“I FEEL YOUR PAIN”:
HOW JUROR EMPATHY EFFECTS DEATH PENALTY VERDICTS

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by

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DEDICATION

This dissertation is dedicated to a very special person, Kelly Melvin-Campbell, who holds a very special place in my heart.
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CHAPTER I

INTRODUCTION

There is no greater punishment in the American criminal justice system than sentencing a convicted person to death. The death penalty as a “just” social policy has long been debated by academics and criminal justice practitioners alike. While capital punishment has many strong death penalty advocates, the strength of their convictions often waivers when sentencing options are available for defendants (Bohm 2003, 45). Those favoring the death penalty argue that it provides a general deterrence to crime and gives convicted criminals their “just desserts”; opponents counter by saying that the government should not engage in any form of sanctioned killing. And for legal scholars, the death penalty raises Eighth and Fourteenth Amendment concerns as to whether such punishment is cruel and unusual and therefore violates the U.S. Constitution.

The U.S. Supreme Court has already weighed-in on the issue, stating that capital punishment is not unconstitutional per se, and yet the Court has held that the death penalty is cruel and unusual when arbitrarily applied (Acker and Lanier 2003). The Court’s major concern with application of the death penalty was that there were no predetermined guidelines that juries could use to decide what merits the death penalty and what does not. Throughout several U.S. Supreme Court decisions beginning in the late 1970s the Court upheld capital sentencing schemes where guided discretion statutes were used to assist juries in sentencing. Yet fundamental questions remain: Are jurors using
guided discretion, as the Court ruled in *Gregg v. Georgia* (1976), and if so, what extralegal factors are also influencing their final sentencing decisions? Specifically, what emotions and feelings weigh on a juror when coming to a penalty decision, and how do such factors comport with the Court’s concern over arbitrariness? Do the emotions and feelings influencing jurors undermine the instructions set out in the majority of state death penalty statutes as a result of the Gregg decision?

**Statement of the Problem**

To ensure equity, uniformity and consistency in the criminal trial process, particularly when a defendant’s life is at stake, research is needed to explore whether, and to what degree, extralegal factors such as emotions can play in jurors’ sentencing decisions. An assessment of jurors’ decision-making is vital to determine whether our jury system is impartial, unbiased, and evenhanded. The research should also examine to what extent jurors are able to overcome their preconceived notions, and rely solely on the legal evidence presented at trial to determine guilt and punishment, as mandated by our criminal justice system. Similarly, how often are jurors swayed by their own emotions, such as empathy for the victim, when rendering their penalty decisions? More precisely, if they do possess empathic feelings for the victim, to what extent does this affect their acceptance of aggravating factors presented during the penalty phase of a criminal case?

Aggravating factors are those circumstances surrounding a homicide that make the crime especially heinous (Lynch, Brody, Heward, and Burge 2008). Statutory aggravating factors are specifically defined by state legislatures. They can be, but are not limited to, the killing of a female or child, a manner of killing that is considered
especially cruel or vicious, and/or whether or not the crime was committed in the course of a felony. Non-statutory aggravating factors such as victim impact statements, are those circumstances presented to jurors during a capital case which are not specifically defined by law and therefore do not have to be proven beyond a reasonable doubt (Turlington 2008).

This dissertation will examine statutory and non-statutory aggravating factors in light of jurors’ empathic feelings for homicide victims. Research that examines juror empathy and its effect on receptivity to aggravating evidence during the penalty phase of a case is crucial to understanding the role jurors’ emotions play in capital cases.

This study seeks to ascertain, based upon responses from individual jurors who have served on capital cases throughout the nation, how juror empathy for victims affects jurors’ receptivity to aggravating evidence during the penalty phase of capital cases. The research is based on data collected by the Capital Jury Project (CJP), a multi-faceted study that surveyed more than 1,000 jurors who served in death penalty cases. This dissertation examines a multitude of data collected from the CJP to gain a broader understanding of all the factors jurors consider in capital cases. The CJP instrument makes use of both quantitative and qualitative questions about particular capital cases and gathers information about the victims, the offenders, and the trials. Jurors were asked about the deliberation process with respect to the guilt and penalty phases of each case, and they were questioned specifically about their perceptions of the victim and the crime committed and whether those perceptions might have influenced their decision-making in
the case. This methodology provides a better understanding of the cognitive and emotional process of decision-making by jurors in capital cases.
CHAPTER II

DEATH PENALTY JURISPRUDENCE

The Death Penalty in America

The use of the death penalty in the U.S. has its roots in British common law (Rand 1997). Several methods were used in early Britain to carry out capital punishment—convicted criminals were hanged, boiled, burned, and beaten to death. These British techniques were brought to U.S. colonies and the first reported execution to take place on American soil, by firing squad for the crime of treason, occurred in 1608 (Costanzo 1994; Rand 1997). Executions continued as a means of criminal punishment, but the practice became the subject of debate, provoked by the writings of philosophers such as Cesare Beccaria. The author’s classic work, *On Crime & Punishment*, discusses the proportionality of punishment and whether or not punishment was an effective deterrent to crime.

As the evolution of American culture peeled away from British tradition, reformers began to look at alternative viewpoints on deterrence and punishment. Beccaria, for instance, challenged the death penalty beyond just moral grounds by examining its pragmatic effectiveness. Jurisdictions began to study whether the death penalty was cost-effective. In 1846, Michigan became the first state to abolish the death penalty for all crimes except those against the government, followed later by Rhode Island, which abolished the death penalty for all crimes (Bohm 1999). Such changes
resulted in discretionary statutes being passed in many states where no mandatory use of the death penalty was imposed. The popularity of capital punishment heightened in the 1930s, when it was used more than at any other time in American history, but by the 1950s it once again was minimally endorsed (Bohm 1999). By the 1960s the death penalty had fallen into disfavor, coming under frequent attack as a violation of the Eighth and Fourteenth Amendments to the U.S. Constitution.

**The Death Penalty and the Eighth Amendment**

In 1972 the United States Supreme Court handed down its decision in *Furman v. Georgia*, the predominant case on the subject of jury discretion and the death penalty. In *Furman* the court held that unbridled discretion in the sentencing phase of death penalty cases offended the provisions of the Eighth Amendment, which bans the use of “cruel and unusual punishment,” resulting in a nationwide moratorium on the death penalty. Although *Furman* resulted in a major shift in the way death penalty cases were handled in the U.S., pre-*Furman* death penalty cases reviewed the procedural process of who is to apply capital punishment statutes as well as the practice of how they are to be applied. A historical examination of pre- and post-*Furman* cases presented below evaluates the impact *Furman* had on these capital punishment statutory schemes.

**Pre-*Furman* and the Eighth Amendment**

In the late 1960s the U.S. Supreme Court began to examine the mechanical process of how the death penalty is carried out and who is ultimately responsible for the sentence imposed. One of the first cases, *U.S. v. Jackson* (1968), involved a federal
kidnapping case in which a defendant was penalized for exercising his/her Sixth Amendment right to a trial by jury. Since only juries can hand down death sentences, defendants who request a trial by jury run the risk of being given the harshest of penalties, whereas, capital punishment is not an option for those who forgo a jury trial. The Court struck down this provision of the Federal Kidnapping Act as unconstitutional, stating that defendants cannot be punished for wanting their case heard by a jury instead of a judge. The Court also looked at jury selection and the standard used to empanel a jury based upon potential jurors’ beliefs about capital punishment.

That same year, in Witherspoon v. Illinois (1968), the Court ruled it was not permissible to disqualify jurors who may morally object to the death penalty as long as they can still render an impartial decision. The Court’s decision allowed jurors who may have had preconceived beliefs about the taking of a human life to be a part of the decision-making process as long as they could remain impartial. Just prior to Furman the high court heard the companion cases of Crampton v. Ohio and McGautha v. California (1971), which gave juries wide latitude in deciding whether or not to impose the death penalty. The defendants in those cases argued that it was a violation of the Fourteenth Amendment for jurors to have unrestricted discretion in deciding whether a defendant should be put to death, and that permitting such behavior amounts to arbitrary and capricious sentencing. Furthermore, the defendants maintained that allowing both the guilt and penalty phase to be determined in the same setting was unconstitutional. The Court disagreed and stated that prior legislative frameworks setting specific criteria had proven unsuccessful and that it was impossible for legislatures to detail such standard
characteristics for juries. All of this changed in Furman when the Court ruled the death penalty unconstitutional, calling it arbitrary.

**Post Furman and Guided Discretion**

In Furman the U.S. Supreme Court weighed in on the application of the death penalty and whether or not its utilization constitutes cruel and unusual punishment. Unlike prior claims alleging Fourteenth Amendment violations, Furman asserted that the death penalty violated the Eighth Amendment’s cruel and unusual punishment threshold. The Court, by a five to four vote, ruled that the death penalty was inconsistent in its application and therefore unconstitutional.

In 1976 the Supreme Court again addressed the constitutionality of capital punishment in three companion cases: *Gregg v. Georgia, Proffitt v. Florida,* and *Jurek v. Texas.* In these cases the Court declared capital sentencing could only be exercised in a relatively narrow, legislatively defined category of cases. Similarly, the trial must be bifurcated and individualized considerations must be given to each case. It also stated that all appeals for capital cases would go to the highest court in the state. The result of Gregg, Proffitt and Jurek was that statutory aggravating factors were prescribed and at least one of these factors had to be demonstrated during the penalty phase if death were to be imposed. The intended purpose as a result of these cases was to correct for arbitrariness while at the same time permitting some flexibility for jurors to consider outside factors that could impact their ultimate decision.

In *Woodson v. North Carolina* (1976), the Court struck down a mandatory death penalty statute that had been created as the state’s response to Furman. The Court found
that society had evolved to the point of rejecting an outright imposition of death for all homicide cases, and that North Carolina failed to provide guided discretion to juries that were asked to make a decision concerning who lived and who died. More importantly, the Court ruled that the character and record of the defendant are important considerations juries should consider.

Likewise, a statute requiring the mandatory imposition of the death penalty on first-degree homicide cases fared no better. In *Roberts v. Louisiana* (1976), the Court ruled similarly to its decision in Woodson, that mandatory death penalty statutes are unconstitutional because they omit the weighing of the defendant’s character as well as the circumstances of the case. Statutes that preclude consideration of case-specific factors are too rigid. It became clear that a balancing test of both mitigating and aggravating circumstances must be evaluated in order for the death penalty to remain constitutional. Mitigating and aggravating factors have become the tools by which states enforce guided discretion. What follows is a discussion of both mitigating and aggravating factors and their usefulness for measuring guided discretion.

**Mitigating Factors**

Certain attributes pertaining to the defendant may constitute “special circumstances” that could reduce the severity of punishment. This can include drug or alcohol addiction, psychiatric problems, and physical health concerns, all of which relate to the defendant’s well-being and are therefore considered mitigating factors (McDonald, Rossman, and Cramer 1979, 161). The U.S. Supreme Court first addressed the issue of mitigating evidence in *Woodson v. North Carolina* (1976) when it determined that
individualized consideration should be given to a defendant’s character and record, stating, “We believe that in capital cases the fundamental respect for humanity underlying the Eighth Amendment…requires consideration of the character and record of the individual offender and the circumstances of the particular offense….” (cited in Palmer 1998, 15). The Court also stated in Woodson that, because the death penalty is the ultimate and most severe of penalties, the “uniqueness of the individual” should be considered paramount in determining the death penalty.

Similarly in Lockett v. Ohio (1978), the Court ruled that a defendant could offer as much mitigating evidence as possible during the penalty phase of a capital case using the lesser standard of preponderance of evidence. Lockett was reaffirmed in Eddings v. Oklahoma (1982) when the Court stated that the failure to take into consideration the childhood circumstances of the defendant violated the constitutional requirements laid out in Lockett. The Court went even farther in the 1987 case of Hitchcock v. Dugger, where it declared that the jury should have considered evidence of mitigation, even if not addressed specifically by Florida statute. Moreover, in Skipper v. South Carolina (1986) the Court ruled that juries must take into account all relevant mitigation evidence, even if there is a perceived cumulative effect. While it appears the Court is willing to relax the amount of evidence required and the evidentiary standard for a juror’s acceptance of mitigating evidence, there is more structure when it comes to accepting aggravating evidence. Next is a discussion of aggravating evidence and the Court’s stringent threshold when it comes to what jurors can utilize in identifying such factors.
Aggravating Factors

Aggravating factors are those circumstances surrounding a homicide that make the crime worse than usual (Lynch et. al 2008). Such factors can be placed into one of three categories: offender characteristics, the manner in which the murder was committed, and victim characteristics (Acker and Lanier 2003). Offender characteristics focus on the defendant’s prior criminal history, prior incarceration, and whether the defendant is likely to be dangerous in the future. The manner in which the homicide was carried out—whether the offense was particularly cruel, heinous or depraved and whether the murder was committed for pecuniary gain—can also be important aggravating factors. Finally, victim characteristics often include the occupation of the victim and whether or not the victim was an adult or a child.

Most states draw upon the Model Penal Code (MPC) for guidance in creating death penalty statutes. The American Law Institute, which drafted the MPC, began the process of refinement with respect to discretion in capital murder cases. While the MPC provides a framework for states, many jurisdictions differ in their vernacular as well as the amount of weight jurors are to assign to each factor. A discussion of the MPC and its comparison to varying state statutory language is useful for understanding the capricious sentencing that often takes place in death penalty cases.

Post Furman (1972), the aggravating evidence mandate for capital murder rejected centuries of homicide jurisprudence, which focused on the defendant’s state of mind in determining whether the person was death-eligible. After 1972, the law of murder veered from a focus on the mens rea of the offender to a set of “objective”
circumstances and outcomes (Givelber 1994, 377). The definition of felony murder, for instance, shifted culpability to the offender’s acts committed during the homicide as opposed to the premeditation of the defendant. Even if the defendant had no intention of killing the victim, because the death occurred during the commission of a felony the defendant could be charged and convicted of capital murder. The underlying intent to commit the felony also serves as the intent to commit the homicide (Givelber 1994, 386).

The felony murder doctrine that weighed against premeditation for capital murder has had a particular impact on a category of cases where the offender/victim relationship is an issue. If, for example, a husband decides well in advance to kill his wife and does so, he may be exempt from a capital murder charge, even though clear premeditation can be shown. On the other hand, a thief who kills an innocent bystander during a robbery becomes automatically death-eligible, even though the defendant had no intention to kill.

While felony murder was retained, the MPC replaced premeditation with seven other aggravating factors, creating eight paths to a death sentence instead of the original two (Givelber 1994, 393). Under the MPC’s additional aggravating factors, bad acts committed by the defendant are more important than the premeditation to kill. The MPC’s eight aggravating factors are:

1. Murder by a convicted person.
2. Murder by one previously convicted of committing a murder or a violent felony.
3. Multiple murders on the same occasion.
4. Knowingly creating a great risk of death to many persons.
5. Possession of a deadly weapon.
6. Knowingly creating a great risk of death to many persons.
7. Knowingly creating a great risk of death to many persons.
8. Knowingly creating a great risk of death to many persons.
5. Murder in an attempt, perpetration, or flight from designated felonies.

6. Murder to avoid or prevent arrest or to escape from lawful custody.

7. Murder for pecuniary gain.

8. Murder that is “especially heinous, atrocious, or cruel, manifesting exceptional depravity.”

**Statutory Construction of Aggravating Factors**

Capital killings must be defined by statutory aggravating circumstances that “genuinely narrow the class of people eligible for the death penalty and reasonably justify the imposition of a more severe sanction” (Acker and Lanier 1994, 108). It was the U.S. Supreme Court that halted the execution process in 1972 in *Furman v. Georgia* for being arbitrary, only to reinstate it in *Gregg v. Georgia* 1976 with conditions that it be uniform and consistent. The consistent nature of the death penalty is called into question when different states specify different requirements for death. Juries are required to find beyond a reasonable doubt at least one statutory aggravating circumstance in a capital case to impose death, but this does not resolve the issue of varying definitions as to what factors are classified as aggravating as well as mitigating. In order to comply with the Court’s criteria for readmitting the death penalty, all levels of arbitrariness should be eliminated. Yet a detailed examination of differing state statutory death penalty schemes clearly demonstrates that a quandary of inconsistency still exists in the execution process.

In the states of Idaho, Montana, Illinois, Indiana, New Jersey, and South Carolina the prior felonies of the offender are considered “aggravating” only if such felonies involved murder or another felony homicide (Acker and Lanier 1994). In Maryland,
however, prior felonies are only relevant if the offender committed capital murder under a sentence of death or life imprisonment (Md. Ann Code art.27, Sec 413(d)(8)(1992)). Georgia’s law mandates that prior bad acts are only germane if they involved an unrelated murder, rape, robbery, arson, or kidnapping (Ga. Code Ann Sec 17-10-30(b)(1)) (Michie 1990). In the states of Colorado, Idaho, New Mexico and Wyoming there is a specification that a defendant must have committed a related felony homicide in the past to be death-penalty eligible. New Mexico’s statute is perhaps an anomaly, since it combines both “mens rea” and the unrelated felony murder criteria, stating the murder had to have been committed with the intent to kill in the commission of or an attempt to commit a kidnapping, or sex act with a minor (N.M. Stat. Ann. Sec 31-20A-5(B) (Michie 1990). While most states do not require the intent to kill as part of felony murder, some are more restrictive, such as Connecticut, which requires that the defendant “must have been convicted of the exact same prior felony” (Conn. Gen. Stat. Ann. Sec 53a-46a(h)(1)) (West 1985). A common denominator in most of these jurisdictions is that the proximity in time of the prior bad acts is irrelevant to the current offense. It does not matter if prior convictions occurred 30 years ago or one year ago. The mere fact that they exist is all that is warranted to meet the aggravating requirement (Acker and Lanier 1994).

Another shared offender characteristic that some states specify pertains to a perpetrator who is under the control of a correctional system. Pennsylvania is one of the few states that specifically require “the defendant to be undergoing a sentence of life in prison” when committing a murder to be death-penalty eligible, thus narrowing the scope of what constitutes aggravation (see Pa. Stat. Ann. Tit. 42, sec 9711(d)(10)) (Purdon
Supp. 1992). Contrarily, most states use vague language that could indicate aggravated circumstances for the defendant who was either in jail on probation or parole (Arizona, Delaware, Georgia) (Acker and Lanier 1994).

For many jurisdictions, the risk that the defendant may pose a future danger is considered an aggravating factor. Three states, Idaho, Wyoming, and Oklahoma, use the risk that the defendant may be dangerous in the future in combination with other aggravating and mitigating evidence for the jury’s consideration. Texas, Oregon, and Virginia require the juror to consider “whether there is a probability, that the defendant would commit criminal acts of violence that would constitute a continuing threat to society” (Acker and Lanier 1994, 119). While offender characteristics are an obvious important consideration for jurors to consider during the sentencing phase, a similarly important consideration in virtually all states is the manner in which the killings occurred.

Another aggravating circumstance included in state statutes that has frequently been challenged is the specification that a murder was committed in a heinous, atrocious, or cruel manner. Some legal scholars have remarked that such terms are too vague and do not meet the U.S. Supreme Court’s requirement that aggravating factors narrow a class of murderers distinct from the entire group of those who kill (see Zant v. Stephens 1982). Gregg v. Georgia (1976) was the first case where the Court examined the heinousness provision. There the aggravating factor was that the crime was committed with “outrageously, wanton, vile and/or depraved state of mind.” The constitutional attack on the statute was that it was overly-broad and vague, violating both the Eighth and Fourteenth Amendments. The Supreme Court disagreed (Cleek 2001). In Godfrey v.
Georgia (1980), the Court struck down a similar statutory aggravating factor because it was believed not to have tailored the statute to meet the individualization requirement. The petitioner’s conduct in the case did not fall under any of the provisions in the statute and thus, according to the Court, it was void for vagueness. According to the Court, Georgia’s sentencing scheme gave no guidance to the jury on the terms “vile,” “outrageously wanton,” or “depraved state of mind.” Such terms, the Court concluded, could not be left open to speculation by the jury.

Controversy over the “heinous, atrocious, and cruel” aggravating factor created significant case law in the state of Tennessee. Prior to 1989, the Tennessee statute contained the “depravity of mind” element (TCA sec. 39-2-203(i)(5). This created confusion in Tennessee law as to what constitutes depravity. In State v. Pritchett (Tenn. 1981), depravity only occurs in a homicide if the defendant’s actions, such as torture, happened prior to the death of the victim. In that case the victim was killed instantly by the first bullet. Although there was a second bullet which went through the back of the head of the victim, the Court ruled that because the victim died instantly from the first shot, whatever happened post death did not create suffering, and therefore did not reach the level of depravity required by the Tennessee statute (see also State v. Williams, Tenn. 1985).

In 1989 the Tennessee legislature amended the Tennessee statute discussing the heinous, atrocious and cruel elements relying on the U.S. Supreme Court ruling in Jones v. Virginia (1985). The Court stated that unlike the Godfrey case, the Virginia legislature has given a narrow definition as to what is meant by “aggravated battery” and “depravity
of mind.” The Court stated, in part: “...the Virginia Court has also given additional limiting constructions to two elements of the vileness component. Aggravated battery has been defined as "a battery which, qualitatively and quantitatively, is more culpable than the minimum necessary to accomplish an act of murder. Depravity of mind has been defined to mean a degree of moral turpitude and psychical debasement surpassing that inherent in the definition of ordinary legal malice and premeditation” (footnote 38 in Jones v. Virginia, 1985). The section of the statute referring to depravity of mind was replaced with language requiring serious physical abuse, beyond that necessary to produce death (Cleek 2001). In cases that followed the Tennessee courts acknowledged that both psychological and physical torture of a victim fell under the new abuse requirement (see State v. Nesbit, Tenn. 1998). Several death penalty scholars take issue with the overlap or mere duplication between the elements of a capital murder charge presented during the guilt phase of a trial and the aggravating factors used for sentencing (Givelber 1994, Acker and Lanier 1994, Turlington 2008). In Illinois, Florida and New Hampshire there is a “lying in wait/premeditation” component to their penalty scheme. It appears that at multiple points during the capital trial, the state’s presentation of events is reinforced to the jury, thus making jurors more likely to support a sentence of death (Haney 1997; Haney 2005).

Murders are committed for many reasons, such as jealousy or revenge. Killing for pecuniary gain or killing for hire is an aggravating factor in almost all jurisdictions, with some states, such as Utah, using extremely broad language in which pecuniary or other personal gains are enough to upgrade the punishment (Utah Code Ann. Sec. 76-5-
Acker and Lanier (1994) suggest that the term “other personal gains” is overly broad, and the authors maintain that it would be difficult to find a murder in which the offender did not achieve some level of gain from the killing.

Finally with respect to the manner of death, several states make it an aggravating factor if the perpetrator committed murder for the purposes of escaping the criminal justice system. New Jersey’s list of aggravating factors includes murder “committed for the purposes of escaping detection, apprehension, trial, punishment or confinement for another offense committed by the defendant or another” (N.J. Stat. Ann. Sec. 2C:11-3(c)(4)(f)(West Supp. 1992). A much broader statute is found in Mississippi where “the capital offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of law” (Miss. Code. Ann. Sec. 99-19-101(5)(g)(Supp. 1992).

Not all murder victims are treated alike. Many states consider it an aggravating circumstance if the victim was a peace officer, judicial officer, or elected official (Acker and Lanier 1994, 142). Lay witnesses in criminal investigations or jurors in criminal cases are also covered by some state statutes; Delaware covers only witnesses who would have testified in a case. Most statutory schemes are silent on whether the criminal investigations must be currently active, potentially active or have taken place in the past, and similarly, the definitions of peace and judicial officers are sometimes unclear. Legal scholars have found that “only seven of the twenty-five statutes that make killing a peace officer an aggravating circumstance require that the offender knew or should have known that the victim was a peace officer” (Acker and Lanier 1994, 144). This categorization of
victims which call for death for certain victims as opposed to others supports prior research as to why jurors view some victims more worthy than others (Sundby 2003).

In *Gregg v. Georgia* (1976), the Court called for a sentencing scheme that was intended to accomplish two purposes: First, that the class of death-eligible murderers be distinct and objectively set apart from all others who commit murder; and second, that the death penalty is justified by the facts surrounding the case to serve as the most severe sanction (Acker and Lanier 1994). The question to be examined is whether the creation of these aggravating factors is achieving the Court’s objectives. There is no evidence that shows that a single aggravating factor found by a jury beyond a reasonable doubt does anything to rectify the troubles found in Furman (Acker and Lanier 1994). In fact, it can be argued that the diversity among jurisdictions in how they define and implement statutory aggravation statutes creates the opposite effect. A discussion of case law with respect to aggravating circumstances provides more evidence to demonstrate that these factors are anything but systematic.

**Case Law and Statutory Aggravation Statutes**

In order to understand the arbitrary nature of aggravating statutes, Givelber (1994) analyzes four cases—*McGautha v. California* (1971), *Crampton v. Ohio* (1970), *Furman v. Georgia* (1972), and *Fisher v. U.S.* (1976)—to show how sentencing schemes can make for dramatic outcomes. In the McGautha case, the murder happened in the course of an armed robbery. The defendant would be death eligible under the Model Penal Code in that the murder was committed during the course of a felony even though the offender had no intention of killing the victim. This would not have been the case if the crime
were committed in either Texas or Louisiana. To be death-eligible in those states, the state would have to prove that the defendant had the specific intent to kill or do serious bodily harm (Givelber 1994, 406). The facts of Furman are very similar to that of McGautha in that the offender had no intention of killing. Furman alleged that the defendant was burglarizing a home and had just been caught by the homeowner when his gun went off accidentally. Like McGautha, Furman committed the murder while in the commission of a felony but without the specific intent to kill. In Crampton, the crime was domestic murder where a husband premeditated in shooting and killing his wife. While Crampton could be convicted in Ohio of aggravated murder, since clear premeditation was shown, he could not be executed for his crime in that state because Ohio law does not include heinousness as an aggravating factor (ORC section 2929.04). There is even a question of whether Crampton would be death eligible in those states that interpret “depravity” to mean the style of killing. Crampton was a “clean” killing in that it was a single shot with no evidence of depravity or harm going beyond that needed to carry out the killing. As previously discussed, courts have often interpreted depravity to include elements of torture or suffering during or before death. This was not expressed in Crampton’s case (Givelber 1994, 406). Finally, in Fisher the defendant beat the victim with a stick, then choked her to silence. Just as he was about to leave, he heard the victim moan, returned and stabbed her in the throat. Those states that embrace heinousness and depravity as an aggravating circumstance would have no trouble finding it among the facts in Fisher. The use of strangulation, blunt force trauma, and leaving the victim to suffer by bleeding to death would almost certainly meet the heinousness requirement in
several states. Yet in those states that do not include heinousness as an aggravating factor, such as Ohio, Fisher could receive the death penalty only if he had robbed or committed another felony while in the murderous act (Givelber 1994, 408). Givelber’s comparison of these differing statutory sentencing schemes is telling. Killers who do not plan to kill are punished more harshly than those who premeditate their attacks. According to Givelber, “of the four killings, Crampton is the only one who premeditated to commit murder, yet he is the only one not death eligible in the majority of capital punishment states. Crampton then is the beneficiary of the narrowing of capital punishment” (Givelber 1994, 409). Thus, examining the statutory state constructions and case law regarding aggravating circumstances, there is no evidence that they are consistently applied across multiple jurisdictions post Furman. With so much divergence regarding statutory schemes, juries are very often introduced to non-statutory aggravating factors during the penalty phase of a capital case.

Non-statutory Aggravating Factors

While the sentencing process in capital cases requires juries to examine those aggravating and mitigating factors specifically prescribed by statute, there are other factors that are often presented at a trial for the jurors’ consideration. “Non-statutory aggravating evidence is any evidence that the state presents in the penalty phase of a capital case that is not directly related to proving one of the statutory aggravating circumstances beyond a reasonable doubt” (Turlington 2008, 477). The two primary pieces of evidence, which exemplify non-statutory evidence, are victim impact statements and evidence of a defendant’s prior bad acts.
Victim impact evidence includes factors “presented during the sentencing phase of a criminal case to convey the harm experienced by victims and victims' relatives as a result of a crime” (Myers and Greene 2004, 1). Admission of such evidence is controversial because it raises the question: Is it appropriate to permit emotional testimony to be presented in a criminal trial that is supposed to be free from passion (Donahoe 1999)? The U.S. Supreme Court had ruled in Booth v. Maryland (1987) that permitting victim impact statements prior to sentencing a defendant creates a substantial risk that the jury will base its sentence on mere sentiment for the victim’s family and not on the individualized characteristics of the offender. The Court concluded that victim impact statements violated the Eighth Amendment to the U.S. Constitution, regardless of whether the statements are made by the victim’s family or by the prosecution (see also South Carolina v. Gathers, 1989). However, the Court nullified its position on victim impact evidence in Payne v. Tennessee (1991). Then Chief Justice William Rehnquist, writing for the majority, stated that a jury can consider more than a defendant’s blameworthiness when deciding on punishment. In order to capture all of the circumstances involved in the crime, jurors need as much information as possible about the offender and the victim. Furthermore, the Court pointed out that since jurors are supposed to weigh mitigating evidence about the defendant against aggravating evidence, testimony concerning the life of the victim plays an important role in the balancing process. Similarly, juries are also permitted to assess the harm caused not only to the victim but also the victim’s family, as well as greater society (see Payne v. Tennessee 1991, Rehnquist majority opinion).
The second avenue in which non-statutory aggravating evidence is presented to a jury has to do with the defendant’s prior bad acts. Several court cases have dealt with whether prior convictions and pending cases can come before the jury during the penalty phase. Consistently, courts have been open about permitting such evidence during the penalty phase alone (*State v. Forest*, 2006; *State v. Middleton*, 1999). Evidence of prior bad acts is usually not permitted during the guilt phase of a case, because it is argued that such factors will bias the fact finder towards a sentence of guilt. Non-statutory aggravating and mitigating factors are central in most capital cases. When it comes to the admissibility of non-statutory aggravating circumstances, the question is often left to judges with no regulatory guidelines. The fact that judges are often expected to authorize such evidence on a case-by-case basis highlights the arbitrary nature of capital sentencing (*Turlington* 2008). Regardless, statutory and non-statutory aggravating evidence are presented to the jury during the trial. The next section discusses the methods by which juries are directed to weigh these factors.

**Capital Sentencing Balancing Formulas**

A significant court ruling relating to juries and the death penalty was *Ring v. Arizona* (2002). It was determined that whether or not a defendant in a criminal case receives the sentence of death is left solely and unequivocally to the jury. Prior to Ring, there were a few states, such as California, Kansas, Ohio, South Carolina and Virginia, where judges could set aside a jury’s verdict under very limited circumstances, and then only if the judge could establish a just cause for reducing a death sentence to a term of life in prison (*Acker and Lanier 1995, 20-21*).
Relying on Apprendi v. New Jersey (2000), the U.S. Supreme Court in Ring proclaimed that the Sixth Amendment to the U.S. Constitution requires juries to find all facts essential to a capital punishment decision, including the aggravating circumstances, on which a death sentence occurs (Acker and Lanier 2003). In both Apprendi and Ring, the judge had based the sentencing of defendants on factors submitted before the sentencing phase and of which the jury was unaware. The Court stated that judges cannot rely on any fact that would enhance the maximum sentence already prescribed by law. Furthermore, the facts must be proven to the jury beyond a reasonable doubt. Thus, juries are the fact finders with respect not only to the guilt portion of the case, but also to the penalty phase. Furthermore, Ring overruled Walton v. Arizona (1990) in part by prohibiting a sentencing judge, sitting without a jury, to find aggravating factors which would necessitate the death penalty.

Depending on the state, juries may use one of two sentencing schemes when deciding on death. One type of sentencing scheme is called automatic sentencing. Here the jury is asked to balance aggravating factors against mitigating factors and then based on such a calculus, if the aggravating outweighs the mitigating, the juror is required to impose the death penalty. An alternative sentencing scheme is referred to as permissive sentencing. Here, the jury also must weigh aggravating against mitigating circumstances, but in permissive sentencing jurors are not required to impose death. The jury must also conclude “that the defendant should be sentenced to death,” a much more subjective criteria (Acker and Lanier 1995, 31). The query into whether the defendant should be sentenced to death asks the jurors to gauge their moral compass, and even though the
aggravating factors may outweigh the mitigating, they still must come to the conclusion
the defendant deserves to die. This moral compass in permissive sentencing schemes taps
into the mechanisms of moral disengagement that jurors may use to take that extra step in
sentencing someone to die (Haney 1997; Haney 2005).

Several states use a combination of both automatic and permissive sentencing
formulas. North Carolina has a combination of automatic and permissive sentencing.
After hearing the evidence, arguments of counsel, and instructions of the court, juries in
those states are asked to deliberate and render a sentence recommendation to the court,
based upon the following:

1. Whether any sufficient (statutory) aggravating circumstance or circumstances
exist.

2. Whether any sufficient mitigating circumstance or circumstances . . . which
outweigh the aggravating circumstance or circumstances found, exist.

3. Based on these considerations, whether the defendant should be sentenced to
death or to imprisonment in the state’s prison for life. (N.C. Gen Stat. Sec.
15A-2000(b)(1983)

While some states have a single sentencing scheme and others have a combination
of sentencing schemes, the Supreme Court has never been explicit about how much
weight jurors must give to aggravating and mitigating evidence. It is true that the
majority of states require the state to prove at least one aggravating circumstance beyond
a reasonable doubt to impose death, but there are some jurisdictions where this standard
is not explicitly spelled out (Acker and Lanier 1995, footnote 68). There is less
consistency in the standard required for mitigating evidence. Does the defense have to prove by a preponderance of evidence that mitigating factors exist (see Maryland, New Hampshire, Pennsylvania, and Wyoming)? Some jurisdictions have shifted the burden to the defendant to show mitigation by a preponderance of the evidence if leniency is to be considered (Ariz. Rev. Stat. Ann. Sec 13-703(C), 13-703(E)(1989); Mont. Code Ann. Sec. 46-18-305(1987)).

Regardless of the burden level thrust upon either the state or the defense, there is a dilemma when relying on a balancing scheme, regardless of whether it is absolute or permissive. The issue with relying solely on a balancing formula without other considerations is that it attempts to compare apples and oranges. How can one effectively compare the mitigating factor of abuse as a child against a heinous, atrocious and vile crime? Similarly, is it fair for jurors to equate alcohol and drug addiction or a life of poverty to the killing of an elected official? We are asking jurors to compare the incomparable. Furthermore, the comparison across criminal cases evinces inequality. Not all felony murders are alike. Not all murders for pecuniary gain are the same. The use of statutory and non-statutory aggravating and mitigating circumstances presents a degree of capriciousness the Furman Court professed unconstitutional.

The U.S. Supreme Court’s decision in Ring makes clear that the jury has great responsibility in capital cases in both the guilt and penalty phases, which cannot be superseded by the judiciary. While the Supreme Court has made it evident that juries are the final arbiters of a death sentence, the discretion that juries are permitted to use in rendering those decisions has a long history of scrutiny. One of the reasons such scrutiny
exists is that juror decision-making is a complex phenomenon and it is difficult to assess the psychological processes involved. The literature on juror decision-making is well documented and prior research gives some insight as to the human processing of this most difficult decision—whether to sentence a defendant to death.
CHAPTER III

FACTORS RELATED TO JURY DECISION-MAKING

**Juror Decision-Making**

Understanding the detailed practices involved in juror decision-making is significant because it describes the psychological processing jurors undertake when making imperative decisions, particularly when those decisions involve sentencing someone to death. Although much of the literature regarding juror decision-making is understandably focused on the particular actions of the defendant during the commission of the crime, jurors’ thoughts and feelings about the victim can also impact their decisions about the defendant’s guilt as well as the sentences they render. Although the literature on jurors’ attitudes towards victims is sparse, research on the process of jury decision-making is immense. The literature in this area has been replete with studies spanning multiple disciplines. In the social sciences there is a record of frequent research regarding jury deliberations in psychology (Hastie, Penrod, and Pennington 1983; Pritchard and Keenan 2002), sociology (Maynard and Manzo 1993), and even business (Kaplan and Miller 1987). The plethora of literature in this area is certainly understandable, in that juries are an important aspect of our criminal justice system and reflect citizens’ participation in the democratic process, much like voting (Gastil et al. 2002). Although jury research is already voluminous, this dissertation seeks to add
to the much narrower body of literature studying the individual sentencing decision of a
particular juror, and more precisely, the emotional and cognitive processes involved.

A seminal piece of research contributing to a broad understanding of the
psychology of juror decision-making can be credited to Hastie et al.’s, *Inside the Jury*
(1983). Using simulations to explore jury deliberations, the authors developed what they
call the Story Model as a comprehensive explanation for information processing by
individual jurors. The Story Model has three components: First, the story construction
stage in which each juror comprehends and organizes into a plausible schema “what
happened.” Since no juror was present during the criminal act, these schemas are
essential for reconstructing events. Second is the verdict-category stage, where each juror
sorts out the possible options based on information provided by the judge. Finally, the
juror “matches up” the story construction and the verdict possibilities (Hastie et al. 1983).
Such a model has been used in numerous studies as a baseline for how jurors frame
events described to them in a courtroom.

Although information processing is highly cognitive and implemented by jurors
acting in a rational manner, there is still an affective element made by all legal decision
makers that cannot be denied, but has often been ignored in the legal literature (Weiner,
Bornstein, and Voss 2006). For example, studies have shown that photographic evidence
has a stronger emotional impact on jurors than a simple verbal description of a crime
scene. Crime scene photos are often gruesome, and the emotional impact of those photos
very likely will influence jurors’ legal decision-making (Bright and Goodman-Delahunty
2006). Even in civil suits with cases involving sexual harassment, jurors base their
decisions with reference to extralegal emotional factors (Voss and Weiner 2006). Similarly, the credibility of rape victims may come down to the emotional reactions that those victims inspire at trial. Studies which have varied the emotional response of rape victims on the witness stand show that the more emotional the victim on the stand, the more credible that witness is perceived by potential jurors (Kaufmann et al. 2003). This is why, according to Salerno and Bottoms (2009), it is important to understand the role that emotion plays in information processing by jurors, especially if judges are to decipher which evidence is probative and which is prejudicial from an evidentiary standard. One emotion that can be studied in the decision-making of jurors is empathy (Sunby 2003, Edelman 2006). What follows is a discussion of empathy and its impact on the criminal justice system.

**Empathy**

Empathy is the ability of people to place themselves in the situation of another (Davis 1983). Although empathy is often confused with other emotions, most commonly sympathy, the two are very distinct. Sympathy is the ability of one person to share in the feelings of another, and can be seen as a passive as well as a reactive response on the part of the individual (Katz 1963; Davis 1983). In contrast, empathy has been identified as a more active process involving multiple cognitive factors (Lipps and Sanborn 1926). Empathy involves a deliberate process of taking all appropriate steps to “step outside the self and ‘into’ the experiences of another” (Katz 1963; Davis 1996, 5-6). There has never been a universal definition of empathy, due in part to a longstanding academic dispute over whether empathy is an emotionally-driven or cognitive functioning process. For
example, Hoffman (1987) defines empathy as “an affective response more appropriate to someone else’s situation rather than one’s own” (48). Here the definition rests on an affective ability rather than a cognitive one.

The affective-versus-cognitive debate has been blended with a multidimensional approach to understanding empathy via an organizational model (Davis 1996). Thus, empathy is the result of an observer being exposed to a situation which elicits a response from the observer by bringing to light both cognitive and affective behavior. Such a multidimensional approach involves understanding several constructs termed by Hoffman (1987) and Davis (1996) as antecedents, processes, and outcomes.

Antecedents are the intuitive abilities of a specific individual and can be broken down into the distinctiveness of the person as well as the situation. Every human being is distinctive and possesses unique intellectual abilities. Whether or not persons have the natural capacity to experience empathy is fundamental to their ability to experience the emotions associated with it. Such innate characteristics can be intelligence as well as the ability/capacity for learning from significant others. Another antecedent is the impact produced by a situation—some situations will produce a more visceral reaction from an observer than others. When the observer is exposed to an environment involving a victim of a brutal crime, for example, the intensity of the situation is likely to provoke a strong reaction. In addition, the more the observer can identify with the target in a particular situation, the greater the chance that the observer will have a more intense reaction (Davis 1996).
The second construct involved in empathy is *cognitive processing*. Davis (1996), drawing on Hoffman’s (1984) organizational model, divides cognitive processing into both simple and complex stages. Simple cognition is the basic ability to associate, which does not take a great deal of aptitude and may in fact be erroneous. For example, one might naturally associate the birth of a child as a happy occasion when, in fact, it may be quite the opposite in certain situations. In this instance there is a lack of depth on the part of the observer and such a person can only capture rudimentary associations. In contrast, advanced cognitive processing includes the ability to *role take* or the ability to assume the perspective of another, i.e. the ability to imagine oneself in another’s situation (Mead, 1934). As will be tested in this dissertation, the ability of observers (jurors) to see themselves in the same situation as the victim in a homicide case is an example of role taking behavior.

The final construct, *outcomes*, relates to how the observer emotionally reacts to the target’s experiences. Again, one can attempt to divide outcomes as either affective or cognitive. Affective outcomes would be witnessed when the observer has a visceral reaction to the target and may display emotionally driven characteristics such as smiling, crying, shaking, etc. Cognitive reactions may be more methodological and judgmental. The observer may be willing to assign blame or praise after a careful evaluation of the circumstances, which are not necessarily based on pure emotion.

Empathy can also be explained by way of the psychological process of identification. We use our ability to identify with others to achieve a sense of self or ego (Katz 1963, 71). As small children one assimilates by placing objects into the mouth, a
process of incorporation. When older, “children move from physiological assimilation to psychological introjections” as a possible defense mechanism (Katz 1963, 72). For example, children who are powerless compared to their parents, will put themselves in the situation of the parent (seen through the art of imitation), as a method for dealing with their inferiority. Whether empathy develops biologically or psychologically, it has been classified as a human emotion that weighs heavily on decision-making (Mehrabian and Epstein 1972; Blair 2005). As prior literature has suggested, emotions can play a role in a juror’s decision-making (Weiner, Bornstein, and Voss 2006; Salerno and Bottoms 2009), and since empathy is an emotion (Stotland 1969; Aderman and Berkowitz 1970; Mehrabian and Epstein 1972), it warrants inquiry into the role empathy plays in the criminal justice system.

**Empathy and the Criminal Justice System**

The actors within the criminal justice system have always relied on emotion to persuade jurors in cases. Although jury instructions underscore the importance of considering only the facts presented in a case, jurors are human, and so too are the litigants in the courtroom. Attorneys are encouraged, in the process of learning and practicing effective trial techniques, to utilize every strategy possible for arousing empathetic feeling for their clients during a case (Wright 1987; Smith and Malandro 1985). According to Hamlin (1985, 315), “the ability to actually experience, internally, what is at issue, to empathize and put themselves in another person’s place, is something of which jurors are not consciously aware. Yet this process is human and universal, and it is a powerful inner voice in decision-making.”
Empathy plays a significant and sometimes controversial role in jury verdicts. A classic study recited in the book, *American Jury* demonstrated that jurors often go well beyond rational decision-making by employing empathy in their verdicts (Kalven and Zeisel 1966). Judges who disagreed about 22% of the time with jury verdicts in criminal and civil cases begrudgingly described how jurors reacted to emotional sentiment portrayed by a victim in a tort claim, for example, or were overly-responsive to an attorney’s call to imagine themselves in the victim’s situation. Although the disagreement between judge and jury may relate to human emotion, assigning sole responsibility to juror empathy for differing verdicts may be somewhat inappropriate, as the disparity could also be due to a conflicting interpretation of the evidence presented (Linder 1997).

Several studies in the area of criminal justice have attempted to precisely define empathy as part of their effort to gauge its importance in jury verdicts. One of the primary research areas has been juror empathy for sexual assault victims. Studying empathy with the use of a precise measuring instrument, Deitz and Byrnes (1981) were the first to employ the Rape Empathy Scale (RES), which developed a continuum as to a person’s attitudes about the role of victims and defendants as it relates to the crime of rape. Results indicated that those who empathized most with the rape victim sentenced the defendant to a longer prison term, expressed positive feelings about the victim, and stated less positive feelings about the defendant compared to those who scored low on the RES (Deitz, Daley, and Bentley 1982). This supports earlier research which characterized a person’s ability to empathize with another as a highly influential indicator of the amount of responsibility jurors will assign to an actor in negative situations (Sulzer and
Burglass 1968). Even in those situations where the defendant is also the victim, such as a case in which a defendant was abused as a child and used that to help explain their own criminal behavior, a juror’s empathy toward that defendant/victim will affect their decision-making. Haegerich and Bottoms (2000) using the Defendant Empathy Scale, asked participants if they could affectively and cognitively put themselves in the place of a victim of child sexual abuse who later killed the abuser, who happened to be their father. Jurors who scored high on the Defendant Empathy Scale were more lenient in their guilt judgments, held the defendant less responsible for the crime, and were more likely to use the acts of sexual abuse as mitigating factors taken into consideration during deliberations. Jurors appeared to ignore the law with respect to assessing whether the defendant killed because they were in immediate danger (as stated in the jury instructions read to them), but rather based their decisions on the past sexual abuse of the defendant and used it as a mitigating factor. This is a clear indication that the power of empathy can override the legal requirements for ascertaining guilt or innocence, particularly in assigning culpability. Even in cases where battered women have killed their husbands, but alleged themselves the victim of Battered Wife Syndrome, a juror’s ability to empathize with the defendant by following the attorney’s directive to do so in closing arguments, impacted their verdict (Plumm and Terrance 2009).

Juror empathy has also been studied with respect to capital cases. There has been a great deal of research on the role victims play with respect to a juror’s decision-making process. Some researchers have examined whether jurors distinguish between victims when sentencing a defendant to death. Sunby (2003) looked at victim “types” and
determined that jurors tend to make a clear distinction between children and adult victims. Jurors by their own admission will sentence a defendant to a harsher sentence if the victim in the case was a child. Yet when asked directly in interviews about possible categorization, the study showed that jurors generally dismissed any suggestion that they would treat adult victims differently than children. Research findings also indicate that when jurors see a victim as reckless and somewhat participating in their own victimization, they are less likely to sentence the defendant to death. Conversely, when jurors see the victim as a non-risk taker and the homicide as a random act, they admit in open narrative responses that they could more easily identify with the non-risk takers, and in these cases the defendant was more likely to be given a death sentence. Sunby’s possible explanation for such an occurrence is that jurors give death sentences in cases in which they could most imagine being in the victim’s situation, because to do otherwise would be to “devalue their own lives by proxy” (Sunby 2003, 369). Consciously aware or not, jurors tend to base their sentencing decision for the defendant according to their empathetic feelings toward the victim.

Other research has found that juror’s individual characteristics also impact their level of empathy for victims and defendants in capital cases. In examining jury decision-making in South Carolina, Garvey (2000) found that race makes the ultimate difference as to the empathic response of jurors in sentencing. African American jurors tend to have more empathy for defendants than Caucasian jurors do especially when the defendant is African American, irrespective of the victim’s race. One of the most important contributions of Garvey’s work is that juror empathy is not mutually exclusive. Just
because jurors may have empathy for the victim in a case does not mean they fail to empathize with the defendant. While jurors do subconsciously view some victims as more worthy than others, and to empathize most with those they see as more worthy, very often they empathize with the defendant as well, especially when they learn more about the person during the penalty phase.

While studies have demonstrated that empathy plays a role in the criminal justice system, research is needed to examine the significance of empathy and its possible influence on a juror’s sentencing decision. In particular, does empathy influence a juror’s appraisal of evidence presented in the penalty phase of a capital case? If empathy has such an influence on a juror’s evaluation of such evidence, is this appropriate under the guided discretion statutes called for in Furman? The next section discusses the objective of the current research and its importance to furthering our understanding of juror decision-making.

The post-Furman law on capital sentencing requires that jurors consider aggravating and mitigating factors during the penalty phase of death penalty cases. Causes for inquiry are the factors which specifically go into a juror’s acceptance of aggravating and mitigating factors presented to them during the course of a trial. While others have examined factors that make jurors more or less receptive to mitigating evidence (Brewer 2004), no studies to date have examined the circumstances that specifically affect a juror’s receptivity to aggravating evidence. Since the latter must be proven beyond a reasonable doubt in order to make a defendant eligible for the death penalty, studies that examine such a process are certainly warranted. Based on the
empathy literature presented the ability of jurors both cognitively and emotionally to place themselves in the same situation as the victim can stir visceral reactions for members of a jury. While prior court decisions have affirmed the need for guided discretion, which now comes in the form of aggravating and mitigating evidence, this research examines what role empathy for the victim plays in jurors’ final acceptance or rejection of aggravating factors put before them during the penalty phase of a capital case. Past research on jurors has shown that those who imagine being in the victim’s situation were disposed to respond to the defendant with anger, disgust and repulsion, and that the more jurors reported having these feelings toward the defendant, the more likely their first vote would be to sentence the defendant to death (Garvey 2000, 52-53, 62). Therefore one can deduce that empathy for the victim in capital cases will impact jurors’ feelings for the defendant and ultimately affect their penalty decision.

When jurors are exposed to evidence and argumentation which suggests that they could have been in a similar situation as the victim, the literature on empathy tells us that they will adopt such beliefs. When jurors think that they could have been the one victimized—as described in the adage, “There, but for the grace of God, go I,”—they are more likely to render harsher punishments and hence be more receptive to aggravating evidence. Following that logic, jurors are more likely to be receptive to aggravating evidence presented to them during the penalty phase of a capital case. There is also theoretical support to show that the structural arrangement of a capital trial lends itself to induce jurors to vote in favor of the death penalty (Haney 1997; Haney 2005). The premise is based on the theory of moral disengagement, which is now presented in detail.
Moral Disengagement

Human beings engage in conduct based on moral self sanctions (Bandura 1999). Through the socialization process, people make choices based on self-imposed sanctions that act as a moral compass. Because human beings want to engage in behavior that provides them with satisfaction and not guilt, they will usually behave in rational ways, avoiding self-condemnation and seeking self worth (Bandura 1999). This applies to group decision-making, such as the group dynamics on a jury, as much as it does in individual decision-making.

British psychoanalyst W.R. Bion was one of the first scholars to study group dynamics. His 1961 book, *Experiences in Groups*, is not only relevant to his own field of psychoanalysis, but also to the study of law, human behavior, and in particular jury decision-making. Bion discusses the notion of group mentality and his definition is pertinent to jury decision-making. According to Bion (1961, 59), group mentality is “the unanimous expression of the will of the group, where individual contributions are anonymous.” Without noting it, Bion could be talking about juries, because verdict and sentencing decisions represent the will of the group (jury) as a whole, and discussions in the jury room by individual jurors are confidential. While Bandura discusses individual goals of self-satisfaction, Bion expresses the same goals in a group dynamic process. He writes, “When groups form, those people making up the group hope to achieve some level of satisfaction from it” (Bion 1961, 53). While feelings of satisfaction are highly important to those assigned the responsibility for important decision-making, there are also psychological mechanisms that people utilize to rationalize their behavior.
Sometimes, people engage in harmful conduct, creating moral opposition to their internal scheme. This harmful conduct must be rationalized if people are going to carry it out without betraying their internal moral code. The actor thus engages in a process of moral disengagement. “Moral disengagement is the process by which a person can justify his or her harmful or aggressive behavior, or in other words, disengage from moral self sanctions that typically serve to regulate behavior” (Pelton, Gound, Forehand, and Brody 2004, 31). The process is carried out through what Bandura calls mechanisms of moral disengagement.

The first mechanism Bandura mentions is moral justification, which can only be satisfied if the actor believes that the behavior has some altruistic purpose. In this instance, actors believe they are engaging in the harmful conduct because they are “called to do so” by a greater good. A second mechanism, euphemistic language, is often utilized to make harmful conduct appear less harmful or insensitive. Janis (1971) illustrates the point in a discussion of how policymakers often become detached from the consequences of their decisions. In the Johnson Administration, for instance, it was common for policymakers to discuss the Vietnam War using military vocabulary without ever mentioning human suffering (Janis 1971, 73). In a more recent example, the Iraq War has popularized the use of the term “insurgents,” and “collateral damage,” euphemistic language to describe the war-related deaths of the Iraqi people (Bandura 1999). Advantageous comparison is another mechanism, one in which the perpetrator of a harmful action deflects criticism by comparing the action to the atrocities of another. What the actor is asking is that a comparison be made between two events in which
surrounding circumstances were more than likely dissimilar, yet the use of the comparison is meant to minimize perception of the harm done. *Displacement of responsibility*, mechanism number four, transfers accountability to laws and guidelines that require the actor to carry out certain actions. Closely related is mechanism five, *diffusion of responsibility*, which is heightened by division of labor (Bandura 1999). When several people are responsible for a task, each assigned their own part separate from others, it becomes more difficult to assign overall blame to one particular person since all participated in the outcome. Some actors looking for moral disengagement will try to *minimize the consequences* of their actions, the sixth mechanism according to Bandura. To once again use the Iraq War as an example, U.S. officials may use statistical deflation to suggest that there were fewer casualties in one month of the war when compared to previous wars, thereby diminishing the apparent consequences of their actions. The seventh mechanism is *assigning blame* to the victims, somehow placing them at fault for the infliction of harm. The last mechanism is that of *dehumanization*. In this instance the perpetrator is seen as something less than human or evil (Janis, 1971; Bernard, Ottenberg, and Redl 1971). According to Bernard, Ottenberg and Redl (1971, 103), “to dehumanize is to help overcome the human inhibition against taking a human life, especially when those who are to be destroyed have been divested of their humanness.” When for example an evil dictator engages in conduct which is cruel and vile, then it lessens their life because they are seen as objects, not people. Their maltreatment is justified since their defects are their own fault and thus to dehumanize them brings temporary relief of guilt to those imposing harm (Bernard, Ottenberg, and
Redl 1971, 105). These mechanisms of moral disengagement are put into place to create distance between the condemner’s self-righteousness and the harmful acts in which they engage.

Mechanisms of moral disengagement have been applied to a wide variety of topics, including war (Janis, 1971), parenting skills (McAlister, Bandura, and Owens 2006), and child behavior (Pelton et al., 2004). Such mechanisms have also been applied to the field of criminal justice, specifically the execution process. In a prison study, Osofsky, Bandura, and Zimbardo (2005) examined the process of moral disengagement that prison personnel engage in when executing those on death row. Typically an execution team sees the process as morally justified. Team members are carrying out a sentencing policy that receives overall public support and is necessary to protect and maintain the social order. Execution team members use euphemistic language that avoids any discussion of death and the details of the execution process, instead referring to the event as a “legal penalty” that must be administered. While no one wants to perform an execution, since witnessing death is an unpleasant and emotionally traumatizing event, discussions with prison personnel suggest that they accept the execution process as humane, particularly when compared to the savage nature of convicted murderers conduct. Responsibility is both displaced and diffused by the team. The guards do not see themselves as the executioners. Instead, they justify their behavior with the knowledge that they are following government orders. Personnel also diffuse responsibility for the execution because it was the jury and the courts that ultimately sentenced the convict to die. Consequences are also minimized by the prison execution team. Team members see
capital punishment overall as a rare event that is reserved only for the most brutal murderers. Therefore, they do not see the process as routine. Some executioners engage in self-righteous behavior, holding offenders as solely responsible for their condemned future; others see the convicted inmate as less than human, identifying them as barbarians, savages, and murderers. When offenders are viewed as beasts it makes them much easier to kill. The fact that many prison execution team members dehumanize the condemned is not surprising, considering the way the prison culture creates an atmosphere where inmates are transported and caged like animals, according to some penal scholars (Osofsky, Bandura, and Zimbardo 2005).

**Structural Aggravation as a Mechanism for Moral Disengagement**

According to Haney (1997) a capital trial sets the stage for jurors to disengage themselves from the harm they inflict by rendering a death sentence. Mechanisms of moral disengagement distort the human context in which capital jurors operate. In particular, they undermine and limit the effect of mitigating evidence in capital trials, the author states, thereby intensifying the human response of the jurors (Haney 1997, 1450). The purpose of this dissertation is to expound on the way a juror’s empathy for the victim results in the “human response” that Haney writes about.

In particular, Haney (1997, 1451) introduces the concept of structural aggravation, “psychological factors that the law has built into the very process of death sentencing, serving to make death sentences more likely.” The structure of a criminal trial often gives an edge to jurors’ favoring aggravating factors over mitigating factors. According to Haney (1997, 2005), the structure of a criminal trial presumably sets the
stage for separating jurors’ decisions from their moral ramifications. Jurors often render death sentences because of developments during the course of a trial which distance jurors from the consequences of their decisions. Structural aggravation as a mechanism of moral disengagement tends to intensify the punitive nature of jurors, resulting more often in death sentences. If this structural aggravation is present, then jurors are more likely to be receptive to aggravating evidence during the penalty phase of a capital case. What follows are five specific ways in which the structure of a capital case disengages jurors from their death sentences.

The first mechanism of moral disengagement in capital cases is *dehumanization*. Through the omission of evidence about the character of the defendant as well as the flow of the trial proceedings, the defendant is not seen as a person but as an agent of violence (Haney 2005, 144). This can be seen when one closely examines the participants in the trial. The state often refers to “the defendant,” when pointing to the defense table and throughout the trial, constantly objectifying the person. On the other hand, defense attorneys will refer to their clients by name, as in “Mr. Jones,” as a way to humanize them and show that they are people with human qualities. While there are rare moments throughout the course of a trial in which the defendant is humanized, this occurs more often at the end of the penalty phase of a case. According to Haney (2005, 146), this is too little too late. “When events are compared [mitigating and aggravating evidence], the first event colors the second and the order in which a criminal trial proceeds will benefit the state.”
The second disengagement mechanism consists of aggravating factors introduced at trial that portray the defendant in the most deviant light. Because prosecutors introduce the past criminal history of the defendant at the outset of the penalty phase, much of the trial is consumed with repeated highlights of the brutality and viciousness of the crime. This according to Haney (2005, 149) leaves the jury without a clear and meaningful context in which to examine all the facts surrounding the crime or the defendant, free from prejudice. There is seldom discussion of the defendant's upbringing and economic environment which would allow the jury to place the crime in context.

A third disengagement mechanism utilized in a trial is to focus on the dangerousness of the defendant. Throughout the guilt and penalty phase, the trial focuses on the weapons and brutality of the crime in an effort to show the defendant as not only evil, but one who, if not given the sentence of death, would be out in the community killing again. As Haney and other researchers have discovered, jurors in several states have misinformation about what would happen if the defendant were not given the death penalty. The confusion or misinformation they may experience, however, is never discussed during jury instructions and is never addressed at any other time in the criminal trial. This unwillingness of the criminal justice system to clarify the possible punishment options available could lead a juror to render a death sentence based on misinformation (Haney, 1997).

Structural aggravation serves as a fourth mechanism of moral disengagement in capital trials via the denial of responsibility by jurors about the death sentences they render. While the literature on jury instructions in capital cases shows a lack of
comprehension on the part of juries (Diamond, 1993), one statement jurors seem to remember consistently is that their sentence is only a punishment recommendation and that appellate courts have the final say on whether or not the execution is carried out (Haney, 1997). If jurors believe that a judge or appellate court can overturn their verdict and assign a different sentence, they may feel less responsible when sentencing a defendant to death. Jurors may also minimize the consequences of their decisions. A great many jurors suffer from what Haney calls “verdict skepticism”; specifically, the juror doubts that the defendant will ever be executed. Second, the trial process is pervaded with graphic details about the crime and the killing process, yet there is no comparison to make to the execution of the murderer because courts do not permit such information to be explained to jurors. Thus, their actions are minimized by the fact they are unschooled on the execution process.

The fifth and final structural aggravation mechanism is just following orders. Thus they are engaging in crimes of obedience. The jury instructions on which they rely serve as a basis for viewing their actions as compliance with the strict requirements of the law.

Structural aggravation in some form is inherent in every capital trial, and it serves as an advantage for prosecutors in presenting their case. Jurors can easily follow the case a prosecuting attorney presents because much of their predetermined schema about crime and criminal justice follows the state’s theme. Trials are structured around aggravating circumstances so that jurors will be exposed to the brutality of the crime and the victim’s suffering throughout the course of the court case. I hypothesize that the more empathy
jurors feel for the victim in a capital case, the more receptive those jurors will be to the aggravating factors emphasized throughout the trial process, in particular the penalty phase.
CHAPTER IV

Current Research

Purpose of This Study

Jury decision-making is vital to our understanding of how capital punishment is carried out. This study specifically seeks to examine what factors will make a juror more receptive to aggravating factors in a capital case. Specifically, this project tests Haney’s (1997) theory of structural aggravation as a mechanism of moral disengagement. According to Haney, a capital trial reinforces preconceived notions about the heinousness of the crime, the dehumanization of the defendant, and more important to this research, creates empathic feelings in jurors for the victim. This is done, as Haney points out, before the jury is ever exposed to any mitigating evidence presented by the defense. While prior research has contributed to the literature by demonstrating the effect that dehumanization (one of Haney’s mechanisms) has on juror receptivity to mitigating evidence (Brewer, 2003), this research appraises juror empathy for victims as structural aggravation, by considering its significance to a juror’s acceptance of aggravating evidence at trial.

Capital Jury Project

There are a number of methodological approaches to studying juror decision-making, with the most notable being jury simulations. There are validity concerns,
however, when mock jurors are substituted for jurors who have actually served in real criminal cases. First, mock jurors are not making life or death decisions about real people in real cases. As Reifman, Gusick, and Ellsworth (1992, 542) point out, “no matter how realistic the simulation, research ethics typically require that the subjects be made aware that they are engaging in a simulation and that no one’s fate is actually dependent upon their decision.” Second, because sound research requires that some generalizations be reached on the basis of empirical findings, mock jurors used in experimentation are often college students, selected through the use of convenience sampling. Using college students as a representative sample in order to generalize to those serving on capital juries raises concerns because college students are not representative of those most often chosen for jury service (Bornstein 1999; Carroll, Kerr, Alfini, MacCoun, and Feldman 1986). Even when studies use adults who are eligible for jury service in a particular jurisdiction because they have a driver’s license or voter registration card (common practices used in calling citizens for jury service), the possibility is slim that those same individuals would be selected to actually sit for a capital case after being rigorously scrutinized by lawyers and the judge. Therefore, the best way for researchers to capture the rich context of the jury service experience is to interview people who have actually served as jurors on real capital cases (Reifman, Gusick, and Ellsworth 1992), as in the Capital Jury Project.

The primary purpose of the Capital Jury Project (CJP) is to (1) systematically describe jurors’ exercise of capital sentencing discretion (2) assess the extent of arbitrariness in jurors’ exercise of such discretion and (3) evaluate the efficacy of capital statutes in controlling such arbitrariness (Bowers 1995, 1077). In-depth personal
interviews were conducted with 1,198 jurors representing 353 capital trials in 14 states. These 3-4 hour interviews chronicle the jurors' experiences and decision-making during the course of the trials, identify points at which various influences come into play, and reveal the ways in which jurors reach their final sentencing decisions. The participating states were selected to represent the various forms capital statutes have taken since 1972 when the U.S. Supreme Court declared all earlier capital statues unconstitutional. Samples of 20-30 capital trials were selected in each state and a sample of four jurors was drawn randomly for interviews in each case (Bowers 1995). The CJP instrument makes use of both quantitative and qualitative questions about a particular capital case and gathers information about the victim, the offender, and the trial. Jurors were asked about the process of deliberations with respect to the guilt and penalty phase of the case and questions include specifics about the victims and their role in the crime. More importantly, the survey asked jurors about their perceptions of the victim and the crime committed and if those factors weighed in their decision-making in the case.

The Model

Dependent Variable

The dependent variable used in this study is an individual juror’s receptiveness to aggravating evidence during the penalty phase of a capital case. The receptivity variable is a single measure that is coded so a positive and high numerical score indicates that the juror found the factor to be a more important argument in favor of a death sentence. Conversely, a negative and lower value on the variable means that the respondent found
the factor to be more supportive of a life sentence. The receptivity variable was coded as follows: if the factor was a very important argument in support of a life sentence, -2; the factor was a fairly important argument in favor of life, -1; the factor was not at all important in the sentencing decision, 0; the factor was fairly important in the juror’s decision supporting death, +1; and finally the factor was very important in the juror’s decision regarding death, +2. The range for each response falls between -2 and +2. The same coding method was used for each of the items listed as aggravation, and the results have been used in past research with respect to measuring receptivity to mitigation (Brewer 2004). The average of the scores is the juror’s receptivity to aggravation. This newly created score indicates how receptive a juror was to the aggravating evidence presented by the state during the penalty phase of the case. According to Brewer (2005, 347), “receptivity is not a dichotomous concept and it is assumed that there are varying degrees of receptivity.” A juror could feel that a factor presented at the penalty phase was very important to his/her sentencing decision or could declare it made no difference at all. This range of possibilities means that the variable is continuous in nature, and when the dependent variable is continuous, the appropriate statistical analysis to use is multiple regression (Long 1997; Imai, King, and Lau 2008).

Independent Variables

In an attempt to predict an individual juror’s receptiveness to aggravating evidence during the penalty phase of a capital case, several independent variables will be used to develop a regression model. A regression model, expressed simplistically, indicates the impact that independent variables have on a single dependent variable, i.e.,
receptivity to aggravating evidence, when the dependent variable is interval. The regression model will utilize the following independent variables: juror empathy, premature decision-making, severity of the crime, future dangerousness, attitudes about crime and punishment in America, and Southern jurisdiction. In the model the following control variables, also independent in nature, will include race, gender, and education. An explanation of these independent variables and how they are measured in the current study are presented below.

Predictor Variable: Empathy for Victims

Empathy as defined in the CJP data is the ability of jurors to actively place themselves in similar circumstances as the victim. In this research a juror’s empathy for the victim will be measured in the precise manner utilized by other capital jury scholars. Sunby (2003) and Edelman (2006) both measure empathy for the victim with the CJP question, “Did you imagine yourself in the victim’s situation?” This role-taking question presented to the juror is directly reflected in the empathy literature and serves as the most direct way to operationalize a juror’s empathy for the victim (Mead 1934; Hoffman 1987; Davis 1996). The respondents were asked to state either “yes” or “no” to the question. Since this information was measured nominally it will be coded as a dichotomous variable. Those who responded yes are coded 1 as having empathy for the victim, while no responses are coded 0 indicating no empathy for the victim.

Premature Decision-Making

In Gregg v. Georgia (1976) the U.S. Supreme Court outlined the requirements needed to rectify the arbitrariness identified in Furman. One of the criteria was that the
trial would result in a bifurcated process, separating the guilt and penalty phases. First, jurors would only focus on the evidence presented by the State to make a decision about whether or not the defendant(s) committed the crime. If they had reached such a decision beyond a reasonable doubt, there would be a separate phase of the trial dealing with sentencing. Yet research has shown that many jurors reach their decisions about punishment before the penalty phase and even before they receive the judge’s jury instructions on how to decide punishment. Using the CJP data, Bowers, Sandys, and Steiner (1998) discovered that nearly half of the jurors interviewed stated they knew what punishment the defendant deserved prior to the penalty phase. Even more striking was the finding that “three out of ten jurors who voted for a death sentence did so not only prior to the penalty phase, but were also strongly convinced they had made the correct decision” (Bowers, Sandys and Steiner 1998, 1489). “This tendency of jurors who take an early stand on punishment and to also stick with it, suggests that they are largely unreceptive to both evidence and arguments presented to them later in the trial” (Bowers, Sandys and Steiner 1998, 1493). Based upon that finding, therefore, this study must control for the fact that if jurors have already formed an opinion about what punishment the defendant should receive prior to the penalty phase, the presentation of both mitigating and aggravating evidence becomes irrelevant, since they may have already made up their minds.

The following CJP question was used by Brewer (2005) to measure premature decision-making: “After the jury found the defendant guilty of capital murder, but before you heard any evidence or testimony about what the punishment should be, did you then
think the defendant should be given….” Respondents were able to select either a death sentence, a life sentence or indicate that they were undecided. Three dummy variables are created representing a life sentence, a death sentence and undecided which are included in the model; the reference category left out of the regression equation is “undecided.”

**Severity of the Crime**

While several studies have examined the use of extralegal factors in jury decision-making, these do not appear to have the strongest influence on how a juror will react to the evidence presented. There is affirmation that jurors rely on the factual evidence before them when reaching decisions (Simon 1967; Kalven and Zeisel 1966). In conducting interviews with jurors who had served in sexual assault cases, several of them based much of their decision-making on the corroboration of physical evidence presented to them at trial (Visher 1987). Not surprisingly, jurors give more severe sanctions to defendants when the crime scenario presented to them is most egregious. For example, Sanders, Zanna and Darley (2000) provided mock jurors with two crime scenarios. One was a crime against a sexual assault victim and the other was a property crime, such as theft. Predictably, jurors regarded the personal crime as more serious and hence gave harsher sentences to the violent offender than to those who committed mere property crimes. The more heinous the crime, the more likely a juror is to sentence a defendant to death (Barnett 1985; Bornstein and Nemeth 1999; Eisenberg, Garvey, and Wells 2001, 277). This can be attributed to the retribution some jurors feel towards those who have committed murder and to the brutality and gruesomeness of a murder scene, both of
which may lead jurors to support the “just deserts” model of punishment (Samuel and Moulds 1986; Bright and Goodman-Delahunty 2006).

Since the CJP obtained data on how the jurors interpreted the severity of the crime, the model controls for the heinous and brutal manner in which the crime was committed. There is good reason to believe that the more brutal and heinous the crime, the more likely jurors will be receptive to aggravating evidence presented to them in the penalty phase (Pollman 1990; Rosen 1986; Ward 1988; Bornstein and Nemeth 1999).

The egregious nature of the offense is an aggravating factor under most death penalty statutes, and therefore it is controlled for in the model. In the CJP instrument, respondents were given 12 words or phrases that indicated the severity of the crime (bloody, gory, vicious, etc.) They were specifically asked, “in your mind, how well do the following words or phrases describe the killing?” The choices provided for each of the 12 words/phrases were: very well, fairly well, not so well, and not at all. All responses are reverse coded so that the higher the number, the more the juror described the killing as severe. A scale ranging from 12 to 48 is then created that averages the scores. The mean score for each juror represents the level of severity attributed to the crime (Brewer 2004, 538).

Future Dangerousness

When jurors believe that the defendant will be dangerous if ever released from prison, such awareness will substantially influence their sentencing decision (Costanzo and Costanzo 1994; Blume, Garvey, and Johnson 2001). Even when the prosecution does not address the dangerousness question in its case, jurors still spend a good amount
of time deliberating on such issues during the penalty phase. Findings from the CJP show that “73% of jurors interviewed in capital cases stated that future dangerousness, although never raised by the state, was an overwhelmingly important factor in their decision-making” (Blume, Garvey, and Johnson 2001, 407).

Jurors not only discuss the defendant’s potential for being dangerous in the future, but they also attempt to predict the amount of time an offender will remain in prison if not given a death sentence. Jurors tend to overestimate the amount of time a defendant would spend behind bars if given a life sentence. Their mistaken beliefs about the time a defendant spends in prison substantially influence their sentencing decision, as well as the amount of danger they ascribe to the defendant if ever released (Bowers and Steiner 1999). They try to gain clarification from the court on such matters, but often to no avail, leaving them confused and irritated (Diamond 1993). Jurors who were interviewed in several studies discussed how frustrating it was not getting a complete answer from judges when they asked whether a person sentenced to life would ever be released, and if so, when (Bowers and Steiner 1999). More troubling is the fact that jurors who did believe that a life sentence really meant life (i.e., life without the possibility for parole) agreed this would have been the most appropriate sentence, but without such a guarantee, they felt that a death sentence was their only alternative.

Jurors are not only concerned about whether the defendant will be released from prison, but also when the release will take place. According to Bowers and Steiner (1999, 703), “the sooner a juror believes a defendant will be released from prison, the more likely they are to vote for death and the more dangerous they view the defendant.”
Because future dangerousness is often an aggravating factor under state statutes, it is very likely such considerations will influence jurors’ receptivity to aggravating evidence. In order to assess the impact of empathy on receptiveness to aggravating evidence, it is necessary to control for the impact that future dangerousness may have on sentencing. Eisenberg, Garvey and Wells (2001) measure future dangerousness with the CJP survey question, “After hearing all of the evidence, did you believe it proved that the defendant would be dangerous in the future?” The response is dichotomous and in the current study is coded into a dummy variable where a juror who believes the defendant would be dangerous in the future is coded 1 and those who did not are coded 0.

*Southern Jurisdiction*

There has been great speculation that juries based in the South may be more punitive than those in any other region in the United States. With respect to capital punishment, the National Association for the Advancement of Colored People found that 65% of executions between 1976 and 2007 were carried out in Southern states (NAACP Legal Defense and Education Fund 2007). There has been considerable academic theorizing concerning regional distinctions and their implications for criminal justice policy, particularly in cases of capital punishment. The fact that the death penalty is more often used in Southern states compared to the rest of the U.S. demonstrates an unequal application of capital punishment for similar crimes based on mere geographic location.

Many scholars have pointed to a Southern subculture of violence rooted in the customs, beliefs, and attitudes concerning gun ownership, hunting, and raising families, which are unique to Southerners and hold a special place in their culture (Wolfgang and Ferracuti
Southerners are more apt to have a military base nearby which sustains the local economy, and because of their high level of military support, they also hold strong beliefs concerning retaliatory violence (Elison 1991). Yet far too often it becomes difficult to hold the Southern mindset solely responsible for subscribing to a culture of violence. Research must be careful to control for other variables closely related to living in the Southern region that could also support the use of retaliatory violence, such as racism, age, poverty and the climate. Still there seems to be some indication that those in the South are more likely to justify interpersonal violence, even controlling for such variables as racism, age and poverty (Borg 1997). It is possible that the culture of violence in the South is hardened in the individual the longer the exposure to such an environment. Ellison (1991) suggests that there is a difference in attitude regarding the use of violence for those who have migrated to the South (for example many Northerners will move to Southern states for economic gain) and those who were born and have maintained lifelong residency in the region. Similarly, when people migrate out of the South, the move tends to weaken the Southern values that legitimize their support for violence, thus leading them to be less punitive (Ellison 1991). Because living in the South could cause a juror to be less receptive to mitigating evidence while being more receptive to aggravating evidence, there is a need in the present study to control for regional jurisdiction.

The CJP coded states with an identification number indicating whether or not they were from a Southern region. Following Brewer (2005, 350–351), a dichotomous variable will be included in the model where “Southern” will be coded 1 for those cases
where the trial was held in a state that had once been a part of the former Confederacy, and 0 if held outside the region.

**Attitudes about the Criminal Justice System**

Jurors’ attitudes about crime and the criminal justice process can impact their punishment decisions in criminal cases. The attitudes we have about crime and the criminal justice system date back to Packer’s (1968) two models of the criminal process. Packer discusses two ways in which we may view our criminal justice system based on a values scheme that is often misinterpreted as being in conflict, but more accurately differs only in a matter of degree (Packer, 1968). One approach is the Crime Control Model, representing the value of crime repression while at the same time efficiently and quickly processing as many criminal cases as possible through the system so that more cases can be settled. These cases get processed through the system at assembly line momentum (Packer 1968, 158–159). The suspect is presumed from the facts collected by police to be guilty of the offense, and the legal system is left to meet its burden of proving legal guilt.

At the other end of the spectrum is the Due Process Model, which underscores the possibility that errors are likely to occur in the criminal justice process and that it is the obligation of the judiciary to implement safeguards for constitutional preservation. It is not that the Crime Control Model is adverse to constitutional rules put in place to protect individual rights, but as Packer (1968, 168) points out, “what the Crime Control Model cannot tolerate is the exclusion of illegally obtained evidence in a case, or to overturn convictions based on the illegal actions of the state.” Jurors’ feelings and opinions about
the criminal justice system are important for understanding their decision-making and, specifically for the current research, their receptivity to attorneys’ arguments.

If jurors subscribe to the Crime Control Model, one might assume they are more receptive to the prosecution’s case, rather than being either neutral or more supportive of defense claims. Similarly, if a juror tilts toward a Due Process Model, that juror may be less receptive to the prosecution’s case and more receptive to defense arguments (Fitzgerald and Ellsworth 1984). While jurors’ feelings about the death penalty in particular can serve as a proxy for their position on a wide variety of criminal justice attitudes (Thompson, Cowan, and Ellsworth 1984, 110), this current research needs no proxy for measuring attitudes about crime and the criminal justice system. The CJP survey instrument directly asks jurors their thoughts and feelings on a number of issues reflective of Packer’s two models. Specifically, those who favor the death penalty are more crime control oriented than their counterparts. There is supportive evidence demonstrating that those who are more crime control oriented are more receptive to prosecutorial arguments presented to them at trial than jurors who are less supportive of the death penalty. Thompson et al. (1984) found that those who agreed with noted legal commentator Blackstone’s statement ("It is better to let 10 guilty go free than convict one innocent person") will have an extremely high conviction threshold, meaning that it will take a lot of evidence for those jurors to render a guilty verdict. Since this dissertation is interested in assessing what makes a juror more or less receptive to aggravating evidence in a criminal case, a variable assessing the juror’s attitude about crime and justice in America is appropriate. A crime control scale was created in order to examine a juror’s
attitude about the criminal justice system. First, each statement reflecting either a crime control or due process philosophy was identified. Next, those statements were assigned a positive or negative score (-3 to +3) representing seven possible ordinal responses ranging from strongly agree to strongly disagree. A juror’s responses were then calculated and given a mean score indicating a juror’s attitude supporting the crime control model.

Jurors are human beings who bring their unique life experiences with them to the jury box. Although they are screened to make sure they are unbiased and that their personal views would not affect their ability to be fair and impartial, there is still a level of discretion that jurors have, particularly at the penalty phase of the case. According to Eisenberg, Garvey, and Wells (2001, 283), “because capital sentencing is so discretionary, considerable room exists for a juror’s personal characteristics to influence their judgments.” It also stands to reason that support for capital punishment will make a juror more likely to vote for death, and hence to be more receptive to the aggravating evidence presented at trial to justify a decision. CJP data for South Carolina, for instance, revealed that “73% of those who supported the death penalty ended up casting their vote for death” (Eisenberg, Garvey, and Wells 2001, 286). A person’s opinion about the death penalty is a strong predictor of the ultimate voting decision. With this prior CJP research in mind, it is important to examine the personal characteristics of jurors and what influence such factors may have on support for the death penalty.
Demographic Control Variables

Race

There have been numerous studies which analyze the impact race has on capital sentencing decisions. Literature has been broken down into studying the race of the victim, the juror, and the defendant. One of the most comprehensive statistical studies to examine racial bias in death penalty cases was conducted by Baldus, Woodworth, and Pulaski (1990). They compared 156 pre- and post-Furman cases between 1973 and 1979. Evidence showed that, controlling for a multitude of legally relevant factors, the odds of a death sentence are 4.3 times higher for defendants who kill a white victim than for those who kill African American victims (Baldus, Woodworth, and Pulaski 1990, 406). This was supplemented by the research of Radlet and Pierce (1991) when they also carefully controlled for legally-relevant factors in homicide cases and still found that homicides which involved white victims are more likely to result in a death sentence than if the victim was African American. Similarly, the Government Accountability Office, using meta analysis, found that in cases where the victim was white, 82% resulted in a capital murder charge and a death sentence, and more current meta analyses have yielded the same results (Baldus and Woodworth 2003, 517-518). The statistical evidence known as the “Baldus Study” was presented in the U.S. Supreme Court case McClesky v. Kemp (1987); however the findings were unpersuasive to the Court.

The racial impact on juror decision-making also includes the race of jurors, victims, and defendants. In a study interviewing capital jurors about their jury experience, African American and white jurors differed substantially in how they viewed the
evidence in the case. African American jurors were more receptive than white jurors to mitigating evidence. African American and white males differed in how they appraised the evidence on the defendant’s future dangerousness, remorse, analysis of the crime and, more importantly to the present research, they differed in the ways in which they personalized the crime and related to the participants (Bowers, Sandys, and Brewer 2004, 1513). African American jurors expressed more doubt about the defendant’s guilt as well as believing the defendant was remorseful and hence deserved mercy. White jurors on the other hand were more likely to believe the defendant would be dangerous in the future (Bowers 2001). These individual differences in the racial attitudes of jurors may stem from preconceived stereotypes about African American culture and the perception that African Americans lack individual responsibility and accountability in their daily lives as a result of their upbringing (Fleury-Steiner, 2002). These stereotypes often lead white jurors to believe African Americans commit crimes because they believe that the African American culture ingrains an attitude that denies individual responsibility. This perceived negation of personal responsibility creates indignation among white jurors (Sweeney and Haney 1992; Fleury-Steiner 2002).

Not only is there an individualized difference among white and African American jurors in the way they view the defendant and the crime, but there are aggregate racial differences as well. When a jury panel is made up of predominantly white males, jurors reported that deliberations ran smoothly and there were no real areas of disagreement in discussions. However when the jury was racially mixed, jurors reported more hostility and emotion with respect to their deliberations. Interestingly, as the jury becomes more
diverse, white jurors tend to hesitate in their decisions. White jurors more strongly support a death sentence for an African American defendant when they witness at least one other African American juror supporting a death sentence (Dovido, Smith, Donnella, and Gaertner 1997). This may result from a white juror’s desire not to show any signs of overt prejudice. Jurors who are only slightly prejudiced will discriminate in subtle situations when there are no racially salient issues put forward and when their decisions about what the defendant’s punishment should be have no racial overtones (Dovido et. al. 1997; Sommers and Ellsworth 2001). The literature on capital punishment has clearly indicated that race matters and that African Americans are treated very differently by the criminal justice system. In the present study the race of the juror, the defendant and the victim are coded into several dummy variables. The coding of the race of the juror, defendant, and victim reflects the interest noted by the literature on race and capital sentencing. Black defendants, black jurors, and white victims were all coded 1 while their respective counterparts were coded 0.

**Gender**

Studies have shown that there may be a gender gap regarding punitive attitudes about criminal justice policies, particularly with respect to capital punishment (Whitehead and Blankenship 2000; Halim and Stiles 2001). Multiple studies spanning more than a decade have demonstrated a significant difference in male and female support for capital punishment (Lester 1998; Stack 2000). When asked in survey questions whether they support capital punishment, 85% of men replied in the affirmative
while only 65% of women did. Additionally, it appears that men as opposed to women are more fixed to their belief system regarding the death penalty. When an alternative to the death penalty was presented, such as life without the possibility of parole, men in contrast to women were less likely to change their minds (Whitehead and Blankenship 2000). When men were told that there was a risk that innocent people could be mistakenly executed, they were still supportive of the death penalty. It appears that women are not only less supportive of capital punishment overall, but they are also more open-minded when intervening factors come into play.

What may account for such differences between men and women is how they are socialized (Gilligan 1982). Unlike men, who often grow up learning aggressive behavior, studies show that women disapprove of violence and their notions about what is fair and just involves a more humanistic aspect (Gilligan 1982; Stacks 2000). Because of the gender disparity in punitive attitudes regarding capital punishment, men as opposed to women, may be more receptive to aggravating evidence in support of a death sentence. Women, due to their more nurturing and forgiving attitudes, may be more receptive to mitigation evidence as well. Therefore, a juror’s gender, as well as that of the victim and the defendant, are relevant considerations that need to be taken into account in the current statistical model. The fact that gender is a nominal variable means it is coded into a dummy variable. Since the literature shows support that female victims may induce a juror to be more receptive of aggravating evidence, cases with female victims are coded 1 and male victims 0, and since men are viewed as more punitive and perhaps more
receptive to aggravating evidence, male jurors are coded 1 while female jurors are coded 0.

**Education**

Numerous public opinion polls conducted during the years demonstrate that those with higher education levels are more likely to be opposed to the death penalty than those with less education. College graduates and those with post secondary degrees are more often opposed to capital punishment than those with less than a high school education (Langworthy and Whitehead 1986; Bohm 1991; Cohn, Barkan, and Halteman 1991). One explanation offered in the death penalty literature as to why those with higher education may not support capital punishment can be seen in the Marshall Hypothesis (deriving its name from Justice Thurgood Marshall’s opinion in *Furman v. Georgia*). Justice Marshall believed that if the electorates were truly informed and knowledgeable about capital punishment, most would be opposed to the taking of a human life, unless the person’s sole motivation was revenge (Bohm 2003, 35). Although Marshall never suggested how a juror’s knowledge of capital punishment should be measured, a number of studies have queried the public on their familiarity with the administration of capital punishment. The public has been surveyed on the following: the cost of execution as opposed to life in prison; whether the death penalty serves as a deterrent; the racial and economic costs associated with its management; and finally, the possibility of executing an innocent person. It then follows that an educational system that includes instruction on these aspects of capital punishment would result in more citizens being opposed to the death penalty.
The consistency in the literature on education level and its impact on death penalty support requires that such information from jurors be included in the model. The CJP asked respondents, “What was the last grade of school you completed?” Respondents’ answers were collapsed into the following: high school graduate, some college, college graduate, and post graduate. The education variable was reversed coded so that higher education reflected a larger numeric response.

**Interaction Effects**

In the previous discussion of race and capital cases, there is strong evidence to suggest that race is influential in sentencing outcomes (Baldus, Woodworth, and Pulaski, 1990; Baldus, Woodworth, and Pulaski 1993; Radlet and Pierce 1991; Dovidio, Smith, Donnella, and Gaertner 1997). There is also evidence to show that different racial combinations among juror, defendant, and victim could also be important in capital verdicts. The effect on capital sentencing when the defendant is black and the victim is white shows how interaction effects among variables can produce significant results (Baldus 1990). Similar studies have also found a discriminatory combination in that, “African American offenders who kill white victims are more likely to be sentenced to death than any other racial combination” (Applegate, Wright, Dunaway, Cullen, and Wooldredge 1993, 99). Given the significance of this interaction on death penalty verdicts, this dissertation creates an interaction term for a possible black defendant/white victim affect on juror receptivity to aggravating evidence. If cases with a black defendant/white victim produce more death verdicts, then this same combination may make jurors more receptive to aggravating evidence.
There is also evidence to show that racial combinations among the defendant, juror, and victim may have an effect on sentencing outcomes. Brewer (2004, 533) explored the interactive effect between various racial combinations and the juror’s ability to accept mitigating evidence during the penalty phase of a capital case. Brewer’s hypothesis was that receptivity to mitigation varies as a function of race, and his results suggested as much. It appears that when black jurors are faced with a situation where a black defendant is charged with killing a white victim, the black juror is significantly more receptive to mitigating evidence. Therefore, because of the black juror/black defendant/white victim (BBW) findings, this research seeks to examine whether such a combination makes jurors less receptive to aggravating evidence. Thus, included in the model is the BBW interaction term representing trials where there are a black juror, black defendant, and white victim.

Finally, as previously noted, black jurors tend to view the evidence presented to them much differently than white jurors with respect to the future dangerousness of the defendant, the defendant’s remorse, and the heinousness of the crime (Bowers, Sandys, and Brewer 2004). Narrative accounts tend to show that black jurors, as opposed to white jurors, tend to be more empathic towards the defendant, stating that they could see themselves in a similar situation as the defendant. Because the role of empathy in sentencing outcomes is critical to this research, this study explores whether there is a possible interaction effect between the juror’s race and empathy for the victim. It could be that black jurors are more empathic than white jurors and this then could impact their receptivity to aggravation.
While race has played a predominant role in capital sentencing outcomes, much less studied has been the interactive effect of race and gender of the victim in death penalty cases. Williams and Holcomb (2004, 366–370) using Supplemental Homicide Reports in the state of Ohio concluded that “although white females make up only 15% of homicide victims, they compose 35% of all death sentences. Homicides involving white female victims had the highest likelihood of resulting in a death sentence, while black male victims had the lowest.” The Williams and Holcomb study possesses some complications in that the research misses some important legally relevant control variables—one being the severity of the crime. Later research included many of the variables missed by Williams and Holcomb and drew on homicide cases in the state of North Carolina to test victim race/gender interaction (Stauffer, Smith, Cochran, Fogel, and Bjerregaard 2006). At first impression their findings tended to support that of Williams and Holcomb, until they introduced these variables: whether the defendant had a public or private attorney, the age of the victim, and the defendant’s prior offenses. When such variables were included in the latter part of their analysis, the results showed a lack of an interaction effect between the race and gender of the victim with respect to capital sentencing. The limited research in this area suffers from poor generalizability in that the research only examines one state. Williams and Holcomb draw attention to such limitations by calling upon future research to replicate their findings with a more comprehensive statistical sample. The Capital Jury Project is sufficient to answer this call and this study will test the possible interaction effect between the gender and race of the victim and juror receptivity to aggravating evidence.
Analytic Strategy

This dissertation will utilize hierarchical multiple regression to test the hypothesis that jurors who possess empathy for the victims are more receptive to aggravating factors in capital cases. Hierarchical regression is one form of multiple regression where the researcher adds in variables through a process of steps, determined by the researcher based on a theoretical assumption and not by a mathematical algorithm, which differentiates it from stepwise regression (Newton and Rudestam 1999, 254). Through this process the variability due to extraneous factors can be removed by entering them first. The first step often contains the control variables, and in the present research these are demographic variables such as race and gender of the jurors, the victims and the defendants as well as the education level of the jurors. In step 2, other independent variables are introduced such as where the trial was held, at what point in the trial the juror decided on punishment, and other legally relevant factors such as the severity of crime, future dangerousness of the defendant, and jurors’ attitudes about crime and justice. Finally in step 3 the predictor variable, juror empathy, is added.

After the main effects from the hierarchical regression are analyzed, a second process examining interaction effects is conducted. When interaction terms are created two variables are combined to create a new variable. It has been argued that to obtain interpretable results from interaction effects, all the variables making up the interaction terms have to be standardized or centered. “Centering,” according to Aiken and West (1991, 9), is when a variable has been “put in a deviation score so that there mean value is zero.” More recent literature, however, demonstrates that centering the variables does
not change the regression results (Kromrey and Foster-Johnson, 1998; Brambor, Clark, and Golder 2005). While the literature has demonstrated that centering variables for examining interaction effects does not change the results in ordinary linear regression, all variables used to examine interaction effects in the present study are centered, i.e., the mean value for each variable (after removing missing cases) will be obtained and then subtracted from the observation.
CHAPTER V

RESULTS

Table 1 provides the descriptive statistics for each of the variables used in the model. Looking at the demographic variables, most of the trials examined were in states that had once been part of the Southern Confederacy (58.1%). When viewing the individual level data, it was not surprising that exploratory analysis showed just over 95% of all capital trials had a male defendant. This can be attributed to the slim number of females on trial for capital murder in the 14 states under consideration in this study. This finding was not surprising and therefore the defendant’s gender was not a variable of interest analyzed in the model, and is not included above. Findings regarding the gender of the victims demonstrated a nearly even split between males and females, with 53.4% having been male victims and 46.6% female victims. A similar even divide can be seen regarding the gender of jurors 51.4% female and 48.6% male. Concerning race, slightly more than 80% of all death penalty cases in these 14 states presented a white victim, while black victims made up just fewer than 20%. Juror race showed a strikingly disproportional jury panel in that blacks only comprised 10% of those serving as capital jurors while whites constituted an overwhelming 90%. With respect to the race of the defendant nearly two-thirds (57.3%) of the defendants were white and 42.7% were black. The final demographic variable shows that the average juror was slightly educated in that
### Table 1. Descriptive statistics

<table>
<thead>
<tr>
<th>Variables</th>
<th>Level of measurement</th>
<th>N</th>
<th>%</th>
<th>Range</th>
<th>Min</th>
<th>Max</th>
<th>M</th>
<th>SD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Receptivity to agg evidence</td>
<td>Continuous</td>
<td>1141</td>
<td></td>
<td>4</td>
<td>-2</td>
<td>2</td>
<td>.51</td>
<td>.81</td>
</tr>
<tr>
<td>Trial was in southern state</td>
<td>Dichotomous</td>
<td>1198</td>
<td>58.1</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>.58</td>
<td>.49</td>
</tr>
<tr>
<td>Premature in favor of death</td>
<td>Dichotomous</td>
<td>1135</td>
<td>30.3</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>.30</td>
<td>.46</td>
</tr>
<tr>
<td>Premature in favor of life</td>
<td>Dichotomous</td>
<td>1135</td>
<td>18.8</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>.19</td>
<td>.39</td>
</tr>
<tr>
<td>Juror empathy for the victim</td>
<td>Dichotomous</td>
<td>1192</td>
<td>53.8</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>.54</td>
<td>.50</td>
</tr>
<tr>
<td>Defendant dangerous in future</td>
<td>Dichotomous</td>
<td>1100</td>
<td>83.7</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>.84</td>
<td>.37</td>
</tr>
<tr>
<td>Severity of crime</td>
<td>Interval</td>
<td>1195</td>
<td></td>
<td>47</td>
<td>1</td>
<td>48</td>
<td>37.14</td>
<td>6.53</td>
</tr>
<tr>
<td>Black juror</td>
<td>Nominal</td>
<td>1145</td>
<td>10.0</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>.10</td>
<td>.30</td>
</tr>
<tr>
<td>White victim</td>
<td>Nominal</td>
<td>1089</td>
<td>80.7</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>.81</td>
<td>.40</td>
</tr>
<tr>
<td>Black defendant</td>
<td>Nominal</td>
<td>1092</td>
<td>42.7</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>.43</td>
<td>.50</td>
</tr>
<tr>
<td>Female victim</td>
<td>Nominal</td>
<td>1190</td>
<td>46.6</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>.47</td>
<td>.50</td>
</tr>
<tr>
<td>Male juror</td>
<td>Nominal</td>
<td>1192</td>
<td>48.6</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>.49</td>
<td>.50</td>
</tr>
<tr>
<td>Juror education</td>
<td>Ordinal</td>
<td>1028</td>
<td></td>
<td>3</td>
<td>1</td>
<td>4</td>
<td>2.32</td>
<td>1.09</td>
</tr>
<tr>
<td>Juror is pro crime control</td>
<td>Interval</td>
<td>1085</td>
<td></td>
<td>41</td>
<td>-18</td>
<td>23</td>
<td>3.48</td>
<td>7.33</td>
</tr>
</tbody>
</table>
most had excelled beyond high school and had attended some college (M = 2.32, SD = 1.090).

Attitudes jurors had regarding the evidence at trial showed that half of all jurors made up their minds regarding the punishment the defendant should receive (a life or death sentence) prior to the end of the penalty phase (49.1%, n = 557). Thirty percent of jurors had arrived at the decision that the defendant should be sentenced to death before the penalty phase of the case even began. After hearing all the evidence in the case, nearly 84% of jurors concluded that the defendant would be dangerous in the future. Jurors tended to view the crime presented to them as severe (M = 37.14, SD = 6.53), which is not surprising since capital trials by definition require an aggravating offense to be offered, usually making the conduct of the crime cruel or heinous. Results also show that jurors are not too far leaning, either one way or another, in their beliefs regarding crime control and due process in the way the American criminal justice system operates (M = 3.48, SD = 7.33). With respect to the level of influence aggravating factors had on jurors’ punishment decision, on average, jurors stated that the aggravating evidence presented to them was only somewhat important on their final sentencing decision (M = .51, SD = .808). Finally empathy, the variable of interest in the present study, seems to show that jurors were nearly evenly split on whether or not they possessed empathy for the victim in the case.

An exploratory Pearson r correlation analysis was conducted to assess if relationships existed among the dependent variable, control variables, independent variables and predictor variable. The Pearson r correlation matrix is presented in
Appendix A, where a significant positive correlation suggests that as one variable increases the corresponding variable will also increase. A negative correlation coefficient, however, suggests that as one variable increases the corresponding variable will decrease. In order to check for the presence of multicollinearity among the variables, the Variance Inflation Factor (VIF) test was used and yielded no higher than a 1.3 VIF score among any of the variables, which is well below that needed to detect the presence of multicollinearity (Fields 2005). A Durbin Watson Test also shows that the residuals are not correlated with one another (a value of 1.64), close to the critical value of 2 (Fields, 2005). To investigate the impact these control and independent variables had on the dependent variable, hierarchical regression was the chosen statistical method utilized to test the hypothesis in this study; jurors who have empathy for victims in capital cases will be more receptive to aggravating factors presented during the case.

There are several assumptions when using multiple regression as a statistical tool and these assumptions were examined in the present research. Normality, linearity, and homoscedasticity were evaluated through an examination of both a histogram of the dependent variable’s standardized residuals (see figure 1) as well as a residual scatterplot (figure 2). With respect to the plotting of the residuals, Tabachnick and Fidell (2001, 127) state, “the residual scatter plot should reveal a pileup of residuals in the center of the plot at each value of a predicted score and a normal distribution of residuals trailing off from the center.” An examination of the scatterplot demonstrates that the assumption of a normal distribution is met and that linear regression is appropriate.
Figure 1. Histogram of juror receptivity to aggravating evidence. N = 667; mean = 4.59; E = 16; SD = 0.99

Figure 2. Residual scatterplot of the regression results.
In order to conduct hierarchical regression, variables are entered via blocks based on a theoretical notion discerned by the researcher (Fields 2005). Demographic control variables were entered into the first block of the regression and included the following: black juror, white victim, black defendant, female victim, male juror and juror education (see table 2). The results of the first block, using only the demographic variables to predict juror receptivity to aggravating evidence, are not significant, 

\( F = 1.62, p = .140 \),

suggesting that the demographic variables as a group do not predict juror receptivity to aggravation. The demographic variables accounted for only 1.4% of the variance in juror receptivity to aggravation.

Independent variables were then entered into the second block of the regression: whether the murder trial was in a Southern state, juror premature decision-making in favor of death, juror premature decision-making in favor of life, whether the defendant would be dangerous in the future, the severity of crime, and whether or not the juror is pro crime control. The results of the second block of variables entered into the regression along with the preceding demographic variables are significant, 

\( F = 3.02, p < .001 \),

suggesting that the independent variables do predict juror receptivity to aggravation after controlling for demographic variables. The independent variables accounted for an additional 3.8% (\( \Delta R^2 \)) of the variance in juror receptivity to aggravation, which is a significant increase (\( F = 4.37, p < .001 \)). The total (\( R^2 \)) is 5.3% of the variation in the dependent variable that can be explained by both the demographic control and independent variables.
Table 2. Main effects hierarchical multiple regression predicting juror receptivity to aggravating evidence

<table>
<thead>
<tr>
<th>Variables</th>
<th>B (SE B)</th>
<th>β</th>
<th>p</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Step 1: Control variables</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Constant)</td>
<td>-.43 (.25)</td>
<td>. .</td>
<td>.084</td>
</tr>
<tr>
<td>Black juror</td>
<td>-.07 (.11)</td>
<td>-.02</td>
<td>.544</td>
</tr>
<tr>
<td>White victim</td>
<td>.00 (.09)</td>
<td>.00</td>
<td>.998</td>
</tr>
<tr>
<td>Black defendant</td>
<td>.12 (.07)</td>
<td>.07</td>
<td>.102</td>
</tr>
<tr>
<td>Female victim</td>
<td>.07 (.06)</td>
<td>.04</td>
<td>.273</td>
</tr>
<tr>
<td>Male juror</td>
<td>.13 (.06)</td>
<td>.08</td>
<td>.037*</td>
</tr>
<tr>
<td>Juror education</td>
<td>.04 (.03)</td>
<td>.05</td>
<td>.231</td>
</tr>
<tr>
<td>R² for step 1</td>
<td></td>
<td></td>
<td>.014</td>
</tr>
<tr>
<td><strong>Step 2: Independent variables</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Southern state</td>
<td>-.12 (.06)</td>
<td>-.07</td>
<td>.070</td>
</tr>
<tr>
<td>Premature death</td>
<td>.07 (.08)</td>
<td>.04</td>
<td>.326</td>
</tr>
<tr>
<td>Premature life</td>
<td>-.01 (.09)</td>
<td>.00</td>
<td>.938</td>
</tr>
<tr>
<td>Future dangerousness</td>
<td>-.04 (.09)</td>
<td>-.02</td>
<td>.646</td>
</tr>
<tr>
<td>Severity of crime</td>
<td>.02 (.01)</td>
<td>.17</td>
<td>.000**</td>
</tr>
<tr>
<td>Juror pro crime control</td>
<td>.00 (.01)</td>
<td>.01</td>
<td>.728</td>
</tr>
<tr>
<td>ΔR² for step 2</td>
<td></td>
<td></td>
<td>.038**</td>
</tr>
<tr>
<td><strong>Step 3: Predictor variable</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juror empathy</td>
<td>-.10 (.07)</td>
<td>-.058</td>
<td>.140</td>
</tr>
<tr>
<td>ΔR² for step 3</td>
<td></td>
<td></td>
<td>.003</td>
</tr>
<tr>
<td>R square</td>
<td>.056</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adjusted R²</td>
<td>.037</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Durbin Watson</td>
<td>1.64</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of cases (N)</td>
<td>667.00</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Note: All coefficient results are for step 3. B = unstandardized coefficient; (SE B) = standard error of unstandardized coefficient; β = standardized coefficient; p = level of significance. **p < .01, *p < .05*
Finally, juror empathy, the predictor variable, was entered into the third block of the regression. Juror empathy only accounted for an additional 0.3% ($\Delta R^2$) increase in the variance in juror receptivity to aggravation, which is not a significant increase ($F = 2.19, p = .140$). The total ($R^2$) for the model reveals that the demographic, independent and predictor variables accounted for 5.6% of the variation in juror receptivity to aggravating evidence. Thus, all else equal, what mattered was whether the juror was male and whether the juror thought the crime was severe, which significantly influence a juror’s receptivity to aggravation. For every male that is chosen to serve on a jury as opposed to a female, there is a .132 increase in the chances that this juror will be more receptive to aggravating evidence. Similarly, for every one unit increase in a juror’s belief that the crime was severe, his/her receptivity to aggravating evidence increases by 0.02 units. Therefore the null hypothesis, that juror empathy has no effect on juror receptivity to aggravating evidence cannot be rejected. The present research illustrates that it is the gender of the juror as well as the severity of the crime that matters regarding receptiveness to aggravating evidence.

**Results of Interaction Terms**

As previously noted, the capital sentencing literature consistently shows that race matters (Bowers and Pierce 1980; Baldus, Woodworth, and Pulaski 1990; Baldus, Woodworth, and Pulaski 1998). Because of the voluminous amounts of empirical research findings as a result of race and capital sentencing, this study examined the interaction effects of race among defendant, juror, and victim as well as gender of the
victim to see if such interaction had an effect on receptivity to aggravation evidence. The results are shown in table 3.

As can be seen in table 3, the interaction terms for black defendant/white victim, black defendant/black juror/white victim (BBW), black juror/empathy, BBW/empathy and victim gender/victim race showed no significant effect on a juror’s receptivity to aggravating evidence (\( F = .98, p = .432 \)) and contributed only a 0.7% increase in the models contribution to explaining the variation in juror receptivity to aggravating evidence. Just as in the main effects regression analysis, severity of the crime and the gender of the juror are statistically significant. Therefore, the interaction terms did nothing to alter the changes from the primary regression model.

The results of this study indicate that what matters for jurors to be more or less receptive to aggravating evidence in capital cases depends on whether the juror is male or female and on the severity of the crime. Whether jurors can place themselves in the situation of the victim had no effect on whether they would be more or less receptive to aggravating evidence during the penalty phase.
### Table 3. Interaction effects predicting juror receptivity to aggravating evidence

<table>
<thead>
<tr>
<th>Control variables</th>
<th>$B$ ($SE_B$)</th>
<th>$\beta$</th>
<th>$p$</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Constant)</td>
<td>-.016 (.040)</td>
<td>. . .</td>
<td>.686</td>
</tr>
<tr>
<td>Black juror</td>
<td>-.136 (.120)</td>
<td>-.047</td>
<td>.257</td>
</tr>
<tr>
<td>White victim</td>
<td>.065 (.143)</td>
<td>.032</td>
<td>.646</td>
</tr>
<tr>
<td>Black defendant</td>
<td>.133 (.078)</td>
<td>.081</td>
<td>.087</td>
</tr>
<tr>
<td>Female victim</td>
<td>.063 (.063)</td>
<td>.038</td>
<td>.324</td>
</tr>
<tr>
<td>Male juror</td>
<td>.140 (.064)</td>
<td>.086</td>
<td>.029*</td>
</tr>
<tr>
<td>Juror education</td>
<td>.038 (.030)</td>
<td>.051</td>
<td>.214</td>
</tr>
<tr>
<td>Southern state</td>
<td>-.106 (.064)</td>
<td>-.065</td>
<td>.096</td>
</tr>
<tr>
<td>Premature death</td>
<td>.067 (.075)</td>
<td>.038</td>
<td>.373</td>
</tr>
<tr>
<td>Premature life</td>
<td>-.010 (.086)</td>
<td>-.005</td>
<td>.905</td>
</tr>
<tr>
<td>Future dangerousness</td>
<td>-.046 (.090)</td>
<td>-.021</td>
<td>.606</td>
</tr>
<tr>
<td>Severity of crime</td>
<td>.022 (.005)</td>
<td>.168</td>
<td>.000**</td>
</tr>
<tr>
<td>Juror pro crime control</td>
<td>.001 (.005)</td>
<td>.011</td>
<td>.790</td>
</tr>
<tr>
<td>Juror empathy</td>
<td>-.100 (.065)</td>
<td>-.061</td>
<td>.126</td>
</tr>
<tr>
<td>BBW</td>
<td>-.908 (.595)</td>
<td>-.065</td>
<td>.127</td>
</tr>
<tr>
<td>Black defendant X White victim</td>
<td>-.124 (.258)</td>
<td>-.030</td>
<td>.631</td>
</tr>
<tr>
<td>BBW X empathy</td>
<td>-.523 (1.22)</td>
<td>-.018</td>
<td>.669</td>
</tr>
<tr>
<td>Black juror X empathy</td>
<td>.095 (.238)</td>
<td>.016</td>
<td>.691</td>
</tr>
<tr>
<td>Victim gender X victim race</td>
<td>.163 (.161)</td>
<td>.040</td>
<td>.310</td>
</tr>
</tbody>
</table>

$R^2$ change from main effects                    | .007         |

$R^2$                                             | .063         |

Adjusted $R^2$                                    | .037         |

Durbin-Watson                                     | 1.65 |

Number of cases ($N$)                             | 667.00 |

**Note:** All coefficient results are for step 3 plus the interaction effects. $B =$ unstandardized coefficient; $(SE_B) =$ standard error of unstandardized coefficient; $\beta =$ standardized coefficient; $p =$ level of significance.

**$**p < .01      *p < .05
CHAPTER VI

DISCUSSION AND CONCLUSIONS

Discussion

The present study sought to examine whether a juror who possesses empathy for the victim in capital cases is more receptive to aggravating evidence. The specific theory tested was that jurors who possess empathic feelings for a homicide victim will be more receptive to aggravating evidence. The findings from this study do not support such a conclusion. Jurors who were empathic for victims were no more likely than non-empathic jurors to be receptive to aggravating factors. One possible explanation for such a finding is based on the notion that empathy is not mutually exclusive (Garvey 2000). Prior Capital Jury Project research has shown that jurors who possess empathy for the victim may also possess empathy for the defendant, or may assign some level of blame to the victim (Sunby 2000). This could mean that while a juror is empathic for the victim, there is some other factor that could negate his/her level of receptiveness to aggravation.

The findings presented here do suggest that the severity of the crime as well as the gender of the juror do impact receptivity to aggravation. First, as previous literature on severity revealed, when jurors are exposed to gruesome evidence presented at trial representing the heinousness of the crime, such evidence affects the legal decision-making of jurors (Bright and Goodman-Delahunty 2006). The results suggested from this study support previous research regarding the heinousness of the crime’s impact on
The more jurors viewed the crime as vile and heinous, the more receptive they were to aggravating evidence. Although empathy for the victim had no effect on receptivity to aggravation, it should be noted that juror empathy for victims had a significant negative zero-order correlation (−.116) with the severity of crime variable, which is positively related to receptivity to aggravation (see Appendix A). This correlation suggests that jurors who have empathy for victims are less likely to be influenced by gruesome evidence representing the presumed heinousness of the crime. Because severity of crime (heinousness) is a strong predictor of receptivity to aggravation, the lack of a significant relationship between juror empathy for victims and receptivity to aggravation may be partly explained by the negative relationship between juror empathy for the victim and perceptions of the severity of the crime. It is possible, at least theoretically, that those jurors who have empathy for victims are also less likely to dehumanize a defendant, which concurs with Garvey’s (2000) argument, that empathy for victims and defendants are not mutually exclusive (i.e., it can be extended to both victims and defendants).

The results regarding the severity of the crime’s influence on juror receptivity to aggravation also supports theoretical work offered in chapter 3 on dehumanization as a mechanism of moral disengagement (Janis 1971, 103). As stated in chapter 3, Bernard, Ottenberg and Redl (1971) argue, “to dehumanize is to help overcome the human inhibition to take a human life.” This can be one reason why the severity of the crime is so significant to juror receptivity. Jurors may be more receptive to aggravation because
the viciousness of the crime on which they base their decision is viewed by the juror as a license to kill. Such findings also support Haney’s research on structural aggravation. Haney argues that one of the mechanisms jurors use to become morally disengaged from their capital punishment decision is to dehumanize the defendant (Haney 1997; Haney 2005). When jurors are exposed to evidence that demonstrates that the crime was overly severe, such factors ease the burden jurors bear because they rationalize that only a monster could initiate such a vicious offense. As noted in the literature regarding aggravating evidence, this is a cause for concern by capital punishment scholars who suggest that the structure of criminal trials are designed to reinforce the brutality of the crime in both the guilt and penalty phase of the trial, thus making a death sentence more likely (Givelber 1994; Haney 1997; 2005).

An important discovery in the current project has been the significance of the juror’s gender in relation to aggravating evidence. Controlling for legally relevant variables, this study demonstrated that male jurors are more receptive to aggravating evidence than females. This provides additional support for the current body of literature on gender disparities in capital sentencing (Lester 1998; Whitehead and Blankship 2000; Stack 2000; Halim and Stiles 2001). Males appear to be more punitive, perhaps as a condition of socialization, where they are brought up to be tough, aggressive, and non-emotional. Men may also be more supportive of a retribution mindset, where defendants are viewed as getting their “just desserts.”

The descriptive results from this analysis demonstrate that jurors do develop empathy for the victim in capital cases. Nearly half of the jurors in this study reported
that they empathized with the victim. This supports the work of legal scholars who have found that attorneys in both civil and criminal trial practice devote a great amount of time trying to arouse empathetic feelings in jurors (Smith and Malandro 1985; Hamlin 1985; Wright 1987). This trial technique seems to be working and the only remaining factors to be explored are why such feelings toward the victim are irrelevant when it comes to receptivity to aggravation. As discussed above, this lack of effect on receptivity to aggravation could be due to the negative association between juror empathy and judgments about the severity of the crime. Empathic jurors may be less likely to dehumanize defendants based on evidence about the severity of the crime. This is a possible relationship that needs to be explored in future research.

When the death penalty was reinstated in Gregg v. Georgia (1976), the Court provided guidance as to how arbitrary discretion could be removed from the capital trial process. One method was the bifurcated proceeding, separating the guilt from the punishment phase. This two-step process was to ensure that guilt and punishment received separate consideration and that jurors not allow the factors presented at one stage to influence the other. Yet prior data collected by the Capital Jury Project shows that jurors tend to make their punishment decision prior to the penalty phase. The findings of this research mirror those of Bowers, Sandys, and Steiner (1998) in finding that nearly half of all jurors have already made up their mind regarding punishment. The present research found that nearly 20% of jurors supported a premature life decision and 30% had already made up their mind before any evidence of mitigation could be offered that the defendant should receive death.
While this study supports prior research on the severity of the crime and juror gender as influential factors on aggravating evidence, the results did not support other death penalty research. For example, there was no support indicating that jurors who possess more crime control attitudes are more likely to be punitive (Fitzgerald and Ellsworth 1984). Similarly, demographic variables (excluding the gender of the juror), had no significant impact on juror receptivity to aggravating evidence. This dissertation highlighted extensively the literature on race and its impact on sentencing outcomes. While the race of the victim, defendant, and juror, either separately or in combination, did not make a juror more receptive to aggravation evidence, the descriptive data supports previous studies underscorong the utilization of the death penalty when the case involves a white victim. Of the capital cases examined in this investigation, 80% concerned a white victim, reinforcing prior research that finds it is the race of the victim that matters when seeking the death penalty (Baldus 1990).

Policy Implications

The current study adds a significant contribution to the literature on understanding juror decision-making as it relates to the death penalty. First, unlike many jury studies that focus on the aggregate decision-making of the jury, this study examines the decision-making process of each individual juror as it relates to his/her own decision about punishment. Therefore, it adds to the sparse literature on individual juror decision-making in death penalty cases. Second, the current study explores aggravating evidence, a prominent yet often unexamined factor in juror decision-making. While most studies focus on the actual vote of the juror as to his/her final decision, the current study
investigates how jurors follow the guided-discretion framework outlined by the Supreme Court in *Gregg v. Georgia* (1976). No studies to date have looked at potential factors that could make a juror more or less receptive to aggravating evidence, and only one study has explored receptivity with respect to mitigation. Specifically, studying aggravation evidence is an important endeavor. Jurors need only find that one aggravating factor was proven beyond a reasonable doubt in order to sentence someone to die. Therefore, this study is groundbreaking in its exploration of aggravating evidence and its influence in capital punishment.

The conclusions highlighted here have practical as well as academic implications. Prosecutors and defense attorneys benefit from research that emphasizes legal and extralegal factors in trial strategy. For example, the results indicate that prosecutors will want as many male jurors on a capital case as possible. Likewise, defense attorneys will examine the evidence here as suggesting females may be less punitive towards the defendant since they are less receptive to aggravating evidence. The government can also take away from this research that the strategy of focusing on the heinousness of the crime in order not only to get a conviction, but also a death sentence is an effective tactic. Therefore, prosecutors will likely view the data as a reaffirmation of their strategic plan for obtaining a capital sentence. However, it is also possible (given evidence from the correlation matrix) that jurors who are empathic with victims may be less impressed by evidence of heinousness.

While no support was found for the hypothesis that jurors who possess empathy for the victim would therefore be more receptive to aggravating evidence, descriptive
findings of the data show cause for concern. First, jurors are not following judicial instructions and not carrying out the mandate that the Supreme Court laid out for reinstating the death penalty. This dissertation supports prior research that shows jurors are prematurely arriving at their decision in capital trials. This raises serious concerns about the usefulness of the penalty phase. If nearly 50% of jurors are arriving at their decision before the penalty phase begins, then perhaps mitigation evidence should be introduced during the guilt portion of the trial. Defense attorneys can view this information as troubling for their client. If jurors are making up their mind before defense attorneys are able to present evidence of mitigation, then the implication is worse than Haney (2005) had imagined. Haney argues that the structure of a criminal trial allows for mitigation to be considered only after that of aggravation. He suggests this trial arrangement benefits the government because what is presented first in the case colors the remaining events. Yet this research supports prior findings that the remaining events may not even come into play. Judges also need to be mindful that jurors are disregarding their charge to keep evidence of guilt separate from that of punishment.

**Limitations to the Present Study**

This study utilized data collected from the Capital Jury Project (CJP), a national study of juror decision-making. Whereas the CJP provides a large sample of jurors to interview, there are limitations to this data. First, jurors may suffer from memory decay. The interviews are conducted years after the actual trial and jurors may not recall with precision all of the facts as they occurred. Second, jurors may not be forthright with the interviewer. Whereas phase II of the CJP attempts to correct for this by matching same
gender and race between interviewer and interviewee, respondents may still be more concerned with political correctness than accuracy.

The CJP instrument itself may present problems for collecting accurate data. The interview can take between three and four hours. Jurors are queried on multiple topics ranging from jury selection, to the guilt phase, the penalty phase, and deliberations. Many of the survey questions are repetitive and lengthy and jurors could possibly be confused with respect to terminology. Jurors may also mix up considerations between the guilt and penalty phase of the trial.

The analysis presented here strived to gain a better understanding of what factors jurors consider when it comes to considering aggravating evidence. While the survey instrument gathered both qualitative and quantitative information from jurors, only quantitative data was used in the analysis. Many of the variables were dichotomous which limits the audiences’ understanding of why jurors possibly responded the way they did. For example, the predictor variable, empathy was a question used by previous CJP scholars, “did you imagine yourself in the victim’s situation?” The responses to choose from were either yes or no. This response unfortunately does not explain the reason why a juror might possess empathy for the victim. Perhaps it was a statement made by an attorney, facts presented in one portion of the trial, or the influence of other jurors. Qualitative data may answer such questions. Such information is available in the CJP instrument and should be examined in the future.
Recommendations for Future Research

Although this research was groundbreaking in examining aggravating factors in death penalty cases, future researchers should channel their efforts into the rich qualitative data the Capital Jury Project offers. The instrument looks at the jury selection process, the guilt and punishment phase of the case, and the actual deliberations. With respect to the latter, there could be some factors which take place during the deliberation process which makes jurors discount aggravating factors. The development of survey questions that focus specifically on jury deliberations should be explored so that such information can illuminate the reasons why jurors may or may not be receptive to aggravating evidence.

Furthermore, replication of the quantitative data analyzed here would be fruitful in that it would demonstrate research reliability. Both quantitatively and qualitatively further research should examine what factors make a juror more or less empathetic. This would provide the foundation for a better understanding as to why jurors who are empathetic for victims are not more receptive to aggravating evidence. Although this research has looked at the empathy literature, the conclusions presented here suggest emotions such as empathy, may not be as important as the legal factors introduced at trial. However, zero-order correlations in the current study suggest that empathy may reduce jurors’ receptivity to evidence of heinousness, which was the strongest predictor in the current study receptivity to aggravating evidence. This potential indirect relationship involving empathy needs to be explored in future research.
Finally juror receptivity, not sentencing outcome, was the dependent variable in this study. While it is the jury’s final sentencing decision that truly matters, receptivity to aggravation is presented here as an important and much understudied focal point en route to the juror’s final sentencing decision. Although this is an important area to examine, future research should endeavor to examine juror empathy for victims as it related to the jury’s final decision.

Conclusion

The death penalty is the ultimate sanction imposed in our criminal justice system. Juries are left with the awesome responsibility of deciding whether or not that sanction will be imposed in capital cases. Since the U.S. Supreme Court’s decision in *Gregg v. Georgia* (1976), there has been structure as to how juries are to make these important decisions. One criterion has been the removal of arbitrariness from the decision-making process. Legislatures have provided such a framework by creating a set of aggravating and mitigating factors to juries so that they can consider when deciding on a possible death sentence. While aggravating factors provide a list of options for jurors, they all too often vary by state, which makes the requirements for a death sentence dependent not on the nature of the crime, but by the geographic location where it was committed. This alone demonstrates inconsistency in the capital sentencing process.

This dissertation has examined jury decision-making as well as aggravating evidence in death penalty cases by exploring legally relevant and possibly irrelevant factors jurors might consider. The findings in this dissertation support the literature that jurors do use legally relevant evidence such as the severity of the crime as an important
factor in their consideration of aggravating evidence. Although nearly half the jurors admitted feeling empathy for the victim in the case, it did little to impact their decision-making process. Yet the gender of the juror seems to make a difference, which signifies that the arbitrariness (more importantly an illegally irrelevant consideration), that was a cause for concern by the Court in Gregg, still exists. Finally, although not significantly impacting their receptiveness to aggravating evidence, the mere fact that jurors are prematurely making their sentencing decisions before the penalty phase is cause for great concern. Hopefully the legal profession can take the results of this investigation and utilize this information to embrace an effort at possible jury reform. Only through such a process can we begin to live up to the non-arbitrariness the Court tried to rectify 34 years ago when it reinstate the death penalty.
### APPENDIX A

**Bivariate Correlation Matrix**

|                  | 1                | 2     | 3     | 4     | 5     | 6     | 7     | 8     | 9     | 10    | 11    | 12    | 13    | 14    | 15    |
|------------------|------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 1. Juror receptivity to aggravation |                 |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 2. Southern State | -.053            |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 3. Premature undecided | -.020            | -.004 |       |       |       |       |       |       |       |       |       |       |       |       |
| 4. Premature death | .055             | -.003 | -.672**|       |       |       |       |       |       |       |       |       |       |       |
| 5. Premature life | -.040            | .009  | -.490**| -.317**|       |       |       |       |       |       |       |       |       |       |
| 6. Juror empathy  | -.086**          | -.047 | -.047 | .003  | .057  |       |       |       |       |       |       |       |       |       |
| 7. Dangerous in future | .067*            | -.055 | -.006 | .163**| -.188**| -.135**|       |       |       |       |       |       |       |       |
| 8. Severity of crime | .170**           | .026  | .000  | .112**| -.133**| -.116**| .207**|       |       |       |       |       |       |       |
| 9. Black juror   | -.066*           | .062* | -.026 | -.031 | .069**| -.006 | -.052 | -.002 |       |       |       |       |       |       |
| 10. White victim | -.026            | -.004 | .045  | -.046 | -.004 | -.058 | .027  | .035  | -.059 |       |       |       |       |       |
| 11. Black defendant | .024             | .045  | .035  | .004  | -.048 | -.034 | .063* | -.087**| .104**| -.484**|       |       |       |       |
| 12. Female victim | .049             | .028  | .009  | .039  | -.058 | .044  | .005  | .184**| -.036 | .067*  | -.066*|       |       |       |
| 13. Male juror   | .046             | -.077**| -.050 | .087**| -.039 | .037  | .038  | -.103**| -.036 | .023   | .001  | .014  |       |       |
| 14. Juror education | .046             | -.010 | .121**| -.148**| .018  | -.064*| .001  | -.059 | -.013 | -.001  | -.071*| -.012 | -.075*|       |
| 15. Juror pro crime control | .049             | .077* | -.186**| .204**| -.003 | -.051 | .083**| .132**| .033  | .013   | -.022 | .014  | -.143**| -.266**|

**p < .01  **  **p < .05**
APPENDIX B

Juror Interview Instrument

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.)

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 __________________________
__________________________________________________

III. B. GUILT DELIBERATIONS

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

II. A THE CRIME
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 ________________________________

III. C. SENTENCING TRIAL

16. After hearing all of the evidence, did you believe it proved that . . .
   __ yes  __ no  __ undecided
   ___ (DEF) _____’s conduct was heinous, vile or depraved
   ___ (DEF) _____ would be dangerous in the future

VIII. CRIME AND PUNISHMENT ATTITUDES
I NOW HAVE JUST A FEW QUESTIONS ABOUT YOUR FEELINGS TOWARD PUNISHMENT FOR CONVICTED MURDERERS.

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    5 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.

II. A  THE CRIME

C. Check respondent's (ASK ONLY IF NOT SURE)

<table>
<thead>
<tr>
<th>Defendant(s)</th>
<th>Victim(s)</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>V1</td>
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<tr>
<td>D1</td>
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<th>MALE/FEMALE</th>
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<td>V1</td>
<td>V2</td>
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<tr>
<td>MALE/FEMALE</td>
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</tbody>
</table>

  | WHITE/BLACK/ |       |       |       |
| HISPANIC/OTHER |        |     |    |
|                |       | V1 | V2 | V3 |

IX. PERSONAL BACKGROUND

FINALLY, I NEED TO ASK YOU A FEW QUESTIONS ABOUT YOURSELF.

I. Check respondent's (ASK ONLY IF NOT SURE)

a. sex:

  ___ male
  ___ female

b. race/ethnicity:

  ___ white
  ___ black
  ___ hispanic
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

____ asian
____ other
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