore (1954) measure, also found a positive association between group cohesion and group performance (see also Budman, Soldz, Demby, Feldstein, Stpring, and Davis, 1989; MacKenzie, Dies, Coche, Rutan, and Stone, 1987; and Yalom, 1995).

Collaboration

As Dailey (1977) suggested, collaboration is also an important component of group interactions and is often related to the ability of a group to form a cohesive unit. Aram and Morgan (1976) define collaboration as "the presence of mutual influence between persons," and point out that it is very similar to the conceptualization of cooperation. In this way, collaboration can be seen as the ability of the group members to work together and share resources in order to meet an agreed upon goal. Henry (1995)

finds that groups where members share task-relevant information were more accurate in obtaining their goals and were more likely to perform better than those groups who did not share information with one another. Similarly, Gladstein (1984) suggests that open communication and supportiveness, two constructs that are closely related to collaboration, are most likely to have a positive effect on self-reported group effectiveness, although she does point out that such variables may have more of an impact on perceived effectiveness than actual effectiveness; these variables did not have any impact on the objectively measured outcome of sales revenue. Still, such findings point to the importance of individual perceptions on experiences and outcomes. Jehn and Shah (1997) also find that cooperation, as measured through a question asking respondents "how helpful were your group members," is also positively related to task performance.

Conflict

One issue that has become increasingly more examined in the group climate literature is how the process of conflict impacts groups and their performance. Cosier and Schwenk (1990) suggest that in some groups, conflict can actually lead to better decisions, especially through an environment of open communication where it can encourage participation. They caution, however, that conflict may be better suited to some environments than others, pointing out that smaller firms may benefit more from trying to foster consensus than by trying to stimulate conflict.

This cautionary tale was examined by Jehn (1995), who defined conflict as the perceptions by involved parties that they hold discrepant views or have interpersonal

incompatibilities. She suggests that whether or not conflict is beneficial is dependent not only on the type of firm involved but also on the type of conflict and the structure of the group. When tasks were non-routine, for example, conflict was more likely to be beneficial. Separating conflict into two components, task conflict and relationship conflict, Jehn (1995) found that in her sample of 633 employees at a large transportation firm, those groups that engaged in task conflict were more likely to facilitate critical evaluation between members, which in turn appeared to decrease the "groupthink" phenomenon and force more discussion between group members. Relationship conflict, however, was always detrimental to group outcomes, regardless of the task being performed. In general, she concluded that the role that conflict plays in influencing group performance is still muddied; in many work environments, individuals tend to structure their time and their tasks so that conflict can be avoided. Of course, jurors do not have this luxury.

Critical Evaluations

Similar to conflict, in that it can cause tension within the group, critical evaluation is the process by which one or more members find fault with other members of the group (Jehn and Shah, 1997). In the examination of the differences between the ways that friendship and acquaintance groups make decisions and work together to achieve group goals, Jehn and Shah (1997) found that in acquaintance groups, non-friends were more likely to be perceived as providing negative evaluations on the basis of flaws inherent within the person rather than on circumstances external to the person, such as information

received. Despite this difference, both friendship groups and acquaintance groups were equally likely to engage in critical evaluation of group members.

This brings to light an important limitation in the current literature about juries as working groups; little is known about whether prior relationships between jurors who serve together has any impact over the group climate. Even though friendship and acquaintance groups were just as likely to engage in critical evaluation, the authors did not examine how the quality of the critical evaluations impacted the group climate. One could suggest that individuals who thought they were being evaluated on the basis of inherent personality flaws would be more likely to perceive the group climate as being negative than those individuals who perceived critical evaluations to be the result of some external force, like a lack of knowledge about evidentiary procedures. This is one limitation that the current research attempts to improve upon.

Related Group Process Research

Two other areas of group process research are also important for the current line of inquiry, although they are not directly related to issues of group climate and its impact on group outcomes. The first issue is that of the impact of minority viewpoints on group functioning. As Kalven and Zeisel (1966) pointed out in their seminal work on the decision-making processes of juries, the majority verdict ended up being the final verdict in approximately 85% of trials. Nemeth (1986) suggests that while group majorities may create convergence of attention and thought and may limit the number of alternative viewpoints considered, minority viewpoints are also important in their ability to stimulate opposing thought, even if such divergent ideas are not accepted by the group. By

contributing new information, the minority viewpoint is able to help create situations where decisions are qualitatively better, if not actually different. She suggests that both majority and minority influence stimulate different problem-solving and decision-making processes.

These differences are able to help create situations where more information is exchanged within the group and helps to ensure that decisions are better. Furthermore, the more consistent and more confident the minority position, the more likely that individuals within the group will switch their position away from the majority and to the minority. Research indicates that movement to the minority happens later in the decision-making process, making the consistency of the minority viewpoint an important consideration as to whether people will change their mind over the course of making decisions. Furthermore, while majorities may force groups to concentrate on their position, minority participation encourages the consideration of alternatives. The consideration of alternatives is in itself a way to stimulate better decision-making processes; Hoffman and Maier (1961) point out that the pressure for consensus and uniformity, something that is inherent in the process of jury deliberation, is often times an impediment to a group's ability to make a good decision. As such, the contribution of minority members should not be overlooked.

Another recent line of research that has emerged from the investigation of the role that group process has on various outcomes is that of the role of diversity in aiding or negating the quality of the outcome. Jehn and her colleagues (Jehn, Northcraft, and Neale, 1999) identify three types of diversity that may impact group functioning: social category diversity, value diversity, and informational diversity. Social category diversity

is defined as explicit differences among group members with regard to social category membership, such as race or gender (see also Jackson 1992). Value diversity occurs when members of a workgroup do not agree as to what they believe the group's real mission to be. Informational diversity is that which can be described as the differences in knowledge bases and perspectives that members bring into the group.

Generally, the authors find that different kinds of diversity may exacerbate different kinds of conflict within the group, although for the current research, the results of how both social category and informational diversities impacts group dynamics are the most applicable. The authors are quick to point out that no theory of workplace diversity suggests that diversity on outward personal characteristics, like race or gender, will actually impact the workgroup, net of the extent to which such diversity creates other types of diversity in the workgroup. Nonetheless, the authors acknowledge that when social category diversity exists, group members tend to exhibit favoritism to members of their own social category (see also Billing and Tajfel, 1973), oftentimes leading to discrimination and self-segregation, which in turn may provoke hostility within the group and have a negative impact on group outcomes. Similar outcomes may occur when groups have a large amount of informational diversity; when groups are diverse, it may prevent the group from getting along and therefore from realizing any benefits that come from the combination of so many different perspectives.

The issue of diversity is especially salient in light of the fact that capital juries are comprised of a group of somewhat arbitrarily chosen people, forced to work together and tasked with the job of coming to a consensus about whether or not another human being should live or die. There is also no reason to believe that these twelve individuals have

any experience working with groups to make such important decisions; as a result, it is possible that the negative influence that diversity can have on group processes and outcomes is more likely than any positive influences to occur during the course of deliberation. This research seeks to further our understanding about whether this would happen and how such diversity would impact sentencing outcomes.

The Next Step

These studies suggest that group climate variables, such as cohesion and conflict, are an important part of the process of group interaction and point to the need to switch our focus on studying juries from one solely at the individual level to one that can take into account the characteristics of both the individual juror and the group as a whole. Because we know, for example, that higher levels of group cohesion lead to stronger measures of group satisfaction as well as more positive outcomes, it is important to see how such group climate variables would impact the functioning of juries, especially in capital cases. Capital trials are an important place to look at how the group influences decision making and performance because the rules of decision-making are very concrete, yet research shows that jurors do not always follow these rules (see Bowers and Foglia, 2003; Foglia, 2003). One distinction that must be made, however, is that the study of decision-making among capital juries does not necessarily lend itself to conclusions about the objective quality of either the interaction or the outcome. While there may be distinct rules that much be followed during the decision-making process, the guidelines allow for the consideration of mitigating factors such that juries may return a life sentence even when aggravating circumstances are present. This makes it very

difficult, therefore, to determine whether or not a jury has made a patently "correct" decision. Much of the research conducted on group decision-making and the impact on group functioning on decision-making has been able to measure objective criteria from which to determine whether or not the group's performance was successful; for instance, some studies have looked at the way that group functioning was related to amount of sales revenue brought in by the group (Gladstein, 1984). Due to data limitations, which will be discussed further in the next section, it is not possible at this time to make an objective determination of the "success" of the jury in reaching its decision. It is possible, however, to determine whether or not group processes can add anything to our understanding of the process by which capital trial outcomes are reached. Research on the subject to date has only been able to look at the power of individual and trial level characteristics to understand sentencing outcomes; the current research examines whether group level constructs, such as the climate of the jury during deliberations, can add to our understanding of how juries come to their decisions.

Chapter 4: Research Methodology

Research Question

This research will examine the effect that group climate has on juror experiences and on capital trial sentencing outcomes. Group climate can best be defined as a series of interactions within a group that lead to group related outcomes, which in this case would be sentencing outcomes for capital cases (Kivlighan and Tarrant, 2001). Little research has been conducted that looks at how group processes can influence the decisions that juries make. Instead, much of the research on jury deliberations focuses on juror level or case level variables, without taking into consideration the group context of deliberations. Measuring group climate, of course, is difficult. One potential way to understand the group climate, however, is to look at the perceptions that jurors have about their interactions with other jurors during the course of deliberations. A juror's perceptions of the quality of the climate can give insight into how he or she perceives their relationships with other members of the jury. Research conducted in the fields of social and organizational psychology also suggest that group climate can have an impact on how well the group works together, which can then in turn impact performance (Jehn and Shah, 1997; Kivlighan and Tarrant, 2001; Webster and Whitmeyer, 2001).

It is important to note one major distinction between the impact that group climate variables can have on performance, especially in the work place, and the impact that group climate variables can have on jury deliberations. In a work place, assumptions can be made about the adequacy of the level of performance by a group or an individual

because employers generally have well-defined metrics by which to compare behavior. For instance, many businesses expect employees to meet certain sales goals or to complete projects within a set time frame; meeting these goals can be considered an objective measure of positive performance. Measuring performance at the level of jury deliberations, however, is much more difficult, as objective measurements of jury performance in capital cases have not been previously defined. Conventional wisdom, coupled with prevailing legal precedent on capital trials, suggests that determining whether a capital jury returned the correct verdict is difficult in the best situations and can in fact be next to impossible. Juries are given instructions by which to guide their discretion within a legally defined framework, but are nonetheless asked to evaluate a very specific set of circumstances and make what amounts to a very personalized decision about each individual case. In order to determine if the "correct" decision was made, observers would have to evaluate each case on both its legal merits and on the somewhat more intangible characteristics that lead to decisions made about mitigating circumstances, such as whether or not the defendant will continue to be dangerous in the future or will instead adjust well to life in prison. Objectively judging verdicts by these criteria requires intimate knowledge about the facts of the case and the intricacies of the deliberation process, a set of information that has yet be collected in any known data source.

As a result of the complications involved in objectively measuring performance in jury deliberations, the distinction between performance and outcome measures is an important one. The group processes literature generally assumes that the outcome being evaluated is an objectively defined performance measures, such as accuracy (Henry,

1995), increased revenue (Gladstein, 1984) or job satisfaction (Dailey, 1977; Gladstein, 1984; Kivlighan and Tarrant, 2001). These same kinds of objective measures are not available when the outcome of interest is jury verdicts; as such, it is not possible in most cases to judge the "correctness" of verdict returned by the jury. Rather, the interest here in on whether group climate as it is currently defined acts as an intervening factor between those juror and trial characteristics of interest and the eventual verdict returned by the group. In essence, group climate acts as a proxy for the dynamics involved in the group deliberations process.

The use of a global group climate measure as a variable of interest is not unprecedented; MacKenzie and colleagues (1987) measured group climate, defined as a participant's perception of the group atmosphere, in their assessment of group member outcomes, finding that successful groups were more cohesive and engaged and less superficial and conflicted. Kivlighan and Tarrant (2001) used the same measurements to test the hypothesis of whether group climate mediated the relationship between levels of leadership and group member outcomes in semi-structured adolescent therapeutic groups. They found that positive group climate was related to treatment benefit. While the outcomes of interest here are certainly different, these findings speak to the importance of group climate in several settings and offer valid arguments for the potential utility of using a group climate variable to better understand jury functioning.

Research on capital juries also suggests that race is a very salient issue during the deliberation processes; as such, this research will also examine how race impacts an individual's perceptions of the group climate during deliberations. Earlier research indicates that Blacks experience the jury deliberation process differently than do Whites;

Blacks, for instance, are more likely to feel that the experience of serving on a capital trial was a negative one (Fluery-Steiner, 2002). Black jurors also appear to be more receptive to mitigating evidence in cases with non-White victims (Brewer, 2004). It stands to reason, therefore, that Blacks and Whites may perceive the climate of deliberations differently. Other aspects of the trial experience may also impact a juror's experience of group climate during the deliberations, such as the race of the victim; research to date indicates that jurors are more likely to return a death sentence when they and the victim are the same race (Foley and Chamblin, 1982). Research also indicates that Blacks in general tend to be less trustworthy of the criminal justice system than are Whites (see Abshire and Bornstein, 2003), something that would inevitably impact their interpretation of sentencing instructions and the experience of jury deliberations. It is possible to assume, therefore, that a juror's feelings about what kind of justice is appropriate for the victim would impact their interpretation of the group climate.

The relationship between individual juror characteristics, such as race, the perception of group climate and the subsequent impact of this relationship on the outcome of a capital trial can best be understood by the visual representation in Figure 1. Individual level characteristics, such as race and gender, help shape a juror's perception of group climate; perception of group climate, in turn, is a measure of group functioning that then has an independent impact on sentencing outcome. In essence, group climate mediates the relationship between the individual level characteristics and the sentencing outcome, such that the individual jury level characteristics operate on the death or life outcome through the process of group functioning. Research to date also suggests that individual level characteristics like race and religious preference will have a direct effect

on sentencing outcomes (Bowers et al., 2001; Eisenberg, et al., 2001). Due to the legal nature of the decision surrounding a death sentence, however, it is also important to include within the model trial level characteristics, such as aggravating and mitigating circumstances, that can operate independently on sentencing outcomes. Such trial characteristics may also be interpreted through the experiences of the individual juror, such as when Black jurors are more likely to find mitigating circumstances present in trials with a Black defendant, so trial level characteristics can also mediate the relationship between individual level juror characteristics and sentencing outcome. For the purposes of these analyses, the path of interest is whether or not the group climate variable, which acts as a proxy for group functioning, mediates the relationship between individual juror level characteristics and sentencing outcome; future analyses will focus on the relationship between individual level characteristics and trial level characteristics and their joint impact on sentencing outcome.

The following sections detail the hypotheses that will be tested during this analysis, as well offers a detailed description of the variables that will be used in testing each of the hypotheses.

Hypotheses

H1A: Perception of the quality of group climate varies between capital juries.

H1B: Black jurors who serve on capital trials will be more likely than White jurors who serve on capital trials to perceive the quality of the group climate as negative.

H1C: The race of the victim will affect the association between the juror's race and the juror's perception of the quality of group climate. Black jurors will be more likely to perceive the quality of the group climate as negative when the victim is Black.

H1D: The race of the defendant will affect the association between the juror's race and the juror's perception of the quality of group climate. Black jurors will be more likely to perceive the quality of the group climate as negative when the defendant is Black.

H1E: The combination of the race of the victim and the race of the defendant will affect the association between the juror's race and the juror's perception of the quality of group climate. Black jurors will be more likely to perceive the quality of the group climate as negative when the defendant is Black and the victim is White.

H1F: The percentage of Black jurors on the jury will affect the association between the juror's race and the juror's perception of the quality of group climate. Black jurors will be more likely to perceive the quality of the group climate as positive when there are a higher percentage of Black jurors.

H2: Juries with a higher average level of perceived climate will be more likely to return a death sentence than those juries with a lower average level of perceived group climate, net of trial characteristics.

Data

The data that will be used for this analysis will come from the Capital Jury Project (CJP). The original Capital Jury Project is a multi-state, university-based consortium of researchers specializing in the analysis of data collected about capital jury deliberation in their respective states. Data on capital jury deliberations were originally collected from fourteen states, although a fifteenth state was added during the middle of data

collection[40]. The primary objectives that the CJP research teams are working to achieve are:

1. To examine and systematically describe jurors' exercise of capital sentencing discretion;
2. To identify the sources and assess the extent of the arbitrariness in jurors' exercise of capital discretion; and
3. To assess the efficacy of the principal forms of capital statutes in controlling arbitrariness in capital sentencing (Bowers, 1995, p. 1077).

The data were collected through the process of lengthy in-person interviews with jurors who had served on capital trials in their respective states between 1988 and 1995 (see Appendix A for a copy of the instrument used). After capital trials had been randomly selected in each state, four jurors per trial were also selected by a random selection process, which will be discussed in more detail in the following section. Once the trials were selected for the study, the jurors involved in those trials were sent a letter from the investigator in their state explaining the research study, promising full confidentiality, offering an incentive for participation and asking for their participation if they were to be one of the four jurors selected for the sample. An interviewer would then follow-up with the four randomly selected jurors and a time for an interview was set up (Bowers, 1995).

[40] The fourteen original states included California, Florida, Indiana, Kentucky, Pennsylvania, South Carolina, Texas, Virginia, Georgia, Louisiana, North Carolina, Tennessee, New Jersey, and Alabama. Missouri was later added because problems with the data from New Jersey prohibited it from being analyzed. The next section contains a more in-depth explanation about the state selection.

The interviews were designed to elicit information about the jurors' experiences and thoughts over the course of all parts of the trial, including the voir dire process, the guilt trial, guilt deliberations, the sentencing trial, and sentencing deliberations. A fifty-page instrument was utilized during these interviews. The questionnaire consisted of both open-ended questions that encouraged the juror to give detailed answers and close-ended questions with a structured response set. Interviews lasted approximately three hours on average and were tape recorded with the respondent's permission. Many of the researchers involved in the project have commented on how forthcoming the jurors were with their responses; individuals were candid in speaking about their experiences and were often willing to expand on their answers and give interviewers detailed information about their thoughts and actions during the trial. Jurors often expressed appreciation for being able to talk about what was a very salient experience in their lives.

Sample Selection

State Sample Selection

The original Capital Jury Project employed a three-stage sampling design. In the first stage, the investigators selected those states from which capital trials would be chosen. States were selected in order to have a representative sample of the types of guided discretion capital statutes. Priority was given to those states which would have a large enough number of capital trials to meet sampling quotas as well as make sure that the selected states would enhance regional diversity within the sample. Eight states were initially selected to represent states with threshold, balancing, and directed statutes and

included both narrow and traditional definitions of capital murder[41]. The first eight states included in the sample were California, Florida, Indiana, Kentucky, Pennsylvania[42], South Carolina, Texas, and Virginia. After the first year, four additional states were added to the sample Georgia; Louisiana; North Carolina; and, Tennessee. Three more states, New Jersey, Missouri and Alabama, were subsequently added, so that the final sample included fifteen states with varying types of guided discretion statutes. Due to the legal prohibition against attorneys interviewing jurors in the state of New Jersey, however, the data from that state has not yet been analyzed[43]. In this sample, Missouri was substituted for New Jersey. Table 1 shows the breakdown of the fourteen participating states by type of discretion statute and type of definition of capital murder (Bowers, 1995).

The large sample of states allows for analysis of both geographic diversity and statutory variation and also allows for flexibility in exploring other differences among states. For example, states have different statutory guidelines about the aggravating factors that jurors may or may not consider and oftentimes have different sentencing instructions. Having such a large sample also makes analysis less sensitive to any state specific biases (Bowers, 1995).

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[41] Traditional definitions of capital murder require that the jury find that at least one of several aggravating factors is present during the sentencing phase of deliberations. Narrow definitions of capital murder require that the jury agree on the presence of at least one aggravating factor during the guilt phase of the trial (Bowers 1995).

[42] Pennsylvania replaced New Jersey in the original sample of eight states. New Jersey was taken out of the first sample because of the small number of capital trials during the sampling time period. New Jersey was subsequently re-added to the study and the sampling time frame was re-assessed, but the complications associated with the phone interviews conducted in New Jersey have led to the data being left out of the current sample.

[43] This information was obtained through personal communication with the Principal Investigator of the Capital Jury Project, Dr. William J. Bowers, on April 10, 2006.

Trial Sample Selection

Once the states were chosen to participate in the Capital Jury Project, a sampling procedure was implemented to ensure that there was a representative number of both death and life outcome capital trials. The criterion for including trials in the sampling framework was that each trial must have gone through both a guilt and punishment phase during the sampling time period, which started in 1988. For the original eight states, the target sample was thirty trials, half where the jury voted for life and half where the jury voted for the death penalty. For the remaining six states, the target sample was twenty trials per state, also with a breakdown of half of the trials ending in a life verdict and half in a death penalty verdict. An attempt was made to over-sample the more recent trials under the assumption that those jurors would be more likely to remember the experience in more vivid detail. Occasionally, investigators have had to depart from the sampling criteria in order to ensure the diversity of the sample; for example, in some states, trials in rural areas were over-sampled, either to ensure regional diversity or to ensure that each region of the state was equally represented with regards to type of capital murder charge. (Bowers, 1995)

In three of the states, California, Florida, and Texas, the sampling of capital trials was restricted to specific areas within the state. The investigators made the decision to restrict the sample to smaller geographic areas because of the long distance within state borders and the large numbers of capital trials within each state. In California, the cases were from the middle third of the state, bounded by the cities of San Francisco, Sacramento, and Fresno. The cases in Florida came from the northern and the central areas of the state, generally north of Tampa and including the Panhandle. The Texas

cases were drawn from the south-central portion of the state, which includes the cities of Austin, Houston, and San Antonio and the surrounding rural counties. By limiting data collection to these portions of the state, the investigators were able to best utilize both the time and resources necessary to conduct a sufficient enough number of interviews to meet the sampling needs (Bowers, 1995).

Juror Sample Selection

The researchers chose to randomly select four jurors per trial for participation in the project. In states with a target of thirty trials, a total of 120 interviews were conducted; in states with a target of twenty trials, 80 jurors were interviewed. In some cases, additional interviews beyond the original four were conducted when the trial was of special interest. This often happened when the original interviews left questions unanswered or raised additional issues and the state investigators felt that a more in-depth understanding of the deliberation process was necessary (Bowers, 1995).

The four jurors were randomly selected using a systematic procedure to ensure a representative sample. Jurors were first numbered from one to twelve, based on the order that they were listed on the jury list obtained from the courts. A starting point was then picked at random in order to prevent any bias that may have existed through the process by which the jurors were listed (for instance, if the foreperson was always listed first or always listed last). From that starting point, jurors were successively assigned an alphanumeric code (A1, B1…C4). The first panel of jurors selected for inclusion in the study were those on the A panel; up to five attempts over a three-day period were made to reach those jurors to schedule an interview. In order to minimize the impacts of

selection bias, the random selection continued through the jury panel if any juror did not agree to participate. For instance, any panel A juror who did not agree to participate in the study was replaced by the corresponding panel B juror. Replacement continued in this way, with a panel C juror replacing a panel B juror, until all four interviews were scheduled (Bowers, 1995).

Because only four jurors were interviewed per case, it is important to note that the experiences of these four jurors cannot be generalized to the experiences of all twelve members of the jury (Bowers, 1995). The interviews with the four jurors should be used as "contextual" data, where agreement on matters of fact can be interpreted as a sign of reliability. The unit of analysis for many of the analyses to be conducted, therefore, is the individual juror. The subsequent analyses that examine the impact that individual level characteristics have on the individual juror's perception of the group climate will all utilize the individual juror as the unit of analysis.

Some of the subsequent analyses, however, will examine the role that aggregate jury level characteristics will have on sentencing outcomes. While the experiences of the jurors on each trial cannot on their own be generalized to the larger population of capital trials, it is possible to aggregate individual level characteristics into jury level characteristics and model the experiences of the jury as a unit under two assumptions. The first assumption is that such analyses take into account the fact that individual jurors are nested within juries, so that more than one juror will share an experience on a jury. Such shared experiences include variables such as the race of the defendant and the level of heinousness of the crime. The nesting of jurors within juries will be discussed more thoroughly in the section on analytic techniques; a hierarchical linear modeling procedure

will be utilized in order to correct for the fact that the observations of jurors within juries are not independent of one another.

The second assumption that will allow for the aggregation of individual level juror data into jury level variables rests on the assumption that those jurors represented in the sample are representative of all of the jurors on the particular jury in question. Such an assumption, however, cannot be tested with these data, as there is no information about those jurors who are not part of the sample with which to compare. Fortunately, this assumption has been dealt with in the community crime literature, where theorists also operate on the assumption that the group context within which certain processes unfold are important to understanding those processes (Bursik, 2000). In testing certain hypotheses at the group level, researchers have used information from individuals that has been aggregated to create community level variables. In their examination of the role that community structure played in the understanding of crime rates, Sampson and Groves (1989) created a community friendship measure, meant to measure friendship groups at the aggregate level, by taking the mean level of friendship networks reported by individuals living within the community in question. Similarly, jury level characteristics will be created by taking the mean level of the responses from the individuals who serve on each jury. For example, as will be described shortly, the jury characteristic of group climate can be created by taking the mean level of responses for those jurors on each jury and attributing it to the jury, much the way that Sampson and Groves attributed group level friendship networks to communities by averaging the responses of individual residents.

The Final Sample

The data from the original Capital Jury Project contains information from 1198 individual jurors sampled from 353 trials in fourteen states. For the purposes of these analyses, a sample of 1069 jurors from 269 trials was derived from the original sample. This smaller sample contained information on all variables of interest for these analyses; when possible, the creation of scales was conducted using all of the available data, which included information from all fourteen Capital Jury Project states with available data are represented in this sample. This final sample includes only responses from those jurors who have served on trials where at least two other jurors per trial were also interviewed, meaning that each trial in the final sample utilized here must be represented by at least three jurors. Because the planned sample size of four jurors per trial could not always be obtained, a decision was made to include all trials in the current sample where at least three jurors were interviewed, in an attempt to ensure that the sample size was as large as possible. Analysis conducted showed that there were no significant differences between trials where only three jurors were interviewed and trials where four or more jurors were interviewed.

Table 2 shows a breakdown of how many of the trials each have 3, 4, 5, 6, 7, and 8 jurors included in the sample. In keeping with the sampling framework, in the majority of trials (57.4%), four jurors were interviewed. In just over a quarter of the trials (26.2%) three jurors were interviewed. In light of the fact that the original Capital Jury Project sampling framework attempted to always interview at least four jurors per trial, descriptive analysis of the sample was conducted both with and without those jurors who served on trials where only three jurors were interviewed. These preliminary descriptive

analyses indicated that there was no difference between those trials where only three jurors were interviewed and those trials where four or more jurors were interviewed. Because of this, a decision was made to include all jurors in the sample who served on a trial where at least three jurors had been interviewed; doing this also increased the number of Black jurors whose information would be available for analysis.

When the smaller sample was further analyzed, it became apparent that missing data existed. Cases with missing data were then eliminated due to several conditions, including missing information about the key variables in the analysis. After all missing data were eliminated, the final sample for all subsequent analyses was 918 jurors who served on 244 trials. The process by which missing data were eliminated will be discussed in a following section; nonetheless, it is important to note here that all cases with available data were used for the creation of the scales and for the examination of jury level averages. This was done in order to ensure that all of the information was included in the creation of new variables and to improve the ability to aggregate from juror level to jury level characteristics. Independent samples t-tests confirmed that there were no significant differences between either the original sample, the smaller sample from which scales were created, or the final sample used for the analyses.

Of this sample, 504 jurors served on 136 trials where the final verdict was a death sentence. Table 3 shows a breakdown of the number of trials in each state, for both life and death outcomes. In order to better understand the use of the different kinds of sentencing guidelines utilized in these fourteen states, Table 4 shows how many trials were sampled under each sentencing guideline, while Table 5 shows the breakdown of how many jurors served on trials using each type of sentencing guideline.

Variables

All of the variables are for these analyses are taken from the responses of the jurors from the interviews conducted in the first phase of the Capital Jury Project. Some of these variables were recorded as structured responses to close-ended questions. Other variables were extracted from the qualitative responses to open-ended questions. It should be noted that preliminary analysis of Capital Jury Project data also shows that the jurors report high levels of recall for all stages of the capital trial process, lending credibility to the jurors' responses (Bowers, 1995). Table 6 replicates these preliminary findings with data from jurors in the final sample used in these analyses. As Table 6 indicates, the majority of jurors report remembering the punishment deliberation phase of the trial "Very Well" (70.9%), and almost all of the jurors responded that they remembered the punishment deliberations "Very Well" or "Fairly Well" (97.5%). Despite the apparent high level of recall, however, it is important that these data, like all other data that asks respondents to remember some time period in the past, may suffer from problems related to respondent memory; this limitation and any others will be discussed in Chapter 6.

Appendix B reports the bivariate correlations between each of the variables of interest. This information is reported in order to obtain a better preliminary understanding of the relationships between each of the variables. It should be noted that the relationships found in these data are consistent with those seen in prior literature; for example, there is a significant negative relationship between verdict and the percentage of Black jurors. This is on par with the findings of Bowers and his colleagues (2001) that juries with at least one Black male are more likely to return a punishment of life instead

of death. Also of note is that there is a significant negative relationship between an individual's perception of the group climate and his or her race; Black jurors are more likely to perceive the group climate more negatively than are White jurors. These correlations offer some insight into the relationships that exist between these variables; the following sections will describe in greater detail the advanced statistical techniques that will be used to test these relationships and the data used in the analysis.

Dependent Variables

Group Climate: The dependent variable for the first set of hypotheses is group climate, a global measure of group functioning at the jury level. This variable at the aggregate level will also serve as one of the independent variables for the second hypothesis. Its function in the aggregate will be discussed in the next section. There are fifteen measures available within these data that appear to tap into what can be described as the construct of group climate. The fifteen variables came from two separate parts of the survey instrument; they included a set of questions asking respondents about their experiences with the jury and a set of questions asking respondents about their general experiences serving on a capital trial.

The first eleven variables came from the section of the questionnaire where respondents were asked to describe how well several phrases described the jury on which they served. The responses to each of the eleven phrases were scaled on a four point scale which ranged from 1, Very Well, to 4, Not At All. The eleven phrases were: likeminded, saw things the same way; close-minded, intolerant of disagreement; too quick to make a decision, in a hurry; friendly and respectful to one another; decided on

guilt and punishment at the same time; dominated by a few strong personalities; got too emotionally involved in the case; was confused by the judge's instructions; did not follow the judge's instructions; kept making mistakes; and, you felt like an outsider. The next four variables came from the section of the instrument that asked respondents a series of questions about their experiences serving on a capital trial. The first question asked of the respondent was whether he or she wished that s/he had done anything differently over the course of the trial. The respondent answered either Yes (0) or No (1). The next question asked whether the juror found the experience to be emotionally upsetting; again, the response set with either Yes (0) or No (1). The third question asked jurors whether or not they had any trouble sleeping; jurors again responded either Yes (0) or No (1). The last question asked jurors whether or not they would again serve on a capital trial if asked. The response set for this question was: I would welcome the opportunity (4); I would do so reluctantly (3); I would try to get out of it (2); and, I would refuse to serve (1). Table 7 shows the mean and standard deviation for each one of these fifteen variables.

Using the analytic technique of principal components analysis, these variables will be examined to see if they contain common factors which can then be compared to one or more of the more common constructs of group climate, such as cooperation, cohesion, conflict, and critical evaluation. Prior research has identified these four constructs as potentially useful ones in explaining the ways that group interaction affects both the performance of a group and the satisfaction with their task of those individuals within the group. The responses to the questions will be recoded so that higher values on the scale are indicative of a more positive perception of group climate; in order to

accomplish this, the questions "likeminded, saw things the same way," and "friendly and respectful to one another" will have to be reverse coded, as will the questions "Do you wish you had done anything differently," "Was the experience emotionally upsetting," "Did you have trouble sleeping," and "If asked to serve on another capital trial, would you?". By reverse coding these items, all responses will indicate a positive experience.

Sentencing Outcome: The sentencing outcome of the trial is contained in the original Capital Jury Project data; as seen in Table 3, just over half of the jurors sampled (56.5%) served on trials where the sentencing outcome was a death sentence and the rest served on trials where the sentencing outcome was a life sentence.

Independent Variables

Average Group Climate: The group climate independent variable for hypothesis two will be measured in a very similar way as the group climate dependent variable for the first set of hypotheses. The above section details the way in which the group climate scale will be created for each individual juror. The average group climate scale will be the mean value of the group climate scale for each of the jurors serving on a particular jury. For example, if three jurors that have served together on a capital trial have been interviewed, the average group climate score for the jury will be the mean value of the three scores from the individual jurors; if five jurors are interviewed, the average group climate score will be the mean value of the five scores from the individual jurors. An average group climate score was able to be calculated for each of the 244 capital trials

included in this analysis. The average group climate score across all 244 trials is 3.44 (S.D. = .27) with a range of 2.33 to 3.97.

Race of Juror: Respondents were asked to identify their race as falling into one of the following categories: White, Black, Hispanic, Asian, or Other. The majority of respondents interviewed identified their race as either White (87%) or Black (9.4%). There were very few other minorities included in the sample. As a result, the Hispanic, Asian, and Other categories are collapsed into one "Other" category. As mentioned above, the final sample of 918 respondents contains 90.2 percent of jurors who identify as White and 9.8 percent who identify as Black. The reference category for this variable will be jurors who identify themselves as White. Descriptive statistics for this variable can be seen in Table 8.

Race of Defendant: Research is still unclear as to the direct impact that the race of the defendant has on a sentencing outcome, although there is evidence to suggest that a minority defendant may be more likely to receive the death penalty than a White defendant, an effect that is often conditioned by the race of the juror (Baldus et al., 1998; Bowers et al., 2001). This research, however, shows that often times the race of the defendant matters earlier in the process, such as during the decision to file a death petition (Baldus et al., 1990; Paternoster, 1991), suggesting that once the case has reached the penalty phase of deliberations, the effect of the race of the defendant is wiped out by the effects of the race of the victim. In order to lend clarity to this issue, I will control for the race of the defendant as well, with defendants being identified as either

White or Black. In the original sample, the majority of the defendants were White (53.5%), followed by Black defendants (39%). Of 244 trials in the final analysis, 58.2% of the defendants (142 trials) were White. Table 13 includes the race of the defendant for the final sample. The reference category for this variable will be White defendants.

Race of Victim: Prior research suggests that one of the most important factors in whether a death sentence is meted out is the race of the victim, with death sentences more likely to occur in cases where there is a White victim. Research also suggests that jurors are more likely to be sympathetic to same race victims and thus more inclined to vote for death. The race of the victim is identified by the jurors, although in most cases it has been independently confirmed by the researchers. The race of the victim in all of the trials is coded as Black, White, or Other. The majority of the victims in these capital cases are White (75%), followed by Black victims (17.2%). Final analyses will only include those cases in which the victim was identified as either Black or White; of those 244 trials in the final sample, 196 (80.3%) had a White victim. Table 13 includes the race of all of the victims in the final sample. The reference category for this variable will be White victims.

Defendant/Victim Race Interaction: There is much evidence to suggest that those cases with same race victims and defendants are treated more leniently than those cases with a victim who is a different race than the defendant, specifically when the defendant is Black and the victim is White. Much of the previous research using the Capital Jury Project data is suggestive of these racial effects; as a result, a defendant/victim race

interaction will be constructed to control for cases where there is a Black defendant and a White victim. Out of the 244 capital trials included in this analysis, 59 trials (24.2%) had a Black defendant and a White victim; table 14 shows the breakdown of the defendant/race interactions in these data. Of the 918 jurors who served on these 244 trials, 217 (23.6%) were jurors who served on a trial with a Black defendant and a White victim. Because there are not enough trials where either the defendant or the victims are of a race other than Black or White, these cases have been omitted from the analyses.

Juror/Victim Race Interaction: Qualitative analysis suggests that jurors tend to feel more sympathy towards victims who are of their same race and therefore are more likely to return a death sentence under these conditions. Research also suggests that Black jurors are more likely to feel sympathy for Black victims than are White jurors, due in part to a speculation that Black jurors are more likely than White jurors to feel sympathy for Black victims. It has also been speculated that Black jurors are more likely to feel that the jury deliberation experience is negative in trials with a Black victim because White jurors may dismiss the importance of the Black victim. In order to test whether or not the relationship between the juror's race and the victim's race impacts perceptions of group climate, an interaction variable will be created. Cases that contain both a Black defendant and a Black victim will be coded as 1, while all other cases will be coded as 0. Only a small percentage of cases (2.2%) consist of both a Black juror and a Black victim; the majority of cases (73.3%) consist of both a White juror and a White victim. Table 15 shows the cross-tabulations for each of the juror/victim race interactions.

Juror/Defendant Race Interaction: Qualitative analysis also suggests that jurors tend to be more sympathetic in trials where they share the same race as the defendant; this appears to be especially salient in trials where both the juror and the defendant are Black. Accounts of jury deliberations have shown evidence that Black jurors feel that they have to explain the actions of Black defendants to their fellow White jurors, making the experience a difficult one, as they report often feeling that they have to serve as a cultural liaison to White jurors. Such accounts suggest that the interaction between the race of the juror and the race of the defendant may act as a way to explain any differences between the ways that Black and White jurors perceive group climate. Cases that contain both a Black juror and a Black defendant will be coded in this analysis as 1; all other cases will be coded as 0. In the final sample, approximately 5 percent of the cases include both a Black juror and a Black defendant; the majority of cases (55%) include a White juror and a White defendant. Table 16 shows the cross-tabulations for each of the juror/defendant race interactions.

Control Variables

There are several reasons to believe that other variables will have a factor into the decision-making process at both the individual and the group levels. Prior research suggests that individual level characteristics may determine how a juror makes a decision. For instance, Whites are more likely to support a death sentence than are minorities (Bowers et al., 1994; Ellsworth and Gross, 1994). Case level characteristics may also come into play, with some research suggesting that cases with multiple victims may be more likely to result in a death sentence (Kalven and Zeisel, 1966). Furthermore,

some group dynamics have been identified in impacting sentencing decisions, most notably the racial composition of the jury (see Bowers et al., 2001). The variables included as controls are described below.

Individual Juror Level Control Variables

Prior work with the Capital Jury Project data suggests that individual level characteristics may impact how jurors make their decisions in capital trials. For instance, Eisenberg and his colleagues (2001) find that Southern Baptists are more likely to vote for a death sentence than jurors with other religious preferences. Other research (see Haney et al., 1994; also Butler and Moran, 2002) suggests that women and minorities may be less likely to vote for a death sentence. In order to control for these individual level differences, several control variables will be used in this analysis. All of these variables were self-identified by the subjects, who were asked about their demographic characteristics at the end of each interview; where possible, these responses were confirmed by the interviewer. Table 8 contains the descriptive statistics for all of the juror-level control variables.

Gender of Juror: Gender is coded as 0 for female and 1 for males. The overall sample is slightly skewed in the direction of female respondents (52.5%); this trend remains in the final sample, where 53.3 percent of the 918 final respondents identify as female. The reference category for this variable is female.

Age: This variable was self-reported by the subjects as the age on their last birthday. Jurors ranged in age from 20 to 85, with the average age of respondents in the overall sample being approximately 46 years old (S.D. = 12.75

Education: Respondents were asked about the last grade in school that they had completed. The responses available to them were less than twelfth grade, finished high school, some technical school beyond high school, some college, college graduate, and attended graduate/professional school. The modal category for this variable was finished high school (25.9%), followed closely by some college (23.6%).

Religious Preference: Respondents were asked to identify their religious preference; eight religions were available to them or the respondent could choose to identify another religious preference. Respondents could also choose no religious preference. Previous analysis on death qualification (see Fitzgerald and Ellsworth, 1984; also Haney et al., 1994) suggests that those individuals who identify themselves as Catholic or as Jewish are less likely to favor the death penalty when compared to those who identify themselves as Protestant. Earlier work on the role that religious preference plays in death penalty decisions suggests that Southern Baptists are more likely to vote for death than individuals who have other religious preferences (Eisenberg et al., 2001). The majority of respondents in the sample identified themselves with one of the Protestant religions (62.9%), with almost a fifth of the Protestant respondents (16.6%) identifying themselves as Southern Baptist.

Due to the large number of religions preferences that are contained within these data, these variables will be collapsed into a series of dummy variables. The dummy variables have been chosen to represent those four most common religious preferences in these data: Southern Baptist; Baptist; Jewish; and Roman Catholic. Each of these religious preferences also has theoretical significance. Respondents who identify themselves as Southern Baptists have been more likely to vote for death in prior research than have respondents identifying with other religions (Einsenberg et al., 2001). And while the distinction between Baptist and Southern Baptist is a well-defined one, the possibility of confusion on the part of respondents between these two responses suggests that including the Baptist religious preference may be a conservative measure that is appropriate for these analyses. Other research also suggests that Jewish and Roman Catholic respondents are less likely to vote for the death penalty, so these two categories will also be included. Because Roman Catholic contains the highest percentage of respondents of one religion, this category will be the reference category.

Income: Respondents were asked to pick an income range which best described their current family income. The income categories ranged from less than $10,000 a year to more than $75,000 a year. There was also an option for respondents to refuse to answer the question. The modal category for income is between $30,000 and $50,000 per year, with more than a quarter of respondents choosing this option (27.7%). The next most common response was between $50,000 and $75,000 per year (20.2%). Only a small number of respondents (83 or 7.9%) refused to answer this question. The reference category for this variable will be the income category of $30,000 to $50,000.

Foreperson: Respondents were also asked whether or not they had served as the foreperson on their trial. Of the jurors interviewed, approximately 11 percent (121 in the overall sample, 109 in the final sample) of jurors reported that they had served as the foreperson. Because a foreperson is traditionally asked to guide the jury in its duties, it is possible that those individuals who have served as a foreperson may be more likely to view the deliberations process differently than did other jurors. As a result, this variable will be controlled for in the final analysis.

Prior Relationships: Jurors were also asked to identify whether they had known any of their fellow jurors prior to serving on the trial with them. Almost a quarter of jurors interviewed (22.5%) responded that they had some type of prior relationship, whether it be as a friend or an acquaintance, with at least one other juror with whom they had served. Because there is research that suggests friendship groups may differ in both their processing and perspective of group climate than acquaintance groups (see for example, Jehn and Shah, 1997), it is important to control for any prior relationships that may have existed on the jury. This variable will be coded 0 for those jurors with no prior relationships and 1 for those jurors who have identified a prior relationship of some sort with someone else on the jury.

Case Level Control Variables

Research suggests that sentencing decisions may be directly related to how heinous the jury deems the crime and to the jury's reaction to the defendant. In order to control for the jury's potential reaction to these characteristics, case level variables will

be included in the analysis. These variables will include both the facts of the case and the characteristics of the defendant.

Number of Victims: Prior research suggests that cases with multiple victims are more likely to result in a death sentence. Multiple victims were reported by approximately one-quarter (25.6%) of the respondents. When the trials were analyzed separately, this percentage was almost exactly the same (25.7%). In trials where there was juror disagreement about the number of victims, a decision was made to use the most common response. For example, if two jurors reported that there were two victims and one juror reported one victim, the trial was coded as having two victims. Of those trials with multiple victims, the majority had only two victims (45 trials in the final sample or approximately 76%). The remainder of the trials were reported as having anywhere from three to six victims.

Presence of Aggravating Factors: Respondents were asked to identify whether several aggravating circumstances were presented during the trial. Aggravating circumstances are any factors that the jury could use during the process of deliberation to justify returning a death sentence. These aggravating circumstances included both legal aggravating factors, such as the case of a felony homicide, and extra-legal aggravating factors, such as the fact that the victim was a child. In order to control for the presence of aggravating factors, both legal and extra-legal, which existed for each trial, a scale was created to measure the presence of these factors. Each factor was measured by either its presence (coded 1) or absence (coded 0). The scale was created by taking the average of

the number of aggravating circumstances that was present according to each individual juror. The thirteen[44] aggravating factors included in this scale are: the murder occurred during the commission of a felony; the victim was a child; the victim was respected in the community; the victim had a loving family; the defendant had a history of violent crime; the defendant was a stranger in the community; the defendant showed no remorse; the defendant would be dangerous in the future; the victim's family suffered severe loss or grief; the victim's family asked for the death penalty; the community was outraged; the community wanted the death penalty; and, the defendant did not testify on his/her own behalf. Table 9 shows the mean values for each of the individual items in the scale; table 19 shows the mean and standard deviation for the scale. The mean of the scale was .40 (S.D. = .18), and the reliability was good, with a Cronbach's alpha of .608.

Because this variable can also be aggregated into a jury level characteristic, the average scale score for each juror serving on a particular jury was computed, creating an average aggravating factor score for each trial. When this new average scale of reported aggravating factors was computed for the 244 trials in the final sample, the mean was .40 (S.D. = .14) with a range of .08 to .87.

Presence of Mitigating Factors: The respondents were also asked to identify whether any mitigating circumstances were present in the trial on which they served. Mitigating circumstances are those which can be used by the jury to justify returning a life sentence, even though the defendant was found guilty of capital murder. Unlike

[44] The original scale was comprised of fourteen aggravating factors, including whether or not the victim was female. Reliability analysis indicated that removing this item would increase the reliability of the scale. This original scale had a Cronbach's alpha of .586 with a mean of .408 and a S.D. of .174. The variable of whether or not the victim was female was retained as a separate variable in the analysis in order to underscore its importance in capital jury decision-making.

aggravating circumstances, the consideration of all mitigating circumstances is considered legal. Depending upon the sentencing guidelines followed by the state, jurors may either be given a list of mitigating circumstances from which to choose as reasons for returning a life sentence or they may return a life sentence for any reason that they deem fit. In order to control for the presence and use of mitigating factors in each trial, an averaged scale of mitigating circumstances was developed in the same way that the scale of aggravating factors was created. The presence of each mitigating factor was measured with a 1, its absence with a 0. Respondents were given a list of twenty-one[45] mitigating factors to potentially identify, of which nineteen were used for the creation of the scale. The mitigating circumstances were: the defendant was under the influence of alcohol; the defendant was under the influence of drugs; the defendant was under the influence of extreme mental or emotional distress; the victim was a stranger in the community; the victim was a known trouble maker; the victim had a criminal record; the victim was an alcoholic; the victim was a drug addict; the defendant had no prior criminal record; the defendant was mentally retarded; the defendant was under 18 when the crime was committed; the defendant was an alcoholic; the defendant was a drug addict; the defendant had a history of mental illness; the defendant had a background of extreme poverty; the defendant had been seriously abused as a child; the defendant had been placed in institutions but never given real help for his/her problems; the defendant had been convicted with evidence obtained from an accomplice who was given a lesser sentence because of his/her cooperation; and, the defendant would be a hardworking and

[45] The original instrument contained twenty-one mitigating factors. Reliability analysis indicated that the Cronbach's alpha could be improved by removing the factors that the defendant had a loving family and that the juror had lingering doubt. The scale using all original twenty-one items had a mean of .62 and a S.D. of .155.

well-behaved inmate. Table 10 shows the descriptive statistics for each item in the scale; table 19 shows the descriptive statistics for the scale. The mean of the scale was .14 (S.D. = .12) and the scale reliability was acceptable, with a Cronbach's alpha of .573.

The reliability of this scale could have been increased by dropping several of the included items. Dropping these items, however, would have meant that many of the legally relevant mitigating factors would have been omitted. In order to maintain the integrity of this scale, a decision was made to keep these nineteen items in the scale. One potential explanation for the low Cronbach's alpha for this scale is that jurors do not always respond correctly to the mitigating factors in a trial. Oftentimes, jurors will misinterpret mitigating factors; instead of recognizing them as reasons to return a life sentence, jurors will instead use them as reasons to return a death sentence. These perverse effects most often occur with such mitigating factors as mental defect or drug abuse. Jurors are supposed to interpret these as reasons for mercy, but instead interpret them as reasons for harsher punishment (see Bentele and Bowers, 2001; Brewer, 2004; Foglia, 2003). Therefore, while reducing the number of items in the scale would have increased the Cronbach's alpha, it would have conceptually changed the scale from one measuring the ways that jurors interpret mitigating circumstances to one that only includes those mitigating circumstances that are clear to jurors. Doing so would have changed the way that this variable operates in the model when compared to the way that it operates during jury deliberations.

This variable is also a jury level characteristic; as such, the average scale score for each juror serving on a particular jury was computed, creating an average mitigating factor score for each trial. When this new average was computed for the 244 trials in the

sample, the mean number of reported mitigating factors was .14 (S.D. = .10) with a range of 0 to .39.

Level of Heinousness: During the interview, jurors were asked to state their level of agreement to several words that potentially described the crime. They words that the juror was asked to consider included the following adjectives: bloody; gory; vicious; depraved; calculated; cold-blooded; senseless; repulsive; the work of a "mad man"; it made you feel sick to think about it; the victim(s) was/were made to suffer; and, the body(ies) was/were maimed or mangled after death. The respondents answered these based on a four-item scale that contained the following categories: Very Well; Fairly Well; Not So Well; and, Not At All. The response set ranged from Very Well, coded as 4, to Not At All, coded as 1. The scale was created by taking an average of the juror's responses to each of the twelve items. Upon creation of this scale, reliability analysis indicated that the Cronbach's alpha for this scale was .785. Higher values on this scale indicate a higher level of heinousness reported about the crime. The mean value for this scale is 3.10 (S.D. = .61). Table 11 reports the mean and standard deviation for each of the twelve items in this scale, while table 19 reports the mean and standard deviation for the scale. The responses to the scale ranged from 1.0 to 4.0

Because this variable can also be considered a jury level characteristic, the average scale score for each juror serving on a particular jury was computed, creating an average level of heinousness score for each trial. When this new average was computed for the 269 trials in the sample, the average level of heinousness scale reported was 3.14 (S.D. = .39) with a range of 2.02 to 3.97.

Defendant Demeanor: Research suggests that the defendant's demeanor may have a significant impact on the sentencing outcome, with those defendants whom the jury believes to be remorseful and repentant more likely to receive a life sentence over a death sentence. Jurors were asked several questions over the course of the interview about the defendant's dress and demeanor, including a scale that asked about their interpretations of the defendant's attitude during the trial. The question asked of the respondents was: How did the defendant appear to you during the trial? The jurors were then asked to state whether or not the following phrases sufficiently described how the defendant appeared during the trial, using a Yes (scored as 1) or No (scored s 0) response: bored, indifferent or remote; sorry for what s/he had done; sincere and honest; self confident; and, bitter or resentful? The following questions were reverse coded so that a scale of positive defendant demeanor could be created: bored, indifferent or remote; and, bitter or resentful. The scale was created by taking the average of the juror's responses to each of the five questions. Higher values on the scale indicate a more positive defendant demeanor. The reliability for this scale was good; the Cronbach's alpha was .715. The mean value for this scale is .42 (S.D. = .30). Table 12 reports the mean and standard deviation for each of the five[46] items; table 19 reports the descriptive statistics for the scale.

Because this variable can also be a jury level characteristic, the average scale score for each juror serving on a particular jury was computed, creating a defendant

[46] The original scale consisted of eight items and also included the items: the defendant was uncomfortable; the defendant was defiant; and, the defendant was spruced up. Reliability analysis of the original scale indicated that the scale would be improved by removing these three items. The Cronbach's alpha for the original scale was .528 with a mean of .524 and a S.D. of .216.

demeanor score for each trial. When this new average was computed for the 269 trials in the sample, the average defendant demeanor was .44 (S.D. = .22) with a range of 0 to 1.0.

Gender of the Victim: One of the more common aggravating factors identified in the capital punishment literature is whether or not the victim is female; in cases where the victim is female, juries appear to be more likely to return a death sentence, especially if there is evidence of a sex crime (see Kalven and Zeisel, 1966; p. 437). Information is available as to whether or not there was a female victim in each trial; almost half (47.5% or 116 trials) of all trials included a female victim. This variable will be included as a control, since research does suggest that there is a strong possibility that jurors may react differently to cases with a female victim.

Jury Level Characteristics

Racial Composition: Prior research suggests that the racial composition of the jury may have a very strong impact on the sentencing outcome. Bowers and his colleagues (2001) suggest that in those cases where there are at least five White males on the jury, a death sentence is reached in almost ninety percent of cases. In those trials where there is at least one Black male serving on the jury, however, a death sentence is only reached in approximately thirty percent of trials. Black males, furthermore, seem to have more control over the sentencing outcome that do Black females; it takes three Black females to have the same impact on the outcome as one Black male (Bowers et al.., 2001). In order to better understand the impact that the racial composition of the jury has

on the outcome, therefore, it is important to control for the number of Black jurors, both male and female, who serve on the trial. On average, almost half (47.3%) of the jurors reported that they had served on a trial with at least one Black male juror, whereas just over half (52.4%) of jurors reported serving on a trial with at least on Black female juror. When these responses were combined, jurors reported that, on average, approximately two Black jurors (mean = 1.70, S.D. = 1.80) served on each capital trial. Table 17 shows how many Black jurors each juror reported serving on his or her capital jury. The majority of jurors report that no Black jurors served on their trial (30.7%), with the next largest category being having served on a capital trial with at least one Black juror (25.2%).

The racial composition of the jury will be measured by the percentage of Black jurors, which is created by taking the reported number of Black jurors serving on a trial and dividing it by twelve, the total number of jurors who serve on a trial. When individual jurors reported the percentage of Black jurors on their trial, the average was 14.27%, with individuals reporting the percentage of Black jurors on a jury ranging from 0% to 75% of the jury. When the individual juror level data was aggregated to create a jury level file, the percentage of Blacks serving on a jury was created by taking the average of the individual responses; in the majority of cases, all of the jurors agreed on the number of Blacks serving on any given capital jury. Table 19 shows the descriptive statistics for this variable.

When the juries were analyzed as their own unit, the average percentage of Blacks serving on the jury was 13.24% with a range of between 0% and 72.2% of the jury consisting of Black jurors.

Gender Composition: Prior research also suggests that males are more likely than females to favor the death penalty (Ellsworth and Gross, 1994). This is evident in Bowers and colleagues' (2001) discussion of the roles that both race and gender play in the probability that a capital jury will return a death sentence. The authors found that juries with at least five White males were more likely to return a death sentence than those with less than five males; similarly, juries with at least one Black male were more likely to return a life sentence. These findings did not, however, translate to similar verdicts when the number of females on the jury was examined. In general, Bowers and his colleagues (2001) found that females, despite their propensity to favor life over death, did not appear to drive verdicts on capital juries. The one exception occurred when there were no Black males serving on the jury and there were at least three Black females. In these situations, the probability that the jury would return a life sentence increased, although the affect disappears when the presence of a Black male is controlled.

In order to ensure that the impacts of gender composition on the jury can be accounted for, a variable for the percentage of male jurors has been created. The percentage of male jurors serving on an individual trial is calculated by taking the reported number of males on the jury and dividing it by twelve, the total number of jurors who can serve on a trial. At the individual juror level, jurors report that, on average, approximately half of the jury (48.9%) is male, with the percentage of males serving on the jury ranging from 0 percent to 91.67 percent. Table 19 shows the descriptive statistics for the percent of male jurors.

When the individual juror level data was aggregated to create a jury level file, the percentage of males serving on a jury was created by taking the average of the individual responses; in the majority of cases, all of the jurors agreed on the number of males serving on any given capital jury. When the juries were analyzed as their own unit, the average percentage of males serving on the jury was 46.96% with a range of between 0% and 91.67% of the jury consisting of male jurors.

Number of Jurors: Each jury contains between three and eight jurors who were interviewed about their experiences on a capital trial. Because the number of jurors per jury is not consistent across cases, it is important to control for the number of jurors per trial that are contained in the sample. This variable will be included in all analyses in order to control for the size of the jury represented in the sample.

Macro-Level Characteristics

The original CJP investigators realized that variation in sentencing outcomes may exist due to several factors, including the geographic location of the capital trial and the type of guided discretion statutes used by the state. These differences, as well as other potentially important community factors, must be taken into consideration because a representative jury should be culturally similar to the community. The jurors, therefore, represent a smaller version of the community at large and will therefore reinforce those values of the community.

State: The state from which the capital trial was drawn. Table 18 shows the distribution of the number of individual jurors interviewed in each of the fourteen states. A dummy variable will be created in order to indicate each state where the trial took place. The reference category for this variable will be the state of California, as this is the largest category, with 12.6% of the trials coming from California.

Missing Data

As is often the case when dealing with social science data sets, some of the cases within these data contain missing information. In an effort to retain as much data as possible, three decision rules were made about missing data. The first decision was to remove all cases from the analyses that were missing information on the dependent variable (perception of group climate). This decision was made in part to ensure that all cases could be utilized in the final statistical models and in part because any cases missing the perception of group climate information could not be aggregated into a jury level characteristic. As a result, fifteen cases were removed from the data. A second decision was made to remove all cases that had missing information about individual juror level demographic characteristics, such as gender, race, or age. Demographic information could not be obtained in any other way and as a result, another forty-eight cases were removed from the analysis.

Other cases were missing information about trial level characteristics, specifically information about the aggravating and mitigating factors, the level of heinousness, and the defendant's demeanor. One hundred and fifty-nine cases were missing at least one of

these variables. In order to retain as many cases as possible, a decision was made to replace missing trial level variables with the average value for that variable from the other jurors who served on that trial. For instance, if an individual juror was missing information about the aggravating circumstances scale, the scale was replaced with the mean aggravating circumstances scale from the jury on which that individual juror served. A similar decision rule was created and imputed for those cases where a juror was missing information about the jury level characteristics, such as the percent of Black jurors serving on the jury and the percent of male jurors on the jury. The jury level information was imputed into the individual juror information, so that those variables were replaced with the jury level variable. In those rare instances when the other jurors serving on a trial disagreed as to the percent of Black or male jurors on their trial, their responses were averaged and this average was imputed for the missing information.

Independent samples t-tests were conducted to see if there was a difference between any of the variables which had missing data. Results indicated that the only difference that existed between cases with any missing data and the rest of the sample was that cases with missing data tended to be slightly older (t = -3.407; p = .001). The difference in average age, while significant, was not large. The mean age for respondents without missing data was 45.2, while the mean age for respondents with missing data was 48.5. Because the average age in the sample was approximately 46 years old, a decision was made that this difference was not large enough to negatively impact the results of any statistical analyses.

There are no missing data for the jury level characteristics that will be used to test Hypothesis 2. Because many of those variables are objective fact, such as the race of the

defendant, there were no cases with missing data. For those juries where information was not available from all of the individual jurors who served, aggregate variables were created using what information was available. The aggregate jury level variables were created by taking the mean level of each variable as reported by the individual jurors serving on that jury.

Analytic Technique

Measuring Group Climate

The first task of this analysis was to determine whether a scale could be created that adequately measured global group climate within these data. In order to do this, analysis was undertaken to examine the role that fifteen variables could potentially play in creating a group climate variable. The fifteen variables that were examined are described above in the section on dependent variables. In order to create a global group climate variable, it was necessary to decide which of the fifteen variables, which as previously noted had been chosen for their ability to map into the theoretical constructs of group climate, grouped together into one global construct. To do this, a principal components analysis was conducted. Several analyses were performed in order to choose the most accurate and theoretically useful way to group these fifteen variables. The results of these analyses suggested that not all of the fifteen variables factored together; further inspection suggested that only ten variables loaded together into a construct that appears to be the best measure of group climate for these data[47]. Examination of the

[47] Please see Appendix D for a discussion of the principal components analyses that were conducted in order to determine the final variables included in the group climate variable. Factor loadings and descriptions of the analyses can be found in the Appendix.

scree plots and the accompanying eigenvalues suggested that the best way to group the ten variables was through a one factor solution. The loadings for this factor are shown in Table 20. The ten variables that are included within the group climate variable are:

1. The group was likeminded, saw things the same way
2. The group was closed-minded, intolerant of disagreement
3. The group was too quick to make a decision, in hurry
4. The group was friendly and respectful to one another
5. The group was dominated by a few strong personalities
6. The group got too emotionally involved in the case
7. The group was confused by the judge's instructions
8. The group did not follow the judge's instructions
9. The group kept making mistakes
10. The group made you feel like an outsider

These ten variables were then scaled to create a group climate that consisted of the average of each individual juror's responses to the ten questions.[48] Higher scores on the index indicated more positive perceptions of group climate. The reliability for this index was calculated and was deemed to be adequately high for the purposes of further analysis ($\alpha = .71$). The mean for the group climate scale, which could range from 1 to 4, is 3.44 (S.D. = .39), indicating that on average, most of the respondents perceived the group interactions as positive. Table 19 reports the descriptive statistics for the scale.

[48] As mentioned previously, the variables "the group was likeminded, saw things the same way" and "the group was friendly and respectful to one another" was reverse coded in order to match the direction of the index.

Despite the fact that most respondents perceived the group climate as positive, bivariate correlations (see Appendix B) suggested that juror race was significantly and negatively related to perception of group climate, with Black jurors more likely to have more negative perceptions of group climate. Verdict was also negatively and significantly related to group climate, with those jurors on trials with a death outcome more likely to report negative perceptions of group climate.

It would be helpful at this point to more closely examine the items that make up the global group climate scale. As mentioned in the previous chapter, the fields of industrial and organizational psychology generally examine at least one of four different types of group functioning: cohesion; cooperation; conflict; and, critical evaluations. Survey limitations with these data, however, prohibit the portioning of the group climate scale into a multidimensional measure; there simply are not enough questions available for use in this scale. The use of a global group climate scale, as will be discussed in the next section, is not unprecedented. Kivlighan and Tarrant (2001) use a similar unidimensional scale of group climate in their examination of the role that group functioning plays on therapeutic outcomes. More importantly, however, is the fact that many of the variables used to create the current group climate are very similar to items used in other studies to measure all four of the constructs of group climate.

One of the most well-known studies of group functioning is Seashore's (1954) study of the level of cohesion among workgroups. Seashore's (1954) original measures of cohesion are represented in this scale. His two measures of "felt like part of a work group" and "how well the group got along" are very similar to two of the items used here: "likeminded, saw things the same way;" and, "made you feel like an outsider." The work

of Kivlighan and Tarrant (2001) is also well-represented; they ask respondents whether or not there was any "friction and anger between members," a measure that is very similar to two measures used here: "closed-minded, intolerant of disagreement;" and, "dominated by a few strong personalities." These measures are very similar to those used by Jehn (1995) to measure group climate. In her examination of the effects of conflict at both the individual and group level, Jehn asked respondents "how much are personality conflicts evident;" this measure is similar to two of the items in this scale: "friendly and respectful to one another;" and, "dominated by a few strong personalities," Jehn also asked respondents to describe the amount of "emotional conflict" that existed during interactions; this questions is similar to the one used here that asks jurors to rate if "the group got too emotionally involved in the case." The four remaining questions: "too quick to make a decision, in hurry;" "confused by the judge's instructions;" "did not follow the judge's instructions;" and, "kept making mistakes," are all ways in which critical evaluations can be measured. These are similar to the question used by Jehn and Shah (1997) which asked respondents to rate how often "people in your group disagreed about opinions regarding the work being done." The consistency between the current measures used to create the group climate scale and the measures used is previous research, along with the results from the principal components analysis suggesting that a one factor solution is the most appropriate method, offer support for the decision to use a unidimensional group climate scale for the current analyses.

Group Climate: A Global Measure of Group Functioning

It is best to consider the measure of group climate created from these data as a global measure of group functioning. A global measure of group climate is not unprecedented in the group processes literature; in their assessment of the impact of group climate on therapeutic outcomes, Kivlighan and Tarrant (2001) use a global group climate questionnaire that also taps into members' perception of the group functioning. The questions used by Kivlighan and Tarrant, as well as those created by Seashore (1954) in his pioneering work on group cohesion, map very well onto the questions used here to create the group climate scale. While separate constructs of group functioning were not identified, a global climate measure fits well both in terms of prior research and the current goals for the following analyses.

In creating their measure of group functioning, Kivlighan and Tarrant also aggregate responses from individual respondents into a group level variable by taking the mean of the individual responses for each member of the group. As with the community crime research, research on group processes oftentimes relies on information gathered from a group of individuals in order to represent the larger group of interest. One difference that needs to be noted, however, is that Kivlighan and Tarrant had information available from all members of the group, whereas the current analyses depend on a global climate measure taken from a smaller number of jurors than comprise the entire jury. As a result, we must turn to the community organization literature for the validity of the aggregate measure; using information aggregated up from some number of individuals, community crime scholars are able to create community level variables to measure such constructs as friendship networks within neighborhoods (see for example, Sampson and

Groves, 1989). Following the protocol borrowed from these two theoretical perspectives, the current use of aggregated measures as a way to get at group level interactions is an acceptable one. While methodologically this practice may be acceptable, however, it is important to note that theoretically, aggregated individual measures are not the ideal way to understand complex group level processes. Until the data become available to look at such phenomena at the group level, however, it is the best way in which to begin an examination of the impact that group level processes may have on various outcomes, including sentencing outcomes in capital trials.

Assumptions of Normality

The group climate scale was also examined for its skew, as the distribution of a dependent variable is a deciding factor not only in what types of statistical tests can be conducted but also in the assumptions about how robust the results of those statistical tests may be. In these data, the group climate scale is negatively skewed, with responses clustered more towards the higher end of the distribution. Statistics for measuring how normally the variable is distributed, however, show that the distribution is not so skewed as to cause worry for statistical examination. The skewness statistic, at -.961, is well within the accepted range of ±3 and the kurtosis statistic, at 1.075, is also well within its accepted range of ±7. Figure 3 shows a histogram of the group climate variable and reports the mean and the standard deviation. While the negative skew is evident, a visual examination of the distribution also shows that the skew is not pronounced enough to impact the robustness of the results, in part because of the large sample size available for

analysis and in part because the distribution still comes close to an approximation of the normal distribution.

Hypothesis 1

The first set of hypotheses focuses on the effects that certain characteristics at both the individual level, including the race of the juror, and the trial level, such as the defendant characteristics, have on the individual juror's perception of the group climate during deliberations. Because the dependent variable for these hypotheses is the group climate variable, which is a scale and at the interval level of measurement, ordinary least squares (OLS) regression can potentially be utilized. OLS regression techniques can examine the impact of more than one independent variable on the dependent variable of interest, which in this case is the group climate variable. Because there is more than one independent variable, it is necessary to estimate more than one slope coefficient. The OLS regression model describes the dependent variable as a function of both more than one independent variable and an error term that contains various omitted factors, so that the general equation to be used is:

$$y = \alpha + \beta_1 x_1 + \beta_2 x_2 + \beta_3 x_3 + \ldots \beta_k x_k + \varepsilon$$

where:

k = the number of independent variables, and

ε = the error term (Bachman and Paternoster, 2004).

In order to make sure that OLS regression is the proper analytic technique, tests will first be undertaken to make sure that none of the assumptions of multivariate regression are violated, such as independence, linearity, homoscedasticity, autocorrelation, and normally distributed error terms (Hoffman, 2004). One concern about these data is that they violate the assumption of the independence of the observations, due to the fact that information has been collected from more than one person who has served on the same jury for the same trial. As a result, these data actually exhibit hierarchical characteristics, with individual jurors nested within capital juries. Because of this, the jurors share certain characteristics, like trial experiences, that will therefore violate any assumptions of independence. There are several ways in which to test whether or not the assumptions of OLS have been violated. Each one of these tests will be undertaken to determine if a different analytic technique is necessary.

Due to the nature of these observations, however, it should be noted that a violation of the independence of observations is already expected, which as previously mentioned, can lead to serial autocorrelation in the error terms and homoscedasticity, among other things (Hoffman, 2004). Should these assumption be violated, the ordinary least squares regression model previously described will produce standard errors that are too small, which in turn will lead to a higher probability that the null hypothesis is rejected when, in fact, we should instead fail to reject the null hypothesis. In order to correct for the problem of the lack of independence, a methodological strategy which takes into account both the individual juror level characteristics and the case level characteristics that are shared by the jurors must be estimated. For the purposes of this research, it appears that the best way to model these data would be using a hierarchical

linear model. In order to ensure that this is the case, an Analysis of Variance (ANOVA) will be conducted on the residuals of the perception of group climate scale, to see whether jury membership predicts those residuals. If jury membership does not significantly predict the residuals, there is no need to conduct a hierarchical model and the ordinary least squares results will be interpreted. If jury membership does significantly predict the residuals, then a hierarchical modeling procedure will be utilized.

As previously mentioned, the hierarchical model takes into account that these data consist of individual jurors which are nested within capital juries. A hierarchical linear model allows us to examine the impact of both the variation within a jury of the perceived group climate for those jurors that served on the same jury and the variation between juries on the average perception of group climate. In order to estimate this model, several steps must be taken. First, the variables must be grouped into individual level variables, which are often termed "level 1" variables. For the purposes of these analyses, all of the juror level variables are considered level 1 variables. Those variables which are shared among jurors serving on the same capital trial are considered "level 2" variables. In these analyses, all of the variables related to the trial characteristics and the jury racial composition are level 2 variables. In using a two-level model, the dependent variable is generally at the individual level; in this case, the outcome for the first set of hypotheses is the individual juror's perception of group climate, which indeed meets this criterion.

The first step in estimating a multi-level model is to ensure that there is variation to be explained. This can be accomplished by estimating an unconditional model on the

first hypothesis, which tests whether or not the perception of group climate during deliberation varies across juries. The model used to estimate this is:

$$Y = \alpha + r$$

where:

α = the intercept as measured by mean probability of Y, and

r = an error term

From here, the proportion of variance in the perception of group climate between juries can be estimated using the following equation:

$$\rho = \tau_{00} / (\tau_{00} + \sigma^2)$$

where:

ρ = the proportion of variance between juries;

τ_{00} = the variance component associated with the mean probability, and

σ^2 = the level 1 variance component

Once it has been determined that there is variance to be explained, a level 1 random coefficients model will then be estimated. The level 1 model tests the second of the first set of hypotheses and determines whether there is variation between how Black and White jurors perceive the quality of the group climate during deliberations. It should be noted that for the level 1 model, the sample size is the number of individual observations within the data; in this case the sample size would be the number of jurors.

The general level 1 model for the outcome for case *i* within unit *j* is as follows (see Raudenbush, Bryk, Cheong, and Congdon, 2000):

$$Y_{ij} = \alpha + \beta_{1j} X_{1ij} + \beta_{2j} X_{2ij} + \ldots + \beta_{Qj} X_{Qij} + r_{ij}$$

where:

α = the intercept as measured by mean probability of Y;

β_{qj} (q = 1,2,…,Q) = level 1 coefficients;

X_{qij} = level 1 predictor q for case i in unit j, and

r_{ij} = level 1 random effect

Both a fixed effects model, which reports the level 1 coefficients as the average within group slopes, and a random effects model, which reports the amount of variance that can be attributed to the level 1 predictors, will be reported for these analyses.

The next step is to report a level 2 model, which is known as the intercepts and slopes as outcomes model (Raudenbush and Bryk, 2002). This model allows us to estimate which characteristics of the trial predict why jurors on certain juries report higher levels of satisfaction as measured through group climate than do jurors who serve on other juries. It should be noted that for this model, the sample changes from the individual juror observations to that of the trial observations; for these data, it means that the sample size will consist of the 269 capital trials from which jurors had been randomly selected for inclusion in the individual juror dataset. For this model, each of the level 1 coefficients (β_{qj}) that were defined in the random coefficients model becomes an outcome

variable in the level 2 model. The general level 2 intercepts and slopes as outcomes model is as follows (see Raudenbush et al., 2000):

$$\beta_{qj} = \alpha + \gamma_{q1}W_{1j} + \gamma_{q2}W_{2j} + \ldots + \gamma_{qSq}W_{Sqj} + u_{qj}$$

where:

α = the intercept as measured by the level 2 mean probability of Y;

γ_{qS} (q = 1, 2, …, S_q) = level 2 coefficients

W_{Sj} = level 2 predictor

u_{qj} = a level 2 random effect

An easy way to understand the relationship between the level 1 and the level 2 models is that the level 1 coefficients, including the intercept, become dependent variables for the level 2 model. Furthermore, the level 2 model also takes into consideration that the probability of each of the level 1 predictors is based on each of their own intercepts, the level 2 predictors, and an error term. By doing this, the model allows for both the intercepts and the slopes to vary. Also, for ease of interpretation, each of the level 2 predictors (i.e. the trial and jury level characteristics) will be grand mean centered. By estimating the proportion of explained variance in the level 2 model, we can explain the percentage of between group variation that can be attributed to both the differences in intercepts and slopes attributed to the level 1 predictors[49].

[49] Because these data also contain information about the state in which each trial was conducted, it may be possible to also conduct a level 3 analysis, taking into consideration the location of the trial. At this time, however, it is premature to estimate a level 3 model, as the small number of cases contained within these data, relative to other utilizations of hierarchical linear modeling, lead to the question of whether it will be possible to explain more variation in a reliable model. Should final estimations of the level 2 model suggest that estimating a level 3 model would be possible and also reliable, a level 3 model will be estimated.

Hypothesis 2

The second hypothesis looks at the impact that the average perception of group climate within each jury has on the sentencing outcome of the trial, be it life or death. Because the dependent variable in this case is a dichotomous measure, a life or a death sentence, it is not possible to use an ordinary least squares regression model. Furthermore, because this hypothesis looks only at the impact that a group level independent variable, the average perception of group climate, has on a group outcome, the sentence, a hierarchical model is not necessary. In order to take into account that this hypothesis has a limited dependent variable, an analytic strategy which takes into account how these data will violate many of the assumptions of the OLS model must be utilized. In this case, the best methodology for the question at hand is that of a multivariate logistical regression procedure.

The logistic regression technique is different from the ordinary least squares regression model in that the logistic regression model examines the impact of the independent variables on the probability that the dependent variable will be equal to 1 [P(Y=1)], where the probability that the dependent variable is equal to 1 being the log of the odds of the dependent variable (Hoffman, 2004, p. 47; Long, 1997, p. 49). For these data, the model would examine the impact of the independent variables on the probability that the sentencing outcome is death. The logistic regression model, or adjusted model, is able to take into account the effects of all of other variables in the model by controlling for them, generally by holding their values constant at their mean, and only report the individual effect for each variable. This is helpful because it allows us to know how an

independent variable will impact the dependent variable while still taking into consideration other factors of interest (Hoffman, p 52. 2004). The generic logistic regression model takes on the form:

$$P(Y=1|X) = 1 / 1 + \exp(-\alpha + \beta_1 x_1 + \beta_2 x_2 + \beta_3 x_3 + \ldots \beta_k x_k)$$

For the current research, the model will take on the form:

$$P(Y = \text{Death}|X) = 1 / 1 + \exp(-\alpha + \beta_1 \textit{(Average Group Climate)} + \beta_2 \textit{(Race of Victim)} + \beta_3 \textit{(Race of Defendant)} + \beta_4 \textit{(Black Defendant and White Victim)} + \beta_5 \textit{(Female Victim)} + \beta_6 \textit{(Percent Black)} + \beta_7 \textit{(Percent Male)} + \beta_8 \textit{(Number of Victims)} + \beta_9 \textit{(Mitigating Factors)} + \beta_{10} \textit{(Aggravating Factors)} + \beta_{11} \textit{(Defendant Demeanor)} + \beta_{12} \textit{(Level of Heinousness)}$$

The coefficients obtained through the logistic regression model are generally interpreted in one of two ways: through the reporting of the odds ratio or through the reporting of the predicted probability. An odds ratio is essentially just two odds that are compared to determine whether or not one group has higher or lower odds of some binary outcome. Generally, an odds ratio is interpreted so that a number greater than one indicates a positive association between an independent variable and the dependent variable and a number between zero and one indicates a negative association (Hoffman, p. 49, 2004). One limitation to reporting odds ratios, however, is that they are often dependent on the scaling of the independent variables and can be difficult to compare to one another. One way to correct for this is to instead report predicted probabilities. Predicted probabilities allow us to compare the probability that Y = 1 (or in this case that there was a death sentence returned) between two populations, such as when there is a White victim and a Black victim. In the case of scaled or continuous variables, predicted

probabilities allow us to compare the probability that Y = 1 at different points in the distribution, such as at different quartiles or at the minimum and maximum point in the scale. Both the odds ratios and the predicted probabilities for variables of interest will be reported for these analyses.

Chapter 5: Results

Hypothesis 1: Preliminary Results

Preliminary Hypothesis Testing: Robust Standard Errors

The first step of these analyses was to specify which individual level variables could predict a juror's perception of group climate. Because the group climate variable is measured as an interval level scale, ordinal least squares regression is the most appropriate statistical technique. Due to the fact that individual jurors are grouped together within juries, however, a correction must be made to the ordinary least squares regression model in order to take into account the shared trial experience of the jurors. This was accomplished by using the cluster command in the Stata statistical software package. Because jurors can be grouped within juries, the individual error terms are not independent; as such, the uncorrected regression model will estimate standard errors that are too small and increase the probability that a variable is significant. The cluster command specifies more robust standard errors, decreasing the probability of rejecting the null hypothesis when it is in fact true.

Five models were specified. The first model examines the role of individual level factors on an individual juror's perception of group climate. The second and third models examine the role of trial level characteristics on an individual juror's perception of group climate. The fourth model examines the role of jury level factors on an individual juror's perception of group climate and the final model combines the four previous models. The results for all models can be found in Table 21. Each model will

be discussed separately. Correlations, means, and standard deviations for all of the variables used in these analyses can be found in Appendix B.

The first model evaluates which individual demographic characteristics predict an individual juror's perception of the group climate. The variables included in the model are the juror's race (Black), gender (female), age, education, religion (Southern Baptist, Baptist, and Jewish), and income, as well as the juror's perception of aggravation and mitigation in the trial, his/her perception of the level of heinousness of the crime, and his/her perception of the defendant's demeanor during the trial. This model also controls for whether the juror knew other jurors prior to the trial and whether the juror served as the foreperson. An examination of the coefficients shows that age, religion, and the presence of mitigation all significantly predict the perception of group climate. Older jurors are more likely to perceive the group climate in a more positive light, as are Baptist jurors. Jewish jurors, however, have a lower perception of group climate, as do jurors who perceive there to be higher levels of mitigation during the trial. No other variables reach traditional levels of significance, although it should be noted that both the gender of the juror (β =.-.07, p = .10)and the perception of the level of heinousness approach significance (β = .037, p = .10). Female jurors are more likely to perceive the group climate as being negative, while jurors who perceive a higher level of heinousness are more likely to perceive the group climate as positive. The Pearson's R^2 value of .08, however, suggests that this model does not have a high degree of explanatory power.

The second model examines the role that the trial level characteristics have on the prediction of an individual juror's perception of group climate[50]. The variables included

[50] All trial level analyses were run both with and without the gender of the defendant included in the model. There is no difference in the results when the gender of the defendant is controlled. In order to retain all

in this model are the race of the defendant (Black), the race of the victim (White), the gender of the victim (female), and the number of victims killed in the crime. None of these variables approach significance and the Pearson's R^2 value of .01 is very low. In order to take into consideration the possible racial interactions between jurors and defendants or victims that could impact a juror's perception of group climate, three interactions were added to this model. Along with the four trial level characteristics, an interaction term was added for a Black defendant and a White victim, a Black juror and a Black victim, and a Black juror and a Black defendant. An examination of the results shows that the interaction between the race of the juror and the defendant is significant (β = -.191, $p < .05$); in a trial where a Black juror sits in judgment of a Black defendant, Black jurors have a more negative perception of group climate. This third model had a Pearson's R^2 value of .02, which while an improvement over the second model, still shows low explanatory power.

The fourth model examines the impact that jury level characteristics, which serve as a proxy for the potential impact of individual characteristics on group level dynamics, have on an individual juror's perception of group climate. The two variables used in this model are the percent of Black jurors serving on each trial and the percent of male jurors serving on each trial. These two variables were chosen because of their potential influence on group functioning, based on the research findings by Bowers and his colleagues (2001), which suggest that juries with one Black male juror are more likely to vote life and juries with at least five male jurors are more likely to vote death. This model also includes a control for the number of jurors from each trial who are in the

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cases, the decision was made to include data from jurors who served on cases with a male defendant and cases with a female defendant. All results include analyses on both types of cases.

sample. The results of this model show that the only variable that is significant is the number of jurors who are in the sample (β = -.037, $p < .05$). Jurors from juries with a higher number of fellow jurors also in the sample report more negative perceptions of group climate. One possible explanation for this is that the more jurors that are in the sample from any given jury, the more likely that a broader range of individual perceptions will be adequately measured and reported, leading to a lower value of group climate. The Pearson's R^2 value for this model was .01, which is very low.

The final model combines the variables from each of the four prior models, in order to see which variables retain their significance when individual level and trial level predictors are included. Examination of these results shows that this is the best model of the five, with a Pearson's R^2 value of .105. Many of the variables that were significant in the earlier models retain their significance; juror age is significant and in the positive direction, indicating that older jurors are more likely to perceive the group climate as positive (β = .003, $p < .05$). Jewish jurors (β = -.274, $p < .05$) and jurors who perceive more mitigating circumstances to be present are significantly less likely to perceive the group climate as positive (β = -.478, $p < .01$). Also noteworthy is that in the final model, the gender of the juror reaches significance, with female jurors more likely to perceive the group climate as negative (β = -.064, $p < .05$). The percentage of males on the jury also reaches significance, showing that jurors who serve on juries with more males are more likely to perceive the group climate as positive (β = .037, $p = .10$). The individual's perception of level of heinousness does not reach statistical significance in this model, although it does approach significance at a less rigorous level (β = -.031, $p < .05$).

These results are suggestive of the fact that race may not be as salient of a predictor as originally hypothesized. They also suggest that the role that gender plays in jury deliberations and in juror ratings of group climate is stronger than scholars have originally thought. In order to ensure that these findings are robust, a hierarchical linear modeling strategy was employed to take into account not only the clustering of these data, but also the fact that jurors who are exposed to differing trial characteristics may vary in the way that their individual characteristics impact their perception of group climate. The next section details the findings from the hierarchical linear modeling techniques, explicitly testing the first six hypotheses set forth in the previous chapter.

Hypothesis 1: Hierarchical Linear Modeling

Hypothesis 1A

H1A: Perception of the quality of group climate varies between capital juries.

In order to measure variation between juries, hierarchical linear modeling is employed. By specifying the dependent variable, group climate, to be a function of both its intercept and an error term, the unconditional hierarchical linear model is able to determine whether or not variation exists between groups. In order to calculate the unconditional model and all subsequent analyses, the statistical program HLM 6.0 was used. The unconditional model examines the cross-jury variations in the individual juror's perception of group climate. The unconditional model for perception of group climate can be specified as:

$$\textit{Perception of Group Climate} = \alpha + r$$

where:

α = the intercept as measured by mean probability of Y, and

r = an error term

Table 22 reports the results of the unconditional model. The significant variance component for the model intercept indicates that an individual juror's perception of group climate varies significantly across juries. These results show support for Hypothesis 1A and suggest initial evidence that jury level variations may explain some of the individual level variation of perception of group climate. What this model does not do, however, is account for the differences in the types of trials that are experienced across juries. The next step is to examine the effect of individual level characteristics on perception of group climate while accounting for the trial level differences that the members of each jury will experience.

In order to account for the impact that trial level differences, such as the race of the defendant, will have on the relationship between individual level characteristics and the perception of group climate, a regression model that takes into account the variation between trials must be specified. In order to do this using hierarchical linear modeling techniques, the specified model allows the intercept for the perception of group climate to

vary based upon the particulars of the trial specific to each juror. This is known as the intercepts and slopes as outcomes model and takes the following form[51]:

$$\textit{Perception of Group Climate} = \alpha + \beta_1(\textit{Black Juror}) + \beta_2(\textit{Female Juror}) + \beta_3(\textit{Age}) + \beta_4(\textit{Education}) + \beta_5(\textit{Baptist}) + \beta_6(\textit{Southern Baptist}) + \beta_7(\textit{Jewish}) + \beta_8(\textit{Less than 10K}) + \beta_9(\textit{10K-20K}) + \beta_{10}(\textit{20K-30K}) + \beta_{11}(\textit{50K-75K}) + \beta_{12}(\textit{More than 75K}) + \beta_{13}(\textit{No Response}) + \beta_{14}(\textit{Prior}) + \beta_{15}(\textit{Foreperson}) + \beta_{16}(\textit{Perceptions of Aggravation}) + \beta_{17}(\textit{Perceptions of Mitigation}) + \beta_{18}(\textit{Perceptions of Heinousness}) + \beta_{19}(\textit{Perceptions of Defendant Demeanor}) + r$$

where:

$$\alpha = \gamma_{00} + \gamma_{01}(\textit{Black Defendant}) + \gamma_{02}(\textit{White Victim}) + \gamma_{03}(\textit{Female Victim}) + \gamma_{04}(\textit{Number of Victims}) + \gamma_{05}(\textit{Average Aggravation}) + \gamma_{06}(\textit{Average Mitigation}) + \gamma_{07}(\textit{Average Level of Heinousness}) + \gamma_{08}(\textit{Average Defendant Demeanor}) + \gamma_{09}(\textit{Percent Black}) + \gamma_{010}(\textit{Percent Male}) + u_0$$

$$\beta_1 = \gamma_{10}$$

$$\beta_2 = \gamma_{20}$$

$$\beta_3 = \gamma_{30}$$

$$\beta_4 = \gamma_{40}$$

$$\beta_5 = \gamma_{50}$$

$$\beta_6 = \gamma_{60}$$

$$\beta_7 = \gamma_{70}$$

$$\beta_8 = \gamma_{80}$$

$$\beta_9 = \gamma_{90}$$

$$\beta_{10} = \gamma_{100}$$

$$\beta_{11} = \gamma_{110}$$

$$\beta_{12} = \gamma_{120}$$

[51] In some cases, the second model estimated after the unconditional model would be a random intercepts model. Because I am not specifying that the effects of the individual level characteristics will vary between juries, this model is not necessary. I am hypothesizing that the effect of the individual level characteristics will vary based on the characteristics of the trial, but not necessarily between juries.

$\beta_{13} = \gamma_{130}$

$\beta_{14} = \gamma_{140}$

$\beta_{15} = \gamma_{150}$

$\beta_{16} = \gamma_{160}$

$\beta_{17} = \gamma_{170}$

$\beta_{18} = \gamma_{180}$

$\beta_{19} = \gamma_{190}$

Table 23 reports the results for the slopes and intercepts as outcomes model. This model includes all of the individual level characteristics that could potentially impact an individual juror's perception of climate and includes an error term which accounts for all of the trial level characteristics that could mediate the relationship between individual level characteristics and perception of group climate. The individual level characteristics included in this model are: race, gender, age, education, religion, and income of juror; the juror's perception of aggravation and mitigation; the juror's perception of the level of heinous of the crime; and, the juror's perception of the defendant's demeanor during trial.

An examination of the coefficients and standard errors of the model shows that the results are very similar to those of the ordinary least squares results with robust standard errors. The following sections will examine the results for each hypothesis and interpret the entire model.

Hypothesis 1B

H1B: Black jurors who serve on capital trials will be more likely than White jurors who serve on capital trials to perceive the quality of the group climate as negative.

Hypothesis 1B postulates that Black jurors who serve on capital trials will be more likely to perceive the group climate as negative. While the coefficient for Black jurors is in the expected direction, suggesting that Black jurors are more likely to perceive the quality of group climate as lower than their White counterparts, it does not reach a traditional level of statistical significance ($\beta = -.070$, $p = .263$). As a result, it is necessary to conclude that there is no difference in the perception of group climate between Black and White jurors.

Hypothesis 1C

H1C: The race of the victim will affect the association between the juror's race and the juror's perception of the quality of group climate. Black jurors will be more likely to perceive the quality of the group climate as negative when the victim is Black.

The next hypothesis suggests that the race of the victim will impact the relationship between the juror's race and his/her perception of group climate so that when both the juror and the victim are Black, the juror will be more likely to perceive the group climate as negative. In essence, the model suggests that the intercept for the juror's race will change based on the race of the victim. An examination of the results suggests that this is not the case, as the co-efficient for the race of the victim is not significant ($\beta =$

.008, p = .886). In these data, the race of the victim does not appear to impact a juror's perception of the group climate.

Hypothesis 1D

H1D: The race of the defendant will affect the association between the juror's race and the juror's perception of the quality of group climate. Black jurors will be more likely to perceive the quality of the group climate as negative when the defendant is Black.

I next hypothesize that the race of the defendant will impact the association between the race of the juror and the juror's perception of group climate, so that Black jurors will be more likely to perceive group climate as negative when there is a Black defendant. The coefficient for a Black defendant is non-significant, however (β =-.050, p = .184), suggesting that the race of the defendant on trial does not mediate the way that individual level characteristics impact an individual juror's perception of group climate. There is no support for this hypothesis.

Hypothesis 1E

H1E: The combination of the race of the victim and the race of the defendant will affect the association between the juror's race and the juror's perception of the quality of group climate. Black jurors will be more likely to perceive the quality of the group climate as negative when the defendant is Black and the victim is White.

It was not possible to test this hypothesis using the HLM program, as entering interactions into the model caused the estimates to become unstable. As a result, I could

not specify the interaction term for a Black defendant and a White victim. This most likely happened due to the small number of cases with Black defendants and White victims (only 24.1% of trials had a Black defendant and a White victim), as well as due to the fact that the number of jurors in each jury is small. This makes it difficult for the program to estimate the error terms; as such, the evidence for this hypothesis comes from the ordinary least squares with robust standard errors analyses, which suggests that there is no support for the Hypothesis 1E. Table 21 reports the results of the ordinary least squares regression analysis with robust standard errors. The co-efficient for the interaction term for a Black defendant and a White victim is not significant ($\beta = -.018$, $p = .801$).

Hypothesis 1F

H1F: The percentage of Black jurors on the jury will affect the association between the juror's race and the juror's perception of the quality of group climate. Black jurors will be more likely to perceive the quality of the group climate as positive when there are a higher percentage of Black jurors.

The final hypothesis looks at the impact that the percentage of Black jurors will have on an individual juror's perception of group climate, specifying that Black jurors will be more likely to perceive group climate as positive when there is a higher percentage of Black jurors serving on the jury. The coefficient for the percent of Black jurors in the level 2 analysis suggests that there is no support for this hypothesis, as the percent of Black jurors does not significantly impact the way in which jurors of either race perceive group climate. This hypothesis is not supported.

Other Findings

There is no support for any of the hypotheses that suggest that differences in racial dynamics may explain a juror's perception of the group climate during jury deliberations. The reasons for this will be discussed in the next chapter. Despite the lack of findings related to race, however, there are several noteworthy findings that should be discussed. In these data, the level 1 characteristics that predict an increase in the juror's perception of group climate are the juror's age, with older jurors more likely to perceive a positive group climate, and the juror's perception of the level of heinousness of the crime, with a higher perception of heinousness translating into a more positive perception of group climate. The two level 1 characteristics that significantly predict a more negative perception of group climate are if the juror is Jewish and when the juror perceives a higher level of mitigating circumstances on the trial. The one level 2 characteristic that predicts to a juror's perception of group climate is the aggregate level of mitigating circumstances in the trial. The coefficient for the aggregate mitigating circumstances shows that as the level of trial mitigating circumstances increases, the individual juror's perception of the group climate during deliberation decreases. These findings are consistent with the findings from the ordinary least squares with robust standard errors analyses.

Also worth noting is the fact that the coefficient for the gender of the juror, while it does not reach traditional levels of significance ($\beta = -.054$, $p = .08$), does suggest that women are more likely to perceive the group climate as negative. While not significant, this is consistent with the findings from the ordinary least squares analysis and does

suggest that more exploration of this effect is necessary. These findings will be discussed in more detail in the next chapter.

Perhaps the most noteworthy finding of this set of analyses is the low explanatory power of the R^2 values for each of the models. These low R^2 values can be interpreted to be indicative of a poor model; because the explanatory power of these models is low, one could reasonably conclude that the variables in the model are doing a poor job of explaining what predicts group climate. Although this does appear to be the case, I would caution the reader that this analysis is the first of its kind. Such low explanatory power at this stage of exploratory research is not uncommon and therefore this is not cause for alarm. What these low R^2 values suggest is that more investigation is needed to more fully understand what variables predict an individual juror's perception of group climate. Furthermore, the final model, despite $R^2 = .105$, shows that five coefficients are significance; in a model of this size (thirty coefficients), only 2 coefficients would be expected based on chance. The fact that five of the thirty coefficients are significant suggests that this model does offer an improvement over chance.

Hypothesis 2: Logistic Regression

> *H2: Juries with a higher average level of perceived climate will be more likely to return a death sentence than those juries with a lower average level of perceived group climate, net of trial characteristics.*

Using logistic regression techniques, the second hypothesis seeks to understand the impact that jury level characteristics have on the sentencing outcome, specifically whether or not a death sentenced was returned by the jury. The analyses specified in

order to test this hypothesis include both trial level characteristics that would be expected to impact a sentence, such as the level of aggravating and mitigating circumstances, and the jury level characteristics that can potentially have an extralegal effect, such as group climate. The question I seek to answer here is whether the aggregate level of group climate can add any explanatory power to those factors that will increase the probability of a death outcome. In order to estimate the probability of a death sentence in these data, three models were specified. The results from each of these models are discussed below. The correlation matrix for each of the variables used in the logistic regression, as well as their means and standard deviations, can be found in Appendix C.

Model 1: Trial Level Characteristics

The first model specifies the trial level characteristics that prior research has suggested are important in whether or not a jury returns a death sentence. The variables included in this model are the race of the defendant (Black defendant), the race of the victim (White victim), the gender of the victim (female victim), the defendant/victim race interaction (Black defendant/White victim), the number of persons killed in the crime, the aggregate average scale of aggravating and mitigating circumstances, the aggregate average juror perception of the level of heinousness of the crime, and the aggregate average juror perception of the defendant's demeanor during the trial. Many of these characteristics as measured in these data are objective facts, such as the race of both the defendant and the victim, the gender of the victim, and the number of victims. Some of these measures, however, while based on legal precedent, are subjective measures taken from information asked of the individual members of the jury.

The scales for both the aggregated average aggravating and mitigating circumstances fall into this category and are meant to capture the presence of both aggravating and mitigating factors on the trial witnessed by each individual jury. Each juror on each trial was asked about the presence of several aggregating and mitigating circumstances on the trial which he/she had served; jurors responded 'Yes' when the factor was present (coded as 1) and 'No' when the factor was absent (coded as 0). As previously described, these measures were created by aggregating the information from individual jurors into a jury level scale[52]. The scales for the level of heinousness and the defendant's demeanor were calculated in the same way; these two scales, however, are more indicative of the potential extralegal factors that could impact outcomes than of legal factors. The level of heinous scale was created by asking individual jurors a series of questions about their opinion of the gravity of the crime, such as whether the victim was made to suffer[53]. The defendant demeanor scale asked jurors about the defendant's attitude during the trial, such as whether or not s/he appeared remorseful for the crime[54]. These items are included as trial level characteristics in order to control for the juror's personal attitudes towards the crime and the defendant.

The final logistic regression model for the trial level characteristics is:

$$P(Y = \text{Death}|X) = 1 / 1 + \exp(-\alpha + \beta_1(\textit{Race of Victim}) + \beta_2(\textit{Race of Defendant}) + \beta_3(\textit{Black Defendant and White Victim}) + \beta_4(\textit{Female Victim}) + \beta_5(\textit{Number of Victims}) + \beta_6(\textit{Mitigating Factors}) + \beta_7(\textit{Aggravating Factors}) + \beta_8(\textit{Level of Heinousness}) + \beta_9(\textit{Defendant Demeanor})$$

[52] The individual items used to create the aggravating circumstances scale can be found in Table 9. The individual items used to create the mitigating circumstances scale can be found in Table 10.
[53] Individual items for the level of heinous scale can be found in Table 10.
[54] Individual items for the defendant demeanor scale can be found in Table 11.

The logistic regression results for this model can be seen in Table 24. The results are generally consistent with what would be expected, with some notable exceptions. The racial factors that would be expected to impact outcome, based on prior research experience, specifically the race of the defendant and the race of the victim, are not significant. The gender of the victim is also not significant, nor is the level of heinousness attributed to the crime. The presence of aggravating factors, however, does significantly predict a death outcome, with a higher value on the scale of aggravating circumstances increasing the odds of a death sentence. The presence of mitigating factors predicts to a death sentence in the opposite manner, which is to be expected; a decrease in the scale of mitigating circumstances increases the odds of a death sentence. Similarly, the lower the jury's perception of the defendant's demeanor during the trial, the more likely it is that a death sentence will be returned. Also expected is that the larger the number of victims of the crime, the more likely it is that a death sentence will be returned.

The explanatory power of this model, reported by Nagelkerke's pseudo R^2 value, is .310. When the predicted probability of a death sentence for this model is calculated, the probability of receiving a death sentence when the defendant is Black, the victim is a White female, and all other variables are held constant at their mean is .364[55]. The probability that a defendant received a death sentence when the defendant is White, the victim is a White female, and all other variables are held constant at their mean is .360. Under these same conditions, but where both the defendant and the victim are Black, the

[55] All predicted probabilities were calculated twice. The first calculation involved using all of the variables in the model. The second calculation involved only those variables which are significant in the model. There is very little difference between the two calculations; as such, predicted probabilities reported in the results were calculated using information from all variables in the model.

probability of a death sentence is .524. These results appear to contradict the research findings which show that cases with a black defendant and a white victim are the most likely to result in a death sentence, net of other characteristics. What these predicted probabilities do not take into account, however, is the impact that jury level characteristics can have on sentencing outcomes. This will be examined in the next section.

Model 2: Jury Level Characteristics

The second model specifies the qualities of the jury that are thought to impact the probability of a death sentence. Based on both qualitative research and group psychology research, I hypothesize here that group functioning, as measured by the aggregate group climate variable, will predict the probability of a death sentence. Also included in this model are a control variable for the percentage of Black jurors on the jury, a control variable for the percentage of male jurors, and a control variable for the number of jurors per jury in the sample.

The final logistic regression model for the jury level characteristics is:

$$P(Y = \text{Death}|X) = 1 / 1 + \exp(-\alpha + \beta_1(\textit{Group Climate}) + \beta_2(\textit{Percentage Black}) + \beta_3(\textit{Percentage Male}) + \beta_4(\textit{Number of Jurors})$$

The results for this model are seen in Table 24. The coefficients show that the only variable that significantly predicts to a death sentence is the group climate variable, which shows that, as expected, higher values on the group climate scale increase the probability of a death outcome. It is somewhat unexpected, however, to find that neither

the percentage of Black jurors nor the percentage of male jurors on the jury significantly predict sentencing outcome. One reason for this could be that the aggregate percentage of people present on the jury is not a strong enough measure for the interactions that are expected to take place between those people present. Indeed, this points to the fact that the group is more than the sum of its parts; this idea will be discussed more thoroughly in the following chapter.

The explanatory power of this model is lower than the model using just trial level variables as predictors to a death sentence; the Nagelkerke pseudo R^2 value is .162. When predicted probabilities are calculated so that each variable is held at its mean, the probability of a death sentence is .56. These results are suggestive of the potential importance of group climate during jury deliberations. Before any conclusions can be drawn, however, it is first necessary to examine the results of the final model.

Model 3: Full Model

The final model includes all of the variables for both the trial and jury levels. The model specified is:

$$P(Y = \text{Death}|X) = 1 / 1 + \exp(-\alpha + \beta_1(\textit{Race of Victim}) + \beta_2(\textit{Race of Defendant}) + \beta_3(\textit{Black Defendant and White Victim}) + \beta_4(\textit{Female Victim}) + \beta_5(\textit{Number of Victims}) + \beta_6(\textit{Mitigating Factors}) + \beta_7(\textit{Aggravating Factors}) + \beta_8(\textit{Level of Heinousness}) + \beta_9(\textit{Defendant Demeanor}) + \beta_{10}(\textit{Group Climate}) + \beta_{11}(\textit{Percentage Black}) + \beta_{12}(\textit{Percentage Male}) + \beta_{13}(\textit{Number of Jurors})$$

The results for the full model can be seen in Table 24. As would be expected, the aggravating and mitigating circumstances remain significant predictors, in the expected

directions, of a death sentence. The number of victims is also a significant predictor, with cases with more victims more likely to result in a death sentence. The defendant's demeanor also remains significant, with trials with more sympathetic defendants less likely to receive a death sentence. Similarly, the group climate variable remains significant, lending support to the hypothesis that group level characteristics impact death sentences, net of trial characteristics. The other group level predictors, percent black and percent male, remain insignificant in the final model, as does the control variable for the number of jurors from the jury who are in the sample.

The explanatory power of the full model is the best of the three, with a Nagelkerke R^2 value of .404. The predicted probability of a death sentence in cases with a Black defendant, a White female victim, and all other variables held constant at their means is .419. The predicted probability of a death sentence in cases with a White defendant, a White female victim, and all other variables held constant at their means is .473. The predicted probability of a death sentence in cases with a Black defendant and a Black female victim, with all other variables constant at their means, is .610. As these predicted probabilities show, this final model is able to take into account many of the factors that contribute to a death sentence. Of considerable interest, however, is the predictive power of the group climate variable; when this variable is removed from the final model, the probability of getting a death sentence in cases with a Black defendant and a White female victim decreases to .00035. The ramifications of the importance of integrating group interactions into the study of jury deliberations will be discussed in the next section.

Chapter 6: Conclusions

Conclusions

To date, the research on sentencing outcomes in capital trials has focused exclusively on the ways in which either individual level characteristics or case level variables have influenced sentencing outcomes. The goal of this investigation was to expand upon previous research findings and examine the way that group functioning during jury deliberations may impact sentences. The impact of group functioning, defined here as the group climate during jury deliberation, was explored using a two-step approach. The first step was to examine how those individual and case level characteristics that have been previously found to significantly impact capital trial outcomes potentially influence the group climate. The second step was to examine what impact the jury level of group climate has on final sentencing outcomes. In this way, I have confirmed my hypothesis that the group climate mediates the relationship between the static individual and trial level characteristics and the sentencing outcome.

This relationship can best be understood by examining the visual representation in Figure 2. By examining only individual and case level characteristics, previous research on capital jury deliberations is unable to look at the impact that group dynamics may have on outcomes. Jury deliberation by its nature is a dynamic group process, one where twelve individuals are asked to work together in order to come up with a unanimous decision about the guilt and where necessary, the punishment meted out to the defendant. By virtue of committing this decision to a group, as opposed to just one or two people,

the legal system has in essence recognized that the group dynamic is an important part of the process. Until recently, however, research has been unable to tap into the dynamic nature of jury deliberations, instead focusing on the static variables previously described. As seen in Figure 2, I hypothesize that those static variables, specifically those related to the demographic characteristics of the individual juror, act on sentencing outcomes through the process of group climate. My findings suggest that individual level characteristics may not have the direct effect on sentencing outcome that has been found in previous research. Trial level characteristics, in turn, are interpreted by the juror, based on his/her personal experiences brought to deliberations, and then impact how that juror will interact with the others on the jury. Trial level characteristics, furthermore, can have an independent impact on sentencing outcomes, as certain legal factors will guide jurors towards one decision or the other. Such a model of capital jury decision-making can incorporate what is currently known about jury deliberations while also expanding our inquiry into the role that the group, envisioned as more than just the sum of its parts, can independently have on outcomes.

One key question addressed in these analyses is what is the best way to measure group climate? Research in the fields of organizational and industrial psychology provides guidance. In studies of workgroups, group climate has been measured by looking at levels of cohesion and cooperation in the group, the amount of conflict present, and how the group members evaluate one another. In these analyses, constructs were borrowed from this line of research in order to create a global measure of group climate. This global measure of group climate incorporated how the jurors felt about one another, how well they thought the group worked together, and how respected they felt during the

deliberation process. The questions used to create the group climate scale are similar to questions used in studies of workgroups, most notably Seashore's (1954) study of cohesion in men working in factory groups and Kivlighan and Tarrant's (2001) study of group climate during therapeutic group sessions for adolescents. Principal components analysis confirmed that the questions factored together and the reliability of the scale was strong ($\alpha = .71$).

The results of the logistic regression models indicate that the group dynamics of the jury do independently impact the probability of a death sentence. In trials where the jurors report a more favorable perception of group climate, there is a higher probability that the sentence will be death. This relationship endures regardless of the characteristics of the crime, such as the presence of aggravation or mitigation, or racial interactions, such as the race of the defendant and the victim. This robust finding emphasizes the importance of examining our assumptions about the capital jury deliberation process. These findings also suggest that the group is more than the sum of its parts; measuring group climate is the first step to understanding what is ultimately appears to be a much more dynamic process than has been previously understood. The only other variable that significantly increases the probability of a death sentence is the number of victims of the crime, a legally relevant variable that should be expected to impact sentencing outcome. Defendant demeanor, on the other hand, decreases the probability of a death sentence, suggesting that jurors show mercy to defendants who appear remorseful. In addition, is support of previous research (see Brewer, 2003), defendant demeanor decreases the probability of a death sentence, suggesting that jurors are more likely to be receptive to mitigation in cases where the defendant has more positive personality characteristics.

The first step in understanding how group climate may impact sentencing outcomes is to examine the factors that impact group climate. Analyses of the factors predicting to a juror's perception of group climate suggest that many of the individual juror level factors that previous research suggests impacts sentencing outcome, such as religion, may be more suited to the prediction of group climate. Jurors who are Jewish, for example, are more likely to perceive the group climate to be negative. Prior research suggests that Jewish jurors are more likely to disagree with statements about capital punishment (see Cowan et al., 1984; Ellsworth and Gross, 1994). It is possible to surmise, therefore, that Jewish jurors perceive the group climate as more negatively because they do not want to vote for a death sentence, but feel pressure or resentment from other jurors during deliberation. Similarly, the finding for Baptist jurors ($p<.10$) suggests that they are more likely to perceive the group climate as positive. Studies of Southern Baptist jurors (see Eisenberg et al., 2001) suggest that they are both more likely to vote for the death penalty and more likely to have pro-capital punishment beliefs. Although Southern Baptists and Baptists do differ in doctrine, these two religions share similar attitudes towards social issues, leading this author to surmise that the findings between these analyses and prior research are consistent.

The investigation of the relationship between previously identified characteristics that predict sentencing outcome and the perception of group climate also found that the juror's perception of the presence of mitigating circumstances in the trial had a statistically significant impact on his/her perception of the group climate. Jurors who perceived there to be more mitigating factors in a trial were more likely to have a more negative perception of the group climate. This relationship operated at both the

individual level, with an individual juror's perception of the presence of mitigation predicting his/her perception of group climate, and at the trial level, with those trials that have more mitigating circumstances identified. In both cases, jurors were more likely to perceive that the group climate was negative. One potential explanation for this relationship is that when mitigation is present, more debate about the proper punishment ensues. Jurors may disagree about a sentencing outcome because of the confusion of the role that mitigating factors should play in the decision-making process. Eisenberg and Wells (1993) find that jurors tend to apply the burden of proof of beyond a reasonable doubt to mitigating factors, whereas the law states that only aggravating factors must meet such a high burden of proof. When mitigating factors are present, therefore, jurors may be more likely to argue over the sentencing outcome or other aspects of the deliberation, making jurors who serve on those trials feel more negatively towards their experience.

Two other findings are worthy of discussion. The first is the finding that a juror's gender predicts his or her perception of group climate. While this relationship did not reach traditional levels of significance in the hierarchical linear models ($\beta = -.054$, $p = .08$), it is significant in the ordinary least squares regression with robust standard errors. Furthermore, the direction of the relationship is the same in both models; women are more likely to perceive that the group climate is negative when compared to men. In studies of death penalty attitudes, women are less likely to support capital punishment (Ellsworth and Gross, 1994; Fitzgerald and Ellsworth, 1984; Haney et al., 1994); as such, women on capital juries may be more likely to perceive the group functioning as negative because they do not wish to vote for the death penalty.

This finding is interesting in light of the results on the percentage of men on the jury in predicting an individual juror's perception of group climate. When there are more men serving on the jury, the individual juror's perception of group climate is more positive. Such a result can be interpreted in one of two ways. It is possible that this finding is just an aggregate of the finding for female jurors; male jurors perceive the group climate more positively than do female jurors, therefore having more male jurors means a more positive perception of group climate. It is also possible that interactions occur differently depending on the gender composition of the jury; this is suggested by the fact that the gender composition only impacts the perception of group climate and does not predict sentence outcome. When juries have more men serving on them, men may be more likely to keep deliberations focused on the task at hand, as men tend to be more results oriented than are women (see Tannen, 1990) thereby eliminating potential discussions that could lead to disagreement between jurors.

One potential explanation for the difference in the ways that men and women perceive group climate is that men and women communicate with one another differently, a difference that is playing itself out during deliberations. Women approach disagreement differently than men; women tend to work towards compromise, whereas men are more interested in the actual outcome (Tannen, p. 25, 1990). Sentencing deliberations require that all of the jurors work together to come up with an appropriate outcome. Inherent differences in the way that men and women communicate could be playing out so that women are more focused on the process of coming to agreement over the sentence, while men are more focused on the actual sentence. When asked about the experience, women may be more likely to remember the process of coming to consensus,

which could have potentially been a contentious one, and answer their questions about group climate based on their interaction experiences, explaining why women are more likely to perceive the group climate as negate. Men, on the other hand, may be answering the questions about the group climate based on their satisfaction with the outcome, not based on the interactions during deliberation. It is possible that for men, what is being measured in their satisfaction with the outcome, not their perception of group dynamics. Future directions for ways to further examine this relationship will be examined in the last section of this chapter.

Finally, it is important to note the lack of racial effects in these data. Contrary to my hypotheses, race did not predict a juror's perception of group climate, nor did racial characteristics of the jury, the defendant, or the victim predict the sentencing outcome. This is not consistent with prior research finings; Bowers and his colleagues (2001; Bowers et al., 2004) have found the presence of a Black male on the jury will decrease the probability of a death sentence, whereas the presence of several White males on the jury will increase the probability of a death sentence. Other investigations have suggested that trials with a Black defendant and a White victim are more likely to end in a death sentence (see Baldus et al., 1998). Neither of these findings is supported with these data.

One potential explanation for this finding is rooted in new research about the ability of jurors to understand and respond to aggravation and mitigation in trials (Brewer, 2004). It is possible that racial characteristics do not operate through group climate, as previously suggested, but operate through other trial characteristics, such as mitigating circumstances. Brewer (2004) finds that a juror's race impacts whether or not

he/she is receptive to aggravating and mitigating factors in trials with a same race defendant. Race, therefore, is still a salient issue, but is operating in a different way than has been hypothesized here. The presence of mitigation does predict an individual's perception of group climate; it is possible, therefore, that there is a three path process being played out, with racial interactions impacting a juror's receptivity to mitigation, mitigation in turn impacting a juror's perception of group climate during deliberations, and the jury's aggregate perception of group climate impacting the sentencing outcome. This is consistent with the research in organizational psychology, where theories explicitly reject the notion that an individual's demographic characteristics, such as race and gender, will directly impact the group interactions (Jehn et al., 1999). Instead, this line of inquiry proposes that diversity in individual level characteristics leads to diversity in perspective, which can be interpreted as leading to diversity in the ways that jurors would interpret aggravation and mitigation. More research is needed in order to better understand these indirect relationships.

The results of the current investigation offer much in terms of new lines of inquiry in the study of capital juries. The role that the group dynamics play in impacting sentencing outcomes is very strong in these analyses; the assertion that the whole is greater than the sum of its parts (Watts, p. 24, 2004) appears to be a very salient one in the issue of jury deliberations. The last section will detail the ways in which future research can work to increase our understanding of the role that group interactions play in predicting sentencing outcomes, as this finding points out that more research on this topic is necessary.

Limitations

Issues of Juror Recall

One limitation of this investigation is the possibility that jurors' recall of the events of their capital trial has been diminished because of the passage of time between the trial and the interview; on average, jurors were interviewed approximately one to two years after their trial experiences (Foglia, 2003). This raises several issues about the reliability of the jurors' responses. The first is the issue of juror recall: were jurors able to accurately remember their trial experiences, particularly the experiences during deliberation? Prior research on this topic suggests that despite the time lapse between the capital jury experience and the interview, jurors are remembering the experience. One reason for this is that serving on a capital trial is a very salient experience for jurors, suggesting that they are more likely to remember the details. This has been corroborated by jurors' own admission of recall of the capital jury experience, where the majority of respondents indicate that they remember all stages of the trial either "Very Well" or "Fairly Well[56]." Interviews with jurors also suggest that the capital trial experience was mentally taxing on them, in that they felt vested in the responsibility of making a punishment decision. Research also suggests that individuals are more likely to remember an experience when they had actively worked with information, as opposed to passively listened to information (Meyers and Jones, 1993).

The time lapse between the trial and the interview also raises the potential for a juror to have modified their interpretation of the events that occurred during the

[56] See Table 6 for a breakdown of how well juror's report remembering each portion of the trial.

trial. For instance, a juror who had been undecided about capital punishment prior to his/her experience on a capital trial but voted for a death sentence may have reframed his/her beliefs so that they are aligned with his/her death vote. It is also possible that jurors have reframed their experiences to feel more positive about them; some psychological research suggests that with time, people are more likely to minimize the negative and accentuate the positive (Wood and Conway, 2006). Such retrospective reconstruction could be responsible for the fact that many of the individual perceptions of group climate are clustered towards the more positive end of the distribution. Jurors may be more prone to reconstruct their experiences positively because it makes it easier for them to remember the trial.

Unfortunately, there is no way to know how much reconstruction may be occurring in these data. One way that Foglia (2003) was able to examine the role of reframing in a sample of Pennsylvania jurors was to ask respondents whether their opinions about capital punishment had changed as a result of their capital trial experience. Eighty-eight percent of respondents said that their feelings had not changed, indicating that, in general, their beliefs at the time of the interview are consistent with their beliefs during their jury service. Jurors in this sample were not asked this question, so their responses cannot be compared. The risk of reconstruction, however, is minimized by the fact that half of the sample served on a trial that ended in a life sentence and half ended in a death sentence. At this time, there is no reason to expect that jurors on a life trial and those on a death trial would differentially reconstruct their experiences. Future research should attempt to address the issue of retrospective reconstruction.

Other potential limitations related to asking jurors questions about their experiences after the fact are that jurors may not be able to understand the complex cognitive processes that led to their decision-making, making it difficult for them to articulate their reasons for a verdict, and that jurors may be concerned with the social desirability of their answers to sensitive questions, making them more likely to censor themselves (Costanzo and Costanzo, 1992). This research limited analyses to the close-ended questions on the interview instrument, so that jurors were guided in their answers to the questions of interest. As a result, the inability of jurors to adequately describe complex cognitive processes is not so much a limitation for this research as it is for any future research wishing to investigate more fully the relationship between individual characteristics and juror perception of group functioning. The potential for jurors censoring themselves, however, is a potential problem for these data, as jurors were asked to answer several questions about race and other sensitive issues. This is not a problem in the current research as it pertains to the measurement of an individual juror's perception of group climate, as the questions asked about the jurors' trial experiences are rather straightforward. It is possible, however, that a juror's desire to answer in a socially acceptable fashion impacts his/her memory of the presence of aggravating and mitigating factors, such that jurors who returned a death sentence may be more likely to remember or possibly exaggerate aggravating factors as a way to explain to the interviewer why a death sentence was necessary. There is no way at this time to test this assertion, although future research can address this by comparing the factual information about the trial that is available in the court documents to the juror's responses.

Although issues such as recall and reframing could potentially bias these data, they are not problems that are insurmountable. Because several jurors were interviewed in each trial, juror responses could be corroborated with one another; it was very rare for the juror responses on factual information to be different between jurors serving on the same trial. In those cases where there was a discrepancy, however, there was information from at least one other juror from whom consensus about the events could be gained. This lends credibility to the assertion that the responses are indeed accurate.

Measurement

Another potential limitation comes from the fact that the scale used to measure the individual juror's perception of group climate was not designed originally for this purpose. The measures that were used to create the group climate scale were chosen from the instrument based on their similarity to items used in prior research on group functioning (see for example, Kivlighan and Tarrant, 2001; Seashore, 1954). In order to ensure that the items chosen were appropriate to measure the construct, principal components analysis was undertaken. An examination of the results of the principal components analysis from the original fifteen variables hypothesized to be indicative of group climate suggested that only ten of the fifteen variables merited inclusion in the scale. Although the group climate scale has proven reliable in the current analyses (α = .71), it is still possible that a better measure can be derived, if not from these data than in future research on this topic. Examination of the robustness of this measure of an individual juror's perception of group climate is especially important in light of the fact that a jury's aggregate level of group climate was one of the strongest predictors of

sentencing outcome, with juries with higher levels of perception of group climate being more likely to return a death sentence. Continued research as to the robustness of this measure will validate the findings reported here as well as potentially create interesting new avenues for future research.

Several avenues can be explored as potential ways to improve on the measure of group climate. One way to enhance our understanding of group climate would be to create questions that are more strongly tied to the measures of group functioning that have been identified in the organizational psychology literature, such as group cohesion, group cooperation, and group conflict. By including questions designed to tap into the specific constructs that make up group climate, a more nuanced scale could help improve our understanding of what aspects of group climate most strongly predict sentencing outcome. The current study, by virtue of its exploratory nature, uses a unidimensional scale to measure the perception of group climate but future research would benefit by using a multidimensional approach. A multidimensional approach would allow both for an understanding of how traditional constructs of group climate predict sentencing outcome as well as examine whether there are other aspects of group climate that may be important for understanding the dynamics of jury deliberations.

The dynamic nature of the group climate during deliberations can also be measured by exploring the role that relationships between jurors have on sentencing outcome. Relationships can be examined by asking a juror to identify those fellow jurors who had important contributions to the discussion or those fellow jurors who shaped his/her decision-making behavior. The types and qualities of the relationships that are made during the process of deliberations may well impact the subsequent sentencing

outcome, especially in circumstances where jurors feel more comfortable and more respected. Data currently being collected in the third phase of the Capital Jury Project will potentially be able to answer some of these questions, as the respondents are being asked to nominate influential jurors, describe those jurors who dominated the discussion, and identify those jurors whose opinions mattered to him/her. Future research using these newly collected data will examine the role that relationships play in broadening our understanding of group climate during jury deliberations and potentially yield stronger ways to measure the group climate.

Another way to enhance our understanding of group climate would be to utilize an objective measure of group climate as opposed to a subjective one. The current group climate variable is operationalized so that it measures an individual juror's perception of the group climate during jury deliberations, as opposed to the actual climate during jury deliberations. An objective measure of group climate during deliberations could only be obtained through the process of observing deliberations; although it is not possible to observe actual juries in the act of deliberation, mock trial experiments could be designed such that observation was possible. Objective measures of group climate would include the tone of voice and the choice of words by jurors, the direction of the flow of conversation during deliberations, and the amount of time spent on certain subjects during the course of deliberations, such as those subjects that appear to be more controversial to the jurors (i.e. the application of aggravating and mitigation circumstances to the sentencing decision). Such objective measures of group climate could be used to determine whether deliberations pattern themselves in any way and whether these patterns help predict sentencing outcome.

The issue of measurement is also very important with regards to the use of the variables for the percent of Black jurors and the percent of Male jurors as a proxy for interpersonal dynamics on the jury. The research on the role that race plays in capital jury deliberations suggest that some type of interpersonal interaction occurs between members of the jury and that race may impact this interaction (see, for example, Bowers et al., 2001; Fluery-Steiner, 2002). Expanding on the work of Bowers and his colleagues (Bowers et al., 2002), this research attempts to use the percent of Black jurors and the percent of male jurors serving on a jury as a way to model this interaction, the reasoning being that on trials with more Black jurors, group dynamics may behave differently than on trials with fewer black jurors. The same rationale can be applied to the role that the percentage of males on the jury plays in determining sentencing outcome. What this measurement assumes, however, is that these percentages will act as a reasonable proxy by which to measure interactional dynamics. This assumption is a risky one, as it underestimates the complexities of measuring interpersonal interaction. The lack of significant findings for these variables emphasizes that future research needs to find better ways to measure interaction, as well as better ways to investigate the role that individual level characteristics like race play in this interaction.

This limitation, however, does not lessen the results of the current investigation; if anything, the importance of the role that a jury's average perception of group climate plays in impacting sentencing outcome suggests that more research focusing on group interactions is needed. What the current research does is eliminate some of the potential ways to measure interaction as a static measure (i.e. the percent of something) and

emphasizes the need for further exploration of how these interactions can be measured dynamically.

A Representative Sample

The sampling procedures utilized in the collection of these data were rigorous and well designed. Once the states for inclusion were chosen and the eligible capital punishment cases were identified, a randomized sampling technique was employed to maximize the probability that each juror had an equal chance of selection into the final sample. The rigors of sampling selection, however, do not preclude sampling bias, as every juror had the right to refuse to be interviewed. What is unknown is whether those jurors who refused to be interviewed are any different than those who did agree to the interview. Ideally, there are no differences between the two groups and any generalizations made from these data can be applied to all capital jurors. Experience holds, however, that this is most likely not the case.

This author had the opportunity to be involved in a third wave of data collection for the Capital Jury Project, where data was collected from jurors serving on capital trials in the state of Maryland. For one trial, six jurors were interviewed about their experiences. All six of these jurors mentioned that there was one Black male juror who had a significant impact on the sentencing outcome, as he had told his fellow jurors that he would not vote for a guilty verdict if they had planned to vote for a death sentence. The six jurors interviewed all suggested that the life sentenced meted out in that trial was the result of his insistence on not voting for guilty unless the life sentence was guaranteed. Repeated efforts to interview this juror, however, were in vain. No incentive or plea would convince this juror to speak to one of the interviewers. As a result, no

Black jurors were interviewed from that trial. If this juror's refusal to participate in the study is similar to the refusal of other Black jurors to participate, the sampling bias would act in such a way as to homogenize the rest of the respondents, as Black jurors with strong beliefs are not included in this sample. This could also explain the lack of any direct racial effects on perception of group climate or sentencing outcome in these data. Those Black jurors who do agree to be interviewed potentially share attitudes similar to those White jurors who agree to be interviewed, negating any racial effects that may exist during the process of actual deliberations (see also Cowan, et al., 1984; Haney, Hurtado, and Vega, 1994).

The sample is potentially biased in another way, although not as the result of sampling procedures. Research on death qualification suggests that those Black jurors who are placed on a capital jury are more likely to share the attitudes of their White counterparts due to the fact that they support the death penalty, or at least are willing to enforce the death penalty. Haney (1981) suggests that the voir dire process works to eliminate racial differences among jurors in capital cases, as all jurors involved must fit a certain criteria. Black jurors and White jurors are therefore the same by virtue of their belief system. The lack of racial differences in these data could be indicative of the way that the death qualification process has been designed, so that differences among jurors are eliminated. This could explain why there are no racial effects for these data, despite the racial differences found between Blacks and Whites in jury simulations and mock trial research, as well as in studies of capital punishment attitudes. Should this be the case, however, the findings here would be indicative of the capital trial process, as those Black jurors in this sample would be similar to those Black individuals who would be

chosen to sit on a capital jury. The question still remains, however, as to whether these Black individuals are representative of Black individuals in the greater population. This is a question that the current investigation cannot address.

Future Directions

The Role of Gender

The current research raises some interesting questions about the potential impact of the role of gender in capital jury deliberations. Prior research suggests that at the level of a capital trial, gender is not a factor in decision-making (Bowers et al., 2001), despite what is known about the relationship between gender and capital punishment attitudes. One reason for the lack of a relationship in prior studies could be that, although women are more likely than men to disapprove of capital punishment (see Ellsworth and Gross, 1994), the process of death qualification during voir dire minimizes these differences by eliminating all jurors, male and female, that are inclined to oppose the death penalty (Haney, 1981; Haney, Hurtado, and Vega, 1994). The lack of difference on capital punishment attitudes could explain why research to date has not found any significant differences in the role that gender has on sentencing outcome. The emphasis on group interactions in the current investigation, however, changes the focus from attitudes to interpersonal skills. This new emphasis opens the door for gender differences to emerge in the study of how group functioning impacts sentencing outcome.

Communication research suggests that men and women communicate differently, face challenges differently, and deal with issues of conflict and consensus differently

(Tannen, 1990). This difference appears to be playing out in the ways that men and women perceive the group climate during jury deliberation, a variable that in turn predicts to the probability of a sentencing outcome. Tannen (1990) points out that women are more likely than men to view interaction based on the experience with others, whereas men are more likely to view interaction in terms of a goal. In the case of capital jury deliberations, therefore, women may be more likely to answer questions about the group climate using their experiences during deliberation as their anchor, while men may be more likely to describe their perceptions of group climate based on their satisfaction with the outcome.

Similar research also finds that men and women behave differently during interactions. In their summary of the findings related to gender and interaction, Ridgeway and Smith-Lovin (1999) point out that men and women have different conversational styles and goals; these different styles are potentially being played out over the course of jury deliberations. For instance, women are more likely than men to express agreement and are also less likely to be assertive (p. 260). In terms of the current study, women's tendency to be more unsure and deferential during conversation may make their recollections of their experiences more negative in those cases where there are more men on the jury, as men tend to be more direct in their conversational style (p. 261). Men, furthermore, are more likely to interrupt women during mixed-sex interactions (p. 261) and more likely to talk more in mixed-sex groups (p. 263), which could also increase the likelihood that women perceive the group climate as negative. Women may feel undervalued during jury deliberations and may feel that their contributions are not being respected during this process as a result of the differences in interaction-styles

between men and women, which could explain why men perceive higher levels of group climate than do women.

Such findings from other fields, combined with the current results, point to the importance of the effects of gender differences during interactions and their subsequent impact on jury deliberations. Future research needs to integrate what is known in the field of communications to what we know about the process of jury deliberations. In doing so, the role that gender plays in the final sentencing outcome can be better explored and an understanding of how these differences impact capital punishment deliberations and capital punishment sentencing outcomes can be more fully investigated. The current findings show that the average level of group climate on a jury is one of the strongest predictors of sentencing outcome; gendered differences in the perception of group climate offer one clear route by which to understand the ways that discretion in capital trials is operationalized and leads to an uneven application of the death penalty.

Measuring Consensus

The results of this research underscore the importance of examining capital jury deliberations as a function of group interactions. The findings here indicate that the average level of the perception of group climate predicts sentencing outcome, with higher levels of group climate increasing the probability of a death sentence, net of trial characteristics. What the current research is not able to determine, however, is why a more positive perception of group climate increases the probability of a death sentence. One reasons for this could be that in trials with obvious aggravating factors, jurors tend to reach consensus more easily with little disagreement; as a result, jurors perceive the

deliberation climate more positively and are also more likely to vote for a death sentence due to the trial characteristics. In this way, the average perception of group climate could be a proxy for the role that aggravating factors play in determining sentencing outcomes.

This explanation does not take into account that jurors could also just as easily come to consensus about a life sentence, as instead it assumes that consensus must be equivalent to a death sentence. Although this assumption is supported in some of the literature, such as the work of Sandys (1995), which suggests that jurors are often willing to switch their vote from death to life in order to avoid a hung jury and thus no punishment, it is still an empirical question that has not been addressed in the current analyses. If jurors are switching their votes from death to life in order to placate other jurors and ensure some form of punishment, it is possible that the group interactions on these juries could be perceived as more negative, since jurors are not in agreement. One way to test this would be to compare the perception of group climate of those juries where the first vote was the same as the final vote to those juries who had to deliberate in order to reach consensus. The data for such analyses are available and it is the goal of this author to next examine the relationship between consensus and group climate in an effort to better understand the way that group climate impacts sentencing outcome.

The Jury as the Group

The results of these analyses underscore the importance of treating the jury as a group phenomenon instead of as a sum of individuals. The impact of the average level of group climate on sentencing outcomes suggests that a group level of explanation can increase our understanding of the factors by which capital trials are decided. Such an explanation is in line with what Short (1985) described as micro sociological theories of

behavior, which focus on the patterns of interactions among groups and individuals (p. 54). The study of jury deliberations must encompass both the individual level of explanation for behavior, as was accomplished here by examining the impact that demographic characteristics have on an individual's perception of group climate, and this micro sociological level of explanation for behavior, which will allow us to examine the impact of group dynamics on outcomes. This was attempted here by examining the role that the average level of group climate had on sentencing outcomes. Such an investigation takes into consideration how individual and group level characteristics interact in a dynamic fashion to produce outcomes. Without this focus, any study of jury deliberations is just a study of what individual people who served on juries think; there is no way to examine how the actual jury operates.

Wirth (1939) suggests that the collective activities of a society, such as language and religion, cannot be understood as merely a collection of the traits of those individuals who make up the society. Rather, the collective identity of the group must be understood in terms of the interactions of the individual who make up that group; such interactions create and sustain culture. Similarly, a jury cannot be understood as simply the collection of traits attached to individual jurors. A jury is by definition a group commanded to interact with one another; these interactions, even on their small scale, create and sustain the group climate that in turn leads to sentencing outcomes. In order to better understand the process by which decisions leading to those outcomes work, it is necessary to understand the dynamics that occur during these interactions.

The measure of group climate used here is the first way to begin to understand the dynamics operating within a group that can lead to specific outcomes. This measure

suggested that group dynamics in some way, operationalized here as climate or functioning, does impact outcomes, net of individual level characteristics. Such a finding gives credibility to Short's (1985) contention that there is an intermediate level of explanation, one that goes beyond the individual level of understanding but is not yet of the macro sociological level of understanding. A micro sociological level of explanation is one focused on the development of patterns and how these patterns can explain larger phenomena (p. 54). The research to date on jury deliberations does suggest that patterns have emerged; these patterns have only been studied at the individual level, leaving a gap in what is known about how juries work. This gap must be addressed by switching our focus from the individual to the group.

Using the percent of Black jurors and the percent of male jurors were other ways that this research attempted to understand group dynamics; they proved to be poor measures and as such should inform future research on this topic. One reason that these measures proved to be poor could be that they are only aggregate measures of individual level characteristics; using such aggregates to explain group level phenomena ignores the notion of the group as distinct from the collection of individuals. The fact that these measures did not explain sentencing outcomes in capital trials emphasizes the fact that the interactions of those individuals within the group matter. The aggregate level of any individual characteristics is just that – an individual level characteristic. Group interactions must be measured in more sensitive and dynamic ways in order to understand how a group operates in ways that are different from the individuals who make up the group, just as we have begun to understand how a society is different than the sum of those citizens who make up the society.

Policy Implications

The issues surrounding capital sentencing outcomes, while certainly lending for interesting scholarly exercises, also have serious implications for the legal practice of capital punishment. Capital punishment, as the most severe punishment that can be inflicted upon a defendant by a court, requires the state to ensure that it be delivered with the most extreme levels of caution and deliberateness. One way that the states have attempted to instill this level of caution is through the enactment of guided sentencing statutes, meant to purge the arbitrariness that was identified in *Furman v. Georgia.*[57] These statutes were designed to assist juries in coming up with the most appropriate sentencing option; as such, these statutes underscored the importance of the role that the jury played in the capital punishment decision-making process. The United States Supreme Court has recently amplified the importance that the jury plays in this process in their ruling in *Ring v. Arizona*[58], where the Court specified that all sentencing decisions for capital trials must be returned by a jury. Prior to this ruling, some states (such as Florida) allowed juries to offer only advisory sentences, with judges making the final determination of the appropriate sentence. Now, however, the task of the jury is even more high stakes, as there are no longer any safeguards to ensure that the proper legal decision has been made. This ruling, taking in conjunction with the fact that research to date still suggests that the death penalty is unequally applied, emphasizes the importance of understanding the processes by which such sentencing decisions are made.

[57] Furman v. Georgia, 408 US 238 (1972)
[58] Ring v. Arizona, 000 U.S. 01-488 (2002)

Despite a vested interest in ensuring that capital punishment is meted out in a fair and Constitutional manner, the U.S. Supreme Court has not once addressed the issue of what happens when a group of people are asked to come to a unanimous decision about the life of another human being (Haney, 1995; Hans, 1995). Instead, the Court has focused on the issue of ensuring equal representation of individuals on a jury, such as in its efforts to make sure that Blacks and women are fairly represented in both the jury pool and on juries. They have patently refused, however, to focus on the way that these individuals may interact so that the jury as a whole acts differently than would be expected if the jury were only the sum of its parts (see Hans, 1995). The current research has shown that such consideration is necessary if we are to better understand the process of jury deliberation in capital trials and ensure that the deliberation ends in fair application of the death penalty. These results suggest that the arbitrariness that should have been purged from the decision-making process by virtue of the guided discretion statutes has not disappeared; rather, it has moved to a different part of the process during the course of jury deliberations. The logistic regression results show that the level of group climate is one of the strongest predictors of a sentencing outcome, with juries experiencing higher levels of perceived group climate more likely to sentence a defendant to death. The impact of group climate remains even when legally relevant factors, such as the level of aggravation and mitigation, are included in the model. It appears that group dynamics, something that has not been addressed by the Court to date, may impact the ways in which discretion is operationalized and then applied; such a possibility needs to be considered more closely, as the level of group functioning is not a factor addressed by trial or sentencing guidelines. The impact of these interactions on sentencing

outcomes is strong, suggesting both a need for further study and a need for extreme caution in the application of the death penalty.

The current research also emphasizes the need to understand group interactions as more than just a sum of individual actions. Juries work together to come to a decision, in most cases one of the most weighty decisions they will ever be asked to make during their lifetime, but the members of the jury do not act in a vacuum to make this decision. Rather, they rely on the experiences and perspectives of each other, as well as the social cues they receive from other participants in the trial, like lawyers and judges (see Haney, 1981). This interplay of personal background and group interactions is one that future research must address in order to better understand the process by which capital punishment decisions are made. The results of this research, for instance, suggest that men and women may interpret their experiences differently, which in turn leads to differing outcomes dependent upon the gender composition of the jury. Similarly, the work of Brewer (2004) suggests that Blacks and Whites may vary in their receptivity to mitigation in a trial; the importance that the role of mitigation plays in determining sentencing outcomes requires that such differences be further explored. Without a better understanding of whether or not the U.S. Supreme Court has indeed reached its goal and the causes of arbitrariness in capital punishment have been purged, we as a society may be fooling ourselves into thinking that the safeguards we are taking to ensure fair application of the death penalty are enough.

The study of capital punishment lends itself well to policy recommendations, although such recommendations must exhibit great care, given the controversial nature of the death penalty. This research, in conjunction with similar findings that suggest that

capital punishment is still being meted out in an uneven manner, points to the need for the abolition of capital punishment. Arbitrariness and capriciousness still exist; the current analyses have identified at least one source of this arbitrariness. Groups interact in ways that are still being examined by scholars; juries, as one type of group, deserve special attention because of the decision with which they are tasked. Until there is a stronger understanding of the ways that jurors work together to come to a sentencing decision, as an examination of these results suggests that these decisions are not based on the facts of the trial alone, leaving a capital punishment decision to a jury is still akin to leaving this decision to fate. As such, it is our responsibility to advocate that this punishment be halted until we can understand the process by which it is made. Until that time, we as a society are as guilty as are those being sentenced.

Tables

Table 1: Sentencing Guidelines by State*

		Forms of Guided Discretion		
Definition of Capital Homicide	**Threshold**	**Balancing with Sentencing**		**Directed**
		Advisory	Binding	
Narrow	VA	AL	CA, LA	TX
Traditional	GA, KY, SC	FL, IN	NC, PA, TN, MO	

*This table was reproduced from Bowers, 1995

Table 2: Number of Jurors per Trial

	Frequency	%
3 Jurors	64	26.2
4 Jurors	140	57.4
5 Jurors	27	11.1
6 Jurors	11	4.5
7 Jurors	1	.4
8 Jurors	1	.4
Total	**244**	**100.0**

Table 3: Sentencing Outcome by State

	Death	Life	Total
Alabama	4	8	12
California	13	17	30
Florida	17	11	28
Georgia	8	8	16
Indiana	10	8	18
Kentucky	13	11	24
Louisiana	6	0	6
Missouri	6	7	13
North Carolina	11	10	21
Pennsylvania	10	4	14
South Carolina	17	11	28
Tennessee	7	4	11
Texas	10	4	14
Virginia	4	5	9
Total	**136**	**108**	**244**

Table 4: Number of Trials for each Sentencing Guideline

Definition of Capital Homicide	**Sentencing Guidelines**			
	Threshold	Balancing	Directed	**Total**
Narrow	9	48	14	**71**
Traditional	68	105	0	**173**
Total	**77**	**153**	**14**	**244**

Table 5: Number of Jurors within each Sentencing Guideline

Definition of Capital Homicide	**Sentencing Guidelines**			
	Threshold	Balancing	Directed	**Total**
Narrow	38	189	44	**271**
Traditional	260	387	0	**647**
Total	**298**	**576**	**44**	**918**

Table 6: Jurors' Recall about Trial

		Very Well (1)		Fairly Well (2)		Not Well (3)		Not At All (4)	
	N	**f**	**%**	**f**	**%**	**f**	**%**	**f**	**%**
Jury Selection	1051	733	69.7	288	27.4	29	2.8	1	0.1
Guilt Evidence	1040	622	59.8	391	37.6	26	2.5	1	0.1
Guilt Deliberations	1026	685	66.8	325	31.7	14	1.4	2	0.2
Punishment Evidence	1043	600	57.5	275	36.0	63	6.0	5	0.5
Punishment Deliberations	1042	739	70.9	277	26.6	24	2.3	2	0.2

Table 7: Descriptive Statistics for Group Climate Variables

How well do the following words describe the jury?					
	N	**Min**	**Max**	**Mean**	**S.D.**
Like-minded, saw things the same way…	1043	1	4	2.84	.80
Close-minded, intolerant of disagreement…	1048	1	4	3.50	.72
Too quick to make a decision, in a hurry…	1049	1	4	3.58	.72
Friendly and respectful to one another…	1051	1	4	3.70	.54
Decided on guilt and punishment at the same time…	1018	1	4	3.10	1.01
Dominated by a few strong personalities…	1046	1	4	2.98	.98
Got too emotionally involved in the case…	1035	1	4	3.08	.94
Was confused by the judge's instructions…	1048	1	4	3.30	.87
Did not follow the judge's instructions…	1046	1	4	3.37	.68
Kept making mistakes…	1046	1	4	3.82	.48
You felt like an outsider…	1046	1	4	3.84	.55
Please answer the following questions about your experience serving on a capital jury…					
	N	**Min**	**Max**	**Mean**	**S.D.**
Do you wish you had done anything differently?	1053	0	1	.87	.34
Was the experience emotionally upsetting?	1041	0	1	.39	.49
Did you have trouble sleeping?	1047	0	1	.64	.48
If asked to serve on another capital trial, would you…	1000	1	4	2.97	.95

Table 8: Descriptive Statistics for Juror Level Control Variables

	N	f	%
Gender	1063		
Male		505	47.5
Female		558	52.5
Race	1059		
White		921	87.0
Black		100	9.4
Other		38	3.6
Age	1046	$\mu = 46.02$ S.D. = 12.75	
Education	1060		
Less than High School		59	5.6
Finished High School		275	25.9
Some Technical School		80	7.5
Some College		250	23.6
College Graduate		222	20.9
Graduate/Professional School		174	16.4
Religious Preference	1055		
Baptist		170	16.1
Southern Baptist		110	10.4
Lutheran		45	4.3
Methodist		123	11.7
Presbyterian		55	5.2
Other Protestant		160	15.2
Roman Catholic		197	18.7
Jewish		15	1.4
Other Religion		68	6.4
No Preference		112	10.6
Income	1055		
Less than $10K		35	3.3
$10K - $20K		99	9.4
$20K - $30K		171	16.2
$30K - $50K		292	27.7
$50K - $75K		213	20.2
More than $75K		162	15.4
Refused to Answer		83	7.9
Jury Foreperson	1069		
Yes		121	11.3
Prior Relationships	1050		
Yes		240	22.9

Table 9: Descriptive Statistics for Aggravating Factors

Aggravating Factors[59]			
	N	**Mean**	**S.D.**
Murder committed during another felony	1033	.39	.49
Victim was a male	1029	.12	.32
Victim was respected in the community	1017	.39	.49
Victim had a loving family	1023	.62	.48
Defendant had a history of violent crime	1028	.39	.49
Defendant was a stranger in the community	1023	.15	.36
Defendant showed no remorse	1019	.65	.46
Defendant would be dangerous in the future	1028	.74	.44
Victim's family suffered severe loss or grief	1020	.69	.46
Victim's family asked for the death penalty	1009	.18	.39
Community was outraged	1010	.30	.46
Community wanted the death penalty	1000	.14	.34
Defendant did not testify on his/her own behalf	706	.54	.50

[59] All questions have a minimum response of 0 and a maximum response of 1.

Table 10: Descriptive Statistics for Mitigating Factors

Mitigating Factors[60]			
	N	**Mean**	**S.D.**
Defendant was under the influence of alcohol at the time of the crime	1029	.21	.41
Defendant was under the influence of drugs at the time of the crime	1028	.20	.40
Defendant was under the influence of extreme mental or emotional stress at the time of the crime	1025	.20	.40
Victim was a stranger in the community	1022	.07	.25
Victim was a known trouble-maker	1023	.04	.19
Victim had a criminal record	1024	.04	.19
Victim was an alcoholic	1019	.04	.19
Victim was a drug addict	1020	.05	.22
Defendant had no prior criminal record	1026	.28	.45
Defendant was mentally retarded	1027	.05	.22
Defendant was under the age of 18 when the crime was committed	1026	.05	.22
Defendant was an alcoholic	1023	.14	.35
Defendant was a drug addict	1022	.20	.40
Defendant had a history of mental illness	1025	.10	.30
Defendant had a background of extreme poverty	1024	.27	.45
Defendant had been seriously abused as a child	1020	.25	.43
Defendant had been placed in institutions but never given the opportunity to receive real help for his/her problems	1022	.20	.40
Defendant had been convicted with evidence from an accomplice who received a reduced sentence	1024	.21	.41
Defendant would be a hardworking and well behaved inmate	1024	.20	.40

[60] All questions have a minimum response of 0 and a maximum response of 1.

Table 11: Descriptive Statistics for Level of Heinousness Scale Variables

In your mind, how well do the following words describe the killing?					
	N	**Min**	**Max**	**Mean**	**S.D.**
Bloody	1061	1	4	3.26	.97
Gory	1059	1	4	3.12	1.03
Vicious	1062	1	4	3.60	.74
Depraved	1045	1	4	3.08	1.00
Calculated	1055	1	4	3.07	1.02
Cold-Blooded	1056	1	4	3.72	.61
Senseless	1053	1	4	3.85	.44
Repulsive	1055	1	4	3.60	.73
The work of a “mad-man”	1050	1	4	2.49	1.14
It made you feel sick to think about it	1060	1	4	3.19	1.00
The victim(s) was/were made to suffer before death	1039	1	4	2.82	1.21
The body(ies) was/were maimed or mangled after death	1038	1	4	1.85	1.17

Table 12: Descriptive Statistics for Defendant Demeanor Scale Variables

How did the defendant appear to you during the trial?[61]			
	N	**Mean**	**S.D.**
Bored (i.e., indifferent, remote)	1053	.48	.50
Sorry for what s/he had done	1033	.21	.41
Sincere (i.e. honest)	956	.28	.45
Self-Confident	956	.28	.45
Bitter (i.e. resentful)	1029	.79	.41

[61] All questions have a minimum response of 0 and a maximum response of 1.

Table 13: Descriptive Statistics for Trial Race Variables

	N	f	%
Defendant Race	244		
White		142	58.2
Black		102	41.8
Victim Race	244		
White		196	80.3
Black		48	19.7

Table 14: Race Dyads: Victim and Defendant

	Victim Race		
Defendant Race	Black	White	**Total**
Black	43 (17.6%)	59 (24.2%)	**142**
White	5 (2%)	137 (56.1%)	**102**
Total	**48**	**196**	**244**

Table 15: Race Dyads: Juror and Victim

	Victim Race		
Juror Race	Black	White	**Total**
Black	20 (2.2%)	70 (7.6%)	**90**
White	155 (16.9%)	673 (73.3%)	**828**
Total	**175**	**743**	**918**

Table 16: Race Dyads: Juror and Defendant

	Defendant Race		
Juror Race	Black	White	**Total**
Black	49 (5.3%)	41 (4.5%)	**90**
White	323 (35.2%)	505 (55.0%)	**828**
Total	**372**	**546**	**918**

Table 17: Number of Black Jurors per Trial

Number of Black Jurors	f	%
0	65	26.6
1	48	19.7
2	49	20.1
3	31	12.7
4	18	7.4
5	6	6.6
6	8	3.3
7	6	2.5
8	1	.4
9	2	.8
Total	**244**	**100.0**

Table 18: Number of Jurors per State

State	f	%
Alabama	44	4.8
California	122	13.3
Florida	107	11.7
Georgia	58	6.3
Indiana	72	7.8
Kentucky	95	10.3
Louisiana	23	2.5
Missouri	52	5.7
North Carolina	71	7.7
Pennsylvania	47	5.1
South Carolina	107	11.7
Tennessee	38	4.1
Texas	44	4.8
Virginia	38	4.1
Total	**918**	**100**

Table 19: Descriptive Statistics for Scale Variables

Variable	Mean	S.D.	Minimum	Maximum
Perception of Group Climate	3.44	.40	1.8	4.0
Perception of Aggravation	.40	.18	0	.92
Perception of Mitigation	.14	.12	0	.68
Perception of Level of Heinousness	3.10	.61	.03	4
Perception of Defendant Demeanor	.42	.30	0	1
Percent Black	14.27	15.04	0	75.0
Percent Male	48.31	15.37	0	91.67

Table 20: Loadings for Principal Components Analysis

Predictors	Component 1
Likeminded, saw things the same way	**.487**
Closed-minded, intolerant of disagreement	**.606**
Too quick to made a decision, in a hurry	**.586**
Friendly and respectful to one another	**.527**
Dominated by a few strong personalities	**.579**
Got too emotionally involved in the case	**.502**
Was confused by the judge's instructions	**.495**
Did not follow the judge's instructions	**.452**
Kept making mistakes	**.612**
You felt like an outsider	**.559**
Eigenvalues	2.948

Table 21: Ordinary Least Squares Regression on Perception of Group Climate – Robust Standard Errors (N=918)

	Model with Individual Characteristics	**Model with Trial Characteristics**	**Model with Trial Interactions**
Independent Variable	β (*S.E.)*	β (*S.E.)*	β (*S.E.)*
Black Juror	-.078 (.065)	-----	-----
Female Juror	-.07 (.029)	-----	-----
Age	.003 (.001)***	-----	-----
Education	-.010 (.008)	-----	-----
Baptist	.080 (.036)*	-----	-----
Southern Baptist	.011 (.045)	-----	-----
Jewish	-.277 (.115)*	-----	-----
Less than 10K	-.026 (.069)	-----	-----
10K - 20K	.015 (.046)	-----	-----
20K - 30K	-.069 (.039)	-----	-----
50K - 75K	-.023 (.040)	-----	-----
More than 75K	-.019 (.046)	-----	-----
No response for Income	-.032 (.044)	-----	-----
Prior Relationships	.043 (.036)	-----	-----
Served as Foreperson	.029 (.038)	-----	-----
Perception of Aggravation	-.054 (.071)	-----	-----
Perception of Mitigation	.524 (.158)***	-----	-----
Perception of Level of Heinousness	.037 (.022)	-----	-----
Perception of Defendant Demeanor	-.031 (.048)	-----	-----
Black Defendant	-----	-.050 (.036)	.007 (.099)
White Victim	-----	.029 (.050)	.076 (.091)
Female Victim	-----	.033 (.029)	.032 (.029)
Number of Persons Killed	-----	-.044 (.029)	-.046 (.029)
Black Defendant/White Victim	-----	-----	-.037 (.107)
Black Juror/Black Victim	-----	-----	.136 (.141)
Black Juror/Black Defendant	-----	-----	-.191 (.099)*
Percent Black	-----	-----	-----
Percent Male	-----	-----	-----
Number of Jurors in Sample	-----	-----	-----
Constant	3.347 (.105)***	3.478 (.068)***	3.435 (.098)***
Model Summary			
R^2	.084	.015	.022

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

Table 21 (Page 2): Ordinary Least Squares Regression on Perception of Group Climate – Robust Standard Errors (N = 918)

	Model with Jury Characteristics	**Full Model**
Independent Variable	B (*S.E.)*	β (*S.E.)*
Black Juror	-----	-.020 (.080)
Female Juror	-----	-.064 (.028)*
Age	-----	.003 (.001)***
Education	-----	-.009 (.008)
Baptist	-----	.064 (.037)
Southern Baptist	-----	-.002 (.046)
Jewish	-----	-.274 (.112)*
Less than 10K	-----	-.013 (.070)
10K - 20K	-----	.020 (.047)
20K - 30K	-----	-.062 (.040)
50K - 75K	-----	-.023 (.040)
More than 75K	-----	-.016 (.045)
No response for Income	-----	-.024 (.044)
Prior Relationships	-----	.035 (.036)
Served as Foreperson	-----	.032 (.038)
Perception of Aggravation	-----	-.050 (.075)
Perception of Mitigation	-----	-.478 (.158)**
Perception of Level of Heinousness	-----	.032 (.022)
Perception of Defendant Demeanor	-----	-.038 (.048)
Black Defendant	-----	.009 (.092)
White Victim	-----	.062 (.083)
Female Victim	-----	.024 (.026)
Number of Persons Killed	-----	-.028 (.028)
Black Defendant/White Victim	-----	-.025 .099)
Black Juror/Black Victim	-----	.164 (.145)
Black Juror/Black Defendant	-----	-.175 (.128)
Percent Black	-.002 (.010)	.000 (.001)
Percent Male	.001 (.001)	.002 (.001)*
Number of Jurors in Sample	-.037 (.017)*	-.031 (.018)
Constant	3.553 (.094)***	3.365 (.159)***
Model Summary		
R^2	.013	.105

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

Table 22: HLM Unconditional Models of Perception of Group Climate

		Group Climate		
Fixed Effects	**β**	**S.E.**	**T-Ratio**	**df**
Intercept	3.44	.016	211.14	243
Random Effects	**Variance**	**S.D.**	**χ^2**	**df**
Level 2	.03	.174	462.02***	243

*$p < .05$, **$p < .01$, ***$p < .001$

Table 23: Hierarchical Models of Perception of Group Climate – Slopes and Intercepts as Outcomes Model

			Level 1: Fixed Effects	
Independent Variable			β (*S.E.)*	
Constant			3.438 (.016)***	
Level 1 Variables				
Black Juror			-.070 (.062)	
Female Juror			-.054 (.031)	
Age			.002 (.001)*	
Education			-.006 (.010)	
Baptist			.065 (.040)	
Southern Baptist			.032 (.047)	
Jewish			-.286 (.108)**	
Less than 10K			-.042 (.069)	
10K – 20K			.054 (.057)	
20K – 30K			-.031 (.039)	
50K – 75K			.015 (.040)	
More than 75K			-.016 (.051)	
No response for Income			-.021 (.049)	
Prior Relationships			.001 (.040)	
Served as Foreperson			.045 (.040)	
Aggravating Circumstances			-.125 (.111)	
Mitigating Circumstances			-.394 (.184)*	
Level of Heinousness			.047 (.024)*	
Defendant Demeanor			.008 (.062)	
Level 2 Variables				
Average Perception of Aggravation			-.046 (.113)	
Average Perception of Mitigation			-.0688 (.221)**	
Average Level of Heinousness			.043 (.046)	
Average Defendant Demeanor			-.070 (.082)	
Black Defendant			-.050 (.038)	
White Victim			.008 (.053)	
Female Victim			.026 (.030)	
Number of Persons Killed			-.018 (.030)	
Average Percent Black			-.001 (.002)	
Average Percent Male			.001 (.001)	
Random Effects	**Variance**	**S.D.**	**χ^2**	**df**
Level 2	.03	.163	421.57***	233

*$p < .05$, **$p < .01$, ***$p < .001$

Table 24: Logistic Regression on Death Sentence (N = 244)

	Model 1: Trial Level Characteristics				**Model 2: Jury Level Characteristics**			
	N = 244				N = 244			
Independent Variables	*β*	*S.E.*	*Wald*	*Odds Ratio*	*β*	*S.E.*	*Wald*	*Odds Ratio*
Constant	0.294	1.637	0.032	1.341	-8.811***	2.343	14.14	0.000
Trial Level Characteristics								
Black Defendant	-0.367	1.236	0.088	0.693				
White Victim	-1.039	1.194	0.757	0.354				
Female Victim	0.176	0.317	0.307	1.192				
Black Defendant/White Victim	0.381	1.297	0.086	1.464				
Number of Persons Killed	0.446	0.242	3.388	1.562				
Average Aggravating Factors	1.876	1.155	2.637	6.527				
Average Mitigating Factors	-4.476*	1.764	6.442	0.011				
Average Level of Heinousness	0.323	0.435	0.551	1.381				
Average Defendant Demeanor	-4.068***	0.845	23.171	0.017				
Jury Level Characteristics								
Average Group Climate					2.835***	0.616	21.178	17.031
Percent Black of Jury					-0.014	0.011	1.777	0.986
Percent Male of Jury					0.002	0.010	0.050	1.002
Number of Jurors in Sample					-0.152	0.172	0.778	0.859
Nagelkerke R^2	0.310				0.162			

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

Table 24 (Page 2): Logistic Regression on Death Sentence (N = 244)

	Model 3: Full Model			
	N = 244			
Independent Variables	*β*	*S.E.*	*Wald*	*Odds Ratio*
Constant	-8.413**	3.166	7.062	0.000
Trial Level Characteristics				
Black Defendant	-0.259	1.256	0.043	0.771
White Victim	-0.815	1.189	0.470	0.771
Female Victim	0.246	0.337	0.534	1.279
Black Defendant/White Victim	0.040	1.315	0.001	1.041
Number of Persons Killed	0.637*	0.279	5.226	1.891
Average Aggravating Factors	2.308	1.220	3.577	10.057
Average Mitigating Factors	-3.116	1.886	2.729	0.044
Average Level of Heinousness	0.101	0.466	0.047	1.106
Average Defendant Demeanor	-4.265***	0.909	22.028	0.014
Jury Level Characteristics				
Average Group Climate	2.886***	0.726	15.815	17.915
Percent Black of Jury	-0.006	0.013	0.241	0.994
Percent Male of Jury	0.006	0.012	0.279	1.006
Number of Jurors in Sample	-0.275	0.197	1.956	0.759
Nagelkerke R^2	0.404			

*$p < .05$, **$p < .01$, ***$p < .001$

Figures

Figure 1: Concept Map A

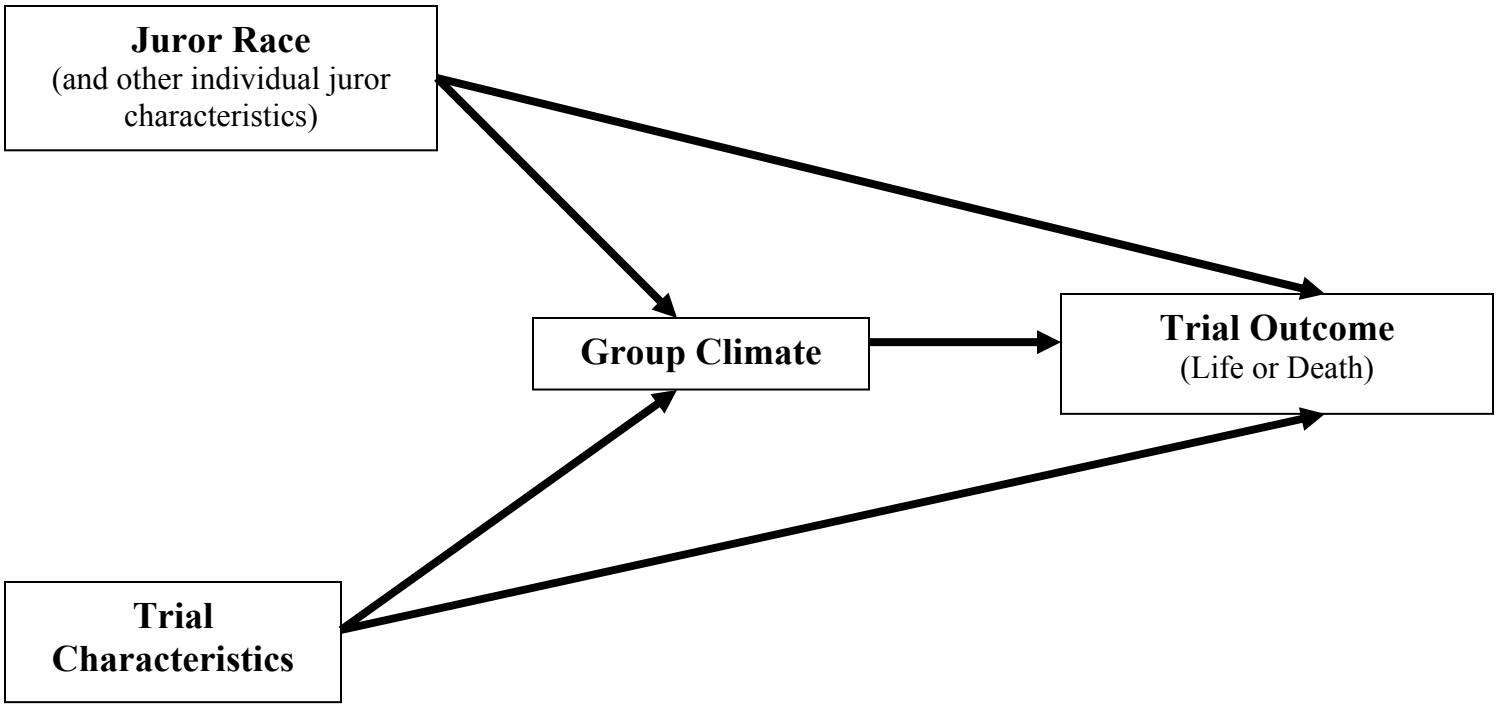


Figure 2: Concept Map B

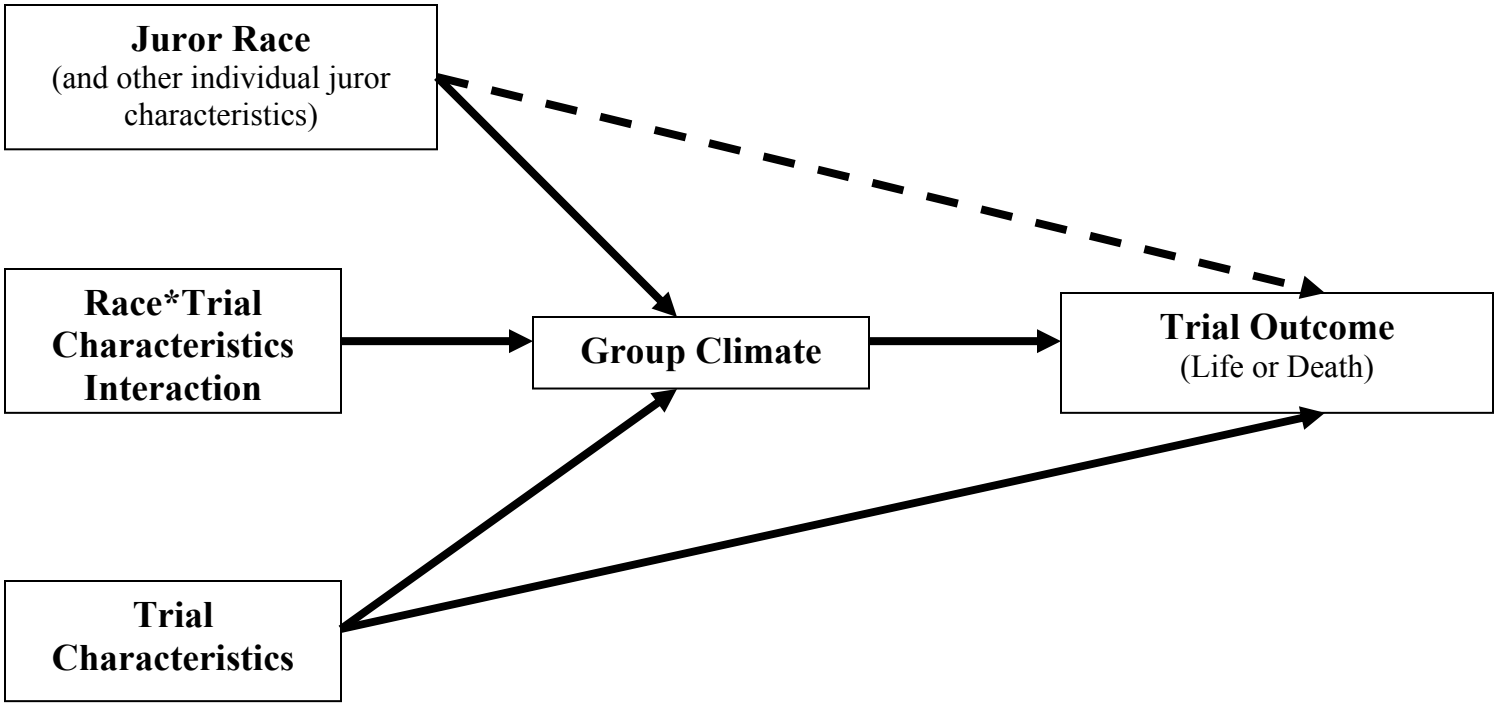


Figure 3: Individual Perception of Group Climate Distribution

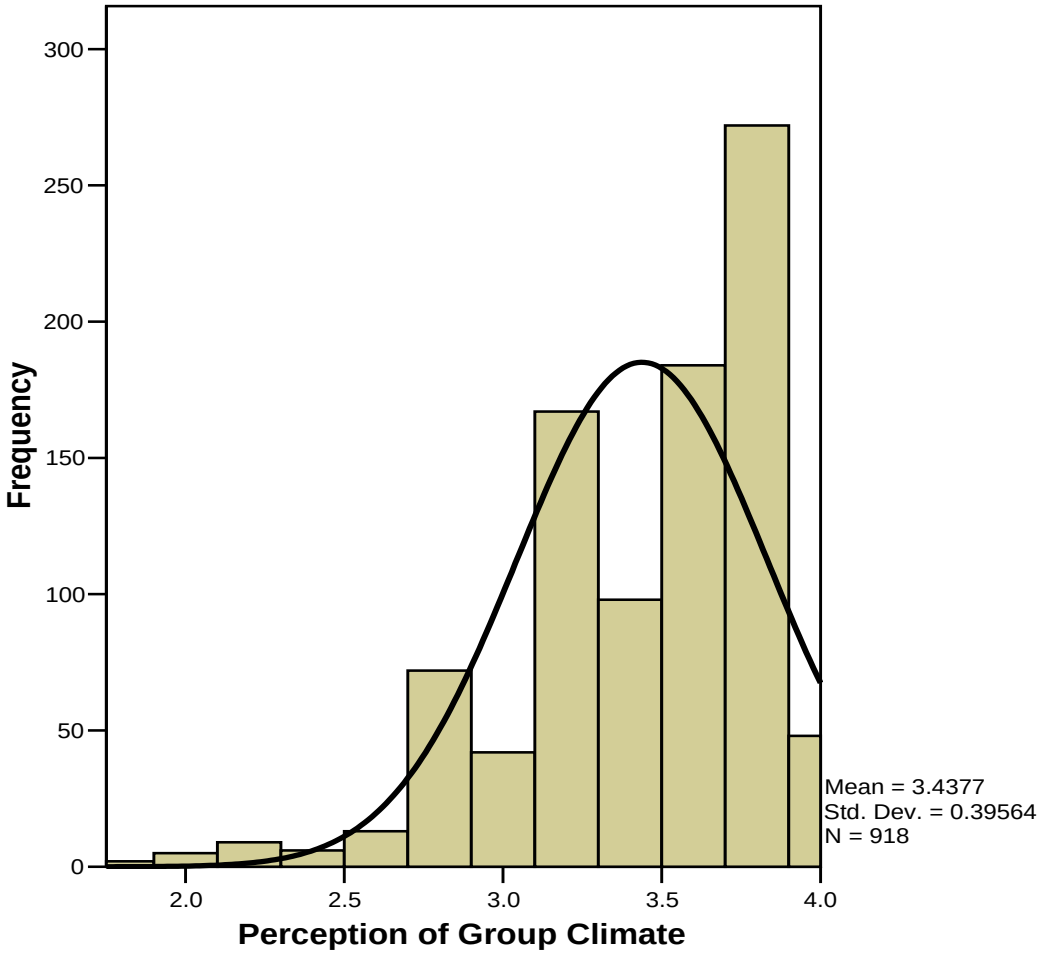
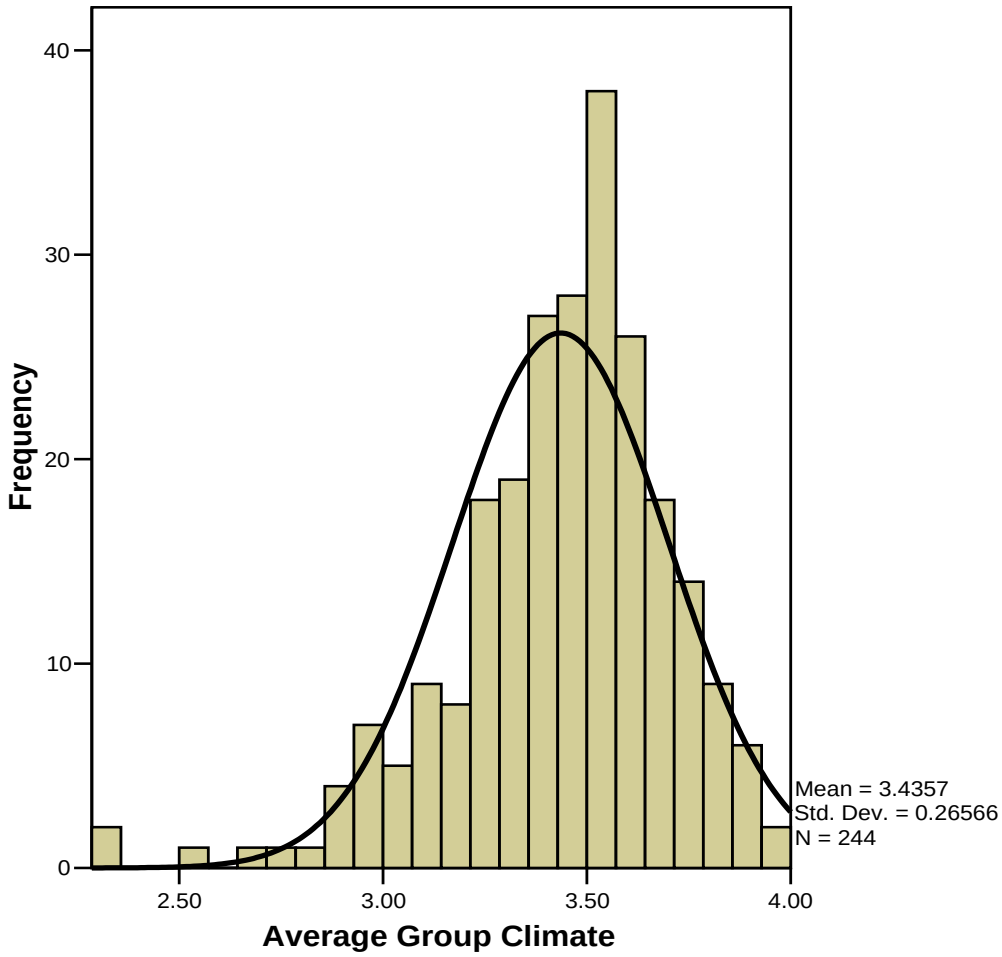


Figure 4: Average Jury Perception of Group Climate Distribution



Appendices

Appendix A: The Capital Jury Project Interview Instrument – Phase I

JUROR INTERVIEW INSTRUMENT

National Study of Juror Decision Making in Capital Cases

Central Office: Justice Research Center
College of Criminal Justice
Northeastern University
Boston, Massachusetts
02115

CONTENTS

I. FACE SHEET

1.Defendant's name: _____/_____
(last) (first)

2.Trial dates: ___/___/____ (jury selection began)

___/___/____ (jury's sentencing verdict)
(mo)(dy)(yr)

location: _____/_____/_____
(town/city) (county) (state)

sentence: ___ death sentence
___ prison term of _____

3.Juror's name: _____/_____
(last) (first)

address: _____

_____/_____/_____
(city/town) (state) (zip)

phone: _____/_____/_____
(home) (work) (other)

4.Interview date: _____/_____/_____
(month) (day) (year)

place: _____

_____

5.Interviewer's name: _____/_____
(last) (first)

INTERVIEW STARTING TIME: _____:_____/_____
(hr) (min) (am/pm)

II. THE CASE

THE GROUND RULES ARE THAT YOU SHOULD INTERRUPT AS WE GO ALONG TO MAKE THINGS CLEAR AND TO TELL ME WHAT YOU THINK IS IMPORTANT. WE ARE HERE TO LEARN FROM YOUR EXPERIENCE, SO DO NOT HESITATE TO BRING UP ANYTHING YOU THINK WILL HELP US UNDERSTAND WHAT IT WAS LIKE FOR YOU AS A JUROR ON THIS CASE.

I'D LIKE TO BEGIN WITH SOME VERY GENERAL QUESTIONS ABOUT THE (THE DEFENDANT'S) _____'S CASE.

1.Did this case attract much attention in your community?

___ a great deal
___ a fair amount
___ not very much
___ none at all

2.Did any of your friends or neighbors come to the trial?

___ many did
___ some did
___ a few did
___ none did

II.A THE CRIME

1. Now, I'd like you to tell me about the crime. In your own words, give me the details I need to understand what happened and why.

(RECORD THE ELEMENTS OF THE RESPONDENT'S NARRATIVE IN SEQUENCE AS S/HE RELATES THEM. THE ELEMENTS COULD INCLUDE FACTS OR CIRCUMSTANCES OF THE CRIME, REASONS WHY THINGS HAPPENED, CHARACTER OR MOTIVES OF THE DEFENDANT AND/OR VICTIM(S), ETC.)

Element #1

_____
_____
_____
_____
____

Element #2

Element #3

Element #4

Element #5

Element #6

Element #7

Element #8

Element #9

_____
_____
__
_____
_

Element #10

_____
_____
_____
__

2.In your mind, how well do the following words describe the killing?

1 very well **2** fairly well **3** not so well **4** not at all

___ bloody
___ gory
___ vicious
___ depraved
___ calculated
___ cold blooded
___ senseless
___ repulsive
___ the work of a "mad man"
___ it made you feel sick to think about it
___ the victim(s) was/were made to suffer before death
___ the body(ies) was/were maimed or mangled after death
___ other, specify _____
_____

3.Is there anything about this case that sticks in your mind, or that you keep thinking about?

4.Now let me make sure I have some basic facts straight.

a. As I understand it, there was/were . . .

#_____ person(s) killed
#_____ person(s) injured

#_____ person(s) responsible for the killing

b. Do you remember the victim's(s') name(s)?

V1 _____
V2 _____
V3 _____

(IF MORE THAN ONE,) which one did you find most memorable or think most about?

(INDICATE BY CIRCLING V1, V2, OR V3 ABOVE)

c. I'd like some facts about the defendant(s) and victim(s). When you're not sure, just give me your best guess. I'll note that you're not sure.

(USE "_" LETTERS TO INDICATE RESPONSES; ADD "?" MARK TO INDICATE "NOT SURE"; MAKE ADDITIONAL COLUMNS FOR MORE THAN THREE DEFENDANTS OR VICTIMS)

	Defendant(s)			Victim(s)		
	D1	D2	D3	V1	V2	V3
MALE/FEMALE	_____	___	___	___	___	___
WHITE/BLACK/ HISPANIC/OTHER	_____	___	___	___	___	___
Age (# YRS)	_____	___	___	___	___	___
Education (# YRS)	_____	___	___	___	___	___
MARRIED/SINGLE	___	___	___	___	___	___
Children (#)	_____	___	___	___	___	___

Occupation (WHEN LAST EMPLOYED)	D1	_____	V1	_____
	D2	_____	V2	_____
	D3	_____	V3	_____

5. Were the defendant(s) and victim(s) related in any of the following ways?

(IF MORE THAN ONE DEFENDANT OR VICTIM, INDICATE PAIR SPECIFIC RELATIONSHIPS, E.G. D1-V3 SPOUSE)

1 yes **2** no **3** not sure (FOR D1-V1)

___ spouse, ex-spouse
___ family relations
___ neighbors
___ friends
___ acquaintances
___ strangers
___ lovers
___ co-workers
___ employer/employee
___ tenant/landlord
___ other relationship, specify_____

6.How Often did the defense and prosecuting attorneys most often refer to the defendant in court?

Defense attorney(s) most often used ...

Prosecuting attorney(s) most often used ...

___ ___ last name preceded by Mr./Mrs./Ms.
___ ___ last name only (no formal address)
___ ___ first name
___ ___ first and last name
___ ___ nickname, (IF SO, SPECIFY) _____
___ ___ the impersonal phrase "the defendant"

7.Which of these names for the defendant should I use in the following questions I have about him/her?

_____

II.B THE DEFENDANT(S)

NOW, I'D LIKE TO GET YOUR PERSONAL IMPRESSIONS OF (THE DEFENDANT) _____ . (THE ONE NAMED ON THE FACE SHEET IN Q.#I.1, IF MORE THAN ONE)

1. In your mind, how well do the following words describe (DEF) _____

1 very well **2** fairly well **3** not well **4** not at all

___ from a poor or deprived background
___ a "loner" without many friends
___ doesn't know his/her place in society
___ doesn't know right from wrong
___ has gotten a raw deal in life
___ vicious like a mad animal
___ mentally defective or retarded
___ emotionally unstable or disturbed
___ dangerous to other people
___ went crazy when s/he committed the crime
___ sorry for what s/he did
___ severely abused as a child
___ raised in a warm loving home
___ someone who loved his/her family
___ lacks basic human instincts
___ drug addict
___ occasional drug abuser
___ alcoholic
___ occasional alcohol abuser
___ had a history of violence and crime
___ a good person who got off on the wrong foot
___ other, specify

_____

_____

2. Did (DEF) _____ remind you of someone or make you think about anyone?

___ no
___ yes; (IF SO,) who? Describe the person(s).

3. What did (DEF) _____ usually wear in court?

___ a business suit, coat and tie
___ casual civilian clothes
___ prison clothing or a uniform
___ can't remember

4. How did (DEF) _____ appear to you during the trial?

1 yes **2** no

___ uncomfortable or ill at ease
___ bored (i.e., indifferent, remote)
___ spruced up to make a good appearance
___ frightening (i.e., threatening, defiant)
___ sorry for what s/he had done
___ sincere, (i.e., honest)
___ self confident
___ bitter (i.e., resentful)
___ other, specify _____
_____

5. How did the defense attorney(s) treat (DEF) _____ ?

___ acted like (DEF) _____ wasn't even there
___ occasionally spoke to (DEF) _____, but mostly ignored him or her
___ frequently talked to (DEF) _____, but didn't seem to involve him or her in their decisions
___ seemed to have a close working relationship with (DEF) _____ as part of the defense team

6. Did (DEF) _____'s mood or attitude change after the guilty verdict was handed down and the focus of the trial shifted to what the punishment should be?

___ no
___ yes; (IF SO,) how?

7. Did you have any of the following thoughts or feelings about (DEF) _____?

1 yes **2** no

___ found (DEF) _____ frightening to be near
___ felt anger or rage toward (DEF) _____
___ felt pity or sympathy for (DEF) _____

___ found (DEF) _____ likable as a person
___ was disgusted or repulsed by (DEF) _____
___ couldn't stand to look at (DEF) _____
___ imagined being like (DEF) _____
___ imagined yourself in (DEF) _____'s situation
___ other reactions, specify _____
_____

8. Did any of (DEF) _____'s family members come to the trial?

___ no, I am sure they did not
___ no, I don't think so
___ yes, I think so
___ yes, I am sure they did

(IF YES,) indicate which family member(s) you think/are sure were at the trial:

(IF YES,) did any member of (DEF) _____'s family remind you of someone or make you think about anyone?

___ no
___ yes; (IF SO,) who? Describe the person(s).

9. Whether or not they came to the trial, did you have any of the following thoughts or feelings about (DEF) _____'s family?

___
1 yes **2** no **3** (NOT SURE, NO ANSWER)

___ imagined yourself in their situation
___ felt anger or rage toward (DEF) _____'s family
___ felt contempt or hatred for (DEF) _____'s family
___ felt sympathy or pity for (DEF) _____'s family
___ they seemed very different from your own family
___ wished you knew (DEF) _____'s family personally
___ imagined yourself as a member of (DEF) _____'s family
___ other reactions, specify _____

II.C THE VICTIM(S)

NEXT, I'D LIKE TO GET YOUR PERSONAL IMPRESSIONS OF (THE VICTIM) _____. (IF MORE THAN ONE, THE VICTIM "YOU THOUGHT MOST ABOUT" OR FOUND MOST "MEMORABLE" FROM Q.#II.A.4.)

1.In your mind, how well do the following words describe (THE VICTIM) _____?

1 very well **2** fairly well **3** not well **4** not at all

___ admired or respected in the community
___ from a poor or deprived background
___ raised in a warm loving home
___ someone who loved his/her own family
___ a "loner" without many friends
___ had a wonderful future ahead
___ was an innocent or helpless victim
___ had an unstable or disturbed personality
___ had a problem with drug or alcohol
___ was too careless or reckless
___ other, specify

_____

_____

2. Did (VIC) _____ remind you of someone or make you think about anyone?

___ no
___ yes; (IF SO,) who? Describe the person(s).

3. Did you have any of the following thoughts or feelings about (VIC) _____?

1 yes **2** no

___ admired or respected (VIC) _____
___ imagined yourself in (VIC) _____'s situation
___ imagined yourself as a friend of (VIC) _____
___ imagined (VIC) _____ as a member of your own family
___ felt grief or pity for (VIC) _____

___ were disgusted or repulsed by (VIC) _____
___ wished (VIC) _____ had been more careful
___ other reactions, specify _____

4. Did any of (VIC) _____'s family members come to the trial?

___ no, I am sure they did not
___ no, I don't think so
___ yes, I think so
___ yes, I am sure

(IF YES,)indicate which family member(s) you think/are sure were at the trial:

(IF YES,)did any member of (VIC) _____'s family remind you of someone or make you think about anyone?

___ no
___ yes; (IF SO,) who? Describe the person(s).

5.Whether or not they came to the trial, did you have any of the following thoughts or feelings about (VIC) _____'s family?

1 yes **2** no **3** (NOT SURE, NO ANSWER)

___ imagined yourself in their situation
___ felt their grief and sense of loss
___ felt distant or remote from them
___ felt they were partly to blame for what happened
___ they seemed very different from your own family
___ wished you knew (VIC) _____'s family personally
___ imagined yourself as a member of (VIC) _____'s family
___ other reactions, specify _____

III. THE TRIAL

LET'S TURN NOW TO THE TRIAL, AND TALK ABOUT YOUR EXPERIENCE AND IMPRESSIONS AS A JUROR. RECALL THAT YOU FIRST HEARD EVIDENCE ABOUT (DEF) _____'S GUILT AND DECIDED WHETHER S/HE WAS GUILTY OR NOT GUILTY; YOU THEN HEARD EVIDENCE ABOUT WHAT THE PUNISHMENT SHOULD BE AND DECIDED WHETHER OR NOT TO GIVE (DEF) _____ THE DEATH PENALTY.

1.How well do you remember each of the following stages of the trial?

1 very well **2** fairly well **3** not well **4** not at all

___ the selection of the jury
___ hearing evidence about (DEF) _____'s guilt
___ jury deliberations about (DEF) _____'s guilt
___ hearing evidence about (DEF) _____'s punishment
___ jury deliberations about (DEF) _____'s punishment

2. Did any part of the trial seem too long to you or make you impatient?

1 yes **2** no

___ the selection of the jury
___ hearing evidence about (DEF) _____'s guilt
___ jury deliberations about (DEF) _____'s guilt
___ hearing evidence about (DEF) _____'s punishment
___ jury deliberations about (DEF) _____'s punishment

3.When the trial began, did you know that the jury would decide what the punishment should be, if it found the defendant guilty of capital murder, that is murder for which the death penalty could be imposed?

___ no
___ yes
___ not sure

III.A GUILT TRIAL

LET'S NOW TURN TO THE FIRST PART OF THE TRIAL, WHERE YOU HEARD EVIDENCE ABOUT WHETHER OR NOT (DEF) _____ WAS GUILTY.

1.How many days in court did it take to hear all the evidence about whether or not (DEF) _____ was guilty?

____# of (FULL AND PARTIAL) days in court

2. To the best of your memory, roughly how many people testified or presented evidence about whether (DEF) _____ was guilty or not guilty? About how many . . .

_____# testified for the prosecution

_____# testified for the defense

3.What kinds of evidence did the prosecutor use to link (DEF) _____ to the crime?

1 yes **2** no **3** not sure

___ formal confession to authorities by (DEF) _____
___ testimony of an accomplice or co-defendant
___ fingerprint identification
___ other scientific evidence, such as blood or hair analysis, ballistics tests etc.
___ testimony of a medical or forensic expert
___ photographs of the crime scene
___ photographs of the victim's body showing the manner of the killing
___ DNA typing

4. Did any witness other than the police or an accomplice testify that he or she . . .

1 yes **2** no **3** not sure

___ actually saw (DEF) _____ commit the crime
___ heard (DEF) _____ admit the crime
___ could place (DEF) _____ at the time and location of the crime
___ knew of a motive (DEF) _____ had for the crime

5.What was (DEF) _____'s main motive for the murder, according to the prosecutor?

6.What were the main reasons why (DEF) _____ should be found not guilty, according to the defense?

1 yes **2** no **3** (NOT SURE, NO ANSWER)

___ (DEF) _____ had no role whatsoever in the killing
___ (DEF) _____ had only a minor role in the killing
___ (DEF) _____ killed in self defense
___ (DEF) _____ killed in defense of others
___ (DEF) _____ was provoked by the victim or others
___ it was an unintentional or impulsive act
___ it was an accident or mistake
___ (DEF) _____ was mentally ill and could not fully appreciate the wrongfulness of his/her actions
___ (DEF) _____ was insane
___ (DEF) _____ simply was not proved guilty beyond a reasonable doubt
___ other, specify _____

7.Did you find the testimony of any of the witnesses for the prosecution or the defense hard to believe?

___ no
___ yes; (IF SO,) which witnesses, what testimony, and why?

8.Did (DEF) ____ testify at the guilt stage of the trial?

___ no; (IF NO,) what impression did this make on you?
___ yes; (IF SO,) what impression did s/he make on you?

9.What do you think was the strongest evidence of (DEF) _____'s guilt?

10.After you heard the judge's instructions to the jury for deciding about (DEF) _____'s guilt, but before you began deliberating with the other jurors, did you then think (DEF) _____ was . . .

___ guilty of capital murder; that is, murder for which the death penalty could be imposed
___ guilty, but not of capital murder
___ not guilty
___ undecided

(IF GUILTY OF CAPITAL OR NONCAPITAL MURDER,)
a. How strongly did you think so?
___ absolutely convinced
___ pretty sure
___ not too sure
b. When did you first think so?

III.B GUILT DELIBERATIONS

LET'S NOW TALK ABOUT HOW THE JURY DECIDED WHETHER (DEF) _____ WAS GUILTY OR NOT GUILTY.

1. About how long did it take the jury to reach its verdict about (DEF) _____'s guilt?

____# of days; ____# of hours; ____# of minutes

2.How much did the discussion among the jurors focus on the following topics?

1 great deal **2** fair amount **3** not much **4** not at all

___ (DEF) _____'s background or upbringing
___ (DEF) _____'s history of crime and violence
___ (DEF) _____'s motives or reasons for the crime
___ (DEF) _____'s role or responsibility in the crime
___ (DEF) _____'s mental condition or sanity
___ alcohol as a factor in the crime
___ drugs as a factor in the crime
___ (DEF) _____'s dangerousness if ever back in society
___ (DEF) _____'s dangerousness to others in prison
___ pain and suffering of the victim
___ loss and grief of the victim's family
___ brutal or vile manner of the killing
___ strengths or weaknesses of the evidence of guilt
___ believability of certain witnesses
___ (DEF) _____'s appearance or manner in court
___ the ways the attorneys presented their cases
___ jurors' feelings for the family of the victim
___ jurors' feelings toward (DEF) _____
___ jurors' feelings about the right punishment
___ the judge's instructions to the jury
___ the meaning of "proof beyond a reasonable doubt"
___ other topics, specify _____
_____

3. Among the topics you did discuss, what were the main areas or points on which jurors disagreed?

4. Among the topics you did discuss, what was the single most important factor in the jury's decision about (DEF) _____'s guilt?

5.Was there any discussion of whether (DEF) _____ was guilty of murder, but not of capital murder?

___ no
___ yes; (IF SO,) what were the main points?

6. In deciding guilt, did jurors talk about whether or not (DEF) _____ would, or should, get the death penalty?

___ no
___ yes; (IF SO,) what did they say?

61.In deciding guilt, was there any discussion of what the punishment might be if the defendant was found guilty of less than capital murder

___ no
___yes (if so,) what did most jurors think the punishment would be?

62. what did you think the defendant's punishment would be if s/he was found guilty of less than capital murder?

63.Was there any discussion among the jurors about the meaning of "proof beyond a reasonable doubt?"

___ no
___ Yes (if so,) what did the jurors think it meant?

64.During your guilt deliberations, did the jury stop to ask the judge any questions?

___ no
___yes (if so,) what was/were the question(s), what was the judge's response, and what was the jury's reaction?

7. Were any jurors reluctant to go along with the majority on (DEF) _____'s guilt?

___ no
___ yes; (IF SO,) were you at all reluctant? ___ yes
___ no

8. About how much time passed before the first jury vote was taken on whether (DEF) _____ was guilty of murder?

___ less than 10 minutes
___ 10 to 20 minutes
___ 20 to 40 minutes
___ 40 to 60 minutes
___ 1 to 2 hours
___ more than 2 hours

9. When the first jury vote on the murder charge was taken, roughly how many jurors . . .

_____# voted guilty of capital murder
_____# voted guilty of a lesser crime
_____# voted not guilty
_____# were undecided
(= 12)

10. When the first jury vote was taken, how did you vote?

___ guilty of capital murder
___ guilty of a lesser crime
___ not guilty
___ undecided

(IF NOT GUILTY OF CAPITAL MURDER,) what caused you to change your vote to guilty by the final ballot?

11. Can you think of anything more we haven't talked about yet that was important in understanding the jury's guilt decision?

12. After the jury found (DEF) _____ guilty of capital murder but before you heard any evidence or testimony about what the punishment should be, did you then think (DEF) _____ should be given . . .

___ a death sentence
___ a life (OR THE ALTERNATIVE) sentence
___ undecided

(IF A DEATH OR A LIFE SENTENCE,)

a. How strongly did you think so?

___ absolutely convinced
___ pretty sure
___ not too sure

b. When did you first think so?

13. Did you believe that once you had convicted (DEF) _____ of this particular kind of murder, the law of this state made the death penalty . . .

___ the only acceptable punishment
___ the most appropriate punishment
___ just one available punishment

III.C SENTENCING TRIAL

LET'S TURN NOW TO THE SECOND PART OF THE TRIAL, WHERE YOU HAD TO DECIDE WHAT THE PUNISHMENT SHOULD BE.

1.How many days in court did it take to hear all the evidence about what (DEF) _____'s punishment should be?

____# of (FULL AND PARTIAL) days in court

2.To the best of your memory, about how many people testified or presented evidence about what (DEF) _____'s punishment should be? Roughly how many. . .

_____# testified for the prosecution

_____# testified for the defendant

3. Did the prosecution witnesses at the punishment stage of the trial include . . .

____

1 yes **2** no **3** not sure

___ the arresting or investigating police officers
___ any other law enforcement or corrections personnel

___ a medical or forensic expert
___ a psychologist or psychiatrist
___ an expert on the death penalty
___ any others involved in the crime
___ an employer, co-worker or business acquaintance of the victim(s)
___ a friend or neighbor of the victim(s)
___ a family or ex-family member of the victim(s)
(IF SO,) specify relation _____

___ others not listed; specify _____

_____

_____

4.What prosecution evidence or witness at the punishment stage of the trial was most important or influential, in your mind, and why?

5.Did any of the testimony by prosecution witnesses at the punishment stage of the trial "backfire," or actually hurt their case?

___ no
___ yes; (IF SO,) explain

6.Did the defense witnesses at the punishment stage of the trial include . . .

1 yes **2** no **3** not sure

___ a clergyman who knows (DEF) _____
___ a school teacher of (DEF) _____
___ a social worker or investigator familiar with (DEF) _____'s background and upbringing
___ a medical or forensic expert
___ a psychological or psychiatric expert
___ an expert on the death penalty
___ any others involved in the crime
___ an employer, co-worker or business acquaintance of (DEF) _____

___ a friend or neighbor of (DEF) _____
___ a family or ex-family member of (DEF) _____
(IF SO,) specify relation _____

___ _____
___ others not listed; (IF SO,) please specify _____

_____

7.What defense evidence or witness at the punishment stage of the trial was most important or influential, in your mind, and why?

8.Did any of the testimony by defense witnesses at the punishment stage of the trial "backfire," or actually hurt their case?

___ no
___ yes; (IF SO,) explain

9. How much did the prosecutor's evidence and arguments at the punishment stage of the trial emphasize . . .

1 great deal **2** fair amount **3** not much **4** not at all

___ the death penalty is what (DEF) _____ deserved
___ the death penalty will deter others from killing
___ the death penalty will keep (DEF) _____ from killing again
___ the character and motives of (DEF) _____
___ past crime or violence of (DEF) _____
___ drugs as a factor in this crime
___ the brutal or savage character of this crime
___ the reputation and character of the victim(s)
___ the pain and suffering of the victim(s)
___ the loss and grief of victim's(s') family(ies)
___ the punishment wanted by victim's(s') family(ies)
___ (DEF) _____'s dangerousness to others in prison
___ danger to the public if (DEF) _____ ever escaped or was released from prison

___ how (DEF) _____ or this crime compare to other criminals or crimes
___ other topics, specify_____

10.How much did the defense evidence and arguments at the punishment stage of the trial emphasize . . .

1 great deal **2** fair amount **3** not much **4** not at all

___ the death penalty is not humane
___ the death penalty is not a superior deterrent
___ (DEF) _____'s abuse or mistreatment as a child
___ the influence of mental illness on (DEF) _____
___ the influence of alcohol on (DEF) _____
___ the influence of drugs on (DEF) _____
___ how factors (DEF) _____ could not control led to the crime
___ the recklessness or provocation of the victim(s)
___ the major responsibility of others for the crime
___ the risk of mistakenly executing the wrong person
___ basic human qualities and potential of (DEF) _____
___ that (DEF) _____ was sorry or asked for mercy
___ how (DEF) _____ had changed since this crime
___ that (DEF) _____ had become a model prisoner
___ that (DEF) _____ had found religion
___ how (DEF) _____ or this crime compared to other criminals or crimes
___ other topics, specify _____

11.Did (DEF) _____ testify or make a closing statement at the punishment stage of the trial?

___ no
___ yes, as a sworn witness who could be examined and cross examined by the attorneys
___ yes, though not as a sworn witness, but only to make a closing statement to the jury

(IF NO,) what kind of impression did this make on you?
(IF YES,) what kind of impression did s/he make on you?

12. What did the prosecutor stress most as the reason why (DEF) _____ should get the death penalty?

13. What did the defense attorney stress most as the reason why (DEF) _____ should not get the death penalty?

14. What do you remember about the judge's instructions to the jury for deciding what the punishment should be?

(NOTE IF RESPONDENT USES THE TERMS "AGGRAVATING" AND/OR "MITIGATING")

15. After hearing all the evidence and the judge's instructions to the jury for deciding on the punishment, but before you began deliberating with the other jurors, did you then think (DEF) _____ should be given . . .

___ a death sentence
___ a life (OR THE ALTERNATIVE) sentence
___ undecided

(IF A DEATH OR A LIFE SENTENCE,)

a. How strongly did you think so?

___ absolutely convinced
___ pretty sure
___ not too sure

b. When did you first think so?

(PROBE FOR TIMING: PRETRIAL; JURY SELECTION; GUILT EVIDENCE, ARGUMENTS, INSTRUCTIONS, OR DELIBERATIONS; PUNISHMENT EVIDENCE)

16. After hearing all of the evidence, did you believe it proved that . . .

1 yes **2** no **3** undecided

___ (DEF) _____'s conduct was heinous, vile or depraved
___ (DEF) _____ would be dangerous in the future

17.After hearing the judge's instructions, did you believe that the law required you to impose a death sentence if the evidence proved that . . .

1 yes **2** no

___ (DEF) _____'s conduct was heinous, vile or depraved
___ (DEF) _____ would be dangerous in the future

18. From what you could tell, did you think the judge believed (DEF) _____ should be sentenced to death?

___ pretty sure the judge favored a death sentence
___ pretty sure the judge opposed a death sentence
___ think the judge favored a death sentence
___ think the judge opposed a death sentence
___ had no idea what the judge favored or opposed

III.D SENTENCING DELIBERATIONS

NOW WE'RE READY TO TALK ABOUT HOW THE JURY DECIDED WHAT THE DEFENDANT'S PUNISHMENT SHOULD BE.

1. In your own words, can you tell me what the jury did to reach its decision about (DEF) _____'s punishment? How did the jury get started; what topics did it discuss, in what order; what were the major disagreements and how were they resolved?

(RECORD THE ELEMENTS OF THE RESPONDENT'S NARRATIVE IN SEQUENCE AS S/HE RELATES THEM.)

Element #1

_____
_____
_____
_____
____

Element #2

_____
_____
_____

_____
_____

Element #3
_____
_____
_____
_____
_____

Element #4
_____
_____
_____
_____
_____

Element #5
_____
_____
_____
_____
_____

Element #6
_____
_____
_____
_____
_____

2. How much did the discussion among the jurors focus on the following topics?

1 great deal **2** fair amount **3** not much **4** not at all

___ (DEF) _____'s background or upbringing
___ (DEF) _____'s history of crime or violence
___ (DEF) _____'s role or responsibility in the crime
___ (DEF) _____'s motive for the crime
___ (DEF) _____'s planning or premeditation
___ (DEF) _____'s IQ or intelligence
___ (DEF) _____'s sorrow, remorse, or lack of it
___ (DEF) _____'s appearance or manner in court
___ alcohol as a factor in the crime
___ drugs as a factor in the crime

___ mental illness as a factor in the crime
___ insanity as a factor in the crime
___ (DEF) _____'s dangerousness to others in prison
___ (DEF) _____'s dangerousness if ever back in society
___ how likely s/he would be to get a parole or pardon
___ how long before s/he would get a parole or pardon
___ need to prevent him/her from ever killing again
___ death penalty as a deterrent to killings by others
___ death penalty as what (DEF) _____ deserved
___ reputation or character of the victim(s)
___ the victim(s)' role or responsibility in the crime
___ innocence or helplessness of the victim(s)
___ pain or suffering of the victim(s) before death
___ loss or grief of victim's(s') family(ies)
___ punishment wanted by victim's(s') family(ies)
___ the way in which the victim(s) was/were killed
___ how weak or strong the evidence of guilt was
___ how well the attorneys presented their cases
___ jurors' own attitudes about capital punishment
___ jurors' feelings for the family of the victim
___ jurors' feelings toward (DEF) _____
___ jurors' feelings toward (DEF) _____'s family
___ what religious beliefs require
___ what moral values require
___ what community feelings require
___ what the law requires
___ similarity to other crimes and other murderers
___ other, specify

_____

_____

_____

3. Among the topics you did discuss, what was the single most important factor in the jury's decision about what (DEF) _____'s punishment should be?

4. Among the topics you did discuss, what were the main areas or points on which jurors disagreed?

5. Did you have any difficulty understanding or following the judge's sentencing instructions to the jury?

___ no

___ yes; (IF SO,) explain

6.During your sentencing deliberations, did the jury stop to ask the judge . . .

1 yes **2** no

___ for further explanation of the law or clarification of the instructions to the jury
___ for an indication of what would happen if the jury could not reach a decision
___ for a review or transcript of certain testimony
___ for information on how long before (DEF) _____ could be released if not given a death sentence
___ for other information or instructions, specify ____

_____

_____

(IF SO,)what was the judge's response and what was the jury's reaction?

7.Would you say the judge's sentencing instructions to the jury . . .

1 yes **2** no

___ simplified the decision making process
___ confused the decision making process
___ helped jurors reach agreement
___ actually led to disagreement
___ simply provided a framework for the decision most jurors had already made
___ had little or no influence on the jury's decision

8.Were any jurors especially reluctant to go along with the majority on (DEF) _____'s punishment.

___ no
___ yes; (IF SO,) were you at all reluctant?

___ no
___ yes (IF SO,) what were your reasons?

9. About how much time passed before the first jury vote was taken on what sentence to impose?

___ less than 10 minutes
___ 10 to 20 minutes
___ 20 to 40 minutes
___ 40 to 60 minutes
___ 1 to 2 hours
___ more than 2 hours

10. When the first jury vote was taken, roughly how many of the jurors . . .

_____# voted for a death sentence
_____# voted for a life (OR ALTERNATIVE) sentence
_____# were undecided
(= 12)

11. As best you can remember, how many votes did the jury take on what sentence to impose?

_____# of votes

12. About how long, overall, did the jury deliberate on (DEF) _____'s punishment in order to reach its final decision?

____# of days; ____# of hours; ____# of minutes

13. Can you think of anything more we haven't talked about yet that was important in understanding the jury's punishment decision?

IV. THE RESPONDENT'S SENTENCING DECISION

NOW I WANT TO ASK HOW YOU REACHED YOUR OWN DECISION ABOUT WHAT THE PUNISHMENT SHOULD BE.

1.How important were the following considerations for you in deciding on what (DEF) _____'s punishment should be?

1 very **2** fairly **3** not very **4** not at all

___ sentences imposed for similar crimes
___ sentences imposed on similar defendants
___ the pain and suffering of the victim(s)
___ the loss and grief of the victim(s) family(ies)
___ the punishment wanted by the victim(s) family(ies)
___ your feelings about what such crimes deserve
___ the principle of an eye for an eye
___ the goal of rehabilitation
___ keeping (DEF) _____ from ever killing again
___ keeping other people from killing
___ lingering doubts about (DEF) _____'s guilt
___ the vicious or brutal manner of the killing
___ feelings of vengeance or revenge
___ desire to avoid a horrible mistake
___ desire to avoid deliberately killing someone
___ weight of aggravating and mitigating factors
___ desire to see justice done
___ desire to apply the law correctly
___ desire to see the law enforced
___ community outrage over this crime
___ punishment wanted by most members of the community
___ feelings of compassion or mercy for (DEF) _____
___ the belief that (DEF) _____ should have a chance to pay for the crime and become a law abiding citizen
___ other, specify _____

2.When you were considering the punishment, did you have any of the following thoughts about (DEF) _____'s guilt; for instance, that s/he . . .

1 yes **2** no **3** not sure

___ might be altogether innocent, a case of mistaken identity

___ definitely had planned or intended to kill the victim, but might not be the one who did so
___ definitely killed the victim, but might not have planned, intended, or wanted to do so
___ might not be one most responsible for the killing

3.When you were considering the punishment, did you believe that (DEF) _____ was truly sorry for the crime?

___ yes, sure (DEF) _____ was sorry
___ yes, think (DEF) _____ was sorry
___ not sure, (DEF) _____ acted sorry but it might have been just a show
___ no, (DEF) _____ acted sorry but it was a show
___ no, (DEF) _____ didn't even pretend to be sorry

4.How true are the following statements about the role of mercy in your decision about (DEF) _____'s punishment?

1 very true **2** fairly true **3** not very true **4** not true

___ the idea of mercy never occurred to you
___ the law required the jurors to decide about punishment without thinking about mercy
___ (DEF) _____ didn't deserve mercy because s/he didn't show any toward the victim(s)
___ If (DEF) _____ wanted mercy, s/he should have admitted his/her guilt from the very beginning
___ (DEF) _____ deserved mercy because s/he was sorry
___ (DEF) _____ deserved mercy due to mental problems
___ (DEF) _____ deserved mercy because other people wanted to see him/her have another chance
___ (DEF) _____ deserved mercy because you felt s/he would try to make up for what s/he did

5.How well do these statements reflect the thoughts or feelings you had as you considered the punishment?

1 very well **2** fairly well **3** not so well **4** not at all

___ anyone who commits such a crime must be crazy; you have to be out of your mind to do such a thing
___ saying (DEF) _____ was sorry isn't worth much after saying s/he wasn't guilty

___ drugs and alcohol aren't excuses; they make the crime worse, so the punishment should be worse

___ saying (DEF) _____ was mentally ill is just trying to play on our emotions

6. When you were considering the punishment, were you concerned that (DEF) _____ might get back into society someday, if not given the death penalty?

___ yes, greatly concerned
___ yes, somewhat concerned
___ yes, but only slightly concerned
___ no, not at all concerned

7. How long did you think someone not given the death penalty for a capital murder in this state usually spends in prison?

_____ # of years

8. How likely did you think it was that murderers sentenced to death in this state will be executed?

___ nearly all will eventually be executed
___ most will be executed
___ about half will be executed
___ less than half will be executed
___ very few will ever be executed

9. How likely did you think it was that a jury decision for the death penalty would be accepted or rejected by the trial judge?

___ the judge must accept the jury's decision; it's final
___ the judge would probably accept the jury's decision
___ the judge would probably reject the jury's decision
___ had no idea what the judge would do

10. How likely did you think it was that a death sentence in this case would be accepted or rejected by the appeals courts?

___ appeals courts accept nearly all death sentences
___ appeals courts accept most death sentences
___ appeals courts reject as many as they accept
___ appeals courts reject most death sentences

___ appeals court reject nearly all death sentences
___ had no idea what the appeals courts would do

11.Did the chances that your punishment decision might by overruled or changed make you feel . . .

1 yes **2** no **3** not sure

___ good, because you would not have the death of another human being on your conscience
___ good, because it meant that any mistakes we might have made could be corrected
___ bad, because it makes our sentencing decision less important
___ bad, because it means that (DEF) _____ might not get what s/he deserves

12.When you were considering the punishment, did you think that whether (DEF) _____ lived or died was. . .

___ strictly the jury's responsibility and no one else's
___ mostly the jury's responsibility, but the judge or appeals courts take over responsibility whenever they overrule or change the jury's decision
___ partly the jury's responsibility and partly the responsibility of the judge and appeals courts who review the jury's sentence in all cases
___ mostly the responsibility of the judge and appeals courts; we make the first decision but they make the final decision

13. Rank the following from "most" through "least" responsible for (DEF) _____'s punishment.

Give **1** for most through **5** for least responsible

___ the law that states what punishment applies
___ the judge who imposes the sentence
___ the jury that votes for the sentence
___ the individual juror since the jury's decision depends on the vote of each juror
___ (DEF) _____ because his/her conduct is what actually determined the punishment

14.When the first jury vote was taken on the punishment to be imposed, did you vote for a . . .

____ death sentence
____ life (or alternative) sentence
___ undecided

15. Was your final vote the same as your first vote?

___ yes
___ no; (IF NO,) what caused you to change your mind?

16. Was there any information you did not have about (DEF) _____ or his/her crime that you feel would have helped in making your decision about punishment?

____ no
____ yes; (IF SO,) what information?

17. What information about (DEF) _____ or the crime could have made you change your mind about what the punishment should be?

IV.A DECISION MODELS

JURORS HAVE DIFFERENT WAYS OF MAKING HARD DECISIONS ABOUT PUNISHMENT. I'M GOING TO DESCRIBE SOME OF THE WAYS JURORS GO ABOUT IT, AND ASK IF YOU USED ANY OF THESE APPROACHES.

1. Some jurors feel that the decisions about guilt and punishment go together once they understand what happened and why; other jurors feel these are separate decisions based on different considerations. Which comes closest to the approach you took?

___ made your guilt and punishment decisions together on the basis of similar considerations
___made your guilt and punishment decisions separately on the basis of different considerations
___ (CAN'T CHOOSE OR SAY THEY DID BOTH)

2. In making your punishment decision, did you compare (DEF) _____ or his/her crime to any other murderers or murder cases you knew about?

___ no, not at all
___ yes, to a minor extent; (IF SO,) . . .
___ yes, to a major extent; (IF SO,) . . .

a. What other case(s) or murderer(s) did you use as comparison(s)? _____
_____

b. How did you know or learn about the other case(s) or murderer(s)?

c. What were the similarities or differences that helped you decide on the punishment?

3. In making your punishment decision, did you use the evidence to develop your own "story" about what happened, and why, that made you feel you knew what the punishment should be?

___ no, not at all
___ yes, to a minor extent; (IF SO,) . . .
___ yes, to a major extent; (IF SO,) . . .

a. How did you develop your own story of what happened and why?

b. Were there any problems of missing evidence or evidence that didn't seem to fit into your story?

___ no
___ yes; (IF SO,) what was this evidence and how did you deal with it?

4. In making your punishment decision, did you find a specific feature or aspect of the case that made you feel you knew whether life or death should be the punishment?

___ no, not at all
___ yes, to a minor extent; (IF SO,) . . .
___ yes, to a major extent; (IF SO,) . . .

a. What factor or aspect of the case made you feel that way?

b. Why did it make you feel that way?

5. In making your punishment decision, did you "add up" the factors in favor of a death sentence and "add up" the factors against a death sentence, and then "weigh" one side against the other side?

___ no, not at all
___ yes, to a minor extent; (IF SO,) . . .
___ yes, to a major extent; (IF SO,) . . .

a.By how much did the factors on one side "outweigh" the factors on the other side?

___ greatly
___ moderately
___ slightly
___ about even

b. What were the strongest factors for and against the death penalty?

c. What were the strongest factors for and against a life (OR THE ALTERNATIVE) sentence?

6. Of the following ways jurors make such hard decisions, rank them in order of importance for your punishment decision.

Rank from **1** for most through **4** for least important

___ comparing or contrasting with other cases or murderers you knew about
___ putting together your own story of what happened and why in this case
___ adding up the factors for and against a death sentence and weighing one side against the other
___ finding one specific factor or aspect of the case that makes it clear what the punishment should be

IV.B AGGRAVATING AND MITIGATING FACTORS

SOME FACTORS ABOUT A MURDER, THE VICTIM, OR THE DEFENDANT MAKE PEOPLE FEEL A DEATH SENTENCE IS MORE OR LESS APPROPRIATE. I WANT TO ASK YOU ABOUT FACTORS THAT MIGHT HAVE INFLUENCED YOUR DECISION IN THE _____ CASE.

1. I am going to read you a list of factors that might be true or present in a murder case. For each factor on the list, I want you to tell me:

a. Was this a factor in the _____ case?

1. yes
2. no
3. not sure

b. (IF YES,) how important was this factor in your punishment decision?

1. very important in your sentencing decision
2. fairly important in your sentencing decision
3. not important in your sentencing decision

c. Did /(IF NO) Would/ this factor make you . . .

(ASK IN ALL SITUATIONS)

1. much more likely to vote for death
2. slightly more likely to vote for death
3. slightly less likely to vote for death
4. much less likely to vote for death
5. just as likely to vote for death

FIRST ARE FACTORS ABOUT THE KILLING:

__ __ __ the killing was not premeditated but was committed during another crime, such as a robbery, when the victim tried to resist

__ __ __ the killing was especially bloody or gory

__ __ __ the killing was brutal, involving torture or physical abuse

__ __ __ the killing was committed while (DEF) _____ was under the influence of alcohol

__ __ __ the killing was committed while (DEF) _____ was under the influence of drugs

__ __ __ the killing was committed while (DEF) _____ was under the influence of an extreme mental or emotional disturbance

__ __ __ (DEF) _____ made the victim suffer before death

__ __ __ (DEF) _____ maimed or mutilated the victim's body after death

a. Was this a factor in the _____ case?

1. yes, it was a factor in this case
2. no, it was not a factor in this case
3. not sure whether it was a factor in this case

b. (IF YES,) how important was this factor in your punishment decision?

1. very important in your sentencing decision
2. fairly important in your sentencing decision
3. not important in your sentencing decision

c. Did /(IF NO) Would/ this factor make you . . .

1. much more likely to vote for death
2. slightly more likely to vote for death
3. slightly less likely to vote for death
4. much less likely to vote for death
5. just as likely to vote for death

NEXT ARE FACTORS ABOUT THE VICTIM:

__ __ __ the victim was a female
__ __ __ the victim was a child
__ __ __ the victim was a respected person in the community
__ __ __ the victim was a stranger in the community
__ __ __ the victim was a known troublemaker
__ __ __ the victim had a criminal record
__ __ __ the victim was an alcoholic
__ __ __ the victim was a drug addict
__ __ __ the victim had a loving family

NEXT ARE FACTORS ABOUT THE DEFENDANT:

__ __ __ (DEF) _____ had no previous criminal record
__ __ __ (DEF) _____ had a history of violent crime
__ __ __ (DEF) _____ was mentally retarded
__ __ __ (DEF) _____ had a loving family
__ __ __ (DEF) _____ was under 18 when the crime occurred
__ __ __ (DEF) _____ was an alcoholic
__ __ __ (DEF) _____ was a drug addict
__ __ __ (DEF) _____ had a history of mental illness
__ __ __ (DEF) _____ had a background of extreme poverty
__ __ __ (DEF) _____ was a stranger in the community
__ __ __ (DEF) _____ had been seriously abused as a child

__ __ __ (DEF) _____ had been placed in institutions in the past but never given any real help or treatment for his problems

__ __ __ (DEF) _____ did not express any remorse, regret or sorrow for the crime

a. Was this a factor in the _____ case?

1. yes, it was a factor in this case
2. no, it was not a factor in this case
3. not sure whether it was a factor in this case

b. (IF YES,) how important was this factor in your punishment decision?

1. very important in your sentencing decision
2. fairly important in your sentencing decision
3. not important in your sentencing decision

c. Did /(IF NO) Would/ this factor make you . . .

1. much more likely to vote for death
2. slightly more likely to vote for death
3. slightly less likely to vote for death
4. much less likely to vote for death
5. just as likely to vote for death

FINALLY, THERE ARE ADDITIONAL FACTORS THAT MIGHT HAVE AFFECTED YOUR SENTENCING DECISION:

__ __ __ (DEF) _____ was convicted with evidence from an accomplice who testified against (DEF) _____ in return for a reduced charge or sentence

__ __ __ (DEF) _____ would be a hardworking well behaved inmate, and would make positive contributions in prison

__ __ __ there is a possibility that (DEF) _____ would be a danger to society in the future

__ __ __ the victim's family suffered severe loss or grief

__ __ __ the vicim's family asked for the death penalty

__ __ __ the community was outraged over the crime

__ __ __ most community members wanted the death penalty

__ __ __ although the evidence was sufficient for a capital murder conviction, you had some lingering doubt that (DEF) _____ was the actual killer

__ __ __ (DEF) _____ did not testify on his own behalf

IF THERE ARE FACTORS NOT ON THIS LIST THAT AFFECTED YOUR SENTENCING DECISION, PLEASE INDICATE WHAT THEY ARE,

__ __ __ other factors
_____
__ __ __ other factors
_____
__ __ __ other factors
_____
__ __ __ other factors
_____

V. SENTENCING GUIDELINES

LET'S TAKE A MINUTE OR TWO TO TALK ABOUT THE JUDGE'S INSTRUCTIONS FOR DECIDING WHAT THE PUNISHMENT SHOULD BE.

1.As you understood the judge's instructions for deciding punishment, could the jury consider . . .

___ all the evidence presented at the entire trial
___ only the evidence presented at the second stage of the trial after (DEF) _____ was convicted
___ (DON'T KNOW)

2.Among factors in favor of a death sentence, could the jury consider . . .

___ any aggravating factor that made the crime worse
___ only a specific list of aggravating factors mentioned by the judge
___ (DON'T KNOW)

3.For a factor in favor of a death sentence to be considered, did it have to be . . .

___ proved beyond a reasonable doubt
___ proved by a preponderance of the evidence
___ proved only to a juror's personal satisfaction
___ (DON'T KNOW)

4.For a factor in favor of a death sentence to be considered, did . . .

___ all jurors have to agree on that factor
___ jurors not have to agree unanimously on that factor

___ (DON'T KNOW)

5.To the best of your memory, was the jury required to impose a death sentence, or free to choose between death and a lesser sentence, if it found . . .

1 death required **2** free to choose **3** (DON'T KNOW)

___ one or more factors favoring a death sentence
___ one or more factors favoring a death sentence and none opposing it
___ more factors favoring than opposing a death sentence
___ stronger factors favoring than opposing a death sentence
___ an equal balance between factors favoring and opposing a death sentence

6.Among factors in favor of a life or lesser sentence, could the jury consider . . .

___ any mitigating factor that made the crime not as bad
___ only a specific list of mitigating factors mentioned by the judge
___ (DON'T KNOW)

7.For a factor in favor of a life or lesser sentence to be considered, did it have to be . . .

___ proved beyond a reasonable doubt
___ proved by a preponderance of the evidence
___ proved only to a juror's personal satisfaction
___ (DON'T KNOW)

8.For a factor in favor of a life or lesser sentence to be considered, did . . .

___ all jurors have to agree on that factor
___ jurors did not have to agree unanimously on that factor
___ (DON'T KNOW)

9.To the best of your memory, was the jury required to impose a sentence of life or less or free to choose between death and a lesser sentence, if it found . . .

1 life or less required **2** free to choose **3** (DON'T KNOW)

___ one or more factors opposing a death sentence
___ one or more factors opposing a death sentence and none favoring it
___ more factors opposing than favoring a death sentence
___ stronger factors opposing than favoring a death sentence
___ an equal balance between factors opposing and favoring a death sentence

10. Do you believe that these guidelines or instructions led to the right or to the wrong punishment for (DEF) _____?

___ led to the wrong punishment, but jurors followed their own consciences and decided on the right punishment
___ led to the wrong punishment, and jurors accepted it
___ led to the right punishment
___ led to no particular punishment

VI. THE JUDGE, PROSECUTOR(S), AND DEFENSE ATTORNEY(S)

LET'S TALK NEXT ABOUT THE JUDGE AND THE OPPOSING ATTORNEYS.

1. In your mind, how well do the following words describe the judge?

1 very well **2** fairly well **3** not so well **4** not at all

___ stern (i.e., often grim faced)
___ good humored (i.e., often smiling)
___ self-confident
___ easy going (i.e., relaxed)
___ a warm outgoing person
___ a forceful, take-charge person
___ strict about rules and procedures
___ sometimes looked bored
___ sometimes looked annoyed
___ acted friendly toward jurors
___ acted friendly toward (DEF) _____
___ acted friendly toward the prosecuting attorney(s)
___ acted friendly toward the defense attorney(s)
___ sometimes difficult for you to understand

___ someone you came to admire
___ someone you did not like personally
___ other, specify_____

_____

2. Toward which side--the defense or the prosecution--did it seem to you that the judge's attitude was more . . .

___

1 defense **2** prosecution **3** (NEITHER, NO DIFF.)

___ sympathetic
___ accepting of requests or objections
___ impatient
___ careful about what s/he said or did
___ favorably inclined

3. For the prosecution, how many attorneys were involved?

_____ # of prosecuting attorneys

(IF MORE THAN ONE,) how did they allocate the work?

___ one took primary responsibility throughout the trial
___ they divided responsibility; one handled the guilt portion of the trial; another handled the punishment portion of the trial.
___ they shared responsibility for presenting evidence throughout the trial

(ASK ABOUT THE "SENTENCING STAGE" ATTORNEY IF RESPONSIBILITY WAS DIVIDED; ABOUT THE "MOST MEMORABLE" ONE IF IT WAS SHARED; OTHERWISE ABOUT THE "PRIMARY" OR "ONLY" PROSECUTING ATTORNEY.)

4.Please indicate how well you think the following words describe the (DESIGNATED) prosecutor.

___

1 very well **2** fairly well **3** not so well **4** not at all

___ a forceful, take-charge person
___ competent and professional
___ did an outstanding job of presenting his/her case
___ didn't seem to have his/her heart in the case
___ was polite and respectful toward the judge
___ was hostile toward (DEF) _____

___ was hostile toward the defense attorney(s)
___ was hostile toward defense witnesses
___ cared more about winning than seeing justice done
___ someone you came to admire (respect)
___ someone you did not like personally
___ other, specify_____

_____

5. Did the prosecutor's decision to ask for the death penalty in this case make you think that . . .

1 yes **2** no **3** not sure

___ the case against (DEF) _____ must be strong
___ (DEF) _____ must deserve the death penalty

6. For the defense, how many attorneys were involved?

_____ # of defense attorneys

(IF MORE THAN ONE,) how did they allocate the work?)

___ one took primary responsibility throughout the trial
___ they divided responsibility; one handled the guilt portion of the trial; another handled the punishment portion of the trial
___ they shared responsibility for presenting evidence throughout the trial

7.How well do you think the following words describe the (DESIGNATED) defense attorney?

1 very well **2** fairly well **3** not so well **4** not at all

___ a forceful, take-charge person
___ competent and professional
___ did an outstanding job of presenting his/her case
___ didn't seem to have his/her heart in the case
___ was warm and friendly toward (DEF) _____
___ was friendly toward the judge
___ was hostile toward the prosecuting attorney(s)
___ was hostile toward prosecution witnesses

___ cared more about winning than seeing justice done
___ someone you came to respect (admire)
___ someone you did not like personally
___ other, specify_____

8.In your judgment, by how much did the prosecution or the defense have the advantage in these respects,

Prosecution Advantage: **1** great **2** moderate **3** slight
Defense Advantage: **4** great **5** moderate **6** slight
No Advantage: **7** (NEITHER HAD THE ADVANTAGE)

___ did better communicating with the jury
___ prepared their case better for trial
___ had more money and resources to work with
___ had a stronger commitment to winning the case
___ fought harder at the guilt stage of the trial
___ fought harder at the punishment stage of the trial

9.Finally, I would like you to rate the prosecution and the defense on a scale from **1** to **10,** with **10** being "the hardest possible" and **1** being "not hard at all."

a. How hard did the prosecuting attorney(s) work to convince you that (DEF) _____ . . .

Scale of **1** to **10**
___ was guilty of capital murder
___ deserved a penalty of death

b. How hard did the defense attorney(s) work to convince you that (DEF) _____ . . .

Scale of **1** to **10**
__ was not guilty of capital murder
___ deserved a penalty other than death

VII. JURY SELECTION AND COMPOSITION

NOW, I'D LIKE TO ASK YOU ABOUT SELECTION OF THE JURY.

1. During jury selection, were you questioned alone or in a group with others?

___ alone
___ in a group; (IF SO,) with how many # ____ ?
___ both in a group and alone (IF SO,) with how many #_

2.During jury selection, who asked you the most difficult questions?

___ the judge
___ the prosecutor(s)
___ the defense attorney(s)

3. During jury selection were you asked what you had heard or knew about the _____ case?

___ no
___ yes

4. Had you heard about the _____ case before the trial?

___ no, nothing at all
___ yes, but very little
___ yes, knew some details

5. During jury selection were you surprised at the number of questions you were asked about your attitude toward the death penalty, when (DEF) _____ had not yet been convicted of murder?

___ no
___ yes, somewhat surprised
___ yes, very surprised

6.Did these questions make you think (DEF) _____ . . .

___ must be guilty
___ probably was guilty

___ probably was not guilty
___ must be not guilty
___ no effect one way or the other

7.Did the questions make you think the appropriate punishment for (DEF) _____ . . .

___ must be the death penalty
___ probably was the death penalty
___ probably was not the death penalty
___ must not be the death penalty
___ no effect one way or the other

8. Were any of the question you were asked during jury selection especially hard for you to answer?

___ no
___ yes; (IF SO,) which question(s); why were they hard; who asked them?

9. During jury selection, who made the most favorable and who made the least favorable impression on you?

1 most favorable **2** least favorable **3** Neither most or least favorable

___ the judge
___ the prosecutor(s)
___ the defense attorney(s)

NOW I WANT TO FIND OUT WHO GOT CHOSEN FOR THE JURY; IF YOU'RE NOT SURE OF AN ANSWER, JUST GIVE ME YOUR BEST GUESS. I'LL MAKE A NOTE THAT YOU'RE NOT SURE.

10. To the best of your memory, how many of the 12 jurors

were:	and how many of the men and women were:		
	WHITE	BLACK	HISPANIC
#___ men	#___ men	#___ men	#___ men
#___ women	#___ women	#___ women	#___ women
(=12)			

11. Was the jury foreperson . . .

___ you, yourself
___ male/white
___ male/minority (SPECIFY _____)
___ female/white
___ female/minority (SPECIFY _____)

12. During the jury deliberations:

a. How many of the jurors would you say . . .

#___ talked a lot
#___ almost never talked
#___ were between these extremes
(=12)

b. Were you among . . .

___ the most talkative
___ the least talkative
___ in between

13. Did you know any of the other jurors before the trial?

___ no
___ yes, (IF SO,)
#___ by sight though not personally
#___ as personal acquaintances
#___ as jurors you had served with previously

14. Have you stayed in touch with any of the jurors since the trial?

___ no
___ yes; (IF SO,) #_____ you knew before the trial
#_____ you met during the trial

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

1 very well **2** fairly well **3** not so well **4** not at all

___ likeminded, saw things the same way
___ closedminded, intolerant of disagreement
___ too quick to make a decision, in a hurry

___ friendly and respectful to one another
___ decided on guilt and punishment at the same time
___ dominated by a few strong personalities
___ got too emotionally involved in the case
___ was confused by the judge's instructions
___ did not follow the judge's instructions
___ kept making mistakes
___ you felt like an outsider

16. Can you think of anything more about the jury that helps to explain how or why it reached its decisions?

VIII. CRIME AND PUNISHMENT ATTITUDES

I NOW HAVE JUST A FEW QUESTIONS ABOUT YOUR FEELINGS TOWARD PUNISHMENT FOR CONVICTED MURDERERS.

0. Do you agree or disagree with the following statements about crime and the criminal justice system?

Agree: 1 strongly 2 moderately 3 slightly
Disagree: 4 strongly 2 moderately 6 slightly
7 (NOT SURE; CAN'T SAY; UNDECIDED)

___ it is better for society to let some guilty people go free than to risk convicting an innocent person
___ even the worst criminals should be considered for mercy
___ if the police obtain evidence illegally, it should not be permitted in court, even if it would help convict a guilty person
___ the insanity plea is a loophole that allows too many guilty people to go free
___ a person on trial who doesn't take the witness stand and deny the crime is probably guilty
___ prosecutors have to be watched carefully, since they will use any means they can to get convictions
___ defense attorneys have to be watched carefully, since they will use any means to get their clients off
___ if we really cared about crime victims, we would make sure that criminals were given harsh punishments
___ if we really cared about crime victims, we would make offenders work to pay for the injuries and

losses their victims have suffered.

1.Do you agree or disagree with the following statements about punishment for convicted murderers?

Agree: **1** strongly **2** moderately **3** slightly
Disagree: **4** strongly **5** moderately **6** slightly
7 (NOT SURE; CAN'T SAY; UNDECIDED)

___ you wish we had a better way than the death penalty of stopping murderers
___ the death penalty is too arbitrary because some people are executed while others serve prison terms for the same crimes
___ if the death penalty were enforced more often there would be fewer murders in this country
___ even convicted murderers should not be denied hope of parole some day, if they make a real effort to pay for their crimes
___ murderers owe something more than life in prison to society and especially to their victims' families
___ defendants who can afford good lawyers almost never get a death sentence
___ the death penalty should be required when someone is convicted of a serious intentional murder
___ you have moral doubts about death as punishment
___ persons sentenced to prison for murder in this state are back on the streets far too soon

2.Would you prefer the following alternatives:

1 yes **2** no **3** not sure

___ If murderers in this state could be sentenced to life in prison without the possibility of ever being released on parole, would you prefer this as an alternative to the death penalty?
___ What if murderers in this state could be sentenced to life with absolutely no chance of parole and also required to work in prison for money that would go to the victims' families; would you prefer this as an alternative to the death penalty?

___ What if murderers in this state could be sentenced to life in prison with no chance of parole for 25 years and even then be eligible for parole only if they earned and paid a required amount of money to the families of their victims; would you prefer this as an alternative to the death penalty?

3. For convicted murderers, do you now feel that the death penalty is . . .

___ the only acceptable punishment
___ the most appropriate of several punishments
___ just one of several appropriate punishments
___ the least appropriate of several punishment
___ an unacceptable punishment

4.Do you feel that the death penalty is the only acceptable punishment, an unacceptable punishment, or sometimes acceptable as punishment for the following specific kinds of murder and other crimes?

1 only acceptable **2** unacceptable **3** sometimes acceptable

___ a planned, premeditated murder
___ a planned murder, when the victim survives
___ a killing that occurs during another crime
___ murders in which more than one victim is killed
___ murder by someone previously convicted of murder
___ murder by a drug dealer
___ killing of a police officer or prison guard
___ when an outsider to the community kills an admired and respected member of the community
___ a rape with permanent injury to the victim

5.Have your personal feelings about the death penalty changed as a result of serving on the _____ case?

___ yes, more opposed than I was before
___ yes, more in favor than I was before
___ no, feelings have not changed

6.Do you now generally favor or oppose the death penalty for convicted murderers?

____ strongly favor

____ somewhat favor
____ somewhat oppose
____ strongly oppose
___ (NOT SURE; DON'T KNOW)

7.Do you now think that your personal feelings about the death penalty at the time of the _____ trial affected your guilt or punishment decisions in any way?

_____

1 yes **2** no **3** not sure

___ guilt decision; (IF SO,) in what way . . .
___ punishment decision; (IF SO,) in what way . . .

IX. PERSONAL BACKGROUND

FINALLY, I NEED TO ASK YOU A FEW QUESTIONS ABOUT YOURSELF.

1. Check respondent's (ASK ONLY IF NOT SURE)

a. sex:

____ male
____ female

b. race/ethnicity:

____ white
____ black
____ Hispanic
____ Asian
____ other

2. What was your age at your last birthday?

_____# years old

3. Have you ever been married?

___ no, never been married
___ yes, been married once
___ yes, been married more than once

4. Are you now married?

____ married and living with your spouse
____ married but separated

____ divorced
____ widowed

5.Do you have any children, step children or foster children; (IF SO,) what is the age and sex of each?

(RECORD AGE [# YRS] AND SEX [M OR F] OF EACH)

___ no children
___ yes, your own ____ ____ ____ ____ ____ ____
___ yes, step ____ ____ ____ ____ ____ ____
___ yes, foster ____ ____ ____ ____ ____ ____

(IF YES,) which, if any, are now living with you?

(CIRCLE AGE/SEX OF CHILDREN LIVING WITH YOU)

6. What was the last grade of school you completed?

_____# grade completed (IF LESS THAN 12TH GRADE)

____ finished high school (OR 12TH GRADE)
____ some technical school beyond high school
____ some college but did not graduate
____ graduated from college
____ attended graduate or professional school

7. Are you currently employed outside of the home?

___ yes, full-time
___ yes, part-time
___ no, housewife, homemaker, child rearing
___ no, injury, disability
___ no, layoff, strike
___ no, student
___ no, retired
___ no, without explanation

(IF NO,) have you been employed

___ within the past 5 years?
___ more than 5 years ago?
___ never been employed

(IF EVER EMPLOYED,)

a. What kind of work do (OR DID) you do?

b. What job or position do (OR DID) you have?

8. Roughly speaking, in which of the following categories does your current family income fall?

___ less than $10,000 a year
___ $10,000-$20,000 a year
___ $20,000-$30,000 a year
___ $30,000-$50,000 a year
___ $50,000-$75,000 a year
___ more than $75,000 a year
___ (NO ANSWER; REFUSAL)

9. Are you involved in any local groups or organizations?

1 yes **2** no

___ school or parent/teacher association
___ youth activities, e.g., Little League, Boy Scouts
___ political parties, candidates or campaigns
___ church or religious groups
___ special interest groups, e.g., Sierra Club, NRA
___ others, specify
_____

_____

(IF ANY SUCH INVOLVEMENTS,) have you held office or taken a leadership role? Explain.

10. Over the past week, on how many days did you . . .

a. read a newspaper? . . . . . _____# of days

b. listen to the news on TV or radio? _____# of days

11.What do you like most to do for recreation?

12. What is your religious preference?

(PROBE FOR SPECIFIC RELIGION OR DENOMINATION)

___ Baptist
___ Southern Baptist
___ Lutheran
___ Methodist
___ Presbyterian
___ other Protestant, specify _____
___ Roman Catholic
___ Jewish
___ Other religion, specify _____
___ No religious preference

13. How often do you attend religious services?

___ more than once a week
___ once a week
___ several times a month
___ once a month
___ several times a year
___ once a year
___ never

14. Did your religious beliefs have any impact on your decision in the _____ case?

___ no
___ yes; (IF SO,) what impact did they have?

15. Have you served in the military?

___ no
___ yes; (IF SO,) what branch and what was the nature of your service?

16.How long have you lived at your current address?

_____ # of years; _____ # of months

17.Do you rent or own your own home?

___ renter
___ home owner

AND LASTLY, I HAVE A FEW QUESTIONS ABOUT YOUR PREVIOUS EXPERIENCE WITH THE CRIMINAL JUSTICE SYSTEM.

18. Did you ever serve on a trial jury before this case?

___ no
___ yes, (IF SO,) ___ on a criminal case
___ on a civil case

19. Did you ever attend a criminal trial in some other capacity before this case?

___ no
___ yes, (IF SO,) ___ as a spectator
___ as a witness
___ as a defendant

20.Have you or other members of your household been the victim of a serious crime in the past five years?

___ no
___ yes, (IF SO,) ___ you yourself
___ other members of your household

(IF YES,) how often in the past five years? ____times
(IF YES,) how often since (DEF) ____'s case? ____times

21. Do you know people who work in the law enforcement or criminal justice fields?

1 yes **2** no

___ in the police, including private security
___ in the courts, including judges, prosecutors, defense attorneys, clerks or other staff
___ in corrections, including jails, prisons or other corrections facilities

22. When you think back about serving as a juror on the _____ case, is there anything you wish you had said or done differently?

___ no
___ yes; (IF SO,) what was it?

23. Did you find the experience emotionally upsetting?

___ no
___ yes; (IF SO,) in what ways?

24. During the trial or right after it, did you have any trouble sleeping, any bad dreams or nightmares, or lose your appetite?

___ no
___ yes; (IF SO,) explain or elaborate.

25.How would you feel if you were asked to serve on another death penalty case? Would you . . .

___ welcome the opportunity
___ do so reluctantly
___ try to get out of it
___ refuse to do so

26.Have you been interviewed by anyone else, attorneys, investigators, media etc. about your experience as a juror on this case?

___ yes
___ no

How much have you talked to others about this experience?

THANK YOU VERY MUCH FOR YOUR COOPERATION.
INTERVIEW ENDING TIME: _____:_____/_____

X. INTERVIEWER'S DEBRIEFING SHEET

1.Interview condition:

a. interruptions (e.g., phone call(s), visitor(s))
If so, at what points (Q#s) and for how long (minutes at each Q#) _____
b. others present (e.g., spouse, offspring)
If so, who and for how long (from Q# to Q# for each instance) _____
c. unfinished but completed later by phone
d. never completed
e. completed without incident

2. Were any questions or topics awkward for the respondent to answer or talk about? If so, which ones?

3. Did the respondent appear to have trouble remembering events or circumstances of the crime or the trial? If so, which events of circumstances?

4. In your opinion, was the respondent less than candid or truthful about some issues? If so, about which issues?

5. Did you tape record the interview entirely or in part? Did this create any problems? Explain.

6. What were the main problems with this interview? What about . . .

interruptions
distractions
lack of rapport
weak or faulty recall
doubts about confidentiality
defensiveness or insecurity

Elaborate on these or any other problems.

Appendix B: Correlation Matrix for Individual Level Variables

Correlation Matrix for Individual Level Variables										
		Mean	S.D.							
	Variable			1	2	3	4	5	6	7
1	Perception of Group Climate	3.44	.40	1	-.06	-.07*	.14**	-.07*	.09**	.01
2	Juror Race	.10	.30		1	-.04	-.03	-.02	.16**	-.01
3	Juror Sex	.47	.50			1	-.08*	.05	-.04	-.02
4	Juror Age	45.88	12.85				1	-.10**	-.01	-.06
5	Juror Education	3.78	1.57					1	-.21**	-.05
6	Baptist	.17	.37						1	-.16**
7	Southern Baptist	.11	.31							1
8	Jewish	.02	.12							
9	Roman Catholic	.17	.38							
10	Less than 10K per year	.03	.17							
11	10K to 20K per year	.09	.29							
12	20K to 30K per year	.17	.37							
13	30K to 50K per year	.28	.45							
14	50K to 75K per year	.20	.40							
15	More than 75K per year	.15	.36							
16	No Income Response	.08	.27							
17	Know Others Before Trial	.24	.43							
18	Foreperson	.12	.32							
19	Aggravating Circumstances	.40	.18							
20	Mitigating Circumstances	.14	.12							
21	Level of Heinousness	3.10	.61							
22	Defendant Demeanor	.42	.30							
23	Number of Victims	1.34	.72							

*p<.05, **p<.01

Correlation Matrix for Individual Level Variables										
		Mean	S.D.							
	Variable			1	2	3	4	5	6	7
24	**Defendant Race**	.41	.49							
25	**Victim Race**	.81	.39							
26	**Female Victim**	.45	.50							
27	**Black Defendant/White Victim**	.24	.43							
28	**Black Juror/Black Victim**	.02	.15							
29	**Black Juror/Black Defendant**	.05	.22							
30	**Percentage Black**	14.27	15.04							
31	**Percentage Male**	48.31	15.37							
32	**Number of Jurors in Sample**	4.13	.89							

*p<.05, **p<.01

Correlation Matrix for Individual Level Variables										
	Variable	8	9	10	11	12	13	14	15	16
1	Perception of Group Climate	-.10**	-.02	.00	.07*	-.04	.03	-.02	-.02	-.01
2	Juror Race	-.04	-.10**	.24**	.04	.06	.02	-.10**	-.09**	-.04
3	Juror Sex	.01	.02	-.08	-.06	.00	-.00	.06	.07*	-.04
4	Juror Age	.03	-.03	.03	.10**	.00	-.07*	-.04	-.01	.05
5	Juror Education	.06	.03	-.16**	-.20**	-.17**	.03	.15**	.25**	-.05
6	Baptist	-.06	-.20**	.09**	.11**	.08*	-.02	-.09**	-.09*	-.02
7	Southern Baptist	-.04	-.16**	-.02	-.00	.02	.03	.02	.06	-.01
8	Jewish	1	-.06	-.02	-.04	-.06	-.06	.05	-.00	.13**
9	Roman Catholic		1	-.05	-.01	-.03	-.05	.02	.09**	.04
10	Less than 10K per year			1	-.06	-.08	-.11**	-.09**	-.07	-.05
11	10K to 20K per year				1	-.14**	-.20**	-.16**	-.13**	.-09**
12	20K to 30K per year					1	-.28**	.23**	-.19**	-.13**
13	30K to 50K per year						1	-.31**	-.26**	.18**
14	50K to 75K per year							1	.21**	-.15**
15	More than 75K per year								1	-.12**
16	No Income Response									1
17	Know Others Before Trial									
18	Foreperson									
19	Aggravating Circumstances									
20	Mitigating Circumstances									
21	Level of Heinousness									
22	Defendant Demeanor									
23	Number of Victims									

*p<.05, **p<.01

Correlation Matrix for Individual Level Variables										
	Variable	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**
1	**Perception of Group Climate**	.08*	-.00	.05	-.19**	.08*	-.06	-.08*	-.08*	.07*
2	**Juror Race**	-.01	-.05	.04	.07*	.03	.17**	-.05	.09**	-.05
3	**Juror Sex**	.03	.20**	.00	.02	.07*	.01	-.03	.00	.04
4	**Juror Age**	-.01	-.03	-.15**	.15**	.00	.07*	-.02	-.02	.03
5	**Juror Education**	-.08*	.138*	.01	.01	.07*	.00	.04	.07*	.02
6	**Baptist**	.15**	-.06	.04	0.01	.10**	.00	-.06	-.06	.10**
7	**Southern Baptist**	.03	-.03	.05	-.02	.04	-.06	.02	-.04	.04
8	**Jewish**	-.05	.04	.01	.02	-.01	.02	-.02	.08*	-.03
9	**Roman Catholic**	.06	.03	.01	-.03	-.04	-.05	.08*	.05	.03
10	**Less than 10K per year**	-.01	.07*	-.02	-.01	.00	.09**	-.01	.05	.01
11	**10K to 20K per year**	.05	-.08*	-.03	-.03	-.03	.05	-.04	-.07*	.02
12	**20K to 30K per year**	.00	-.07*	.09**	.01	.06	.00	-.01	-.02	-.01
13	**30K to 50K per year**	.08*	.02	.01	.02	.05	.00	.03	.02	.01
14	**50K to 75K per year**	-.01	.02	.-2	-.01	.04	-.05	.00	.04	.06
15	**More than 75K per year**	.11**	.15**	.00	.01	-.11**	-.02	.00	-.02	.06
16	**No Income Response**	.01	.03	-.05	.01	-.05	.02	.01	.02	.02
17	**Know Others Before Trial**	1	.01	.09**	-.08*	.10**	.01	-.09**	-.07*	.12**
18	**Foreperson**		1	-.08*	.01	-.05	.00	-.04	.00	.00
19	**Aggravating Circumstances**			1	.12**	.17**	-.15**	.09**	.00	.13**
20	**Mitigating Circumstances**				1	.00	.15**	.14**	-.01	-.05
21	**Level of Heinousness**					1	-.19**	.03	-.09**	.06
22	**Defendant Demeanor**						1	.00	-.01	.01
23	**Number of Victims**							1	-.01	.11**

*p<.05, **p<.01

Correlation Matrix for Individual Level Variables										
	Variable	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**
24	**Defendant Race**								1	-.48**
25	**Victim Race**									1
26	**Female Victim**									
27	**Black Defendant/White Victim**									
28	**Black Juror/Black Victim**									
29	**Black Juror/Black Defendant**									
30	**Percentage Black**									
31	**Percentage Male**									
32	**Number of Jurors in Sample**									

*p<.05, **p<.01

Correlation Matrix for Individual Level Variables								
	Variable	**26**	**27**	**28**	**29**	**30**	**31**	**32**
1	**Perception of Group Climate**	.04	-.03	.03	-.09**	-.06	.06	-.08*
2	**Juror Race**	-.01	.07*	.48**	.72**	.33**	-.08*	-.05
3	**Juror Sex**	-.02	.04	-.05	-.04	-.03	.26**	.01
4	**Juror Age**	-.01	.02	-.03	-.01	-.08*	-.01	.06
5	**Juror Education**	-.02	.08*	-.05	-.05	.02	.03	.04
6	**Baptist**	.04	.01	.08*	.15**	.06	.01	-.11**
7	**Southern Baptist**	-.02	-.01	-.01	-.04	.05	.01	-.07
8	**Jewish**	-.01	.06	-.02	-.03	.01	.00	.03
9	**Roman Catholic**	.04	.02	-.07*	-.08*	.05	.06	.05
10	**Less than 10K per year**	.07*	.07*	.10**	.21**	.10**	-.03	-.01
11	**10K to 20K per year**	-.02	-.05	.02	.03	-.01	-.04	.01
12	**20K to 30K per year**	.00	.04	.10**	.06	.02	-.08*	0
13	**30K to 50K per year**	.01	.03	-.02	.01	-.02	.05	-.05
14	**50K to 75K per year**	-.03	-.01	-.06	-.08*	-.01	.07*	-.04
15	**More than 75K per year**	.04	.03	-.07*	-.07*	.02	-.01	.09*
16	**No Income Response**	-.05	-.02	-.02	-.03	-.01	-.01	.04
17	**Know Others Before Trial**	.01	.03	-.04	.02	-.02	.06	-.04
18	**Foreperson**	.00	.00	-.04	-.03	.02	-.02	-.02
19	**Aggravating Circumstances**	.10**	.11**	-.03	.03	.01	.01	.03
20	**Mitigating Circumstances**	-.01	.03	.07*	.11**	.08*	.00	-.01
21	**Level of Heinousness**	.14**	-.04	-.06	-.04	-.03	-.03	-.06
22	**Defendant Demeanor**	-.09**	.01	.04	.11*	.07*	.03	-.03
23	**Number of Victims**	.10**	-.12**	.05	-.07*	.03	-.03	.03

*p<.05, **p<.01

Correlation Matrix for Individual Level Variables								
	Variable	**26**	**27**	**28**	**29**	**30**	**31**	**32**
24	**Defendant Race**	-.07*	.67**	.16**	.29**	.29**	-.08*	-.07
25	**Victim Race**	.06	.27**	.32**	-.13**	-.20**	0.06	.08*
26	**Female Victim**	1	-.03	0	-.02	-.02	-.01	0.05
27	**Black Defendant/White Victim**		1	-.09**	.20**	.13**	-.03	-.01
28	**Black Juror/Black Victim**			1	.60**	.15**	.08*	.05
29	**Black Juror/Black Defendant**				1	.29**	-.09**	-.04
30	**Percentage Black**					1	-.20**	-.15**
31	**Percentage Male**						1	-.03
32	**Number of Jurors in Sample**							1

*p<.05, **p<.01

Appendix C: Correlation Matrix for Jury Level Variables

Correlation Matrix for Jury Level Variables										
		Mean	S.D.							
	Variable			1	2	3	4	5	6	7
1	Verdict			1	.119	-.048	.021	.055	.105	-.215**
2	White Victim	.80	.40		1	-.479**	.279**	.058	-.125	-.070
3	Black Defendant	.42	.49			1	.666**	-.141**	-.003	-.027
4	Black Defendant/White Victim	.24	.43				1	-.116	-.142*	-.056
5	Female Victim	.48	.50					1	.146*	-.051
6	Number of Persons Killed	1.34	.73						1	.149*
7	Average Mitigating Factors	.14	.09							1
8	Average Aggravating Factors	.40	.14							
9	Average Level of Heinousness	3.14	.39							
10	Average Defendant Demeanor	.42	.22							
11	Average Group Climate	3.44	.27							
12	Percent Black	13.56	13.56							
13	Percent Male	46.57	13.94							
14	Number of Jurors in Sample	3.97	.81							

*$p < .05$, **$p < .01$

Correlation Matrix for Jury Level Variables								
	Variable	**8**	**9**	**10**	**11**	**12**	**13**	**14**
1	**Verdict**	.211**	.198**	-.422**	.333**	-.122	.063	-.067
2	**White Victim**	.161*	.063	.018	.105	-.224**	.082	.095
3	**Black Defendant**	.007	-.110	-.012	-.139*	.300**	-.050	-.058
4	**Black Defendant/White Victim**	.139*	-.059	.023	-.081	.126	.026	-.013
5	**Female Victim**	.096	.266**	-.087	.111	.008	.000	.039
6	**Number of Persons Killed**	.100	.081	-.043	-.063	.023	-.026	.005
7	**Average Mitigating Factors**	.064	-.058	.200**	-.284**	.122	.023	.000
8	**Average Aggravating Factors**	1	.210**	-.234**	.004	.002	.032	.019
9	**Average Level of Heinousness**		1	-.345**	.106	-.004	-.005	-.077
10	**Average Defendant Demeanor**			1	-.141*	.101	.014	-.034
11	**Average Group Climate**				1	-.150*	.087	-.066
12	**Percent Black**					1	-.219**	-.156*
13	**Percent Male**						1	-.065
14	**Number of Jurors in Sample**							1

*$p < .05$, **$p < .01$

Appendix D: Discussion of Principal Components Analysis

This section discusses the process by which the principal components analyses were conducted and the final group climate variable was created. The first step of the process was to conduct a principal components analysis for all fifteen of the variables that, based on prior research and theoretical constructs, would potentially yield a global group climate variable. The fifteen variables came from two separate parts of the survey instrument; they included a set of questions asking respondents about their experiences with the jury and a set of questions asking respondents about their general experiences serving on a capital trial.

The first eleven variables came from the section of the questionnaire where respondents were asked to describe how well several phrases described the jury. The responses to each of the eleven phrases were scaled on a four point scale which ranged from 1, Very Well, to 4, Not At All. The eleven phrases were: likeminded, saw things the same way; close-minded, intolerant of disagreement; too quick to make a decision, in a hurry; friendly and respectful to one another; decided on guilt and punishment at the same time; dominated by a few strong personalities; got too emotionally involved in the case; was confused by the judge's instructions; did not follow the judge's instructions; kept making mistakes; and, you felt like an outsider. The responses to the two phrases likeminded, saw things the same way and friendly and respectful to one another were recoded so that higher values (i.e. Not At All) indicated a more positive response about the respondent's perceptions about his or her experiences on the jury.

The next four variables came from the section of the instrument that asked respondents a series of questions about their experiences serving on a capital trial. The first question asked of the respondent was whether he or she wished that s/he had done

anything differently over the course of the trial. The respondent answered either Yes (0) or No (1). The next question asked whether the juror found the experience to be emotionally upsetting; again, the response set with either Yes (0) or No (1). The third question asked jurors whether or not they had any trouble sleeping; jurors again responded either Yes (0) or No (1). The last question asked jurors whether or not they would again serve on a capital trial if asked. The response set for this question was: I would welcome the opportunity (4); I would do so reluctantly (3); I would try to get out of it (2); and, I would refuse to serve (1). All of these questions were also coded so that higher values indicated a more positive experience serving on a capital trial.

The first principal components analysis that was conducted included all fifteen of these variables and was set up so that only components with an eigenvalue larger than 1 would be returned. No rotation was specified. This analysis returned a four factor solution. The following table contains both the factor loadings and the eigenvalues for this four factor solution.

Predictors	Component 1	Component 2	Component 3	Component 4
Do you wish you had done anything differently?	.349	.227	-.035	.042
Did you find the experience emotionally upsetting?	.326	.723	.071	-.063
Did you have any trouble sleeping?	.243	.687	.015	-.083
If asked to serve on another capital trial, would you…	.262	.552	-.063	.246
Likeminded, saw things the same way	.453	-.162	-.586	-.104
Closed-minded, intolerant of disagreement	.559	-.255	.023	-.383
Too quick to made a decision, in a hurry	.550	-.202	.269	-.352
Decided on guilt and punishment at the same time	.057	.003	.791	-.182
Friendly and respectful to one another	.515	-.081	-.240	-.051
Dominated by a few strong personalities	.562	-.100	-.072	-.251
Got too emotionally involved in the case	.522	.176	.011	-.137
Was confused by the judge's instructions	.490	-.096	.019	.389
Did not follow the judge's instructions	.411	-.236	.204	.555
Kept making mistakes	.621	-.186	.175	.319
You felt like an outsider	.564	-.060	.040	.089
Eigenvalues	3.143	1.634	1.194	1.041

Based on an examination of both the eigenvalues and the scree plot, along with the fact that, theoretically, a global measure of group climate is the best way in which to proceed with the current research, another principal components analysis was conducted on these fifteen variables where the number of factors was forced to be one. A global measure of group climate was chosen for the current analyses so that the most

parsimonious option would be utilized. Because this is the first analysis of its kind, the global group climate measure offers the most direct test of the hypotheses; a multi-dimensional scale at this stage of understanding would unnecessarily complicate the model before an understanding of the impact of group climate could be fully formed. Future analyses, however, should address the impact of a more nuanced measure of group climate. The following table contains both the factor loadings and the eigenvalues for this one factor solution.

Predictors	Component 1
Do you wish you had done anything differently?	.349
Did you find the experience emotionally upsetting?	.326
Did you have any trouble sleeping?	.243
If asked to serve on another capital trial, would you…	.262
Likeminded, saw things the same way	.453
Closed-minded, intolerant of disagreement	.559
Too quick to made a decision, in a hurry	.550
Decided on guilt and punishment at the same time	.057
Friendly and respectful to one another	.515
Dominated by a few strong personalities	.562
Got too emotionally involved in the case	.522
Was confused by the judge's instructions	.490
Did not follow the judge's instructions	.411
Kept making mistakes	.621
You felt like an outsider	.564
Eigenvalues	3.143

Upon closer inspection of the factor loadings for the one factor solution with all of the fifteen included variables, a determination was made to eliminate five of the variables from the analysis because their loadings did not exceed .40; while there is no standard determination of how large a loading should be before it is removed from the analysis, a loading of .40 or larger is generally considered an acceptable standard. The five variables that were eliminated were: would you do anything differently; was the experience emotionally upsetting; did you have any trouble sleeping; if asked to serve on another capital trial, would you; and, the jury decided on guilt and punishment at the same time.

The elimination of these variables is also theoretically consistent with ensuring that the global group climate measure includes only those constructs that can be mapped into group functioning. The five variables that were eliminated could potentially be measures of group functioning; they also could be measures of the trauma experienced by the jurors during the course of the trial. The current analysis cannot parcel out the different ways that these five variables could be measuring the trauma of the trial as compared to the trauma that could be related to jury deliberations. The inability to make this distinction, combined with the desire for parsimony, points to the utility of a global climate measure using only those variables that load highly on the same factor for the current analyses.

In order to ensure that the ten remaining variables loaded together well, a third principal components analysis was conducted. This analysis was conducted with no rotation and was set so that all factors with an eigenvalue larger than one would be returned. This was done to make sure that the remaining ten variables did not load on more than one factor in a way that would disrupt further analysis. This analysis returned

a two factor solution. The following table shows the results from this principal components analysis.

Predictors	Component 1	Component 2
Likeminded, saw things the same way	.487	-.415
Closed-minded, intolerant of disagreement	.606	-.314
Too quick to made a decision, in a hurry	.586	-.176
Friendly and respectful to one another	.527	-.317
Dominated by a few strong personalities	.579	-.132
Got too emotionally involved in the case	.502	-.012
Was confused by the judge's instructions	.495	.365
Did not follow the judge's instructions	.452	.550
Kept making mistakes	.612	.464
You felt like an outsider	.559	.056
Eigenvalues	2.948	1.075

Because all of the variables have high enough loadings on the first component, a decision was made to continue to pursue a one factor solution, as a global group climate construct is the best fit for the present research. Table 17 shows the final one factor solution for the ten variables that make up the group climate variable. As this table shows, all ten of the variables have factor loadings greater than .40, making them acceptable for the use in the creation of the group climate variable. The text in Chapter 4 describes the steps which were taken to create the group climate variable in more detail and describes the reliability analysis conducted.

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