

# Stereotypes factor in death sentence deliberations

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how stereotypical each of the defendants looked in the pictures by noting facial features such as lips, nose and skin tones. Each feature was rated on a scale of one (not at all stereotypical) to 11 (extremely stereotypical).

Fifty-seven percent of the defendants considered by the participants as being extremely stereotypical had already received a death sentence by juries. Only 24.4 percent of defendants considered not at all stereotypical had received the death sentence.

The fact that the issue of race continues to be of great significance in the outcomes of capital and other criminal cases does not come as a surprise, according to death penalty opponents.

"Sadly, this is not a new finding," said Christina Swarns, director of the NAACP Legal Defense and Educational Fund Criminal Justice Project.

The findings will do little to assuage the concerns of death row inmates who believe they have been sentenced unfairly because of a key precedent set in the 1987 U.S. Supreme Court decision in *McCleskey v. Kemp*.

In that case, the high court rejected the arguments of Warren McCleskey, a black man convicted of killing a white Georgia police officer, even though his defense presented statistical data which proved that blacks convicted of killing whites in the state of Georgia were four times more likely to be sentenced to death than those who were convicted of killing non-Whites.

"McCleskey v. Kemp was one of the most rigorous examinations of the effects of

race on capital sentencing, and the defense's arguments were similar to findings in this study," Swarns added.

In fact, the majority opinion in the *McCleskey* case stated that "apparent disparities in sentencing are an inevitable part of our criminal justice system." Moreover, the Court also argued that rather than relying on broad statistical data to illustrate patterns of discrimination in the criminal justice system, Black capital defendants must provide "exceptionally clear proof" that the people involved in their specific cases had discriminated against them in seeking the death penalty.

The decision delivered a debilitating blow to death row inmates seeking to overturn their fatal sentences on the grounds that the sentences were racially motivated.

*McCleskey v. Kemp* has since been used as the precedent to overturn appeals from death row inmates in state Supreme Courts and Courts of Criminal Appeals in Illinois, Oklahoma, Missouri and South Carolina, according to a 2003 Amnesty International report on the continued significance of race in capital cases.

The findings of Eberhardt's research underscore how deeply rooted the negative perceptions of stereotypes and black physical traits are in the psyche of many jurors. Further, they illustrate how those perceptions affect the outcomes of capital cases.

According to the study, "in actual sentencing decisions, jurors may treat these traits as powerful cues to death worthiness."

Defendants with stereotypically black features receive harsher sentences in other

criminal cases, too. The study found that blacks with stereotypical features spend up to eight months longer in prison for felonies.

"In modern history, the state of Texas," according to NCADP's Elliot, "has only executed one or two white defendants for the killing of a black person."

Between 1976 and April 2006, the state of Texas executed 78 black defendants for the killing of a white victim, according to the spring 2006 quarterly report by the NAACP Legal and Educational Defense Fund.

Texas has executed only two white defendants for the killing of victims of mixed race between 1976 and 2006, according to that same report. Those statistics expose blatant flaws in the criminal justice system, according to some critics.

"It sends a powerful message in the criminal justice system that the lives of whites are more valuable than those of blacks," Elliot said.

Eberhardt's report also notes that people, not just whites alone, "associate black physical traits with criminality."

Still, many death penalty opponents are optimistic that through continued advocacy, policy change and legislative reform, the "apparent disparities" that the US Supreme Court acknowledged in 1987 as an "inevitable part" of the criminal justice system can be eliminated.

"There's always hope," said Swarns. "The NAACP Legal Defense Fund is always looking at ways to successfully attack and remedy those disparities."

She points to Kentucky's Racial Justice Act as a model

that should be considered by federal and state legislatures.

That act allows capital defendants to use statistical data as evidence to prove that racial discrimination influenced the outcomes of their individual capital sentences.

It was signed into law in Kentucky in 1998, 11 years after the *McCleskey* decision.

Supporters of a nation-wide Racial Justice Act argue that some current death row inmates who believe their death sentence were racially motivated will be able to cite, for example, the statistical findings of Eberhardt study to prove that capital defendants with more stereotypically black features receive the death penalty more frequently than other capital defendants.

"We need a national racial

justice act," said Elliot. "The act will make it easier to tie individual cases into the

broader context of racial discrimination."

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