

THE FARRELL-JOHNSON REPORT

Biased against blacks? Capital punishment in perspective

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Over the last 20 years, federal and state law makers have instituted, with widespread public support, a series of get tough-on crime policies in an effort to stem the tide of lethal violence in the U.S., especially in the nation's large urban centers.

Currently, 41 U.S. jurisdictions (39 states, the U.S. government, and the U.S. military) have capital punishment statutes. Within these jurisdictions, there are, at present, 3,061 inmates serving time on death row.

Research indicated that public support for capital punishment has been on the rise in the U.S. since the mid-1960s. In 1969, 51 percent of the population favored the death penalty in capital cases; by 1991, 78 percent were in favor of capital punishment statutes (71 percent were in favor of such statutes even if they were not a deterrent to crime).

There is, however, a fair amount of opposition to it on two grounds: Moral and disparate racial impact. A sizable and vocal minority exists who think that it is morally wrong to take another person's life, no matter how heinous a crime the individual

may have committed. Included in this group are members of an organization called Murder Victims Families for Reconciliation (MVFR), which is comprised of individuals and families who have lost loved ones to lethal violence, but who reject "violence (i.e., the death penalty) as a response to violence."

But the strongest opposition appears to be based on the belief that the death penalty is not applied in a race neutral manner. Data on the racial composition of the death row population tend to support this view. While blacks constitute 12.3 percent of the U.S. population, they make up 40.7 percent of the population on death row.

In other words, there are 3.3 times as many blacks on death row as one would expect based on their percent distribution in the U.S. population as a whole. In North Carolina, for example, blacks make up 22 percent of the state's population, but they constitute 48 percent of the state's death row population. Thus, there are twice as many blacks on death row in North Carolina as one would expect given their percent distribution in the state's population.

Previous studies have documented that the gross over representation of blacks among the U.S. death row population reflects, in part, the widespread discrimination that occurs in various phases of criminal processing—from prosecutorial decisions, to jury deliberations, to sentencing decisions of judges. In part, the over-representation reflects the class bias that confronts most African-American males who face the possibility of a capital murder conviction. According to the American males who face the possibility of a capital murder conviction. According to the Washington-based Death Penalty Information Center, "more than 90 percent of the men and women currently on death row were financially unable to hire an attorney to represent them at trial."

Research further indicates

that, as a consequence of their lack of financial resources, most death row inmates are represented at trial by public defenders or court-appointed lawyers who are so overworked, so incompetent, or so convinced of their clients' guilt that they make countless mistakes and miss golden opportunities to mount a strong defense on their behalf. Commenting on the quality of representation that indigent clients receive in capital cases, Stephen Bright of the Atlanta-based Southern Prisoners' Defense Committee

states, "people are not sentenced for committing the worst crimes; they're sentenced for having the worst lawyers."

We contend that one of those missed opportunities to launch a strong defense on the behalf of many African-American males who are faced with the prospect of the death penalty, is the failure of their legal counsel to develop and utilize a contextualized defense — one that focuses on both the broader societal and the local environmental contexts as well as the critical life course events which have shaped the

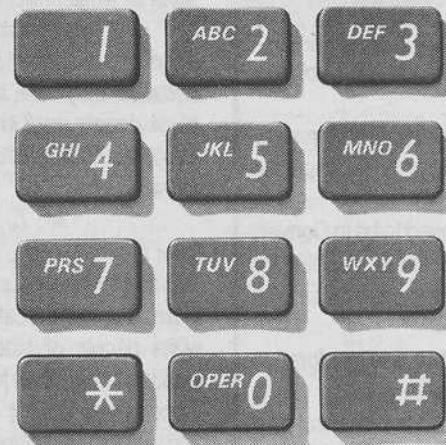
defendant's behavior.

How does a contextualized analysis of the life course experiences of African-American defendants in capital murder cases strengthen the penalty phase defense strategy? It does so in two interrelated ways. On the one hand, it enables the defense to refute the contention, typically advanced by the prosecution in these cases, that the life course experiences of the defendant are a product of individual moral failings; on the other, it allows the defense to argue that the circumstances

surrounding most capital cases are, at least in part, an outgrowth of structural constraints — broader societal forces that are beyond the control of the defendant — and thus that a sentence of life in prison without the opportunity for parole is more reasonable than the death penalty. It is imperative that the African-American community promote the contextualized defense strategy if it is to prevent the excessive executions of black males from becoming the primary solution to the nation's violent crime problem.

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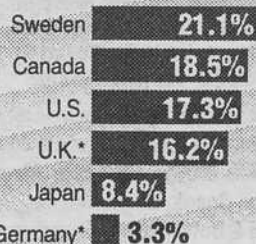
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Out-of-work teens

Unemployment rates for teenagers ages 16 to 19, in selected countries, 1994



*Figures for Germany are from 1991, for U.K. from 1994

SOURCE: Bureau of Labor statistics; research by PAT CARR



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