

---

## Folk Knowledge as Legal Action: Death Penalty Judgments and the Tenet of Early Release in a Culture of Mistrust and Punitiveness

---

Benjamin D. Steiner

William J. Bowers

Austin Sarat

This article traces interconnections between folk knowledge—the everyday, taken-for-granted understandings and beliefs that shape people’s perceptions, actions, and reactions to events and situations—and legal action. It examines the consciousness of crime and punishment as that consciousness comes to bear when citizens are given the responsibility for the life or death decision made by jurors in capital cases. It seeks to identify the sources of both general and specific folk knowledge about the release of convicted capital murderers not sentenced to death and to elucidate the construction and concentration of such knowledge. One state—Georgia—where folk knowledge of early release is distinctively concentrated and different from other states serves as a strategic site for the analysis. Using Capital Jury Project (CJP) data from 3–4-hour interviews with 916 jurors in 11 states, we show that it is jurors’ specific release estimates that influence their capital sentencing decisions, and we explore how folk knowledge figures in jury deliberations, despite court admonitions that such considerations are not to play a role.

**T**he world of law is a complex and sometimes contradictory compilation of elements—of institutions and their distinctive practices, of orders and decisions, of images and the understandings that citizens carry with them in their daily lives. Law lives as much in folk knowledge as in the pronouncements of appellate courts, in the quotidian as well as the majestic (Sarat & Kearns 1993). It is inseparable from the interests, goals, and understandings that deeply shape or make up social life.<sup>1</sup> It is part of the

---

Support for this research was provided by a grant from the Law and Social Sciences Program of the National Science Foundation, grant NSF SES-9013252. We are grateful for the helpful comments of Patricia Ewick and Stuart Scheingold on an earlier version of this article. Address correspondence to Benjamin D. Steiner, College of Criminal Justice, Northeastern University, 400 Churchill Avenue, Boston, MA 02115-5096 (email <benjaminsteiner@hotmail.com>).

<sup>1</sup> “Law,” Geertz (1983:218) explains, “rather than a mere technical add-on to a morally (or immorally) finished society, is, along of course with a whole range of other cultural realities, . . . an active part of it.”

everyday world, contributing to the apparently stable, taken-for-granted quality of that world.<sup>2</sup>

“The law,” Ewick and Silbey (1998:16) suggest, “seems to have a prominent cultural presence . . . , occupying a good part of our nation’s popular media. . . . We watch real and fictitious trials on television, often unable to distinguish fact from fiction. . . . We hear reports of crime and criminals on the nightly local news. And . . . millions of us devote hours of our leisure time to reading stories about crime, courts, lawyers and law.” As a result, citizens are very familiar with the routines of state law, with decisions, actions, policies, and tendencies. So, for example, the Miranda warnings, or the rituals of interrogation and cross-examination in a criminal trial, or even the internal life of law firms, these and many more, have a rich and powerful vernacular life (Friedman 1999). They are part of folk knowledge and are implicated in the practices through which citizens go about their daily lives.

By “folk knowledge,” we mean the everyday, taken-for-granted understandings that shape people’s perceptions, thinking, actions, and reactions to events and situations.<sup>3</sup> Attending to folk knowledge as a legal phenomenon involves recognizing “law *in* society” (Brigham 1996:9) and refusing to privilege one particular source or location of law over another. It involves recognizing that citizens are not merely pushed and pulled by laws that impinge on us from the “outside.” We are not merely the inert recipients of law’s external pressures. We make law in our daily lives, in our expectations, in our norms, in our knowledges. As a result, state law and legal policy can be, and often are, controversial, seen as out of step with the dictates of ordinary morality or common sense,<sup>4</sup> and in these instances the force of the everyday

<sup>2</sup> “[T]he power exerted by a legal regime consists less in the force that it can bring to bear against violators of its rules than in its capacity to persuade people that the world described in its images and categories is the only attainable world in which a sane person would want to live” (Gordon 1984:108; see also Hunt 1980). As Trubek (1984:604) writes:

[S]ocial order depends in a nontrivial way on a society’s shared “world view.” Those world views are basic notions about human and social relations that give meaning to the lives of society’s members. Ideals about the law—what it is, what it does, why it exists—are part of the world view of any complex society. . . . Law, like other aspects of belief systems, helps to define the role of an individual in society and the relations with others that make sense. At the same time that law is a system of belief, it is also a basis of organization, a part of the structure in which action is embedded.

<sup>3</sup> Folk knowledge lives in daily life and is generally untheorized and always nontechnical, though not always uninformed by technical knowledge (Schutz 1967). Folk knowledge is what Lefebvre (1991:127) calls “the truth in a body and a soul.” It is immediate and familiar, the background for projects of reason and science and often the object criticized in those projects. It is “the reality which seems self evident to men. . . . It is the . . . ground of everything given in my experience . . . the taken-for granted frame in which all the problems which I must overcome are placed” (Schutz & Luckmann 1973:3–4). For a different perspective on folk knowledge see Blanchot 1987.

<sup>4</sup> As Brigham (1996:20) notes, “laws sometimes infuse American social life with elements that seem not quite natural. The due process guarantee that the criminal goes free if the constable blunders is one.”

world, of morality and common sense, of folk knowledge, may stand as a point from which state law is critiqued, resisted, reformulated.<sup>5</sup> As de Certeau (1984:xiii) remarks, citizens often make of “rituals, representations and laws imposed on them something quite different from what their . . . [originators] had in mind.”<sup>6</sup> Thus folk knowledge sometimes pushes against, as it pushes into, the domain of state law. It is itself integral to state law, both constitutive and sometimes critical of it.

Folk knowledge, however, is not all of a piece, not strictly uniform in its articulation or in its presence. In the first instance, it may take the form of general beliefs people hold as a matter of cultural intuitions and sensibilities or the form of specific cultural “facts” or realizations that make up its concrete “truths.”<sup>7</sup> Additionally, there will be variations in the prevalence or consensus on such beliefs or factual claims. Some general beliefs or specific claims may be broadly held throughout society, while others are confined to distinct subgroups, and still others dispersed among a less identifiable or socially concentrated minority in society. Indeed, disparities or concentrations in folk knowledge may arise from decisions or actions taken by, or in the name of, state law. Such official behavior and the way it is conveyed or portrayed to the public may unsettle the everyday world, giving rise to doubts and consequent rethinking of previously taken-for-granted folk understandings. The clustering or concentration of factual folk claims, as with the specificity of such claims, would appear to harbor the potential for mobilizing social or legal action.

This article traces interconnections between folk knowledge and legal action. It explores relations between the pictures of law that people carry around with them and the ways they act in the legal world. We seek here to identify the sources of both general and specific folk knowledge, elucidate the construction and concentration of such knowledge, and examine “the consciousness of crime and punishment” as that consciousness comes to bear within the institutional structure of state law.<sup>8</sup> The particular instance on which this study concentrates occurs when citizens are

---

<sup>5</sup> Jury nullification is such an instance. Citizens not only resist but override state law. Indeed, they substitute “folk law” for state law.

<sup>6</sup> Citizens are not merely pushed and pulled by laws that impinge from the “outside.” We are not merely the inert recipients of law’s external pressures. We make law in our daily lives, in our expectations, in our norms, in our knowledges, that is, in society (Brigham 1996).

<sup>7</sup> In cult ideology, for example, this roughly corresponds to the difference between the shared sentiment that the end of the world is “coming soon” and the belief that the end will be here on a specific day. These different levels in the generality and specificity of folk knowledge may have very different consequences in, for instance, the mobilization of cult members’ action, as the literature on cult movements attests (Lofland 1966).

<sup>8</sup> Following Ewick and Silbey (1998:224), we believe that “consciousness entails both thinking *and* doing [emphasis added]: telling stories, complaining, lumping grievances, working, playing, marrying, divorcing, suing a neighbor, . . . refusing to call the police.”

given the responsibility for making legal decisions, in this case the life or death decision made by jurors in capital cases. Folk knowledge about the release of convicted capital murderers not sentenced to death in one state, Georgia, where folk knowledge on this matter is distinctively concentrated and different from other states, is a strategic focus in the analysis. We examine whether jurors in capital cases come to those cases generally believing that convicted murderers get out of prison too soon and how soon they think such offenders usually return to society. After exploring the sources of these beliefs about early release, we show how folk knowledge about crime and punishment influences the exercise of juror discretion in capital sentencing. In conclusion, we consider the implications of our findings for the legal and procedural control of jury decisionmaking in capital cases.

## **I. Folk Knowledge of Crime and Punishment**

What is true of law in general—its complexity, the interdependence among its constituent parts, its role in everyday life, and the status of folk knowledge as a form of legal action—is equally and especially true where the subject is crime and punishment. These issues have particular visibility and salience within the canon of legal thinking and also in the popular legal imagination (see Gaubatz 1995). “People in general,” Friedman (1999: 68–69) contends, “know or think they know far more about the basic contours of criminal justice than about other aspects of the legal system.” As a result, crime and punishment are a rich subject for vernacularization and for the development of folk knowledges. “More than most legal phenomena,” Garland (1991:192) notes, “the practices of prohibiting and punishing are directed outwards, toward the public . . . and claim to embody the sentiments and moral vision not of lawyers, but of the people. . . . [T]his claim . . . makes penalty a particularly apposite site for a culturalist approach.” Images, knowledges, and assessments of crime and punishment, says Garland (p. 193; see also Mead 1918), help shape the overarching culture just as “the established frameworks of cultural meaning undoubtedly influence the forms of punishment.”

Since the mid-1960s, uneasiness about social disorder generally, and about criminal behavior in particular, has given rise to what Stuart Scheingold (1984) calls the “myth of crime and punishment.” This myth stresses punitiveness as the appropriate response to crime, in contrast to seemingly out-of-vogue alternative scenarios he labels the “myth of redemption” and the “myth of rehabilitation.”<sup>9</sup> The myth of crime and punishment provides the

---

<sup>9</sup> The myth of crime and punishment presents punitiveness as a necessary and sufficient solution to complicated, and otherwise intractable, problems of social order, includ-

rationale for scapegoating and stereotyping categories or classes of people as the “criminal element.”<sup>10</sup> It calls for harsh and lasting punishment as the appropriate, indeed the only adequate, solution to the frightening scourge of allegedly random, predatory criminal violence.<sup>11</sup>

Mistrust of the criminal justice process is inherent in public advocacy for punitiveness. It is reflected in a cultural common sense that holds that courts do not punish severely or effectively enough, that prisons release incarcerated offenders “far too soon.”<sup>12</sup> Underlying these sentiments is the view that the criminal justice system has been, and continues to be, “faulty,” especially those agencies responsible for the imposition and administration of criminal punishment.<sup>13</sup> In their comprehensive review

---

ing but not restricted to crime. Its appeal is greater where people’s apprehensions and insecurities are more pronounced, apart from the realities of crime and the risks of victimization (see Connolly 1995:ch. 2). The emphasis on punishment as the solution to crime is rooted in America’s cultural themes of “frontier justice” and “individual responsibility,” according to Scheingold (1984:64); they are, in his words, “more expressive than instrumental.”

<sup>10</sup> This image of the incorrigible offender has been reinforced in the public mind through accounts and portrayals of crime in the popular media over the past several decades. John M. Sloop’s (1997) analysis of over 40 years of American media portrayal of prisoners and punishment reveals a decisive shift in the characterization of persons convicted of criminal violence. Specifically, his investigation of more than 600 articles in popular periodicals (e.g., *U.S. News & World Report*, *The Nation*, *Psychology Today*, and the like) between 1950 and 1993 reveals a distinctive shift in media representations away from the offender capable of redemption to a more irrational, incorrigible, predatory, and dangerous criminal. Although Sloop’s analysis reveals important variations in the depiction of criminals by race in previous decades, he finds a convergence in the depiction of the contemporary violent offender as “characteristically represented as animalistic and senseless, arising from warped personalities” (ibid., p. 142). Moreover, contemporary media discourse frames prisons as utterly incapable of reforming prisoners regardless of race: “Violence, simply stated, is constructed as a norm of prison behavior and begins to include inmates of all ethnicities” (ibid., p. 145). Sloop’s analysis thus reveals how “the consciousness of crime and punishment” is culturally constructed through popular media discourse.

<sup>11</sup> Scheingold (1998:8) notes: “Recent public opinion research reveals increasingly punitive attitudes in the United States.” Since the claim that punishment is now too lenient is embedded in cultural understandings rather than experience with crime (Scheingold 1984:226–27), the implication that we are not now imposing enough punishment is a cultural tenet, a value judgment, not subject to empirical refutation.

<sup>12</sup> More than three decades of research demonstrates that the public sees courts as too lenient (Roberts 1992). Public attitudes regarding the belief in early release and parole board leniency is less well documented in the United States owing to the absence of questions, not contrary findings. However, one U.S. report found that over 80% of the public who were surveyed in 1993 supported a proposal to make parole more difficult (Maguire & Pastore 1993). In Canada, on the other hand, the belief in early release and parole board leniency has been well documented (Roberts 1988; Canadian Criminal Justice Association 1987).

<sup>13</sup> Public mistrust of the criminal justice system is manifest in public opinion surveys asking about confidence in various institutions and agencies. The criminal justice system has ranked lowest, or next to lowest, each year since 1993 when it was added to the Gallup Poll question asking respondents how confident they were in various institutions, including church or organized religion, military, U.S. Supreme Court, banks and banking, public schools, Congress, newspapers, big business, television news, organized labor, police, and the Presidency. Only 15 to 24% of respondents said they had “a great deal” or “quite a lot” of confidence in the criminal justice system over the period 1993–98 (see Maguire & Pastore 1997:Table 2.14). Moreover, the generalized mistrust of the criminal justice

of the public's perspective on crime and punishment, Roberts and Stalans (1997) have documented public mistrust of courts, sentencing, and parole in the United States, Canada, and other countries. The authors suggest (p. 3): "Most people view the criminal justice system as excessively lenient. . . . One of the ironies in the field is that the public perceive the criminal justice system itself as a cause of crime."<sup>14</sup> Likewise, Theodore Sasson (1995:30) finds, in focus group interviews with citizens especially concerned about crime, that people attribute the crime problem to a "faulty system" marked by "leniency" and "inefficiency."<sup>15</sup>

The impression of leniency owing to the breakdown of the criminal justice system is conveyed best, perhaps, by news accounts of the recidivism of ex-convicts or persons on probation, parole, or furlough from prison—in the worst case, by the narrative nightmare of the murderer released to murder again. Such stories of early release have inherent newsworthiness (see Hall et al. 1978; Barak 1994).<sup>16</sup> Moreover, they comport with public consciousness of crime and punishment and contribute to folk understanding of early release as a widespread infirmity of the American criminal justice system. In this sense, the early release

---

system is due especially to the public's lack of confidence in the two agencies responsible for the imposition and administration of criminal punishment. Local courts and especially state prisons, in contrast to the local police, have the least public confidence (*ibid.*, Tables 2.16, 2.18, 2.21, and 2.22).

<sup>14</sup> "When asked to state the cause of increased crime rates," Roberts & Stalans (1997:3) report, more respondents identified leniency by the courts and the prison system than any other possible cause. Over 41% identified the law enforcement system or the courts and the prison system as the part of society that is most to blame for the increase in crime. Although no stage of the criminal justice system escapes criticism, the public is far more critical of the courts and correctional authorities than of the police. Almost two-thirds of the American public rate the police in their community as being excellent or good.

In addition, a Sam Houston State University survey (Macquire & Pastore 1997:Tables 2.16, 2.18, 2.21, and 2.22) that included "local court system" and "state prison system" shows that the generalized mistrust of the criminal justice system is due especially to the public's lack of confidence in the two agencies responsible for the imposition and administration of criminal punishment. The public distrusts local courts and especially state prisons more than it does the local police. The 1996 national survey revealed that the proportions having a great deal or a lot of confidence in specific agencies were as follows: local police, 59.9%; local court system, 34.0%; state prison system, 25.7%; criminal justice system, 22.8%.

<sup>15</sup> Sasson evaluated focus group members' adherence to several reasons or explanations (he refers to these as "frames") for the crime problem. He reports that the "faulty system" frame dominated the other explanations or accounts of the crime problem in the focus group discussions. As he puts it (1995:37–38): "Participants in 50% of the discussions expressed unanimous support for "faulty system" whereas in 5% they unanimously rejected the frame. In the remaining 45% of the discussions participants disagreed with one another over the frame's merits." He notes further that the distinction between leniency and inefficiency "proved unhelpful in illuminating the dynamics of faulty system's performance in the conversational discourse." While this distinction was relevant in editorials and op-ed commentaries, focus group participants "tended to conflate the sub-frames, often expressing elements of both in individual utterances."

<sup>16</sup> Several studies describe the media's predilection for stories of criminal violence against the person; see Graber 1980; Ericson, Baranek, & Chan 1991; Schlesinger & Tumber 1994; especially for serial killers see Jenkins 1994.

of imprisoned offenders, most especially incarcerated murderers, is a principal tenet or corollary of the cultural understanding of the crime problem.

## II. The Tenet of Early Release: Political Narrative, Media Construction, and Folk Knowledge

The most visceral confirmation or “proof” of a defective criminal justice system and of the need for more severe punishment is the early release of criminals who return to violent crime. Such cases easily become the focal points for public debate about the “crime problem” and how it should be dealt with.<sup>17</sup> What the public knows or thinks about the release of criminals in general and murderers in particular may well be reinforced and reproduced by the media (Roberts & Doob 1991), politicians (Simon 1997), and others in the “law and order marketplace” with a stake in having the public see the issue in one way or another.<sup>18</sup> The public’s apprehension about crime and punishment invites politicians to assume a “get tough” posture in their political campaigns and to tell stories of early release and what they will do about it as a way of garnering support from a public ever wary of crime.<sup>19</sup> Especially when the crime is murder and early release is blamed, emotionally laden media accounts accompanied by allegations of the contributing role of early release will often be the vehicles for presenting the crime problem to the public.<sup>20</sup>

Such public pronouncements and media accounts appeal to the constituent elements of folk knowledge, both general understandings about early release and specific factual estimates of its occurrence—a general sense that murderers are out of prison too soon and a specific belief about how soon they get back on the streets.<sup>21</sup> In this section, we examine both specific release es-

<sup>17</sup> Determinate sentencing, the abolition of parole, “three strikes and you’re out” legislation, and the death penalty are offered as antidotes to early release and are commonly advocated on the heels of violence perpetrated by a formerly incarcerated offender.

<sup>18</sup> Such distorted or mistaken public perceptions are documented in the cases of fears about escalating crime rates (Sasson 1995), hysteria over stranger child abduction (Best 1990), or the obsession with serial murder (Jenkins 1994).

<sup>19</sup> The extent to which issues of crime and punishment are solidly anchored in cultural common sense or are politicized from above is an open question. Beckett (1997) argues that issues of crime and punishment get politicized from above. For a similar view see Friedman (1999:70); as he puts it, “from TV, and from the political pulpit, come messages that somehow play into the public lust for more and tougher punishment.”

<sup>20</sup> The claims made by the media or politicians “assert the existence of some condition, define it as offensive, harmful, and otherwise undesirable . . . creates a public or political issue over the matter” (Spector & Kitsuse 1987:147). Moreover, as Edelman (1988:12) observes, the way such claims define an issue or social problem come to “constitute people as subjects with particular kinds of aspirations, self-concepts, and fears, and they create beliefs about the relative importance of events and objects.”

<sup>21</sup> Best (1990:28) argues that in the construction of a social problem claimsmakers rely on typifications that focus on events in the lives of specific individuals or specific policies that “make it easier to identify with the people affected by the problem.” A typifi-

timates and general beliefs about the release of convicted murderers.

Before turning to folk knowledge about how long first degree murderers actually serve in prison, we first examine how general understandings about early release are generated in the political arena and conveyed in media sources. For this purpose, we consider what is, perhaps, the best known contemporary example—the Willie Horton early release narrative.

### **Folk Knowledge as General Beliefs: The Willie Horton Early Release Narrative**

Perhaps never before has a national political candidacy made the crime problem as decisive an election issue as George Bush's did with the controversial William "Willie" Horton ads in the presidential campaign of 1988. The Horton advertisements proved to be ideal fodder for an election-year media rampage that turned the tide for Bush.<sup>22</sup> These ads created a narrative nightmare of escape from punishment that resonated with public fears of criminal violence (Skogan 1990). They have provided the bedrock for both political rhetoric and the consciousness of crime and punishment ever since. The Horton narrative did so by making a black man who senselessly brutalized a white couple the symbolic representation of Dukakis's alleged criminal justice policy failure<sup>23</sup>—a racial theme apparently also echoed in media crime coverage.<sup>24</sup>

---

cation also has a general function—"it becomes the referent for discussions of the problem in general" (*ibid.*). Perhaps most important, effective claimsmaking about a problem relies on estimating the extent, growth, and range of the issue. As Best argues, "[t]he bigger the problem, the more attention it can be said to merit, so most claimants emphasize a problem's size" (p. 29). Thus, in the case of missing children crusaders, misleading claims about the growing, missing children epidemic "were buttressed by claims about the number of missing children found each year: "There are about 4,000–8,000 of these children each year who are found dead and probably a majority have experienced some type of sexual exploitation" (Representative Simon, cited in Best 1990:30).

<sup>22</sup> Ellsworth and Gross (1994:43) traced this effect during the 1988 presidential campaign. In the May and July 1988 polls, most people did not know how the candidates stood on capital punishment. Specifically, when asked which candidate "comes closer to your way of thinking" on the death penalty, 21% said Bush, 19% said Dukakis, and 60% said there was no difference or had no opinion. In late summer, after the Bush campaign emphasized the theme that Dukakis was soft on crime because he was against the death penalty and was responsible for the furlough of Willie Horton, there was a short-term spike in general support for capital punishment. Polls in September and October of 1988 both found 79% support for capital punishment, an all-time high for death penalty support in the national polls (*ibid.*, p. 44). In October, 71% of a national poll correctly chose Dukakis as the candidate who opposed the death penalty, 12% mistakenly chose Bush, and 17% did not know.

<sup>23</sup> The Horton narrative provides both the underpinnings for a punitive response to social change and disorder and the rationale for stereotyping and scapegoating categories or classes of people as the "criminal element" (Scheingold 1984:226).

<sup>24</sup> The theme of the Horton ads was apparently replicated in concurrent media crime coverage. Jamieson (1992:134) reports that in 1988 crime stories there was a significant increase in news of black alleged offenders and female victims, with no corresponding increase in reported crime.



The Horton advertisements blamed Dukakis for the occurrence of senseless, brutal crimes because of his alleged policy of letting serious violent offenders back into society far too soon. Specifically, the advertisements “George Bush and Michael Dukakis on Crime” and “Governor Dukakis’s Liberal Furlough Program Failed” attacked Dukakis’s “liberal” punishment policy, a policy quite out of step with the public’s belief in punitiveness as a response to criminal violence. The first ad showed a revolving-door turnstyle with running text saying that 268 convicts escaped while on furlough and a voice-over stating that many leave prison early to commit crime again. The second ad, narrated by the sister of the teenager killed by Horton, provides emotional testimony about Dukakis’s record of failed furloughs and vetoes of capital punishment.

Kathleen Hall Jamieson (1992:31–33) has demonstrated the substantial effect of these ads on the public’s consciousness of crime and punishment. In her analysis of attitude change in focus groups, she describes, for example, how a nine-member Dallas focus group that favored Dukakis 5–4 in early September shifted to Bush 7–2 shortly after the airing of the Horton ads. More important, for our purposes, by early November, there was a hardening of attitudes in favor of a “get tough” crime policy and the death penalty. The principal elements of the Horton narrative that focus group members identified were the fearful horror of such crimes, the need to keep such criminals in prison or execute them, and the complicity of Dukakis in letting Horton out of prison. Specifically, Jamieson (p. 34) asked respondents to write a description of the Horton incident and to indicate the source of their information for each sentence with a “PN” for print news, “BN” for televised broadcast news, “RN” for radio news, “A” for advertising, “H” if they had heard it in conversation, and “NS” to indicate that they weren’t sure where they had heard/read/seen it. As an example, one member of the focus group wrote:

Willie Horton was a killer and wasn’t electrocuted (H/PN). . . . He kept raping the wife (BN). He [Horton] was black and the wife [*sic*] was white. . . . Her husband went crazy. . . . He [husband] still can’t forgive himself. That’s why he is against Dukakis (BN). Her husband says that she is afraid that he will come back (BN/NS). He [Horton] killed a boy in a supermarket in Maryland (H). . . . I believe in the death penalty for people like that. . . . George Bush opposes gun control and favors executing Hortons (Radio—I think it was an ad). I would guess Willie Horton doesn’t.

Analyzing this response, Jamieson (p. 35) notes that “the cues in the media have triggered a broad chain of associations.” While some of the details were garbled or confused, the main theme is clearly evident. She observes that the Horton narrative—“mur-

derer released to murder again”—has a powerful resonance with the public’s fear of violent crime and desire for a commonsense explanation for why it occurs. In her words (p. 36), the Horton ad

completes in a satisfying manner a narrative that is already cast with a menacing murderer in a mug shot; anguished, outraged victims; and an unrepentant, soft-on-crime liberal. In such narrative construction, the governor will be unmasked for what he is because the murderer *will murder again* [emphasis added]. Horton is incapable of redemption. Prison has accomplished nothing. He deserved the death penalty Bush is touting.

The captivating character of the Horton narrative is evident in another aspect of public response. In particular, over time, focus group members became resistant to evidence that might debunk the accusations against Dukakis. Statistics documenting the overall success of the Massachusetts furlough program, as well as statistics from the federal government showing higher rates of early release and recidivism in California under Governor Ronald Reagan, provoked one group member to respond: “You can’t change my mind with all of that. . . . When you support the death penalty, the really bad ones get killed. That’s . . . the problem with . . . liberals.” Another focus group member dismissed statistical evidence, “We should ship all our criminals to the college liberals in College Station . . . or Austin. Crime’s not statistics, honey” (Jamieson 1992:31–32). These responses indicate, we think, the depth and persistence of folk knowledge about crime and punishment. Evidence dissonant with taken-for-granted assumptions about the right way of dealing with criminals and the dangers of deviating from those methods does not penetrate (Chancer & Donovan 1994).<sup>25</sup>

Jamieson blames the media as a willing, sometimes eager, accomplice in the deception.<sup>26</sup> The media, she suggests (1992:37), did little to disabuse the public of the misimpression that Dukakis promoted an irresponsible and failed policy of early release, or to get the details or context of the Horton story across. However, to the extent that the Horton ads hit home, it may have been because they tapped into, rather than created, the prevailing cultural common sense. As Ericson (1991:237) notes, the re-

---

<sup>25</sup> The larger-than-life character of the Horton incident is underscored in the following facetious comment of Gore Vidal (1995): “Certainly no reality intrudes upon our presidential elections. They are simply fast moving fiction, empty of content at a cognitive level, but at a visceral level very powerful indeed, as the tragic election of Willie Horton to the governorship of Massachusetts demonstrated in 1988.”

<sup>26</sup> Nor were media accounts scrupulously accurate. A series in the Lawrence, MA, *Eagle Tribune* was replete with distortions of the Horton story. It claimed that the woman raped by Horton was pregnant at the time and that he had cut off the genitals of the man killed in the holdup that landed him in a Massachusetts prison (Jamieson 1992:37). To add insult to injury, this series won the Pulitzer Prize for Journalism.

relationship between the media and the public involves a “process of discursive struggle and negotiation.”<sup>27</sup>

Nonetheless, whatever the reason for its profound impact, the early release narrative conveyed in the Willie Horton incident is one of a criminal justice system out of control, a system unable to keep society’s worst offenders off of the streets. The message that comes across does not focus on the specific periods in which offenders, or in this case, murderers are being released, only that they are being released early—or in the Bush campaign’s words “let out on vacation.” As Jamieson’s focus group data suggests, the Horton incident tapped into a broad “culture of mistrust” on crime and punishment policy. This culture of mistrust didn’t depend on specific knowledge of what actually happened or what policies Dukakis employed as governor. Instead, it seized on the message that dangerous criminals were not being treated severely enough.<sup>28</sup>

### **Folk Knowledge as Specific Estimates: Public Understandings of Release Practice**

Citizen surveys about crime and punishment give us a glimpse of the more specific understandings people have about how long offenders actually spend in prison. Surveys in four states—New York, Nebraska, Kansas, and Massachusetts—provide an indication of just how soon people think convicted first degree murderers will usually return to society.<sup>29</sup> Citizens in each of those states were asked, “How many years do you think a convicted first degree murderer will usually spend in prison before being paroled or released back into society?” Their responses to this question together with the mandatory minimum by law for

<sup>27</sup> Jamieson (1992) does not explore the complex ways in which media images are consumed, resisted, and refigured. For an examination of that process see de Certeau 1994.

<sup>28</sup> Focus group analysis of citizens’ “crime talk” (Sasson 1995) and surveys of public attitudes (for a review, see Roberts & Stalans 1997) confirm that citizens generally see the criminal justice process and particularly criminal sentencing as too lenient. An exchange between two focus group members (Carol and Alex) in Sasson’s study (1995:41) strongly illustrates folk beliefs concerning an inefficient criminal justice system in which criminals are released far too soon:

CAROL: . . . [I]t would be wonderful if our criminal justice system worked, and it did the things it was supposed to do. But we know very well that it’s a revolving door and you get in jail, and what the hell good does it do? You know, makes them harder criminals.

ALEX: And plus they’re out in no time. I mean—

CAROL: You do everything but shoot down the entire city of Cleveland, and you’ll be out in 6 to 8, you know?

ALEX: Exactly. If not less. You go in the front door, and two hours later your lawyer’s in with the bail until trial or whatever, and you are out.

<sup>29</sup> For a discussion of the background and results of the 1991 New York and Nebraska survey data, see Bowers, Vandiver, & Dugan 1994. At the times of these surveys, only Nebraska had the death penalty, though Kansas and New York later enacted capital statutes.

parole eligibility in each state at the time of the survey are shown in Table 1.

**Table 1.** Citizens' Estimates of How Long Convicted First Degree Murderers Usually Serve in Prison before Parole or Release in Four States

	>10	10–14	15–19	20–24	25+	Rest of Life	<i>N</i>	Median Estimate	Statutory Minimum
New York <sup>a</sup>	32.2	20.7	17.4	10.1	19.6	N.A.	(397)	12	12 yrs.
Nebraska <sup>b</sup>	23.4	32.0	19.1	14.8	10.7	N.A.	(440)	10–15	LWOP
Kansas	31.7	23.3	21.4	9.8	13.9	N.A.	(360)	10–14	40 yrs.
Massachusetts <sup>c</sup>	38.5	28.4	18.7	7.1	3.7	3.6	(603)	10–14	LWOP

NOTE: For economy of presentation, the percentages in Table 1–3 are calculated by row, not by column.

<sup>a</sup> An open-ended format was used in the New York survey, which accounts for the greater nonresponse in that sample.

<sup>b</sup> The response options in the Nebraska survey were overlapping ranges (e.g., 10–15, 15–20, 20–25, etc.). The Nebraska response intervals appear in parentheses following the intervals for the other states.

<sup>c</sup> The response option “rest of life in prison” was provided only in the Massachusetts survey. “N.A.” entries indicate that the question was not asked in that state.

The following generalizations about folk knowledge concerning the release of first degree murderers are evident in these data. First, there is greater uniformity in folk knowledge than in state law for the release of imprisoned first degree murderers. Indeed, folk knowledge of release is virtually independent of the requirements of state law. Citizens of the four states share the belief that such offenders will be back on the streets in 15 years or less. In three states virtually the same percentages give such estimates (52.9%, 55.0%, 55.4%), in the other state such estimates are within 15 percentage points (66.9%). State laws diverge far more in what they say about how long first degree murderers must serve before becoming eligible for parole and thus possibly returning to society.<sup>30</sup>

Second, folk knowledge of precisely how long first degree murderers usually spend in prison shows considerable divergence. With responses grouped into 5-year intervals (except at the extremes), less than a third of the citizens agreed on the same response category (i.e., fell within the same 5-year range of release estimates) in three of the four states. The only exception (38.5% in Massachusetts) comes in the first interval, which actually encompasses a 10-year range of estimates, 0–9 years.

Third, most citizens give estimates that fall below the mandatory minimum for parole eligibility for first degree murderers in their states. The median estimates are well below the mandatory minimums in each state. The single most common response in three of the four states is the lowest response option,

<sup>30</sup> This divergence is virtually unrelated to citizens' release estimates. Massachusetts and Nebraska, with the shortest and longest release estimates, both deny parole to such offenders. Citizens' release estimates are on a par in the two states that permit parole, although Kansas law makes offenders wait 25 years longer before becoming eligible for parole than does New York law.

“less than 10 years.” Citizens clearly do not trust the criminal justice system to act predictably in accord with legal requirements, to the extent that they actually know what state law requires. Thus, in none of these states do we see a degree of consensus on the time such offenders would serve of the kind we might expect to find if the media and political rhetoric in a state were focused on a specifically articulated time of release. The relatively low, if not uniform, estimates are, however consistent with the kind of narrative representation contained in the Horton ads.<sup>31</sup>

### III. Capital Jurors and the Consciousness of Crime and Punishment: From Cultural Context to Institutional Practice

How is commonsense understanding of the state’s response to crime, indeed the belief that first degree murderers will be back on the streets far sooner than the law on the books permits, translated into legal action? To answer that question we turn to the jury. It is in and through jury service that the moral views and commonsense understandings of citizens are given the sanction of the state. Nowhere is this clearer or more consequential than in capital juries. We examine first the folk knowledge that jurors bring with them to their service in capital cases, then the sources of that knowledge, and finally how that knowledge informs their judgments.

Our data on capital jurors comes from the Capital Jury Project (CJP). The CJP was designed to examine and systematically describe jurors’ exercise of capital sentencing discretion, to identify the sources and assess the extent of arbitrariness in jurors’ exercise of such discretion, and to assess the efficacy of capital statutes in controlling arbitrariness in capital sentencing (see Bowers 1995). The CJP incorporates a three-stage sampling design. First, states were chosen to represent the principal variations in guided discretion capital statutes.<sup>32</sup> Then, within each

<sup>31</sup> We cannot say, of course, to what extent the Horton ads may have fostered the belief in early release in these four states. It is notable that citizens’ estimates of the time until release are lowest in Massachusetts, the state where the Horton narrative was supposed to be the reality. But surely the Horton ad’s public appeal and political effectiveness in 1988 presidential politics was the result of its resonance with an already prevailing public fear of crime, mistrust of criminal justice policy and practice, and desire for harsh punishment, as embodied in the “myth of crime and punishment” (Scheingold 1984).

<sup>32</sup> The states were chosen to represent the three types of guided discretion statutes, known as “threshold,” “balancing,” and “directed.” Threshold statutes require jurors to find at least one aggravating factor from a list specified in the statute before imposing a death sentence; once the jury finds the existence of an aggravator beyond a reasonable doubt, its discretion is unguided in considering additional aggravating and mitigating factors. Balancing statutes require jurors to weigh aggravating factors against mitigating factors listed in the statute in making their sentencing decision; jurors then recommend life or death depending on the assessment of the relative “weight” of the aggravators and mitigators. In most balancing states the jury’s sentencing recommendation is binding on the trial judge, but in some the judge may override the sentencing recommendation.

state, full capital trials since 1988 with both guilt and sentencing phases were selected to provide balanced coverage of cases that resulted in life and death sentences. And finally, a target sample of four systematically selected jurors from each case were interviewed. Interviews were designed to chronicle the jurors' experiences and thinking over the course of the trial, to identify points at which various influences came into play, and to reveal the ways in which jurors reached their sentencing decisions. Responses of some 916 jurors from 11 states serve as the basis for the findings presented here.<sup>33</sup>

To assess their folk knowledge about crime and punishment, we asked jurors two questions about the early release of convicted murderers, one intended to tap a general belief that such offenders are out of prison "far too soon" and the other intended to elicit specific estimates of just "how soon" such offenders usually return to society:

Do you agree or disagree [strongly, moderately, or slightly] that persons sentenced to prison for murder in this state are back on the streets far too soon?

How long did you think someone not given the death penalty for a capital murder in this state usually spends in prison?

Jurors' responses to these two questions together with the mandatory minimum sentence convicted capital murderers must serve if not given the death penalty are shown by state in Table 2. Specifically, for each state the table shows the percentage who agree "strongly," "agree somewhat" ("moderately" or "slightly") and do not agree that "murderers in this state get out of prison far too soon" (panel A); the distributions (and medians) of jurors' estimates of how long convicted murderers not given the death penalty in their state usually serve in prison (in five-year intervals except at the extremes) (panel B); and the mandatory minimum sentence that must be served in each state before a capital murderer not given the death penalty becomes eligible for parole (panel C).

The belief that murderers are out on the street far too soon is the accepted wisdom of four out of five jurors (79.3%); indeed, most jurors adhere "strongly" to this proposition (53.4%). In the states, between 67 and 89% of the jurors agree with this statement, and most jurors agree "strongly" with this sentiment in 8 of the 11 states. Hence, a diffuse dissatisfaction about the early release of murderers is widespread in all 11 states, and this sentiment is intensely felt by most jurors in most states.

---

Under directed statutes, jurors are required to impose a death sentence if they make certain findings (e.g., the likely future dangerousness of the defendant, the defendant's intent to kill or level of responsibility for the victim's death) and do not find the existence of mitigating circumstances which would warrant a life sentence.

<sup>33</sup> See Bowers (1995:1078-79) for a further description of the research objectives of the CJP and Bowers & Steiner (1999:643) for further details of the sample used here.

**Table 2. Feelings that Murderers Are Out Far Too Soon and Specific Release Estimates for Murderers Not Sentenced to Death among Capital Jurors in 11 States (%)**

	A. Agree that Murderers Are Out Far Too Soon			B. Estimated Years in Prison If Not Given Death Penalty					C. Mandatory Minimum <sup>a</sup>		
	Strongly	Somewhat	Not at All	0-9	10-14	15-19	20-24	25+		Life	N
Alabama	54.4	17.5	28.1	8.5	18.6	11.9	6.8	10.2	16.9	(59)	LWOP
California	42.1	34.9	23.0	13.2	13.8	7.9	9.2	2.0	36.2	(152)	LWOP
Florida	54.7	30.8	14.5	15.4	10.3	12.0	14.5	35.9	5.1	(117)	25
Georgia	62.2	27.0	10.8	61.0	9.1	5.2	9.1	1.3	2.6	(77)	15
Kentucky	65.4	21.2	13.5	24.8	19.5	6.2	5.3	8.8	6.2	(113)	12, 25, IND <sup>b</sup>
Missouri	38.2	29.1	32.7	16.1	12.5	7.1	12.5	30.4	14.3	(56)	LWOP
North Carolina	57.7	17.9	24.4	10.8	25.3	15.7	30.1	10.8	0.0	(83)	20
Pennsylvania	59.2	22.4	18.4	28.6	16.3	10.2	20.4	6.1	10.2	(49)	LWOP
South Carolina	46.5	32.5	21.1	9.6	21.1	14.0	16.7	25.4	0.9	(114)	30
Texas	75.0	12.5	12.5	16.0	18.0	22.0	8.0	14.0	10.0	(50)	20
Virginia	38.2	29.1	32.7	10.9	21.7	8.7	17.4	17.4	2.2	(46)	21.75

<sup>a</sup> These are the minimum periods of imprisonment before parole eligibility for capital murders not given the death penalty. (For documentation and additional clarification, see Bowers & Steiner 1999:646 n. 198.)

<sup>b</sup> "IND" is defined as "indeterminate" to represent the third Kentucky sentencing option.

Like the citizens surveyed in New York, Nebraska, Kansas, and Massachusetts, the jurors in these states consistently believe that murderers not sentenced to death will usually be back on the streets sooner than state law permits.<sup>34</sup> In all 11 states the median estimate of time usually served is less than the mandatory minimum for parole eligibility, five years less than that minimum in all but one state.<sup>35</sup> Hence, most jurors in every CJP state believe that murderers like Willie Horton will usually be back on the streets before completing their sentence.<sup>36</sup>

Across states, jurors seem to have roughly similar ideas about how long such offenders usually spend in prison, quite apart from the wide variation in statutory minimums for parole eligibility in their states. For the five states that have mandatory minimums of 20 to 40 years and the four life-without-parole states, the median estimates of years usually served all fall within the range 15–20 years. At the same time, within most states jurors' estimates are widely divergent. Fewer than a third of the respondents are concentrated in any single response category in five of these states (Alabama, North Carolina, South Carolina, Texas, and Virginia). Even adjacent intervals spanning 10 years do not encompass a majority of the estimates in most of these states.<sup>37</sup> Thus,

---

<sup>34</sup> The release estimates of capital jurors in most states have much in common with those of the citizens examined earlier in Table 1. (1) Specifically, they show greater uniformity than does state law. The median estimates are far less divergent than are the mandatory minimums; all but one fall within 5 years of the 15.2-year average of state medians. (2) The release estimates are largely independent of state law. Having a fixed period before parole or prohibiting it altogether makes relatively little difference; 15.0 years is the average of the median estimates in the six states with an unambiguous mandatory minimum (excluding Kentucky), 16.3 years is the average in the four states that prohibit parole. Nor does the length of the fixed minimum have much effect on jurors' estimates, except for Georgia. Thus, 17.7 years is the average estimate for the three states with mandatory minimums of more than 20 years; 16.0 years is the average for the two states with a 20-year mandatory minimum. (3) There is relatively little consensus within most states on a specific release estimate. Few of the 5-year intervals contain more than a third of the estimates.

<sup>35</sup> Only North Carolina with a median estimate three years below the mandatory minimum is the exception. In Kentucky with various sentencing options such a difference is indeterminate.

<sup>36</sup> Compared with citizens' estimates (in Table 1), jurors' tend to estimate that murderers serve somewhat more time in jail. Jurors' higher estimates might be expected since they were asked specifically about the narrower class of "death-eligible" capital murderers, instead of "first degree" but not necessarily "death-eligible" murderers. Of course, the jurors, unlike citizens at large, were "death-qualified" (staunch death penalty opponents were eliminated), so differences in their estimates could result from jury selection procedures as well as differences in the questions asked.

<sup>37</sup> There is little convergence around the median estimates in most states. Nor is there much convergence around the mandatory minimums for parole eligibility. Among states that do permit parole, in Florida, and North Carolina, the interval that includes the state's mandatory minimum does attract the most estimates. Yet, only about a third of all responses fall into this interval: 36.0% in Florida and 30.0% in North Carolina. In the other states that permit parole, even fewer occupy the category that embodies the mandatory minimum. Indeed, none of the five-year intervals accounts for as many as 30% of the release estimates in these states.

Among the four states that have life without parole (LWOP), only in California does the "life" response attract more jurors (36.2%) than any other single category. Even so,



despite the “strong” agreement among jurors in most states that murderers are back on the streets “far too soon,” there is little agreement on the specific timing of release.

There is, however, one glaring exception. Georgia stands in stark contrast to the other states. Most Georgia jurors’ estimates (61.0%) fall into the single 0–9 year category. Despite the 15-year mandatory minimum for parole consideration in Class I (capital) murder cases, half (49.3%) of all Georgia jurors, and even more than half (56.0%) of those who volunteered an estimate, agreed on the single specific estimate of release in 7 years. The concentration of estimates in a single category, the substantial agreement on a single estimated value, and the earliness of release it represents are all distinctive to Georgia, unparalleled in any of the other states.

In most states jurors’ release estimates are not a reflection of consensus keyed to the mandatory minimum for parole or to any other specific duration or time interval. In the absence of knowing or agreeing on what the death penalty alternative actually is, most jurors gravitate to estimates below the mandatory minimum for parole—in keeping with their widely held and strongly felt sentiments that murderers get out of prison “far too soon.” Again, the one exception to this lack of consensus is Georgia. There is conspicuous agreement among jurors that defendants not sentenced to death would be out in seven years.

### **Media, Politics, and Folk Knowledge in Georgia**

In Georgia, as in the rest of the nation, the mass media play a key role in reinforcing and reproducing folk knowledge about crime and punishment. Throughout the 1980s and 1990s the media in Georgia have repeatedly reported that murders not given the death penalty will be eligible for parole in 7 years. They have done so despite the Georgia State Parole Board’s explicit indication in 1985 that Class I murderers, persons sentenced to life for capital crimes, are considered for parole only after 15 years,<sup>38</sup> despite official reports of the Parole Board indicating that Class II murderers who do become eligible for parole in 7 years are

only half of those who say “life” go on to indicate that there is no parole; hence, fewer than one in five California jurors affirmatively identifies LWOP as the death penalty alternative. In the other three states without parole, the life response is slightly more common than in any of the seven states that permit parole, yet it is the response of only 10.2%, 14.3%, and 16.9% of the jurors in these three states. And even if having LWOP prompted a few more jurors in these states to say that the death penalty alternative is life, there is virtually no indication that it promoted awareness that parole is unavailable. Only three jurors in the three LWOP states qualified his or her life response to indicate that there was no parole.

<sup>38</sup> In Georgia, the State Board of Pardons and Paroles indicated that 15 years is the absolute minimum before parole consideration for Murder I (offenders convicted of capital murder but not given the death penalty); offenders sentenced to life for other crimes may be paroled in 7 years, but only 1% actually are, and murderers are underrepresented among that 1% (Paduano & Smith 1987:211).

extremely unlikely to actually be paroled in 7 years<sup>39</sup> and despite legislation in 1994 that altogether abolished parole for capital offenders not sentenced to death (Georgia Code Annotated, sec. 17-10-31.1 (1994)). The extremely infrequent use of parole in 7 years for noncapital murderers and explicit rejection of parole consideration before 15 years for capital murderers not given the death penalty received virtually no publicity and were thereafter ignored in political rhetoric and news accounts of murders. As a result, it had little chance of penetrating the consciousness of even the most attentive Georgian.

Several themes in the news coverage of murder cases in Georgia appear to reinforce extant folk knowledge. They are illustrated in three widely covered Georgia murder cases.<sup>40</sup>

#### *Anticipation of Release in Seven Years*

The 1982 case of serial murderer Wayne Williams who sexually attacked and murdered more than 20 Georgia youths, like the Willie Horton case, garnered national media attention that anticipated Williams's possible early release from prison (Atlanta Constitution & Journal, Early Ed., 28 Feb. 1982, p. 2):

Wayne Williams tonight was found guilty and sentenced to two consecutive life terms for the murders of two young blacks who were among 28 victims killed here over a 22-month period. . . . Court sources said Williams will be eligible for parole in seven years, despite his two life terms.

#### *Confirmation of Release in Seven Years*

The case of Warren McCleskey, known for the 1987 Supreme Court challenge of racial bias in capital sentencing (McCleskey v.

---

<sup>39</sup> The parole board's annual report for fiscal year 1985 indicated that only 1% (12 of 949) of all life-sentenced inmates were released on their first application after 7 years, that class II (noncapital) murderers were less likely than other lifers to be paroled, and that none of those paroled were class I (capital) murderers (Paduano & Smith 1987:229).

<sup>40</sup> To review media coverage of Georgia murder cases, we conducted a NEXIS search of Georgia's premier newspaper the *Atlanta Journal & Constitution* using the key words and phrases: "Parole in seven years," "Early Parole," "Parole," "Murder," and "Early Release." This source is not, of course, representative of coverage in the local media of what is essentially local crime news. Content analysis of the coverage of Georgia murder cases in local newspapers is needed for a more representative picture of how the theme of parole in seven years is presented. Nonetheless, this look at coverage of the more celebrated murder cases in the state's leading newspaper suggests one way in which the seven-year figure may have been articulated and reinforced. And we did find similar media themes in lower profile cases covered, as the following excerpt demonstrates:

Superior Court Judge James A. Weeks sentenced Rodney Joel Whatley to a life term and 20 years for the death of 19-year-old James "Andy" Whatley. . . . Whatley, who had been convicted of three felonies before this one, could be paroled in seven years. But prosecutor Mike McDaniel said he hoped Whatley's parole would be denied at that time. "We're disappointed that the jury didn't agree that the death penalty was appropriate, but we hope we can convince the parole board he should stay in jail a long time," Mr. McDaniel said. (Shepard 1992)

Kemp 1987), attracted extensive media coverage that tended to confound McCleskey's release from prison in seven years with the murder he committed (Williams 1991):

Warren McCleskey already had been sentenced in the 1970s to three life terms for armed robbery. He was paroled after but seven years, only to execute an unsuspecting Frank Schlatt before the officer could draw his gun. McCleskey never should have had the chance.

Reading that a criminal was released in seven years, people may well ignore or forget the fact that McCleskey was not a murderer at the time of his release. The murder he committed after his release may become his defining characteristic for many readers who then generalize, "murderers are released in seven years."

*Blaming the Parole Board for Release in Seven Years*

The 1992 case of David Alfred Jarrell attracted considerable media coverage because of steps taken to prevent the parole board from releasing him in seven years. The prosecuting and defense attorneys entered into a "no parole agreement" (Morehouse 1992):

Jarrell got three consecutive life sentences and agreed never to ask for or accept parole. The Gwinnett district attorney also can seek the death penalty if Jarrell ever breaks the agreement, according to the signed contract. Despite legal questions about the parole agreement, attorneys on both sides of the Jarrell case predict similar parole agreements will become more popular as a middle ground between the death penalty and Georgia's version of life that makes convicts eligible for parole after serving seven years.

This article focuses the reader's attention on the alleged irresponsibility of the parole board.<sup>41</sup> A special agreement is needed only because the parole board so commonly lets capital murderers out in seven years.<sup>42</sup>

The emergence of folk knowledge concerning parole in seven years for murderers not given the death penalty happened

---

<sup>41</sup> The reality of what the parole board was actually doing got lost. The media failed to hold politicians accountable for the truth of their claims, perhaps because their own crime stories attracted more attention with the routine reminder that the offender could be back on the streets in seven years. While it might have been true for other crimes, the fact that it was false for capital murder was consistently buried in the frenzy to make crime news in murder cases.

<sup>42</sup> Editorials from the *Atlanta Journal & Constitution* have also helped encourage a focus on release in seven years by demonizing the parole board: "Even if they get caught and convicted, meaningless sentences and early paroles mean they'll be free to rob and kill again with barely a hiccup in their sordid careers. . . . [A] life sentence [needs] to last a minimum of 14 years, not the seven it now means" (Williams 1994). Other writers have blamed the problem on the actual sentencing of an offender, and specifically on how judge's utilize probation: "Currently, many judges abuse probation. . . . Some judges mete out ridiculously long periods of probation, sometimes 10, 15 or even 20 years . . . The offender can keep all the conditions of his probation for seven years and then slip up" (Tucker 1992).

in, and perhaps because of, a unique political context. When the possibility of parole in seven years first became law in Georgia in 1943, it was recognized as advanced correctional policy. Increasing crime rates and levels of incarceration in the 1960s and 1970s, however, raised doubts about the wisdom of that policy. Prison overcrowding, external federal pressure for reforms to meet minimum correctional standards, and the cost of improving existing or building new facilities in the 1980s weighed against eliminating parole or extending the period before parole eligibility. At that time judges and prosecutors focused on the issue of early release in political campaigns, highlighting it in particularly noteworthy murder cases.

As ingrained features of the political landscape, early release and the denunciation of the parole board continued into the 1990s, even after mandatory sentencing reforms were instituted by then Governor Zell Miller. Recent political campaigns and editorials in the media continue to be laced with a rhetoric of early release,<sup>43</sup> including explicit references to parole in seven years for convicted first degree murderers not given the death penalty.

### **Jurors' Articulation of Folk Knowledge Concerning Early Release in Georgia**

In this context it should not be surprising that jurors in Georgia were extremely vocal in articulating their concern about early release.<sup>44</sup> Their statements provide strong evidence of a cultural common sense focused on "undue solicitude" for defendants' rights and "insufficient severity" in dealing with the most dangerous criminals. Time and again in talking about the cases on which they served, jurors returned to those issues. As one man put it, "The prosecution and the judges. . . . It's the pardons and parole people and the judges that keep interfering with the system that turn them loose." This language is interesting in its separation of particular actors in the criminal justice system from that "system," suggesting that the source of problems is personal rather than institutional. In contrast, another juror's analysis moved from the personal to the systemic as he explained his thinking about crime and punishment; "I feel like our justice system has gotten—now I can get on the soapbox—that our justice system has gone way too much for the criminal instead of the victim. I think they definitely have gotten more."

---

<sup>43</sup> In the 1994 gubernatorial campaign, Miller's Republican opponent Guy Millner used television ads that vowed to abolish the State Board of Pardons and Paroles and called Miller "soft on crime" for failing to eliminate early release.

<sup>44</sup> The analysis that follows is based on 77 completed interviews with Georgia capital jurors. The CJP interviews average 3–4 hours and include both structured questions with predetermined response options and open-ended questions crafted to elicit jurors' accounts of their own punishment decisionmaking and that of the jury as a group. See Bowers (1995:1081) for a further discussion of the interviewing strategy.

There are two ways that jurors think that the criminal justice system has gone “too much for the criminal” in capital cases. One is, of course, early release. The other is the phenomenon of prolonged appeals in capital cases. With respect to the former, the specter of early release—of convicted murderers getting out a prison after a very short incarceration—is deeply ingrained in the folk knowledge that jurors bring with them to their jury service. Explaining why she voted to impose a death sentence, one juror said: “I remember thinking that he should never be let out and I remember thinking that if he got life chances were he would end up with parole.” A second juror in the same case said: “The fact that we were unsure that he [the defendant] would get a life sentence had a lot to do with the death sentence verdict. Most of the people on the jury were of the opinion that if we didn’t give him the death penalty that he would get out in seven years.”

As another said in explaining a death sentence in a different case, “Jurors were swayed by the fact that the defendant meant to kill . . . it was vicious. They didn’t want him out. We would have given him life if we thought that he would actually serve life. [But we had] no real choice.” A middle-aged man in still another case echoed this feeling that there was no real choice other than death. As he put it, “Well, we had two choices, death and we had life . . . and he’d be up for parole in seven years.” Asked what was the single most important factor in the jury’s decision about what the defendant’s punishment in another case should be, a juror responded, “Whether he would be released to do it again. It would have been unanimous; we would have voted for life without parole, but that wasn’t a real option. We felt sure that if he was given life, he’d be given parole.”

So pervasive is the folk knowledge about early release that some jurors regard any contrary belief as frivolous.<sup>45</sup> One juror explained how he had responded when he encountered such a belief during his jury’s deliberation.

**JUROR:** One of the women, she was under the impression that if you gave someone life in prison they would be in prison for the rest of their life and myself and a couple of other jurors had to explain to her that if he did get life in prison, he would stand a chance of parole in years to come and that they would be back out of the streets again. That there was only one way to actually stop him from doing what he did again. It was to give him the death penalty.

<sup>45</sup> Such a claim also was recently recognized by the state’s highest judicial authorities to be the prevailing cultural common sense. For example, Georgia Supreme Court Judge Charles Weltner is quoted as having said, “Everybody believes that a person sentenced to life for murder will be walking the streets in seven years.” Apparently of little avail was State Parole Board Chairman James T. Morris’s response, “That’s the greatest myth that’s been perpetrated on the Georgia people, I blame the district attorneys and the judges of the state for putting it out” (Silk 1996).

INTERVIEWER: So you explained that to the other juror?

JUROR: Myself and some one else, because she wasn't aware that a life sentence means you can be released in 7–9 years.

The female juror's view is attributed to ignorance, to a lack of awareness of what the respondent takes as an established fact.

Still another juror talked how he had confounded the judge and the lawyers during *voir dire*.

They asked something about life in prison and I said "Well, there's really no such thing," and of course they all went "uh-hhh." And they said "What do you base your opinion on?" I said "I read a lot while I was growing up. I got the impression that when you were sentenced to life in prison and you died in prison, you weren't killed, but you died in prison." But I said "This is not true. You get out in seven years, you know, even for the most heinous crimes."

Other research on Georgia juries (Sarat 1995; Lane 1993) has documented that capital jurors' beliefs in early release are reinforced when they interrupt their sentencing deliberations to ask the trial judge about the length of a life sentence. State law in Georgia imposes a "vow of silence"<sup>46</sup> on trial judges concerning any jury questions regarding parole. As a result, when jurors ask about the meaning of a life sentence they get little guidance.

Most strikingly, Lane (1993:375) cites court transcripts detailing the actual discussions held or inquiries regarding sentencing during jury punishment deliberations. As the transcripts show, capital juries are extremely interested in ascertaining how state law defines the meaning of a life sentence and in testing that meaning against their folk knowledge.

QUESTIONS BY NOTE: Is there life without parole? In the three life sentences, would they run concurrently or consecutively?

JUDGE: I think I had instructed you, and I want to repeat my instructions for you that for the purposes of this case, despite all the things you read in the newspapers and everything else you here, in this case life means life and death means death. . . . As far as the second question, . . . once again, I answer the same question, life means life and death means death.

Here we see an explicit acknowledgment of the pervasiveness of folk knowledge about crime and punishment, "despite all the things you read in the newspapers," and an answer that, as the

<sup>46</sup> Only California, Nevada, New Jersey, New Mexico, Indiana, and Ohio allow any instruction to the jury regarding parole in capital cases. In California, which has life without parole, the jury is instructed that life without parole may result in parole but is ordered not to consider it for the purposes of the life or death decision. Nevada juries are instructed on the differences between life with the possibility of parole in 10 years, life without parole, and death. New Jersey requires the trial court to answer the jury's questions accurately and then instruct the jury not to take parole into consideration. Only New Mexico, Ohio, and Indiana permit argument by counsel to the jury on the issue of parole (see Hood 1989; Paduano & Smith 1987:217).

law required, avoids providing the assurance that jurors were seeking.

QUESTION BY NOTE: Under Georgia law give us a definition of life in prison. Under Georgia law is there a provision for parole to a person given a life sentence?

JUDGE: I have received the questions that you have sent out to me which are just like the questions I got just a few minutes ago. . . . There is no way that you can frame the question so I can answer it differently.

Lane (1993:336) reports that soon after judges refuse to answer questions of this nature, the jury typically returns with a sentence of death.

[O]f the 280 trials reviewed, seventy of the resulting death penalties were returned following jury questions to the court regarding the nature of the life sentence alternative and the possibility of release therefrom. . . . Typically, they either send a note to the judge or return to the courtroom to ask quite directly whether there is a possibility that the defendant will be released if they sentence him to life imprisonment.

In addition, he describes the frustration felt by jurors as a result of their unsuccessful bids for information regarding sentencing, frustration of the kind reflected in the following exchange:

JURY FOREMAN: Your Honor, a couple of the jurors want to know what you said a while ago is that if we vote life imprisonment that he will serve the rest of his natural life imprisonment. [We want] to know what you meant by that?

JUDGE: I cannot answer that question. . . . Does that satisfy both of you lawyers?

JUROR COLE: That doesn't satisfy me.

JUDGE: Did you understand that I just said that I have to abide by the law and I have given you all the law that I can give you in this case, ma'am.

JUROR COLE: May I say something, please? May I ask a question? May I state a question to the Court?

JUDGE: Wait just a minute until I can let the Foreman ask the question. Yes, sir. Do you have any other questions? . . . All right. Now, what did you want to ask?

JUROR COLE: I would like for you to state, please, my question is, will you state to this Court that as—

JUDGE: I am the Court.

JUROR COLE: [T]hat as jurors we are not allowed to know the law of the State of Georgia on paroles in cases of murder? I am not asking you, sir, to tell us anything about what will be done in the case of Mr. Davis. We do not desire to know what is going to be done in the case of Mr. Davis. We're asking a point of law in any murder case. Mr. Davis may go to prison and never be paroled.

JUDGE: Wait just a minute. Wait just a minute.

JUROR COLE: What is the law in the state of Georgia?

JUDGE: Will you wait just a minute. Don't talk when I start talking.

JUROR COLE: I'm sorry sir, but I thought I was still talking when you started talking.

JUDGE: All right. Now let me instruct you one more time. . . . I cannot comment on the question.

Lane's research attests to the desire of some jurors to "validate" their folk knowledge by ascertaining what life in prison means in state law. The fact that they typically return with a death verdict shortly after being denied such information suggests that the belief in early release may have been the critical last issue on which a life or death decision depended. This is illustrated in the following comments by one juror we interviewed:

INTERVIEWER: During your deliberations, did the jury stop to ask the judge for further explanation of the law or clarification of the instructions to the jury?

JUROR: We asked if there was a life without parole option. I knew it was seven years.

INTERVIEWER: What was the judge's response and what was the jury's reaction?

JUROR: We were told it was not [an] option, and we asked when he would be paroled: he wouldn't tell us that either.

INTERVIEWER: In your own words, can you tell me what the jury did to reach its decision about defendant's punishment? How did the jury get started; what topics did it discuss, in what order; what were the major disagreements and how were they resolved?

JUROR: . . . No one liked the idea of sentencing anyone to death but we didn't want to see him out in the streets again. We asked the question why not life without parole. We sent a note to the judge an hour or two after it started. The judge marched us in—they expected the question earlier—[the] judge said 2 choices. So, we put our tails between our legs and went back in the jury room. He said almost all juries ask that, why not life without parole? I guess we were looking for an easy out. The other choice was death.

Or as another juror explained, "The jury and my own personal feelings were that there was no option that would have kept him in jail. In fact the jury went back and asked the judge a point of law if he could be kept in jail and the judge told us he could not answer that. I think it would have been only a matter of time before [the defendant] would do something crazy."

While jurors ask about the meaning of a sentence of life as a way of testing their folk knowledge, it is not clear that they are prepared to hear or accept a view that contradicts their belief in early release. Said one juror, reflecting on the deliberations of the jury on which he sat:

If we could definitely determine that he would not get out of prison rather than being electrocuted that might have been allowed, but the fact that a life sentence would mean but a few



years in jail meant that we had to go the other way. . . . The judge was saying that life in prison means life in prison period. *But we knew better.* [Emphasis added]

This notion that the jurors “know better” is crucial to our understanding of the significance of folk knowledge as legal action. As Friedman (1999:81) states:

Juries . . . allow the legal system to exhibit a degree of normative complexity and subtlety that the official law does not permit, and perhaps cannot permit. . . . The official rules of criminal law are relatively tight and brittle; they mince no words, and they draw bright, clear lines. . . . But patterns of jury behavior give off more ambiguous and nuanced messages. In part these messages are about what parts of the criminal justice system are taken seriously; and which are not.

High on the list of things not taken seriously by jurors in capital cases in Georgia is the injunction that life in prison means life in prison. The fact that jurors in Georgia come to their service in capital cases with a store of folk knowledge, one crucial tenet of which is early release, seems to drive them toward death as a way of insuring against the future damaging acts of dangerous criminals. But another aspect of their folk knowledge undermines even this confidence that their sentence can protect against future crimes. Jurors also come to court believing that the law grants excessive and undue protections to defendants which result in endless appeals in capital cases.<sup>47</sup> As one juror who sat on a case that resulted in a life sentence said about persons given the death penalty, “They go back and appeal, appeal, appeal so they die of old age.” Or as a juror who voted for death in another case explained,

Just because someone is sentenced to the death penalty doesn't mean he'll ever die. They don't put people to death. For example, \_\_\_\_\_ [name of defendant] has now been on death row for many years. He's still there. Every time you turn around he's appealing again. . . . I'm very unhappy. I think the man should be put to death.

Still another juror talked about the influence that the allegedly prolonged appeals process had in the deliberations of the jury on which he sat. “There was,” he said, “a lot of discussion about the appeals and the money it would cost to keep him trying and in the end he might still get life after years of appeal. . . . So, this came up that there could be appeal after appeal after appeal and in the end you still get life.” Finally, another person suggested that for the jury on which he sat the issue of endless appeals was very important. “If this guy gets death,” the jury hypothesized, “they are going to appeal the hell out of it on all kinds of grounds because \_\_\_\_\_ [name of defense lawyer] is

<sup>47</sup> For a discussion of one source of this belief in endless appeals, see Amsterdam 1999.

that good. . . . If we say he gets the death penalty there is no guarantee that he'll get it. He'll appeal all the way up through the Supreme Court for the next 10 years. And who is to say that through some technicality he won't get off scott free." Thus if a life sentence doesn't necessarily mean life, it is also not clear that a death sentence will mean death.

### **Sources of the Early Release Tenet: The Georgia Difference**

What are the sources of jurors' folk knowledge about early release in Georgia and in other states? How is such folk knowledge influenced by media exposure; contacts with people who work in criminal justice agencies such as the police, courts, or corrections; or talk with friends and neighbors about the crime problem, about cases in the news, and about instances in their communities or neighborhoods?<sup>48</sup> And how much do mistrust of the criminal justice system and advocacy of punitiveness contribute to such folk knowledge? Are there differences in the sources of specific estimates as compared with general beliefs about releasing murderers from prison? To answer these questions we compare in Table 3 the responses of Georgia jurors with those of jurors from the other states. The table shows how their responses to the (1) general early release tenet that murderers get out "far too soon" and (2) the more specific estimate of "how soon" before they are released are related to indicators of exposure to the media,<sup>49</sup> contact with persons in criminal justice fields,<sup>50</sup> community involvement,<sup>51</sup> and jurors' mistrust of the criminal justice system and advocacy of punitiveness.<sup>52</sup> We also assess the extent to which jurors' specific release estimates may be grounded in their more general beliefs about early release. For these possible sources of folk knowledge about early release, the table shows the percentage who agree strongly, moderately, or

---

<sup>48</sup> Skogan and Maxfield (1981) document the role of talk with friends and neighbors in promoting fear of crime. Their work suggests that such talk may influence expressions of mistrust of courts and corrections in keeping offenders in prison.

<sup>49</sup> Our measures of exposure to print and electronic media come from a two-part question to jurors, "Over the past week, on how many days did you . . . (a) read a newspaper? (b) listen to the news on TV or radio?"

<sup>50</sup> On the assumption that contact with people who work in criminal justice agencies such as the police, courts, or corrections is a way of learning about the "realities" of early release, we tap the effects of such contacts with a three-part question, "Do you know people who work . . . (a) in the police, including private security; (b) in the courts, including judges, prosecutors, defense attorneys, clerks or other staff; (c) in corrections, including jails, prisons or other corrections facilities." We scored jurors on how many of these fields or agencies in which they know someone.

<sup>51</sup> Our measure of community involvement counts participation in school, youth, and church groups; we asked, "Are you involved in any local groups or organizations?" and then listed, (a) school or parent/teacher association; (b) youth activities, e.g., Little League, Boy Scouts; (c) church or religious groups.

<sup>52</sup> For measures of mistrust and punitiveness, we have drawn largely on items not originally conceived as indicators of these concepts. For more information on this, see Appendix A.

not at all that murderers are out far too soon and the percentage who give specific estimates of how soon they are released, each grouped into three categories. Because Georgia jurors estimate release so much sooner than jurors in other states, we have grouped these estimates differently for the two sets of jurors: for Georgia jurors the estimates are 0–7, 8–10, and 11+ years (panel B); for the jurors in ten states they are 0–9, 10–19, and 20+ years (panel A).

We first consider the sources of jurors' general feelings that murderers get out of prison far too soon and then turn to the sources of jurors' specific estimates of how soon murderers not given the death penalty usually do get out of prison.<sup>53</sup>

### General Beliefs That Murderers Are Out of Prison Far Too Soon

1. Beliefs that murderers are out of prison far too soon are embedded in mistrust of the criminal justice process and advocacy of punitiveness.

Jurors' advocacy of punitiveness and their mistrust of the criminal justice process are prominent in promoting the view that murderers get out of prison far too soon. This is consistent with the arguments that punitiveness is a culturally based response to the crime problem (Scheingold 1984) and that people concerned about the crime problem see its roots in a breakdown of the criminal justice process (Roberts & Stalans 1997; Sasson 1995). In the 10-state sample, the differences of 45.2 and 28.2 percentage points in strongly agreeing that murderers are back on the streets far too soon between jurors high and low on these two crime and justice orientations far exceed the differences owing to any other sources. In Georgia, as well, mistrust and punitiveness are both associated with general concerns about early release.<sup>54</sup>

2. Media exposure, criminal justice agency contact, and community involvement are largely unrelated to general beliefs about early release.

In both Georgia and the 10-state sample, concern about murderers getting out of prison far too soon shows little association with media exposure. Greater contact with persons who work in criminal justice agencies add somewhat to the percentage who strongly agree that murderers are out of prison far too soon in

<sup>53</sup> Our attention is chiefly on the substantive relationships as reflected in percentage differences in Table 3. Since the Georgia sample of jurors is quite small compared with that of the other 10 states combined, differences in statistical significance tend to obscure common substantive patterns in the data.

<sup>54</sup> The Georgia differences are not directly comparable to those in the 10-state sample. Because of the relatively small number of responses to the components of these crime and justice orientations in Georgia, we dichotomized all responses into high and low scores on these two indices.

**Table 3.** Feelings and Estimates of Time before Release by Media Exposure. Criminal Justice Contact, Community Activity and Justice Orientations among Capital Jurors in (a) 10-State Sample and (b) Georgia (%)

	Agree that Murderers Are Out Far Too Soon			N	Estimated Years in Prison If Not Given Death Penalty			
	Strongly	Somewhat	Not at All		0-9	10-19	20+	N
<b>A. 10-State Sample</b>								
No. of days listened to the news on TV or radio in the last week								
0-6	48.3	28.1	23.6	(242)	20.1	35.3	45.5	(187)
7	55.5	25.5	19.0	(573)	21.6	40.3	38.2	(422)
No. of days read a newspaper in the last week								
0-1	57.3	26.8	15.9	(157)	22.6	33.1	44.4	(124)
2-5	50.2	27.2	22.6	(217)	15.3	39.3	45.4	(163)
6-7	53.6	25.8	20.6	(442)	22.8	40.4	36.7	(324)
No. of criminal justice agencies in which juror knows someone								
0	50.7	23.3	26.0	(150)	17.5	39.8	42.7	(103)
1	56.9	21.8	21.3	(216)	20.5	37.9	41.6	(161)
2	52.5	30.8	16.7	(240)	19.2	37.3	43.5	(177)
3	51.7	28.9	19.4	(201)	25.3	40.1	34.6	(162)
No. of community activities in which juror participates								
2+	45.7	28.2	26.1	(188)	15.3	40.3	44.4	(144)
1	58.1	24.1	17.8	(253)	20.8	42.1	37.2	(183)
0	54.4	27.5	18.1	(342)	23.2	36.6	40.2	(254)
Mistrust of the criminal justice process								
High	69.5	17.0	13.5	(223)	24.0	41.5	34.5	(171)
Mid	50.6	28.4	21.0	(324)	20.1	39.8	40.2	(249)
Low	41.3	31.7	27.1	(240)	17.4	36.6	46.0	(161)
Punitiveness toward criminals								
High	73.5	16.2	10.3	(253)	23.1	41.0	35.9	(195)
Mid	52.6	29.5	17.8	(325)	18.4	43.1	38.5	(239)
Low	28.7	33.2	38.1	(202)	20.0	31.4	48.6	(140)
Agree persons sentenced to prison for murder in this state are back on the streets far too soon								
Strongly					25.1	39.6	35.3	(323)
Somewhat					17.3	38.9	43.8	(162)
Not at all					12.5	36.6	50.9	(112)

Table 3—Continued

	Agree that Murderers Are Out Far Too Soon				Estimated Years in Prison If Not Given Death Penalty			
	Strongly	Somewhat	Not at All	<i>N</i>	0-7	8-10	11+	<i>N</i>
<b>B. Georgia</b>								
No. of days listened to the news on TV or radio in the last week								
0-6	66.7	23.8	9.5	(21)	35.3	41.2	23.5	(17)
7	60.4	28.3	11.3	(53)	66.7	16.7	16.7	(48)
No. of days read a newspaper in the last week								
0-1	62.5	31.3	6.3	(16)	50.0	28.6	21.4	(14)
2-5	57.9	21.1	21.1	(19)	47.4	26.3	26.3	(19)
6-7	64.9	27.0	8.1	(37)	67.7	19.4	12.9	(31)
No. of criminal justice agencies in which juror knows someone								
0	63.6	27.3	9.1	(11)	62.5	37.5	0.0	(8)
1	55.0	30.0	15.0	(20)	58.8	23.5	17.6	(17)
2	60.0	33.3	6.7	(15)	53.8	15.4	30.8	(13)
3	70.4	18.5	11.1	(27)	60.0	24.0	16.0	(25)
No. of community activities in which juror participates								
2+	65.0	25.0	10.0	(20)	63.2	21.1	15.8	(19)
1	62.5	25.0	12.5	(32)	60.0	20.0	20.0	(25)
0	57.9	31.6	10.5	(19)	55.6	27.8	16.7	(18)
Mistrust of the criminal justice process								
High	72.0	24.0	4.0	(25)	63.6	22.7	13.6	(22)
Low	52.2	30.4	17.4	(23)	57.1	19.0	23.8	(21)
Punitiveness toward criminals								
High	69.7	21.2	9.1	(33)	64.0	16.0	20.0	(25)
Low	50.0	37.5	12.5	(16)	58.8	29.4	11.8	(17)
Agree persons sentenced to prison for murder in this state are back on the streets far too soon								
Strongly					66.7	25.6	7.7	(39)
Else					50.0	16.7	33.3	(24)

Georgia (disregarding the small number who have no such contact). Involvement in community activities appears slightly to reduce concern about early release among jurors in most states but to increase it a little among Georgia jurors; this countervailing tendency is most concentrated among jurors involved in two or more community activities.

Our data thus indicate that concerns about the early release of murderers are embedded within criminal justice orientations of mistrust and punitiveness that reflect a cultural common sense about crime and punishment but are little affected by people's exposure to media, their contact with people in criminal justice agencies, or their involvement in community activities. Adherence to this general tenet of early release is pervasive, largely taken for granted. It appears not to require, though it may benefit from, the reinforcement of media exposure, social networking, or criminal justice agency contact.

### **Specific Estimates of How Soon Murderers Are Out of Prison**

3. The specific release estimates of Georgia jurors, but not jurors in other states, are associated with media exposure, especially daily exposure to TV news coverage.

Media exposure is foremost in Georgia in promoting a seven-year estimate of how long such offenders will remain in prison. There is a 32-point jump (from 35.3% to 66.7%) in the percentage who say murderers will usually be out in seven or fewer years among those with TV news exposure every day as compared with those having less than daily exposure.<sup>55</sup> There is a similar but less pronounced tendency among Georgia jurors who read newspapers six or seven days a week to believe release will come in seven years compared with those reading fewer days a week. Such exposure is quite unrelated to release estimates in the 10 other states.

4. Specific estimates of how soon capital murderers are usually back on the streets are grounded in more general beliefs that murderers are out of prison far too soon.

When we turn to general understandings about early release and treat them as a source of specific release estimates, the resonance between these complementary aspects of folk knowledge about crime and punishment is apparent. In the 10-state sample, general understandings about early release show the strongest association with specific release estimates. Those who strongly agree that murderers are released too soon are twice as likely as those who do not agree to say release will usually come in less than 10 years; only a third of those who strongly agree, compared with half of those who disagree, believe such offenders

---

<sup>55</sup> While this is a sizable difference, it does depend on a relatively small number of jurors who access the electronic news media less than daily ( $N=17$ ).

will spend at least 20 years in prison.<sup>56</sup> Indeed, general belief about early release is the only variable in the 10-state sample to show a difference of more than 10 points in the percentage estimating 9 or fewer years or in the percentage estimating 20 or more years. Strong agreement that murderers are back on the streets far too soon is also associated with early release estimates in Georgia. Note that in Georgia beliefs about early release have the strongest effect on estimates of more than 10 years, while media exposure has its strongest effect on the much advertised estimate of 7 (or fewer) years. Since those beliefs are so concentrated in the “strongly agree” category especially in Georgia, they provide a broad base of support for early release estimates.

Thus, we find with respect to specific estimates of early release in Georgia, but not elsewhere, that media exposure is strongly related to giving an early, in this case seven-year, release estimate. In order to produce substantial agreement within a state on a specific release estimate, it appears that political controversy and media coverage must be framed in terms of a particular “magic number.” Only then will it appear as shared folk knowledge, at least in the minds of those with the greatest media exposure. Specific release estimates will otherwise be grounded in the broader, more general understandings that jurors have that murderers are out of prison and back on the streets far too soon.

#### **IV. Folk Knowledge and Legal Action: Jury Sentencing in Capital Cases**

The quotations from our interviews with capital jurors in Georgia suggest that folk knowledge about the release of murderers not given the death penalty is very important in their punishment deliberations.<sup>57</sup> Moreover, Georgia jurors are the most likely of those in any state to agree that murderers are out of prison far too soon and far likelier than those in other states to give an extremely early release estimate (as shown in Table 2). For both these reasons we might expect Georgia jurors to be more likely than those in other states to hand down death sentences. Yet our equal sampling of trials that ended in life and death sentences in the respective states prevents us from making a direct test of this proposition. By examining Georgia jurors separately from those in other states, however, we can at least determine whether folk knowledge about release has the same impact

---

<sup>56</sup> The truncated response to the question about general understandings (more than half of the responses were “strongly agree”) and its reference to murderers in general rather than capital murderers undoubtedly dampens the strength of this relationship.

<sup>57</sup> Research on juries in other contexts has reached similar conclusions about the importance of folk knowledge. For examples, see Garfinkel 1967; Manzo 1993, 1994.

in Georgia as elsewhere, or whether the concentration of specific release estimates about the timing of release is responsible for departures from sentencing patterns in other states.

We know from earlier analyses of these data that jurors' specific release estimates influence their punishment decisions in most states (Bowers & Steiner 1999). We will now see how jurors' general beliefs about the release of such offenders compared with their specific release estimates influence the decisionmaking of Georgia capital jurors who were excluded from the earlier analysis. For this purpose, we examine the effects of jurors' beliefs and estimates about release at four points to see when during the course of the trial their influence is most prominently felt.

We asked jurors what they thought the defendant's punishment should be at several points in the trial process: after the guilt decision but before the sentencing stage, after the judge's sentencing instructions but before sentencing deliberations, at the first jury vote on punishment, and at the final vote. At the first three points, jurors could answer that they thought the punishment should be "a death sentence" or "a life (or the alternative) sentence" or that they were "undecided." The precise wording of the questions was:

- a) After the jury found \_\_\_\_\_ [defendant's name] guilty of capital murder but before you heard any evidence or testimony about what the punishment should be, did you then think \_\_\_\_\_ [defendant's name] should be given . . . ["a death sentence," "a life (or the alternative) sentence;" or were you "undecided"]].
- b) After hearing all the evidence and the judge's instructions to the jury for deciding on the punishment, but before you began deliberating with the other jurors, did you then think \_\_\_\_\_ [defendant's name] should be given . . . ["a death sentence," "a life (or the alternative) sentence;" or were you "undecided"]].
- c) When the first jury vote was taken on the punishment to be imposed, did you vote for a . . . ["death sentence," "life (or the alternative) sentence;" or were you "undecided"]].

Juror responses to each of these questions and their final punishment votes are shown for the 10-state sample and for Georgia in Table 4. Their responses are broken down first by level of agreement that murderers are out far too soon and then by estimates of how soon release usually comes. In each case, the data are presented separately for Georgia jurors (B) and for those in the other 10 states (A). Jurors' release estimates are divided into three groups: 0–9, 10–19, and 20+ years for jurors from the 10 states, and 0–7, 8–10 and 11+ for Georgia jurors, as



in Table 3.<sup>58</sup> Jurors' concerns about murderers being released from prison far too soon are presented in three categories for the jurors from 10 states but in only two categories for Georgia jurors.<sup>59</sup>

We first examine the effects on decisionmaking of jurors' general belief that murderers get out of prison far too soon and then consider the role of their specific estimates of how soon capital murderers not given death usually return to society.

1. General beliefs that murderers get out of prison far too soon have a modest initial pro-death sentence effect that disappears by the final punishment vote.

After the jury convicts the defendant of capital murder but before the sentencing phase of the trial, there is a modest 10 percentage point difference in the 10-sample states between the pro-death stands of those who strongly agree and those who do not agree that murderers are back on the streets far too soon. This is on a par with the percentage difference at this stage of the trial between jurors who think the alternative punishment is less than 10 years and those who think it is at least 20 years. But the effect of thinking generally that murderers get out far too soon diminishes as the trial proceeds to the point that it becomes wholly negligible as an influence on the final sentencing decision in these states. In Georgia, where we are limited to a comparison between jurors who strongly agree that murderers are back on the street far too soon and all others, there is also a suggestion in the data that strong concern about early release disposes jurors to take a pro-death stand prior to sentencing deliberations. By the first and final votes on punishment, however, all indications of a pro-death impact are gone.

2. Specific early release estimates have an initially modest pro-death sentence effect that becomes a substantial influence in their decisionmaking during sentencing deliberations.

The shorter time jurors think prison confinement would be if they did not impose the death penalty, the more likely they are to vote for death at the first and especially at the final ballot on the

<sup>58</sup> The grouping of release estimates for jurors from the other states was used in a previous analysis of the effects of release estimates on sentencing behavior (see Bowers & Steiner 1999), but because of the skewedness of Georgia estimates Georgia had to be excluded from that analysis. The grouping of Georgia jurors' release estimates here is intended to permit a three-way breakdown of the data while preserving at least 10 cases as a base for percentages.

<sup>59</sup> There were simply too few Georgia jurors who did not agree that murderers were out far too soon ( $N=7$ ) to serve as a reliable base for percentages, so they were grouped with those who disagreed "somewhat" or "slightly." Because the sample of Georgia jurors is not large ( $N=77$ ) and because the responses of Georgia jurors are more concentrated (skewed) than those of jurors in other states on both these questions, statistical comparisons based on the Georgia data must be regarded merely as suggestive of underlying patterns. A second round of interviews with Georgia jurors has recently been initiated, which should provide data that will yield more reliable statistics.

**Table 4. Jurors' Punishment Stands at Successive Stages of the Trial by Their (1) Views of Whether Murderers Are Out Far Too Soon and (2) Estimates of the Death Penalty Alternative in (a) 10-State Sample and (b) Georgia (%)**

Punishment Stands at Four Points in Trial	A. 10-State Sample					B. Georgia					
	1. Views on Whether Murderers Get Out Far Too Soon			2. Estimate of Death Penalty Alternative		1. Views on Whether Murderers Get Out Far Too Soon			2. Estimate of Death Penalty Alternative		
	Strongly	Somewhat	Not at All	0-9	10-19	20+	Strongly	Else	0-7	8-10	10+
<b>Before sentencing phase of trial:</b>											
Death	31.8	27.5	21.3	39.2	28.8	28.2	32.5	29.2	27.3	27.3	33.3
Life	18.7	20.5	17.5	10.8	14.4	22.7	27.5	33.3	24.2	36.4	33.3
Undecided	49.5 (418)	52.0 (200)	61.3 (160)	50.0 (120)	56.8 (229)	49.2 (231)	40.0 (40)	37.5 (24)	48.5 (33)	36.4 (11)	33.3 (12)
<b>Before sentencing deliberations:</b>											
Death	42.9	37.9	38.2	44.4	28.6	39.5	33.3	25.0	50.8	44.3	39.0
Life	17.9	27.0	26.1	15.9	16.9	23.2	31.1	28.6	34.2	26.7	33.3
Undecided	39.2 (431)	35.1 (211)	35.8 (165)	33.3 (126)	38.8 (237)	37.8 (246)	24.4 (45)	42.9 (28)	26.3 (38)	40.0 (15)	41.7 (12)
<b>At 1st vote on punishment:</b>											
Death	56.5	47.4	52.4	66.7	60.8	45.5	47.8	51.9	50.0	46.7	38.5
Life	28.8	39.7	37.2	21.4	24.1	40.2	39.1	37.0	42.1	26.7	53.8
Undecided	14.7 (430)	12.9 (209)	10.4 (164)	11.9 (126)	15.2 (237)	14.3 (244)	13.0 (46)	11.1 (27)	7.9 (38)	26.7 (15)	7.7 (3)
<b>At final punishment vote:</b>											
Death	56.0	51.6	58.7	68.5	65.1	43.1	43.5	53.6	50.0	53.3	30.8
Life	44.0 (436)	48.4 (215)	41.3 (167)	31.5 (127)	34.9 (238)	56.9 (248)	56.5 (46)	46.4 (28)	50.0 (38)	46.7 (15)	69.2 (13)

defendant's punishment in the 10-state sample. Comparing jurors who say the alternative is less than 10 years and those who say 20 or more years, the difference in percentage voting for death is 21 points at the first ballot and 25 points at the final ballot. Before the sentencing stage of the trial and before sentencing deliberations, the corresponding differences are 11 and 12 percentage points, respectively. In Georgia, too, jurors who believe release will come sooner are generally more apt to take a pro-death stand and the greatest difference (of 19 percentage points) between the estimates of 7 years or less and more than 10 years comes at the final punishment vote, although the percentage for the latter group is based on relatively few jurors ( $N=13$ ).<sup>60</sup>

Thus, it is having a specific estimate rather than a general impression of the alternative punishment that appears to influence jurors' sentencing decisions both in Georgia and in the 10-state sample. Jurors with the shortest release estimates tend to take a pro-death stand soonest; in the 10-state sample 4 out of 10 (39.2%) take a stand for death during the guilt stage of the trial.<sup>61</sup> Jurors with intermediate estimates of 10–19 years take longer but are, in the end, almost as likely to reach a pro-death stand. At guilt their punishment stands are closer to those of jurors with 20+ year estimates, but by the final punishment vote their stands have gravitated closer to those of the jurors whose estimates are 0–9 years. For jurors with estimates of 0–9 and 10–19 years, the greatest increase in pro-death stands comes during sentencing deliberations, earlier in deliberations for the 0–9 than for the 10–19 group. The corresponding reductions in “undecided” in these two groups suggest that early release estimates are critical in converting those undecided on punishment to pro-death stands during sentencing deliberations (Sandys 1995). By the same token, jurors in the 10-state sample whose release estimates were 20 years or longer experienced the greatest increase in life sentencing stands and the greatest decrease in “undecided” between sentencing instructions and the first vote on punishment. Evidently it is when jurors deliberate specifically about

<sup>60</sup> The concentration of especially low release estimates there suggests that the decision process in Georgia may differ from that in other states. It could be, for example, that this concentration means for most Georgia jurors that early release is taken for granted and that other arguments or considerations come to the fore in deciding on punishment. In other words, for the majority of jurors who agree on release in 7 years, the choice between death and life could be the product of retributive judgments or a reflection of the influence of race, as persuasively demonstrated for Georgia by Baldus and his associates (1990).

Additional evidence from the interviews with jurors points, however, to the central place of concern about the death penalty alternative in punishment deliberation and even during deliberations on guilt among Georgia jurors. For more on this issue, see Appendix B.

<sup>61</sup> Since the difference depends on a small sample of jurors with release estimates of more than 10 years, it must be regarded only as suggesting the role of release-specific estimates in capital decisionmaking among Georgia jurors. A more definitive answer must await additional data on Georgia jurors now being collected.

what the punishment should be that their specific release estimates become especially salient. In the context of group decisionmaking, folk knowledge of the timing of release is the currency of negotiation and decisionmaking. Jurors are more apt to be moved by arguments that invoke specific estimates of when offenders will be released rather than by appeals to their more general apprehension that such release will come too soon. In effect, these data suggest that jurors whose folk knowledge leads them to believe that murderers are less likely to be released early if given a life sentence may be more open to mitigating evidence and argument during sentencing deliberations. By contrast, believing that the defendant would soon be released may close jurors' minds to mitigation and, hence, to a sentence less than death. Here we see two ways in which folk knowledge becomes legal action within a state institution. It may do so not only by shaping individual judgments but also by short-circuiting existing legal procedures (in this case the requirement to consider mitigating evidence) (see *Morgan v. Illinois* 1992, drawing on *Woodson v. North Carolina* 1976 and *Lockett v. Ohio* 1978).

## **V. Conclusion**

Folk knowledge about crime and punishment is widespread, deeply held, and consequential. Crime is neither an esoteric subject nor one far removed from the consciousness of ordinary Americans. It is consistently seen and cited as one of society's most serious problems (Skogan 1995). Social theorists have long pointed out the significance of beliefs about crime and punishment in fostering social solidarity (Durkheim 1984 [1893]; Mead 1918) and bolstering community standards of right and wrong (Malinowski 1926). Embedded in contemporary cultural common sense about crime and punishment is the tenet of early release which holds that state policy is too lenient and so ineffective that murderers not condemned to death will be back in society far too soon, even before they actually become eligible for parole.<sup>62</sup> We have seen that such folk knowledge is an important basis for legal action when citizens are called on to make punishment decisions in capital cases.

How folk knowledge figures in legal action is, according to the requisites of state law, supposed to be structured by the legal context in which it occurs. The capital sentencing decision is distinctive. It is a state-authorized collective choice made by citizens under legally prescribed procedures with explicit rules to govern, or at least guide, decisionmaking. The decision is supposed to be

---

<sup>62</sup> The consistent evidence in state after state on this point (see Table 2) contradicts Justice Scalia's dissenting opinion in *Simmons* (1994:175) where he stated: "The notion that the South Carolina jury imposed the death penalty 'just in case' Simmons might be released on parole seems to me quite far-fetched."

a “reasoned moral choice” between life and death informed by aggravating and mitigating considerations in accord with retributive standards.<sup>63</sup> The realities for those called on to make this decision are different, however. In the starkest terms, as they themselves say, the punishment options available to them are not death or life in prison—“death is not death” and “life is not life.” Folk understandings substitute perceived legal realities for abstractions that the courts use to frame the decisionmaking process. Thus, instead of an abstract life or death decision, capital jurors face a choice between a death sentence they believe is unlikely to be carried out and a life sentence which means to them that the defendant will be back in society far too soon.

Though represented in state law as a strictly regulated and formally guided exercise of reasoned moral judgement, in practice, the capital sentencing decision is often a negotiated social transaction fraught with tactics of persuasion, advocacy, rhetorical claims, intimidation, and the like (see Bowers & Steiner 1999:pt. V). In this context, specific claims about the timing of release become potent tools in negotiations over the right punishment. General beliefs that violent offenders are out of prison too soon are a resource in the sense that they buttress specific release estimates, indeed are the chief determinant of specific release estimates in states except Georgia, where daily media exposure also supports jurors’ specific release estimates. But such general sentiments appear to be too vague or slippery to serve as powerful currency in the give and take of jury deliberations. In some instances the apparently confident estimates of one juror may persuade others less certain to reach consensus on the punishment.

Folk knowledge and the cultural common sense which it embodies empower citizens, giving them a conception of how state law does, and should, operate that has a source independent of those whose legal authority derives from formal training or official position. It means that law can, and does, live in society in ways that cannot readily be cabined or controlled by state law.<sup>64</sup> This means that in capital cases, instructing jurors not to think about what the alternative would be when they are deciding guilt and refusing to explain to them what the death penalty alternative would be when they are deciding punishment, while it may make sense within the highly structured ideology of due pro-

---

<sup>63</sup> See *California v. Brown* 1987, *Franklin v. Lynaugh* 1988, and *Penry v. Lynaugh* 1989. For a detailed discussion of the Supreme Court’s articulation of “reasoned moral choice” as one grounded foremost in retributive purposes of punishment see Bowers & Steiner 1999:622–27.

<sup>64</sup> “Legality,” Ewick & Silbey (1998:248) observe, “is composed of multiple schemas, and each of the schemas of legal consciousness emplots a particular relationship among ideals and practices, revealing their mutual interdependence. The persistently observed gap is a space not a vacuum; it is one source of law’s hegemonic power.”

cess,<sup>65</sup> defies cultural common sense and, as such, is regularly resisted.<sup>66</sup>

Friedman (1999:81) observes, "The jury's power to bend and sway, to chip away at the official rules, is built into the system. Juries are not supposed to be lawless; but the system is set up in such a way that lawlessness . . . cannot be prevented—cannot even be detected." Friedman is right about the power of juries in relation to official rules. But is he wrong to characterize that as lawlessness? Regarding folk knowledge as a kind of law allows us to understand that, from the perspective of the juror, the injunction not to consider the alternative sentence is itself a kind of lawlessness or, if not that, a law that makes no sense. Presented with what they regard as legal nonsense, they make recourse to their store of folk knowledge, their own repertoire of legal understandings. They substitute one source of law for another.

But how can state law tolerate death as a punishment when folk understandings compromise the constitutional protections required of state law? It can do so only by ignoring this fact. By "deregulating death" (Weisberg 1983), the Supreme Court is able to ignore the sacrifice of legal protections while insisting that lower courts exercise heightened care and reliability in the handling of capital cases.

In *Simmons v. South Carolina* (1994), the Supreme Court seemed to recognize the difficult position capital jurors are put in when they are not informed about sentencing alternatives prescribed by state law. Thus the Court acknowledged in *Simmons* that it was the defendant's right to have jurors know what the alternative to the death penalty would be, though under limited conditions.<sup>67</sup> But would telling jurors about the alternative over-

---

<sup>65</sup> One rationale for not telling jurors what the punishment will be is that when parole or good time are possible, the actual sentence that will be served is not something the judge can definitively determine. To properly answer the question means telling jurors what the contingencies are within the law and administrative regulations now in effect or providing them with statistics compiled on the median or mean sentence served by capital murderers not given the death penalty. Here the judge would have to depend on statistics provided by the department of corrections compiled specifically for this purpose by a court administrator.

<sup>66</sup> See Bowers, Sandys, & Steiner (1998:pt. IV) for evidence that jurors widely violate instructions not to discuss punishment during guilt deliberations and Bowers & Steiner (1999:pt. IV) for further evidence of juror frustration about not being informed about the death penalty alternative when making punishment decisions.

<sup>67</sup> The Court restricted the circumstances in which this is required to cases where the alternative was life with no chance of parole and the defendant was alleged to be dangerous in the future. In opposition to these restrictions, Justice Souter concurring in *Simmons*, wrote that the Eighth Amendment requirement of a heightened standard of reliability in capital sentencing requires that the judge unambiguously inform the jurors of the alternative to the death penalty whether or not future dangerousness is alleged and whether or not the alternative is life with no chance of parole. Our research indicates that the relevance of the alternative punishment to capital jurors is not limited to such cases. While the effects of consideration of what jurors think the alternative is may be strongest in the kinds of cases identified in *Simmons*, perceptions of the alternative have a significant effect in the vastly larger number of cases lacking one or both of these circumstances (Bowers & Steiner 1999).

ride their folk knowledge? While some may argue that the belief in early release and its adverse impact on defendants' rights can be dispelled by jury instructions, the evidence presented here raises serious doubts. Jurors' specific release estimates are embedded in more general folk beliefs about early release.<sup>68</sup> They are the product a perception that murderers get out of prison far too soon, which in turn is rooted in a deep-seated mistrust of the criminal justice system, as well as in punitiveness and the belief that due process unfairly tips the scale in favor of defendants.

Evidence dissonant with taken-for-granted assumptions about the right way of dealing with criminals and the dangers of deviating from those methods does not penetrate (Chancer & Donovan 1994). Thus, despite being told by trial judges in California that a life sentence means life without parole, only 18.4% of the 152 capital jurors in our California sample indicated that they believed capital murderers given a life sentence would usually spend the rest of their lives in prison (Bowers & Steiner 1999:653 n.220). As one of these jurors recounted, "the judge explained to me that if [the defendant] gets a life sentence there was absolutely no chance that he would get out. I thought he might get out. I don't trust anybody about it. You can do anything you want to if you're crooked enough or whatever" (ibid., p. 698). The tenaciousness of folk belief in early release is also evident in Jamieson's focus group member who reacted to information contradicting the Horton narrative with the quip, "crime's not statistics, honey" (Jamieson 1992:31–32). Such beliefs and estimates are nurtured in an environment in which crime is highly politicized. Given the repeated and insistent political and media emphasis on the specter of early release in murder cases, and the absence of reliable evidence about parole practice in such cases, jurors are not apt to trust court pronouncements that run contrary to their deeply ingrained folk knowledge.<sup>69</sup>

In the end, our findings illuminate the ability of law in society to resist colonization by state law and/or the way the culture of mistrust and punitiveness preserves a distinctive way of knowing and seeing law. Only by viewing law in this way can we, as Yngveson (1989:1693) notes, "explain popular consciousness as a force contributing to the production of legal order rather than as simply an anomaly or a pocket of consciousness outside of law, irrelevant to its maintenance and transformation." Thus a public enlisted by the state to impose death will do so, but not in the way

<sup>68</sup> If such specific estimates were merely the product of ignorance, they might be expected to center on the mean. Instead, they are a substantially biased reflection of actual practice, lower than even the mandatory minimums for parole consideration by law in all states.

<sup>69</sup> Additional difficulties confronted in presenting jurors with objective information about parole practice in the adversarial context of the courtroom have been discussed by the California Supreme Court in *People v. Morse* (1966). For a review of the *Morse* court's account, see Bowers & Steiner 1999:714.

required by the constitution as a condition for using death as punishment.

### **Appendix A. Measures of Mistrust and Punitiveness**

Our measure of mistrust of the criminal justice system sums agreement (scored from 7 for strongly agree to 1 for strongly disagree) with the following four statements:

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.

Our measure of punitiveness sums agreement scored 7 to 1 (as in the mistrust index) with the first three and disagreement (reverse scored 1–7 from strongly agree to strongly disagree) with the final two of the following five statements:

Murderers owe something more than life in prison to society and especially to their victims' families.

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.

Even the worst criminals should be considered for mercy.

Even convicted murderers should not be denied hope of parole some day, if they make a real effort to pay for their crimes.

Notably, most of these questions are drawn from a battery of items that was added to the interview instrument shortly after the interviewing had begun. Unfortunately, the interviewing in Georgia had proceeded farther than in other states before these questions were added. Hence, our relatively small sample of Georgia jurors is further diminished in the tabulations involving these indices. The sample reduction in Georgia owing to missing data on these questions is 36.4% as compared with 5.8% in the other 10 states. Nonresponse or "no answers" accounted for another 3–5% among Georgia jurors and 2–3% in the other states. The Georgia sample is thus reduced by as much as 40% in the tabulations of these variables.

To compensate for the reduced response to these items in Georgia, we have dichotomized the mistrust and punitiveness indices in the tabulations of the Georgia data.



## Appendix B. Concern about Release and Punishment in Deliberations among Jurors in Georgia and the 10-State Sample

We did additional analysis to explore the place of concern about the death penalty alternative in punishment deliberations and even during deliberations on guilt among Georgia jurors. The data show that during punishment deliberations Georgia jurors were more likely than those in other states to discuss the likelihood and timing of parole. The results of the analyses are shown below.

- A. How much did the discussion among the jurors [during punishment deliberations] focus on how likely [the defendant] would be to get a parole or pardon?

	Georgia ( <i>N</i> =75)	Other States ( <i>N</i> =817)
Great deal	41.3	27.7
Fair amount	38.7	28.3
Not much	8.0	20.8
Not at all	12.0	23.3

- B. How much did the discussion among the jurors [during punishment deliberations] focus on how long before [the defendant] would get a parole or pardon?

	Georgia ( <i>N</i> =75)	Other States ( <i>N</i> =813)
Great deal	33.3	25.2
Fair amount	37.3	26.2
Not much	13.3	19.9
Not at all	16.0	28.7

The data further show that before the sentencing stage of the trial Georgia jurors appear to be more concerned than others about the punishment alternatives and more apt to take a stand on the defendant's punishment.

- C. In deciding guilt, did jurors talk about whether or not [the defendant] would, or should, get the death penalty?

	Georgia ( <i>N</i> =64)	Other States ( <i>N</i> =793)
Yes	48.4	38.3
No	50.0	61.7

D. In deciding guilt, was there any discussion of what the punishment might be if the defendant was found guilty of less than capital murder?

	Georgia (N=6)	Other States (N=743)
Yes	50.0	32.2
No	50.0	67.8

E. Would you say the judge's sentencing instructions to the jury . . . simply provided a framework for the decision most jurors had already made?

	Georgia (N=75)	Other States (N=786)
Yes	86.7	71.9
No	13.3	28.1

Georgia jurors were also more likely than those in the 10-state sample to take a stand on the defendant's punishment, either for death or for life, than to remain undecided on punishment at guilt (see Table 4). In fact, the 39.4% of Georgia jurors who remained undecided on punishment at guilt is lower than in the results in any of the other 10 states. For an analysis of premature decisionmaking in capital cases, see Bowers et al. (1998).

## References

- Amsterdam, Anthony G. (1999) "Selling a Quick Fix for Boot Hill: The Myth of Justice Delayed in Death Cases," in A. Sarat, ed., *The Killing State: Capital Punishment in Law, Politics and Culture*. New York: Oxford Univ. Press.
- Baldus, David, C., George Woodward, & Charles A. Pulaski, Jr. (1990) *Equal Justice and the Death Penalty: A Legal and Empirical Analysis*. Boston: Northeastern Univ. Press.
- Barak, Gregg (1994) "Between the Waves: Mass-Mediated Themes of Crime and Justice," 21 *Social Justice* 133-47.
- Beckett, Katherine (1997) *Making Crime Pay: Law and Order in Contemporary American Politics*. New York: Oxford Univ. Press.
- Best, Joel (1990) *Threatened Children: Rhetoric and Concern about Child-Victims*. Chicago: Univ. of Chicago Press.
- Blanchot, Maurice (1987) "Everyday Speech," 76 *Yale French Studies* 12-20.
- Bowers, William J. (1995) "The Capital Jury Project: Rationale, Design, and Preview of Early Findings," 70 *Indiana Law J.* 1043-1102.
- (1996) "The Capital Jury: Is It Tilted toward Death?" 79 *Judicature* 220-23.
- Bowers, William J., Marla Sandys, & Benjamin D. Steiner (1998) "Foreclosed Impartiality in Capital Sentencing: Jurors' Predispositions, Guilt-Trial Experience, and Premature Decision Making," 83 *Cornell Law Rev.* 1476-1556.
- Bowers, William J., & Benjamin D. Steiner (1999) "Death by Default: An Empirical Demonstration of False and Forced Choices in Capital Sentencing," 43 *Texas Law Rev.* 605-717.
- Bowers, William J., Margaret Vandiver, & Patricia H. Dugan (1994) "A New Look at Public Opinion on Capital Punishment: What Citizens and Legislators Prefer," 22 *American J. of Criminal Law* 77-115.

- Brigham, John (1996) *The Constitution of Interests: Beyond the Politics of Rights*. New York: New York Univ. Press.
- Canadian Criminal Justice Association (1987) *Attitudes toward Parole*. Ottawa: Canadian Criminal Justice Association.
- Chancer, Lynn, & Pamela Donovan (1994) "A Mass Psychology of Punishment: Crime and the Futility of Rationally Based Approaches," 21 *Social Justice* 50–85.
- Connolly, William E. (1995) *The Ethos of Pluralization*. Minneapolis: Univ. of Minnesota Press.
- de Certeau, Michel (1984) *The Practice of Everyday Life*, trans. S. Rendell. Berkeley: Univ. of California Press.
- Durkheim, Emile (1984 [1893]) *The Division of Labor in Society*, trans. W. D. Halls. New York: Free Press.
- Edelman, Murray (1988) *Constructing the Political Spectacle*. Chicago: Univ. of Chicago Press.
- Eisenberg, Theodore, & Martin T. Wells (1993) "Deadly Confusion: Juror Instructions in Capital Cases," 79 *Cornell Law J. Review?* 1–17.
- Ellsworth, Phoebe C., & Samuel R. Gross (1994) "Hardening of the Attitudes: Americans' Views on the Death Penalty," 50 *J. of Social Issues* 43–65.
- Ericson, Richard V. (1991) "Mass Media, Crime, Law, and Justice: An Institutional Approach," 31 *British J. of Criminology* 219–250.
- Ericson, Richard V., Patricia M. Baranek, & Janet B. L. Chan (1991) *Representing Order: Crime, Law, and Justice in the News Media*. Toronto: Univ. of Toronto Press.
- Ewick, Patricia, & Susan Silbey (1998) *The Common Place of Law: Stories from Everyday Life*. Chicago: Univ. of Chicago Press.
- Friedman, Lawrence (1999) "On Stage: Some Historical Notes about Criminal Justice," in P. Ewick, R. A. Kagan, & A. Sarat, eds., *Social Science, Social Policy, and the Law*. New York: Russell Sage Foundation.
- Garfinkel, Harold (1967) "Some Rules of Correct Decisionmaking that Jurors Respect," in *Studies in Ethnomethodology*. Englewood Cliffs, NJ: Prentice Hall.
- Garland, David (1991) "Punishment and Culture: The Symbolic Dimension of Criminal Justice," 11 *Studies in Law, Politics, & Society* 191–224.
- Gaubatz, Kathlyn Taylor (1995) *Crime in the Public Mind*. Ann Arbor: Univ. of Michigan Press.
- Geertz, Clifford (1983) *Local Knowledge: Further Essays in Interpretive Anthropology*. New York: Basic Books.
- Gordon, Robert W. (1984) "Critical Legal Histories," 36 *Stanford Law Rev.* 57–125.
- Graber, Doris A. (1980) *Crime News and the Public*. New York: Praeger.
- Hall, Stuart, et al. (1978) *Policing the Crisis: Mugging, the State, and Law and Order*. London: Macmillan.
- Hood, W. (1989) "The Meaning of 'Life' for Virginia Jurors and Its Effects on Reliability in Capital Sentencing," 75 *Virginia Law Rev.* 1605–38.
- Hunt, Alan (1990) "Rights and Social Movements: Counter-Hegemonic Strategies," 17 *J. of Law & Society* 310–33.
- Jamieson, Kathleen Hall (1992) *Dirty Politics*. New York: Oxford Univ. Press.
- Jenkins, Philip (1994) *Using Murder: The Social Construction of Serial Homicide*. New York: Aldine de Gruyter.
- Lane, Mark J. (1993) "'Is There Life without Parole?' A Capital Defendant's Right to a Meaningful Alternative Sentence," 26 *Loyola of Los Angeles Law Rev.* 327–94.
- Lefebvre, Henri (1991) *Critique of Everyday Life*, trans J. Moore. London: Verso.
- Lofland, John (1966) *Doomsday Cult: A Study of Conversion, Proselytization, and Maintenance of Faith*. Englewood Cliffs, NJ: Prentice Hall.
- Maguire, Kathleen, & Ann L. Pastore, eds. (1993) *Sourcebook of Criminal Justice Statistics*. Washington: U.S. Bureau of Justice Statistics.

- (1997) *Sourcebook of Criminal Justice Statistics*. Washington: U.S. Bureau of Justice Statistics.
- Malinowski, Bronislaw (1926) *Crime and Custom in Savage Society*. New York: Harcourt, Brace.
- Manzo, John F. (1993) "Jurors' Narratives of Personal Experience in Deliberation Talk," 13 *Text* 267–90.
- (1994) "You Wouldn't Take a Seven-Year-Old and Ask Him All These Questions': Jurors' Use of Practical Reasoning in Supporting Their Arguments," 19 *Law & Social Inquiry* 639–63.
- Mead, George Herbert (1918) "The Psychology of Punitive Justice," 25 *American J. of Sociology* 577–602.
- Morehouse, Macon (1992) "No Parole Deal Signed in Murder Case," *Atlanta J. & Constitution*, 27 Oct., p. C4.
- Paduano, Anthony, & Clive A. Stafford-Smith (1987) "Deathly Errors: Juror Misperceptions concerning Parole in the Imposition of the Death Penalty," 18 *Columbia Human Rights Law Rev.* 211–57.
- Roberts, Julian V. (1988) "Early Release from Prison: What Do the Canadian Public Really Think?" 26 *Canadian J. of Criminology* 231–48.
- (1992) "Public Opinion, Crime, and Criminal Justice" in M. Tonry, ed., *Crime and Justice: A Review of Research*. Chicago: Univ. of Chicago Press.
- Roberts, Julian V., & Anthony N. Doob (1991) "News Media Influences on Public Views of Sentencing," 14 *Law & Human Behavior* 451–68.
- Roberts, Julian V., & Loretta J. Stalans (1997) *Public Opinion, Crime, and Criminal Justice*. Boulder, CO: Westview Press.
- Sandys, Marla (1995) "Cross-Overs—Capital Jurors Who Change Their Minds about the Punishment: A Litmus Test for Sentencing Guidelines," 70 *Indiana Law J.* 1183–1221.
- Sarat, Austin (1995) "Violence, Representation, and Responsibility in Capital Trials: The View from the Jury," 70 *Indiana Law J.* 1103–35.
- Sarat, Austin, & Thomas R. Kearns (1993) "Beyond the Great Divide," in A. Sarat & T. R. Kearns, ed., *Law in Everyday Life*. Ann Arbor: Univ. of Michigan Press.
- Sasson, Theodore (1995) *Crime Talk*. New York: de Gruyter.
- Scheingold, Stuart A. (1984) *The Politics of Law and Order: Street Crime and Public Policy*. New York: Longman.
- (1998) "Criminology and the Politicization of Crime and Punishment," in G. Mars & D. Nelken, eds., *Politics, Crime Control, and Culture*. Aldershot, Eng.: Dartmouth/Ashgate.
- Schlesinger, Philip, & Howard Tumber (1994) *Reporting Crime: The Media Politics of Criminal Justice*. New York: Oxford Univ. Press.
- Schutz, Alfred (1967) *The Phenomenology of the Social World*, trans. G. Walsh & F. Lemert. Evanston, IL: Northwestern Univ. Press.
- Schutz, Alfred, & Thomas Luckmann (1973) *The Structures of the Life-World*, trans. R. Zaner & H. T. Engelhardt. Evanston, IL: Northwestern Univ. Press.
- Shepard, Beverly (1992) "Gunman Convicted in Clerk's Death Gets Life Term," *Atlanta J. & Constitution*, 24 Oct., p. B2.
- Silk, Mark (1996) "Juries Prefer Alternative to Death Penalty," *Atlanta J. & Constitution*, 3 July, p. B1.
- Simon, Jonathan (1997) "Governing through Crime" in L. M. Friedman & G. Fisher, eds., *The Crime Conundrum: Essays in Criminal Justice*. Boulder, CO: Westview Press.
- Skogan, Wesley G. (1990) *Disorder and Decline: Crime and the Spiral of Decay in American Neighborhoods*. New York: Free Press.
- Skogan, Wesley G., & Michael G. Maxfield (1981) *Coping with Crime: Individual and Neighborhood Reactions*. Beverly Hills, CA: Sage Publications.

- Sloop, John M. (1996) *The Cultural Prison: Discourse, Prisoners, and Punishment*. Tuscaloosa: Univ. of Alabama Press.
- Spector, Malcolm, & John I. Kitsuse (1977) *Constructing Social Problems*. Menlo Park, CA: Cummings.
- Trubek, David M. (1984) "Where the Action Is: Critical Legal Studies and Empiricism," 36 *Stanford Law Rev.* 575–622.
- Tucker, Cynthia (1992) "Colwell's Crime-Fighting Bill Deserves to Pass," *Atlanta J. & Constitution*, 22 Jan., p. B2.
- Vidal, Gore (1995) *Palimpsest: A Memoir*. New York: Random House.
- Weisberg, Robert (1983) "Deregulating Death," in P. B. Kurland, G. Casper, & D. J. Hutchinson, eds., *The Supreme Court Review 1983*. Chicago: Univ. of Chicago Press.
- Williams, Dick (1991) "McCleskey's Execution Just End to Long Charade," *Atlanta J. & Constitution*, 28 Sept., p. A19.
- (1994) "Playing the Parole Shell Game," *Atlanta J. & Constitution*, 7 Jan., p. A10.
- Yngvesson, Barbara (1989) "Inventing Law in Local Settings: Rethinking Popular Legal Culture," 98 *Yale Law J.* 1689–1709.

## Cases

- California v. Brown, 479 U.S. 538 (1987).
- Franklin v. Lynaugh, 487 U.S. 164 (1988).
- Lockett v. Ohio, 438 U.S. 586 (1978).
- McCleskey v. Kemp, 481 U.S. 279 (1987).
- Morgan v. Illinois, 504 U.S. 719 (1992).
- Penry v. Lynaugh, 492 U.S. 302 (1989).
- People v. Morse, 388 P.2d 33 (Cal. 1964).
- Simmons v. South Carolina, 512 U.S. 154 (1994).
- Woodson v North Carolina, 428 U.S. 280 (1976).

## Statute

- Georgia Code Annotated, sec. 17-10-31.1 (WESTLAW 1994).