

THE DEATH SENTENCE IN GEORGIA, 1974-1987

Criminal Justice or Racial Injustice?

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Statistics regarding the death penalty in the state of Georgia have been interpreted as evidence of racial bias in sentencing procedures. Men who killed white victims were more likely to receive the death penalty than if the victims were black, and this was especially the case if the murderer was black. This study considered two interpretations of these statistics. One proposed that the men receiving the death penalty generally were more dangerous, so that the sentences tended to be merited without regard to race of victim or murderer. The other proposed that racial discrimination had been instrumental in determining who received the death penalty and who received a life sentence. The results, covering a period between 1974 and 1987, were consistent with the dangerousness proposal and suggested that the Georgia system was responding to legitimate criminal justice variables.

Baldus, Pulaski, and Woodworth (1983) raised the issue of whether racial bias entered into the sentencing procedures in Georgia's application of the death penalty. A sample of over 2,000 cases of murder that were tried in Georgia in the 1970s provided different death-penalty rates when varying perpetrator-victim racial combinations were considered. Baldus et al. found that a death sentence was imposed for 22% of the blacks who killed

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whites, 8% of the whites who killed whites, 1% of the blacks who killed blacks, and 3% of the whites who killed blacks.

The possibility of racial bias in the Georgia death-sentencing procedure became the basis for a petition to the U.S. Supreme Court in 1986 (Supreme Court of the United States, 1987). It was alleged that the death penalty accorded to Warren McCleskey, a black man who had killed a white victim, had been racially discriminatory in violation of the petitioner's Eighth and Fourteenth Amendment rights. Although the Supreme Court ruled by majority vote against the McCleskey petition, it did so without questioning the racial-bias interpretation or the Baldus et al. data that served as the basis for the petition. The Court concluded that no evidence had been offered to prove that racial considerations had played a part in the McCleskey sentence itself. Continuing concern regarding racial bias in the Georgia death-penalty procedures was clearly evident in the opinions of dissenting justices.

The present study was initiated in May 1987 when examination of the death-sentencing rates reported by Baldus et al. revealed that the number of statutory aggravating factors in death-penalty cases involving white victims exceeded the number in cases where the victims were black. This observation offered another interpretation of the Baldus et al. racial findings besides bias; men who killed white victims are more likely to receive the death penalty, because they were seen as committing more malicious crimes. However, it was still uncertain why blacks who killed whites were given a death sentence in a higher percentage of cases than were whites who victimized whites.

Further light was shed on the alternative meaning for the Baldus et al. findings when Katz (1987) released testimony he had given in federal court some four years earlier that disputed the allegations of the Baldus et al. investigation and supported the fairness of the Georgia sentencing system. He noted that the white-victim homicide cases were more heinous than black-victim cases, since they were

much more likely to involve other offenses, such as armed robbery, kidnapping, or rape. They were more likely to be brutal, with higher rates of mutilation, torture and clubbing or stomping

the victim to death. And they were more likely to be cold-blooded, with the assailant motivated, for example, by the pursuit of money or the necessity to silence a witness to a crime.

Katz's review of the cases revealed that black-victim homicides were more likely to include mitigating circumstances, to be precipitated by domestic quarrels and fights over drugs, and to be followed by surrender to authorities and remorse. Katz explained the higher percentage of death-penalty sentences in black-kills-white cases by the absence of mitigating factors, such as quarrels between relatives or friends in interracial killings. The white-kills-white cases included aggravating circumstances as well as a full measure of mitigating factors. He concluded that the rarity of white-kills-black cases prevented the lack of mitigation in interracial murders to inflate the death-penalty rate for white murderers as it had for black murderers.

The goals of the present investigation were to test two alternative interpretations of the Baldus et al. racial discrepancies for the death sentence in Georgia. To restate, the interpretation of racial bias suggests that more severe punishment is likely to be meted out for killing a white victim, because more value is placed upon the life of a white victim than a black victim. Furthermore, this discrimination is even more likely if the defendant is black. The alternative interpretation is that the killing of a white victim is more apt to involve aggravating factors than the killing of a black victim so that the death penalty is merited in a higher percentage of cases. The black who kills a white victim will be even more likely to receive a death sentence than his white counterpart because interracial homicide reduces the possibility of mitigating circumstances associated with close social kinship or affiliation.

What is needed, given the two interpretations of the same death-penalty statistics, is empirical evidence that would be consistent with only one position. Since it is difficult to devise a scientific procedure that would directly test whether jurors allowed racial bias to enter into their deliberations and judgments, an alternative research approach was chosen that allowed us to weigh the meaning of the Georgia death-penalty statistics without intrusive inquiry.

Criminal dangerousness, defined as the individual's risk of harming others, falls along a continuum. At the low end, the person may be responsible for only minor psychological and/or economic damage, whereas the highly dangerous person extends the risk to violent crimes that threaten or impose physical harm and serious psychological consequences to the victim. There would appear to be little argument with the conclusions that (1) the most dangerous criminals are those who engage in violence, (2) convicted murderers are among the most dangerous of violent criminals, and (3) those murderers who are sentenced to die because of the special aggravating circumstances of their crimes qualify as an extreme of dangerousness. The review of death-sentence cases by Katz (1987) revealed the prevalence of brutality, mutilation, and torture in the treatment of victims; cold-blooded killing for hire; or murder simply to prevent identification of the criminal.

Granted that men receiving a death sentence for murder should qualify as especially dangerous when considered as a group, the death-penalty statistics relating to the race of the criminal and the race of the victim can then be analyzed to determine whether the racial disproportionalities revealed by the Baldus et al. study can be better accounted for by differences in dangerousness among the murderers, or as a product of racial prejudice. The three hypotheses that were investigated were restricted by the relative absence of cases involving a white murderer and a black victim.

The first hypothesis considered the dangerousness of murderers given the death penalty and murderers given life sentences. *Death-penalty murderers should be more dangerous than life-sentence murderers without respect to race (dangerousness interpretation), or the difference in dangerousness between black death-penalty murderers and black life-sentence murderers should be less than the difference for their white counterparts (racial-bias interpretation).*

The second hypothesis dealt with the same race-of-murderer \times sentence dangerousness comparisons as the first hypothesis but restricted the cases to white victims only. *Death-penalty murderers of white victims should be more dangerous than life-*

sentence murderers of white victims without respect to race of the murderer (dangerousness interpretation), or the difference in dangerousness between black death-penalty murderers of white victims and black life-sentence murderers of white victims should be less than the difference for their white counterparts (racial-bias interpretation).

The third hypothesis was limited to black murderers but considered dangerousness comparisons by the race of the victim and the sentence received. *Death-penalty black murderers should be more dangerous than life-sentence black murderers without respect to race of the victim (dangerousness interpretation), or the difference in dangerousness between death-penalty black murderers who have killed white victims and life-sentence black murderers who have killed white victims should be less than the difference between death-penalty and life-sentence black murderers who have killed black victims (racial-bias interpretation).*

METHOD

SUBJECTS

The sample of 243 male prisoners included in this study were confined within the Georgia prison system following conviction for murder. This number included 109 men who had received the death sentence after 1973 and were still awaiting the execution of sentence on death row. The death-penalty murderers (DPM group) were made up of 54 blacks and 55 whites and represented a complete sample for whom files were available and whose status was determinate.¹ Life-sentence murderers (LSM group) included 71 blacks and 63 whites; their files were obtained by random selection from a population of 1,373 blacks and 927 whites.

The four groups of prisoners provided by a sentence \times race breakdown were similar in their demographic characteristics. Average ages at the time of the crime were the following: DPM blacks, 27.29 years ($SD = 8.12$); DPM whites, 27.70 years ($SD = 8.60$); LSM blacks, 30.01 years ($SD = 13.06$); LSM whites, 30.59

years ($SD = 9.92$). Mean years of formal education varied only between 9.09 years and 9.58 years for the four groups. Sentencing periods extended from January 1974 to May 1987 for DPM blacks, January 1974 to March 1987 for DPM whites, October 1974 to June 1987 for LSM blacks, and December 1973 to January 1987 for LSM whites.

MEASURES

The dangerousness index in the present study was made up of scores from an antisociality measure and an intelligence test as in our earlier studies (see below). The diagnostic criteria for antisocial personality disorder proposed by Feighner et al. (1972) served as the antisociality measure. The nine criteria include school problems (e.g., truancy, fighting), running away from home, problems with police (e.g., multiple arrests), poor work history, marital difficulties, repeated rage outbursts or fighting (not in school), sex problems (e.g., prostitution, pimping), vagrancy or wanderlust, and repeated lying or use of an alias.

Information taken from the social history within the prisoner files, expressed in terms of the probability that the prisoner demonstrated each criterion on antisociality, served as the basis for scoring antisociality. The 4-point scale of probability extended from "definitely not" ($= 0$), through "possibly" ($= 1$) and "probably" ($= 2$), to "definitely" ($= 3$). A high overall score, accordingly, means that the prisoner definitely displayed an extensive antisocial history, whereas a low score indicates a clear-cut absence of antisocial history.

Possible scores for the antisociality measure range from 0 to 27, and actual scores in this study showed the same range. The total sample mean antisociality score was 12.90 ($SD = 5.51$). High agreement among judges on the antisociality score ($r = .87$) has been reported (Heilbrun & Gottfried, 1988). Preliminary analysis within the present data reveals that DPMs in general are significantly ($t[234] = 3.00, p < .01$) more antisocial ($M = 14.07, SD = 5.18$) than LSMs in general ($M = 11.97, SD = 5.60$).

Intelligence was estimated from the IPAT Culture Free Intelligence Test (Scale 2; Cattell & Cattell, 1958), a nonverbal

test of Thurstone's general intelligence factor. The Georgia prison system makes standard use of this test to compensate for the diversity of cultural and educational backgrounds of the prisoners. An earlier review of culture-free intelligence tests (Jensen, 1972) included a recommendation of the Cattell test. The total sample mean IQ was 98.71 ($SD = 16.46$). A preliminary analysis of IQ differences on this instrument disclosed a difference ($t[209] = 2.08, p < .05$) between the intelligence of the DPM prisoners ($M = 95.74, SD = 15.02$) and the LSM group ($M = 100.39, SD = 18.80$). While this rather brief intelligence test probably lacks the power of longer intelligence measures, it has proven of heuristic value in all of our earlier research into dangerousness.

The dangerousness index represented the multiplicative function of antisociality and IQ scores. Sample distributions for each score were transformed independently into standard score distributions with a mean of 50 and a standard deviation of 10 in order to ensure equal weight for each component of the index. IQ scores were transformed inversely so that low IQs were assigned higher standard score values. Total sample index scores had a mean of 2,481.99 ($SD = 666.78$). This index score differentiated DPM murderers ($M = 2,658.50, SD = 1,022.04$) and LSM murderers ($M = 2,360.83, SD = 599.78$) without regard to race ($t[209] = 2.59, p < .01$).

The validity of antisociality and IQ in combination as a predictor of dangerous criminal behavior is supported by a number of studies. Heilbrun (1979) reported that low-IQ antisocial prisoners had committed a preponderance of violent crimes relative to other prisoners. Holland, Beckett, and Levi (1981) associated high antisociality and low intelligence with a lifetime pattern of repeated violence in prisoners. Deficits in impulse control and empathy were identified in low-IQ antisocials, relative to other prisoners, partially explaining the potential for violence in these men (Heilbrun, 1982). Predictions of dangerousness in prison and parole conduct were possible given low-IQ and high-antisocial status of the criminal (Heilbrun & Heilbrun, 1985). Antisociality and intelligence worked in concert to discriminate among three categories of violent criminals varying in severity of the crime (Heilbrun, in press). As stated, the

antisociality/intelligence index in the present study discriminated between murderers whose crimes were considered more or less heinous.

PROCEDURE

Five graduate and undergraduate students were responsible for collecting the data in this study. Experienced investigators were responsible for the training of new investigators in the use of prisoner files and uniform application of rating procedures.

It did not seem possible to prevent the raters from becoming aware of the race of the perpetrator or the victim or of the sentence as they carefully reviewed case files, so blind ratings to prevent judgmental bias regarding race or sentence were not obtained. Judges were urged to be as objective as possible. However, the investigators did work without knowledge of the hypotheses or of the nature of the dangerousness measurement procedures. Bias in judgment or reporting based upon race could have influenced those responsible for information that was used in the files, but no control over that source of bias was possible.

Prisoner files were sometimes lacking information necessary to determine the dangerousness index. For example, IQ scores were available for 78% of the DPM group and 94% of the LSM group. The indeterminate dangerousness scores resulted in varying numbers of subjects across analyses.

RESULTS

PRELIMINARY ANALYSIS OF RACE AND SENTENCE

The extent to which racial discrepancies in sentencing were apparent in our data became the first object of analysis, since these discrepancies reported by Baldus et al. instigated the present study. Black men convicted of murder and sentenced to death between 1974 and 1987 had killed a white victim in 37 cases (69%) and a black victim in 17 cases (31%). Blacks who had killed whites

received a life sentence in 15 cases (25%), whereas blacks who had killed blacks were given a life sentence in 46 cases (75%). (The race of the victim was indeterminate in 10 cases.) The tendency for black men to receive the death penalty when their victims were white and life sentences when they killed other blacks was clearly evident ($X^2[1] = 22.31, p < .001$), consistent with the earlier Baldus et al. findings.

White men convicted of murder and sentenced to death had killed other whites in 53 out of 55 cases (96%), whereas a black victim was involved in only two cases (4%). The identical proportion was found in life-sentence decisions, since 54 out of 56 (96%) white murderers had killed other whites and only two (4%) had victimized a black. (The race of victim was indeterminate in seven cases.) It is clear that the race of the victim played no role in sentencing white men following conviction for murder. White men rarely kill blacks, as Katz pointed out in 1987.

SENTENCE, RACE OF MURDERER, AND DANGEROUSNESS

The next analysis considered whether black and white men given the death penalty are generally more dangerous than those extended a life sentence, or whether racial bias attenuates this difference in dangerousness for only black murderers. Table 1 presents the dangerousness findings. A 2 (sentence) \times 2 (race-of-murderer) factorial ANOVA for unequal cell frequencies revealed a main effect for sentence ($p < .001$), but no sentence \times race interaction ($p > .20$). The dangerousness interpretation was supported, since men receiving the death penalty, both black and white, were more dangerous criminals than those receiving life sentences. Another main effect for race of murderer ($p < .001$) indicates that black murderers were generally more dangerous than white murderers.

SENTENCE, RACE OF MURDERER, AND DANGEROUSNESS (WHITE VICTIMS ONLY)

These analyses were of the same type as those reported in the previous section, except that they focused only upon cases in

TABLE 1
Dangerousness of Black and White Murderers
Sentenced to Death or Life in Prison

Sentence	Race of Murderer					
	Black			White		
	<u>N</u>	<u>M</u>	<u>SD</u>	<u>N</u>	<u>M</u>	<u>SD</u>
Death	44	2953.70	649.66	41	2393.07	673.28
Life	65	2525.40	683.17	61	2185.48	596.69

Summary table for dangerousness ANOVA:

Source	<u>df</u>	<u>M²</u>	<u>F</u>	<u>P</u>
Race of murderer	1	10407276	24.14	<.001
Sentence	1	5201946	12.07	<.001
Interaction	1	626180	1.45	NS

which the victims were white. Table 2 reports the dangerousness results for the four sentence \times race-of-murderer groups. A main effect of sentence ($p < .05$) and absence of a sentence \times race-of-murderer interaction ($F < 1.00$) favor a dangerousness interpretation: DPM criminals (white victims only) are more dangerous than LSM criminals (white victims only) without regard to the murderers' race. The race-of-murderer effect ($p < .001$) was again evident; blacks who kill whites are generally more dangerous than whites who kill white victims.

SENTENCE, RACE OF VICTIM, AND DANGEROUSNESS (BLACK MURDERERS ONLY)

Perhaps the most focused analysis bearing upon possible racial bias in death-sentencing procedures considered whether black

TABLE 2
Dangerousness of Black and White Murderers
Sentenced to Death or Life in Prison (White Victims Only)

Sentence	Race of Murderer					
	Black			White		
	<u>N</u>	<u>M</u>	<u>SD</u>	<u>N</u>	<u>M</u>	<u>SD</u>
Death	23	2853.74	545.43	39	2369.08	664.88
Life	15	2627.13	705.08	51	2081.65	640.80

Summary table for dangerousness ANOVA:

Source	<u>df</u>	M2	<u>F</u>	<u>p</u>
Race of murderer	1	6866546	16.23	<.001
Sentence	1	1726598	4.08	<.05
Interaction	1	19409	.05	NS

murderers given the death penalty were generally more dangerous than black murderers given a life sentence, or whether this difference would be compromised when a white victim had been involved. Table 3 contains the dangerousness findings for the four sentence \times race-of-victim groupings of black murderers. A factorial ANOVA revealed a significant main effect for sentence ($p < .025$) but no sentence \times race-of-victim interaction ($p > .20$). Black murderers given the death penalty were more dangerous than those sentenced to life in prison whether the victims were white or black, as the dangerousness interpretation would require.

Table 1 data not only reflect higher dangerousness scores for black murderers in general relative to white murderers but also suggest a marked discrepancy between the high level of dangerousness shown by blacks and the low level of dangerousness

TABLE 3
Dangerousness of Black Men Sentenced to
Death or Life in Prison for the Murder of White or Black Victims

Sentence	Race of Victim					
	Black			White		
	<u>N</u>	<u>M</u>	<u>SD</u>	<u>N</u>	<u>M</u>	<u>SD</u>
Death	16	3010.12	656.17	23	2857.74	545.43
Life	41	2469.90	715.47	15	2627.13	705.08

Summary table for dangerousness ANOVA:

Source	<u>df</u>	MS2	<u>F</u>	<u>p</u>
Race of victim	1	183.69	.00	NS
Sentence	1	3041008	6.56	<.05
Interaction	1	484044	1.04	NS

shown by whites who are sentenced to die for their crimes. This raised the question of whether differential limens on the dangerousness dimension may exist for men in these racial groups as far as the death sentence is concerned. To test this, the distribution of dangerousness scores for the total sample of 211 murderers was split into quartiles using the following ranges of dangerousness scores: low = 1,066-1,950, low-intermediate = 1,951-2,448, high-intermediate = 2,449-2,963, and high = 2,964-4,356. The cumulative frequencies of whites receiving the death penalty within these quartiles were 32%, 56%, 78%, and 100%, respectively. The frequencies for blacks sentenced to die were 0%, 25%, 55%, and 100%, respectively. Chi-square analysis of these respective frequencies revealed significant proportional differences ($X^2[3] = 19.85, p < .001$). White men who received the death penalty were more likely to present very low dangerousness scores and unlikely to show high dangerousness scores relative to black men who

received the death sentence. There may be better explanations for these findings than reverse discrimination against whites in the sentencing process, but at least they clearly emphasize the failure to find evidence for the opposite type of discrimination within the Georgia system against black murderers.

DISCUSSION

The sentences given in Georgia murder cases between 1974 and 1987 did not reflect evidence of racial bias, despite the fact that our data reaffirm the imbalance in death penalty decisions for black men, depending upon the race of their victim. If a man has killed a white victim, he is far more likely to end up on death row than if his victim was black; this is especially true if the murderer is black. While this superficially implies that a higher premium is placed upon a white life, none of the analyses of criminal dangerousness revealed evidence that racial bias against blacks was involved in determining the death penalty. In fact, post-hoc analysis suggested that the opposite was true, since whites who were sentenced to be executed were far more likely to be at the low end of the dangerousness dimension.

One result repeatedly emerged from the comparisons of DPM and LSM men. The expected greater dangerousness of criminals who received the death penalty was found in every analysis but without regard to race of the victim or race of the murderer. This does not mean that racial bias could not have been involved in any individual case, but, considered overall, it does suggest that the Georgia sentencing system has operated without racial discrimination against blacks as a systematic factor.

Katz (1987) anticipated the conclusion that discrimination against blacks is not routinely practiced in the Georgia sentencing procedures based upon examination of the Baldus et al. data alone. He explained the disproportionality of death sentences for convicted black murderers when a white victim was involved by the likelihood that the crime would involve relative strangers rather than friends or family. He observed that circumstances surrounding the murder of someone familiar to the criminal would more likely involve mitigating factors that would reduce the likelihood of the death penalty. The killing of a stranger,

frequently the case when a black kills a white, would lack mitigation of that type.

This proposed difference in the black murderer's relationship with his victim, contingent upon the race of the victim, can be illustrated within the present data using information extracted from the criminal's file. A scale of relationship between murderer and victim extended from stranger ($= 1$), through acquaintance ($= 2$), and friend ($= 3$), to natural or marital family ($= 4$). Blacks who killed blacks were relatively familiar with their victims whether they were given a life sentence ($M = 2.79$) or the death penalty ($M = 2.61$). In contrast, crimes involving blacks killing whites included victims who were relative strangers, whether a life sentence ($M = 1.25$) or the death penalty ($M = 1.36$) had been extended. For the purpose of comparison, the average relationship ratings for whites killing whites fell at similar intermediate levels when life-sentence murderers ($M = 2.42$) or death-penalty murderers ($M = 1.87$) were considered. These data do support Katz's contention that the black murderer of a white victim typically was confronting a stranger, so that mitigating factors based upon relationship would be less likely.

The importance of clarifying the role of race in Georgia's sentencing system goes beyond the dispassionate theoretical curiosity of the social scientist. The entire country has had to contend with serious problems of a racial nature in past years, and it is a matter of special concern when evidence presumably indicating routine racial prejudice in the criminal justice system is disclosed. The McCleskey case argued before the U.S. Supreme Court is one indication that a racial-bias interpretation of the Baldus et al. data has had an impact outside of the forensic scientific community. Interestingly enough, a recent article (*Atlanta Journal and Constitution*, 1988) suggests that the seeming misrepresentation of the sentencing statistics for black murderers, depending on the victim's race, is again having a social impact. An organization of black Baptist ministers registered a complaint about the light sentences given to blacks who kill blacks compared to cases where a black murders a white victim. Citing statistics that revealed that blacks are usually killed by

other blacks, the clergy blamed the relaxed punishment given when black-on-black murders occur. This shift of concern from the allegation of too much punishment if a black kills a white to too little punishment if a black kills a black misses the same point. Courtroom justice in a murder trial includes consideration of factors that add to or detract from the egregious character of homicide. The present study supports the thesis that blacks who kill whites merit more serious punishment and are not themselves the victims of racial discrimination. By the same token, the same evidence suggests that blacks who kill blacks deserve lesser punishment and are not being patronized by a criminal justice system because it places less value on a black life.

NOTE

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