

# Racial Disparities in Capital Punishment Sentencing within the United States

## A Literature Review

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Capital punishment has been a dividing and controversial topic in the United States, in large part due to its subjective convicting criteria. Historically, there has been little consistency and the sentencing factors have been highly skewed against people of color. In 1972, the Supreme Court ruled during *Furman v. Georgia* that the application of capital sentencing in the United States was categorized as “cruel and unusual punishment” which disproportionately affected the poor, people of color and minority groups, and it was deemed unconstitutional after a 5-4 split ruling.<sup>1</sup> This outcome temporarily abolished the death penalty for four years until further research and guidance could be given to ameliorate racial biases and sentencing disparities. Four years later, modifications and stricter regulations for capital cases were implemented to clarify what factors can be fairly considered.<sup>2</sup>

*Gregg v. Georgia* (1976) reinstated the death penalty in the United States but specified that it cannot be given automatically and cannot be applied in an “arbitrary or capricious” manner.<sup>3</sup> A new practice of using mitigating and aggravating factors as the only considerations for capital decisions was implemented, with the aim to eradicate racial bias and the use of other extra-legal influences.<sup>4</sup> Mitigating factors are positive characteristics often used by the defense, while aggravating factors

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1 R. L. Young, “Guilty Until Proven Innocent: Conviction Orientation, Racial Attitudes, and Support for Capital Punishment,” *Deviant Behavior* 25, no. 3 (2004): 151-167. <https://doi.org/10.1080/01639620490266916>.

2 Young, “Guilty Until Proven,” 156.

3 T. J. Keil et al. “Race and the Death Penalty in Kentucky Murder Trials: 1976-1991,” *American Journal of Criminal Justice* 20, no. 1 (1995): 17-36, <https://doi.org/10.1007/bf02886116>.

4 S. Bomboy, “On This Day, Supreme Court Temporarily Finds Death Penalty Unconstitutional,” *National Constitution Center*, June 29, 2021, <https://constitutioncenter.org/blog/on-this-day-supreme-court-temporarily-finds-death-penalty-unconstitutional>.

are negative qualities surrounding the crime context often used by prosecutors. Now, aggravating factors like repeat offenses, high victim vulnerability, prominent role in the crime, use of a weapon, the execution of a hate crime, and mandatory minimum sentencing could not be used to justify a harsher punishment, unless found to be “true beyond a reasonable doubt.”<sup>5</sup> The United States legal system continues to use these sentencing criteria.

Following Gregg, capital cases are required to feature three phases: charging, sentencing and appeal. During the charging phase, the jury deliberates and unanimously decides whether the defendant will be found innocent or guilty. During sentencing, a penalty is decided through the careful consideration of all mitigating and aggravating circumstances presented by the defense and prosecution.<sup>6</sup> Originally, judges determined the penalty; however, the Supreme Court decision in *Ring v Arizona* (2002) extended the jury’s responsibility to impose the death penalty. The jury must unanimously decide whether the offender is sentenced to death or life in prison without the possibility of parole. The appeal phase requires the automatic appeal of all death sentences to the state Supreme Court to be reviewed for any potential errors or abuses by the trial court.<sup>7</sup>

A major caveat within capital cases is the strict involvement of a death-qualified jury. The Supreme Court determined in *Lockhart v McCree* (1986) that states can remove any jurors whose performance of duties will be impaired by their strong personal opposition to the death penalty.<sup>8</sup> Only individuals who are willing to consider the death penalty as a prospective sentencing option are eligible to serve on a capital jury. Unfortunately, even after modifications following Gregg were made in courts to address and decrease the existing disparities, there was still evidence that legally impermissible factors may still play a role in sentencing decisions. The Supreme Court ruled in *McCleskey v Kemp* (1987) that the contribution of racial discrimination towards capital punishment decisions is unconstitutional.<sup>9</sup> Although this case defines equal treatment under the law for all groups, racial disparities persist, having a detrimental impact on Black and other minority populations. Many researchers continue to investigate this within the justice system and the varying factors that may contribute. There is a diverse array of studies adhering to this general topic that differ methodologically. For this literary review, I analyze the existing racial disparities between Black and White defendants in death penalty sentencing. I aim to identify whether Black defendants receive the death penalty/capital punishment more often than White defendants for comparable offenses.

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5 “Stages of a Criminal Case,” *Justia*, October 15, 2022, <https://www.justia.com/criminal/procedure/stages-criminal-case/>.

6 Keil et al., “Race and the Death Penalty,” 19.

7 N. Shaked-Schroer et al., “Reducing Racial Bias in the Penalty Phase of Capital Trials,” *Behavioral Sciences & the Law* 26, no. 5 (2008): 603-617, <https://doi.org/10.1002/bsl.829>.

8 Young, “Guilty Until Proven.”

9 R. Paternoster et al. “Reassessing Race Disparities in Maryland Capital Cases,” *Criminology* 46, no. 4 (2008): 971-1008, <https://doi.org/10.1111/j.1745-9125.2008.00132.x>.

## **Exclusion Criteria**

My research strategy focused on the specific differences between capital punishment outcomes for Black versus White defendants. For this, I used the search terms “(capital punishment or death penalty) AND (black or African American)” and included a variety of limiters to exclude dissertations, literature reviews, mathematical models, metaanalysis, metasynthesis and all non-English articles. I was interested in finding articles that adhered to the specific differences between Black versus White defendants in capital punishment decisions but also look for different factors that may contribute to these disparities. My initial search yielded sixty-one potential resources of which I immediately excluded three because they were not empirical journal articles. From this list, I excluded thirty-four more articles: fifteen because they focused primarily on the factors that influence differences in death penalty support and attitudes; two because of their focus on racial jury composition or victim race, and seventeen because they lacked relevancy or did not highlight key components like capital punishment discussions or racial differences. From the remaining twenty-four articles, I further excluded six due to their exclusive focus on the effects of victim/juror race and capital punishment, other verdict possibilities outside of capital punishment, or generally did not contain enough supporting evidence for my topic. I then added three additional articles from the citations of articles under review and individual external literature searches. My search strategy left me with twenty-one total articles relevant to my research topic for this literature review.

## **Literature Review**

Racial discrimination within the court system today is a multifaceted systemic issue, not the result of a few individual cases. Studies that have examined this topic have generally found similar trends: Black defendants are more likely than White defendants to receive the death penalty, especially when the victim is White. This review will analyze a variety of controlled factors that influence capital punishment decisions, specifically variables that contribute to the disproportionate racial differences in death penalty sentencing. Most of the pertinent studies report that the race of the defendant has a remarkable impact on the sentencing outcomes, and the victim’s race also has similar effects. Most significantly, the interaction between defendant-victim racial dyads is the most common factor discussed among research in the field. Other contributing factors that seem to influence outcomes like jury, organizational factors and data collection factors will be discussed in less detail. The literature analyzed in this review spans over 25 years, dating back to 1993 and the most recent in 2018. There is also an array of methodologies used within the studies such as post-trial interviews, archival research analyzing government cases, and true experimental research and surveys.

## Defendant Racial Factors

Most research finds the race of the defendant to be the main factor affecting capital sentencing outcomes. Because there seem to be some inconsistencies in the past two decades of research, varying results will be discussed.

A study by Applegate et al. yielded significant differences in sentencing for Black vs. White offenders. Participants were given one of two vignettes' scenarios in which the only differential feature was the race of the offender. Respondents were significantly more likely to support capital punishment for Black offenders than White offenders.

Other studies have delivered similar results of racial differences but presented caveats, highlighting the complexity of the issue. Sorenson et al. aimed to identify racial disparities in capital punishment through an archival examination of all death-qualifying cases in the state of Missouri from 1977 to 1991. He found that White offenders are more likely than Black offenders to be charged and convicted with capital murder, but less likely to receive a death sentence. Conversely, Black offenders are more likely than White offenders to be charged but less likely to be convicted; if a case does lead to conviction, a Black offender is more likely to receive a death sentence. These results are explained by the perceived severity of the crime. A crime is perceived to be more aggravated for Black offender vs. a White offender, and therefore the severity of the punishment follows that perception. This effect is magnified if the victim is White.

While the majority of studies have found strong evidence to support racial inequalities unfavorable to Black offenders, others fail to yield statistically significant racial differences in the application of the death penalty. Mannes et al. examined how the defendant's race affected capital case decisions. Participants were instructed to read materials from a modified trial transcript of the *Harvard v. Mississippi* case in order that normal court proceedings would follow. They were provided with a picture of either an African American or Caucasian defendant; based on their review of the case, they were asked to determine whether the given defendant was guilty or not guilty on the charges of murder and sexual assault. If guilty, participants had to recommend a sentence of death penalty or life without parole. The outcome did not find statistically significant results to show racial biases in sentencing and the results failed to support their hypothesis. Thus, while race was not deemed a significant predictor, there may be underlying factors that affects the results such as aversive racism. Aversive racism indicates that stereotypes of Black people are internally present in White participants, but White participants are likely to change their behavior when race is made salient in a case to avoid appearing prejudiced.<sup>10</sup> Because Mannes' results differed from the consensus

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<sup>10</sup> J. F. Dovidio et al., "Racial Attitudes and the Death Penalty," *Journal of Applied Social Psychology* 27, no. 16, (1997): 1468-87. <https://doi.org/10.1111/j.1559-1816.1997.tb01609.x>.

of other relevant studies, it is possible that other experimental confounds had an influence. The sample population lacked diversity, and although an orderly process of court readings was followed, deliberation among participants was not allowed which does not make for a realistic court setting, potentially skewing results. Therefore, it is difficult to determine whether the defendant's race alone is sufficient to be deemed as the causative variable for racial disparities in capital sentencing.

### **Victim Factors**

A victim's gender and race also have a major influence in sentencing outcomes. Many studies interested in the impacts of the victim's race on capital punishment decisions recount similar hypotheses: cases involving White victims are more likely to result in capital punishment compared to those with victims of other racial backgrounds, regardless of the defendant's race. Indeed, when capital murder cases tried in North Carolina between 1977 and 2009 were compared, a common "white victim effect" was established.<sup>11</sup> Defendants of all races were more likely to receive capital punishment when the victim was white. Alternatively, Sorenson & Wallace hypothesized a similar effect but did not find consistent results. Rather, cases with white victims were more likely to result in a charge or convictions but not significantly more likely to warrant the death penalty.

These factors in combination can have substantial implications for capital sentencing in court. Based on studies that have established that Black defendants are sentenced to death at disproportionately higher rates compared to White defendants, and also that cases involving White victims are more likely to result in the death penalty, it is then plausible to predict that the interaction between Black defendants and White victims will show amplified results for capital sentencing. Thus, we expect Black male defendants associated with white female victims to have a higher likelihood of receiving the death penalty compared to other racial and gender combinations. These differences and the ways in which these factors interact are important aspects of capital cases to consider.

To understand how race impacts capital sentencing, research must aim at pinpointing all factors that influence jury decisions. Achieving this implies controlling all possible variables. The essential component of researching the impacts of race on capital sentencing decisions is to consider all potential factors that may contribute to the way a juror decides, and control as many variables as possible. Therefore, an accurate way to analyze the data is to compare capital punishment decisions for specific defendant-victim racial combinations and the way these dyads impact jury deliberation.

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11 W.G. Jennings et al., "A Critical Examination of the 'White Victim Effect' and Death Penalty Decision-Making from a Propensity Score Matching Approach: The North Carolina Experience," *Journal of Criminal Justice* 42, no. 5 (2014): 384-398, <https://doi.org/10.1016/j.jcrimjus.2014.05.004>.

## **Defendant-Victim Dyad Factors**

This section will examine the comprehensive evidence surrounding varying defendant-victim dyads as well as how these specific racial combinations influence the way juries interpret case factors.

### **Sentencing Outcomes for defendant-victim racial combinations**

Many studies seem to recognize the most pronounced racial disparities in cases involving Black defendants and White victims.

As aforementioned, Jennings et al. established the presence of a “White-victim effect” regardless of the defendant’s race but found a more pronounced effect when defendants were Black. This may suggest a ‘case effect’ rather than a ‘race effect’ because the issue may be more nuanced than they were able to test within the limitations of their study.

Consistent results were found within the previously mentioned Sorenson archival analysis of death-qualified homicide cases in Missouri between 1977 and 1991. Black offender-White victim dyads were most likely to be convicted and receive a death sentence while white offender-white victim dyads were also susceptible to similar convictions. On the other hand, both black offender-black victim dyads and white offender-black victim dyads were much less likely to result in a conviction.<sup>12</sup> One way to interpret these results is from the juror’s perception of the crime. Minority or Black offenders may be stereotypically viewed as more dangerous and their crimes more heinous, therefore justifying a harsher punishment. When the victim is a minority, jurors tend to lessen the severity of the crime and impose a less harsh sentence compared to a white victim, implying that the lives of a minority victim may be perceived as less valuable. This theory is supported by an array of studies such as Keil and Vito,<sup>13</sup> Paternoster,<sup>14</sup> and Eberhardt with the same outcomes. Considering that minorities make up a much smaller percentage of the population, their overrepresentation on death row depicts signs of racial bias.

### **Case Severity and Defendant Stereotypicality**

The perception of the severity of the crime is directly tied to jury’s perception and implied stereotype. As previously discussed, Black or minority offenders are perceived as more violent, their crimes more severe, and therefore receive a harsher sentence.

In less severe cases, more pronounced racial bias was found for black defendant-white victim cases than other racial combinations. This suggests that racial disparities in capital sentencing may be due to biases brought into a court setting from the

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12 J. R. Sorenson et al. “Capital Punishment in Missouri: Examining the Issue of Racial Disparity,” *Behavioral Sciences & the Law* 13, no. 1 (1995): 61-80, <https://doi.org/10.1002/bsl.2370130105>.

13 Keil et al., “Race and the Death Penalty.”

14 Paternoster et al., “Reassessing Race Disparities.”

real world as opposed to organizational factors.<sup>15</sup> The liberation hypothesis, the notion that extra-legal factors play a big role in less severe crimes or when the evidence is weak or contradictory, further supports this theory.<sup>16</sup> Due to the lack of concise criteria for sentencing and punishment, it allows for more arbitrary decisions based on personal bias by the jurors. A thorough examination of capital cases in North Carolina between 1977 and 2009 by Bjerregaard expected to find similar results to those in Applegate's study. He looked at different victim race-defender race dyads and their interactions with case severity, hypothesizing that the liberation hypothesis would be further supported. Surprisingly, the end results were contradictory; case severity positively influences death sentence probability. Black defendant-White victim cases were more likely to receive the death penalty in high severity cases, but less likely in low severity cases. Victim-offender dyads did not have a significant impact on sentencing outcomes for cases of average severity.

On the other hand, results were like past studies regarding sentencing outcomes for different victim-defendant racial dyads. Cases involving a Black defendant and White victim were more likely to receive a death sentence compared to white defendant-Black victim cases overall. Racial bias seems to play a bigger role in high severity cases and contradicts the liberation hypothesis. A feasible explanation lies on the fact that the death penalty is not a justified punishment for low severity cases. As prosecutors are more likely to seek the death penalty for more severe offenses, it is possible that jurors weigh aggravating factors more heavily than mitigating factors for Black offenders, thus more easily rendering a guilty verdict. Ultimately, regardless of case severity, racial disparities in capital punishment for Black versus White defendants committing the same crimes still prevail.

### **Weight of Mitigating/Aggravating Factors by a Jury**

This section presents the evidence to support the hypothesis that Jurors place more emphasis on aggravating evidence than mitigating evidence when the defendant is Black. Despite the court instruction to jurors to exclusively weigh mitigating and aggravating factors presented, jurors are still humans with their own biases and prejudices.<sup>17</sup> Other studies further analyzed how the race of the defendant, juror, and victim influences a jury's receptivity to mitigating evidence. In capital cases where a black defendant kills a white victim, Black jurors were more receptive to mitigation than White jurors.<sup>18</sup>

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15 B. K. Applegate et al., "Victim-Offender Race and Support for Capital Punishment: A Factorial Design Approach," *American Journal of Criminal Justice* 18, no. 1 (1994): 95-115, <https://doi.org/10.1007/bf02887641>.

16 B. E. Bjerregaard et al., "A Further Examination of the Liberation Hypothesis in Capital Murder Trials," *Crime & Delinquency* 63, no. 8 (September 2015): 1017-38, <https://doi.org/10.1177/0011128715574454>.

17 V.Y. Womack, (2022). Social Cognition [powerpoint slides]. Lake Forest College Psych 255: Social Cognition.

18 T. W. Brewer, "Race and Jurors' Receptivity to Mitigation in Capital Cases: The Effect of Jurors', Defendants', and Victims' Race in Combination," *Law and Human Behavior* 28, no. 5 (2004): 529-545, <https://doi.org/10.1023/b:lahu.0000046432.41928.2b>.

An archival study by Bjerregaard<sup>19</sup> showed, through a quantitative measure of aggravating and mitigating factors, that aggravating factors were weighed more heavily for Black defendants involved with White victims. Keil and Vito concluded that if more than one aggravating circumstance is found, the defendant is far more likely to receive a capital charge and death penalty. Harmon found that defendants with prior felonies yielded significantly higher rates of conviction and execution. Consequently, jurors are likely to consider recidivism as an extra factor in their decisions disregarding court instructions to only weigh circumstances pertinent to the present case.

As Black offenders are likely to experience racial bias in first offense cases, the snowballing effect deems a black offender more prone to be found guilty due to the recidivist argument previously discussed, and any subsequent crimes are perceived as more severe. This amplified racial bias renders Black defendants to be found guilty more easily and frequently.<sup>20</sup>

According to the Bureau of Justice Statistics in 2010, 52% of convicted homicides are committed by black offenders, and an assumption that black people commit more crimes than white people may be made from this. However, this statistic does not consider the discussions that make black offenders more readily “prosecutable” compared to offenders of other races. In other words, the “blackness” of an offender makes him a better target for prosecution than defendants of other racial profile.<sup>21</sup>

## **Jury Factors**

The constitutional right to a jury trial is an aspect of the criminal justice system unique to American democracy, and jury trials also offer a voice to the people by allowing them to participate in the government process.<sup>22</sup> Members of a jury hold their individual beliefs, biases and prejudices, which may ultimately decide on the fate of a defendant either positively or negatively. This section will analyze jury factors that contribute to differential sentencing outcomes including jury racial composition, instruction comprehension and education and how jury attitudes differ based on geographical location.

### **Racial Composition of a Jury**

The racial composition of a jury has been shown to correlate with specific attitudes that promote prejudice. In a between-participants quasi experiment, Shaked-Schroer et al. analyzed how a diverse jury can introduce the possibility of reducing racial bias in capital sentencing. Racially diverse set of 58 white and 62

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19 Bjerregaard et al., “Liberation Hypothesis.”

20 Owens et al., “Examining Racial Disparities,” 1-2.

21 E. Owens et al., “Examining Racial Disparities in Criminal Case Outcomes among Indigent Defendants in San Francisco,” *Quattrone Center for the Fair Administration of Justice* (2017): 1-2 <https://www.law.upenn.edu/live/files/6791-examining-racial-disparities-may-2017combinedpdf>.

22 “Why Jury Trials Are Important to a Democratic Society - Judges,” accessed April 28, 2022, <https://www.judges.org/wp-content/uploads/2020/03/Why-Jury-Trials-are-Important-to-a-Democratic-Society.pdf>.



non-white participants were recruited to read a trial transcript and decide on a penalty for either a Black or White defendant. When only White mock jurors were assessed, Black defendants were significantly more likely to receive the death penalty while White defendants were more likely to receive a life sentence. In racially diverse mock juror groups, the race of the defendant did not have any significant effect on decisions to grant the death penalty or life without parole. Ultimately, diversity in a jury decreased racial bias against black defendants.

Racial diversity within a jury impacts sentencing outcome. An extensive study conducted by Dovidio and Smith<sup>23</sup> examined the impacts that overt and subtle racism, as categorized by high versus low prejudice scores, from white participants have on capital sentencing recommendations for Black and White murder convicts. Participants with high prejudice scores recommended the death penalty more for black offenders than white offenders, exemplifying trends of traditional racism.

While highly prejudiced participants seem to display traditional forms of prejudice, the racial composition of the jury serves as a rationalizing factor for low-prejudice participants to show prejudice in a more subtle and indirect way. Dovidio describes this as aversive racism. When people experience high racial ambivalence, they tend to make decisions that are more favorable towards Blacks in order to avoid appearing prejudiced. However, when discriminatory decisions can be rationalized, they tend to unconsciously allow their racial bias to have an influence in subtle ways.<sup>24</sup> Aversive racism creates significant disadvantages for Blacks in society, especially towards capital sentencing outcomes, but its manifestations go more easily unnoticed due to its discrete nature.

### **Attitudes common to death-qualified jurors**

Jurors that meet the death qualifications to serve for a capital case are commonly associated with a specific personality type that renders them prone to hold prejudices toward people of color.

Young conducted an archival study assessing how the death penalty may be disproportionately applied to African Americans due to the selection process of jurors. He aimed to determine the attitudes and beliefs that connect racial prejudice to capital punishment support and predisposition to conviction. Through an examination of general social surveys taken in 1990 and 1996, he found that individuals with high prejudice are more likely to support the death penalty. It can then be suggested that death-qualified jurors hold prejudice against Black defendants and thus, are more likely to vote for a conviction and death penalty sentence, even when the evidence is not strongly compelling. Furthermore, when presented with less than strong evidence, white respondents showed a preference for convicting innocent defendants over acquitting guilty defendants.<sup>25</sup> It is considered

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23 J. F. Dovidio et al., "Racial Attitudes and the Death Penalty." *Journal of Applied Social Psychology* 27, no. 16 (1997): 1468-87. <https://doi.org/10.1111/j.1559-1816.1997.tb01609.x>.

24 Dovidio, "Racial Attitudes," 1475.

25 Young, "Guilty Until Proven," 165.

a more severe mistake to let a guilty defendant free than convicting an innocent one. This is rooted from a rigid obedience of the law, negative views and distrust in human nature, and racial prejudice, in particular towards Black defendants. These characteristics and attitudes tend to favor subjects who believe more strongly in capital punishment and therefore make them “death-qualified” jurors; and subjects meeting these criteria appeal to the prosecution. Above all, Black defendants experience a predisposition to conviction and an increased likelihood to receive a death sentence due to the nature of capital cases and the process of selecting a death-qualified jury.

### **Instruction Comprehension and Education of the Jurors**

Studies have established that many jurors have poor comprehension of procedural and court instructions overall. When instructions are not clearly understood, jurors more heavily consider the aggravating evidence and have a higher misunderstanding of mitigating evidence. Moreover, poor instructional comprehension yields a higher rate of death verdicts for black defendants than white defendants compared to jurors with high instructional comprehension. For high comprehension jurors, the race of the victim and defendant do not have any effect on sentencing decisions.<sup>26</sup>

Young suggests that less educated jurors tend to support the death penalty more than educated jurors, and the level of education of the juror directly correlates with instructional comprehension. Therefore, when faced with a lack of instructional understanding, a juror is more likely to consider extralegal factors and prejudices on their verdict.

A way to mitigate this problem is to further simplify the jury instructions in order to promote higher comprehension. Studies have tested this solution by comparing the comprehension of participants who receive standard or simplified instructions. Shaked-Schroer conducted a study where participants were asked to provide definitions for mitigating and aggravating factors and appropriately indicate the sentence that would be given for the respective prevalence of each factor. A calculation of instruction comprehension was taken from this. Only one participant that had received the standard instructions was able to correctly define mitigating and aggravating factors after reading the instructions which shows how minimally people are able to comprehend jury instructions.<sup>27</sup>

A decade later, another study by Mannes, Foster, and Maier further supported these findings. Simplified instructions decreased death penalty decisions for Black defendants but not White defendants, and Black defendants were not found guilty more than White defendants.<sup>28</sup> Racial bias in the capital sentencing process is

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26 M. Lynch et al., “Discrimination and instructional comprehension: Guided discretion, racial bias and the death penalty,” *Law and Human Behavior* 24, no. 3 (2000): 337-58, <https://doi.org/10.1023/A:1005588221761>.

27 Shaked-Schroer, “Reducing Racial Bias,” 610.

28 S. Mannes et al., “Jury instructions: How timing, type, and defendant race impact capital sentencing decisions.” *Applied Psychology in Criminal Justice* 14, no. 2 (2018): 154-70.

reduced by the modification of jury instructions because comprehension of the instructions is increased.

Juries have a crucial role in capital cases and the fate of defendants on trial is determined by their sentencing decisions. However, evidence indicates that the varying attitudes held by different jurors and the lack of instructional comprehension has a detrimental effect on black defendants in capital cases. Substantial changes and reform need to take place to ameliorate these issues. Past and ongoing research continues to offer solutions that can create the necessary ground for reform.

### **Organizational Factors**

Thus far, we have considered how factors relating to the main characters of a capital trial affect sentencing verdicts for black and white defendants. Organizational factors also shape the inordinate ways that defendants of certain races are treated and penalized. The negative effects of these factors come about inadvertently because of the fixed structure of the justice system and the way in which it is organized. In this section, we will analyze the evidence concerning organizational factors that encompass the inequitable treatment towards Black people in capital verdicts. Examples highlighted in the current research literature include the punishment options, phase of the case, and exoneration.

### **Severity of Punishment Options and Racial Bias in Each Stage of a Capital Case**

Prosecutors can decide whether a case is going to be punished capitally. When a death notice is passed during the prosecutorial stage and the potential for a capital charge is claimed, the jury must undergo deliberation in the sentencing stage to decide on a death sentence or give life without parole.<sup>29</sup> Studies have shown that the severity of the maximum punishment option can alter the way jurors decide to sentence a defendant.

Glaser et al. questioned whether the possibility of the death penalty interacts with the defendant's race to influence verdicts. Participants involved in this experiment were given a mock triple-murder trial summary; the defendant's race (Black/White), and maximum sentence (life without parole/death penalty) were manipulated for different conditions. They then were asked to make a decision to either acquit or convict the defendant. The results showed that Black defendants were convicted more than White defendants when death penalty was a possibility, but not when life without parole was the maximum sentence option.<sup>30</sup>

Other studies have looked at 'truth-in-sentencing' (TIS) murder cases to see if race is still a factor. TIS cases essentially follow the same proceedings as death penalty cases, but the maximum possible punishment is life without parole. When

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29 "Stages in a Capital Case," High School Curriculum on the Death Penalty, accessed April 29, 2022, <https://deathpenaltycurriculum.org/node/3>.

30 J. Glaser et al., "Possibility of death sentence has divergent effect on verdicts for Black and White defendants," *Law and Human Behavior* 39, no. 6 (2015): 539-46. <https://doi.org/10.1037/lhb0000146>.

death sentencing is not a possibility of consideration, the jury may not feel as heavily pressured, which may change their decision-making tactics. These cases allow us to directly compare outcomes to those of capital sentencing processes; controlling the severity of the sentence can help to more clearly articulate the role race has on verdicts. TIS can serve as a solution to reducing bias in the legal system. Non-discriminatory application of TIS allows for it to be a better alternative to capital punishment.<sup>31</sup>

A significant difference between juror racial bias and prosecutor racial bias is that the latter holds much more power and can keep information confidential. The prosecution commonly has self and political interests to win a case and may use their power to manipulate factors in their favor. For example, the prosecution is likely aware of the statistics in favor of conviction and thus will favor the selection of a jury that will render them their wanted outcome. Furthermore, prosecutors recognize that minorities or Black defendants have a higher chance of prosecution, therefore seeking capital punishment more in Blacks or minorities than White defendants. For this reason, there are more existing cases involving Black offenders that can result in a conviction.

During deliberation, the jury gets together to consider all aggravating and mitigating factors of a case in order to produce a unanimous verdict.<sup>32</sup> As previously discussed, research evidence shows a better outcome for Black defendants by reducing racial bias; improving instructional comprehension and properly weighing aggravating and mitigating evidence.<sup>33</sup>

The appeal process occurs after a defendant is found guilty and the innocence presumption is revoked. During this short period, the defense can admit new evidence or delineate any mistakes made throughout the conviction process that would acquit them of the designated sentence. Some researchers argue that race shapes the speed and outcomes of post-sentence processes including the appeal stage. In a study by Petrie et al., Texas death sentence cases involving Black or Hispanic male offenders were assessed for their death row outcomes of either execution or sentence relief. Petrie expected Black offenders to experience lower rates of sentence relief and faster execution; however, the opposite effect was determined. Minority defendants had a lower hazard of execution than white defendants but also did not have a greater hazard of sentence relief. This may be caused by a dragged-out appeals process that takes longer to be resolved when minorities are involved in a case. It is reiterated, however, that a race effect was not found to influence sentence relief decisions; neither the defendant nor victim race had a significant impact on increasing or decreasing the hazard of execution or sentence relief. A longer appeals process is not necessarily indicative of an increased chance of sentence relief, but rather a result of inadequate legal representation,

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31 Keil et al., "Race and the death penalty."

32 "Stages in a Capital Case."

33 Lynch, "Discrimination," 350.

which is known to speed up the pace and urgency of the appeals.<sup>34</sup> So, Black defendants spend more time on death row overall but do not experience execution at greater rates or have a higher chance of being released. These occurrences may be indirectly due to racial prejudice but are directly a result of organizational factors that create disparate outcomes in sentencing.

Exoneration after sentencing might be the only instance of the trial/post-trial process statistically favoring non-White or Black defendants. Talia Harmon and her colleagues examined exoneration rates in the United States to determine if race contributes to erroneous capital convictions. Results yield that non-white defendant/white victims' dyads are more likely to be exonerated compared to other racial combos.<sup>35</sup> These results were due mainly to allegations of perjury and police misconduct that increased chances of exoneration.<sup>36</sup> However, this paradox does not directly reflect redemption of a wrong conviction, but rather a broken system that seems to push for harsher punishments of minorities.

Ultimately, the trial process has shown to cultivate racial bias in nearly all aspects of the system making black defendants far more represented on death row and in the penal system as a whole. The "conviction-prone" orientation commonly possessed by death-qualified jurors favor conviction over acquittal when a case cannot be proven beyond reasonable doubt.

## Conclusions

This comprehensive literature review covered a wide range of studies and identified a myriad of factors that contribute to the way jurors decipher information and determine verdicts in capital cases.

The victim and defendant race predominantly impacts sentencing outcomes but the reliability of these outcomes is best shown with the combination of these dyads. Thus, defendant-victim racial dyads are significant predictors of verdict decisions. Unequivocally, the main conclusion is that Black defendants who kill White victims are more likely to receive capital punishment at disproportionate rates than other racial combinations. The severity of the crime modifies these findings slightly; more severe cases increase the probability of the death penalty for Black defendants. A case is likely to be perceived as more severe when the Black Defendant-White victim racial combination is present.

The racial composition of the jury and their ability to comprehend instructions has a main effect on how deliberation unfolds. An equal representation of different races on a jury is most effective in reducing the pervasiveness of racial bias. Nonetheless

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34 M. A. Petrie et al., "Who lives and dies on death row? Race, ethnicity, and post-sentence outcomes in Texas," *Social Problems*, 57, no. 4 (2010): 630-52. <https://doi.org/10.1525/sp.2010.57.4.630>.

35 T. R. Harmon, "Race for Your Life: An Analysis of the Role of Race in Erroneous Capital Convictions," *Criminal Justice Review* 29, no. 1 (2004): 76-96. <https://doi.org/10.1177/073401680402900106>.

36 T.R. Harmon and W. S. Lofquist, "Too Late for Luck: A Comparison of Post-Furman Exonerations and Executions of the Innocent," *Crime & Delinquency* 51, no. 4 (2005): 498-520. <https://doi.org/10.1177/0011128705275977>.

this is difficult to enact due to the required death-qualification for capital jurors. Additionally, it is found that most capital jurors have a low comprehension of the instructions given, leading to the use of extralegal factors in decision making. This problem is found to be reduced by simplifying instructions.

The structure of the justice system itself has created gaps that allow for racial disparities to seep in. The severity of the maximum punishment option has skewed the way a jury deliberates; the mere consideration of the death penalty makes it more likely to be applied disproportionately to people of color. In addition, most phases of a capital case display biases; however, research has not had the ability to sufficiently examine bias in early stages because of the limited data recorded and available to the public. Although certain aspects of a capital trial, such as the deliberation process, are intended to reduce the likelihood that discriminatory beliefs will control outcomes, ultimately, they have not shown to be effective in their merit. As a result, minorities and Black people are incarcerated and given the death penalty at higher rates than White people for the same or similar offenses. Exoneration was examined by many researchers because of suspicion that these disparate trends were due to higher rates of false conviction. Ultimately, Black defendants were exonerated more than White defendants supporting this false conviction ideology.

### **Limitations**

It is important to recognize that the studies reviewed contained major limitations and weaknesses. The topic of capital punishment can only be studied empirically utilizing archival data or experimental models. Consequently, it is impossible to control every variable in these studies due to high numbers of confounding variables that may influence the case. Many archival studies lack information necessary to measure all of the contributing components, mostly in the prosecutorial stages. Moreover, despite the efforts to simulate real life scenarios in all the experimental studies, the real-life stresses and pressures that jurors may experience during an actual trial can be very difficult to replicate in a research study. Participants understand that the decisions will not have any real impact on human life since it is strictly for research methods. In fact, many studies did not include a deliberation process of participants which is a crucial aspect of a real capital case trial. It was also quite difficult to find studies that examine capital punishment sentencing for Black female defendants compared to Black male defendants. This is an area of research that needs to be expanded on.

Some studies appeared to tilt their research and findings in a way to favor an outcome and to counter the findings of similar studies in the field. This confirmation bias alters the way they structure their study, the type of analysis they use and the way they interpret their results, proposing misleading conclusions to the audience.

### **Improvements for Future Studies and Real-World Implications**

For future research, it may be important to measure the effects of racial bias in the early stages of a trial that may be imposed by prosecutors and judges. This requires courts to keep better records of case details in all stages of a capital proceeding and to make these records more publicly accessible. Finding ways to more accurately replicate the jury process and to include a mock deliberation process may help find more accurate results and data.

Cumulatively, these studies presented predictable but tragic results, nonetheless. The existence of racial bias in the legal system is a representation of the systemic racism that occurs in our society and translated to all its aspects including incarceration and capital punishment. The objective of many of these studies is to propose potential solutions to these systemic problems. We must continue to evaluate these sources to understand how we can eliminate these racially targeted consequences by effectively applying solutions that aim to eradicate biases. A high scrutiny of Prosecutors and Judges allowing racial prejudices and biases needs to be ensued. Finally, the very definition of “death-qualified” jury is in and of itself a self-fulfilling prophecy. A major reform in the choosing of jurors needs to take place to warrant a fair outcome for the accused.