

# Fear, Views of Human Nature, and the Potential Consequences for Capital Juries

Jamie L. Flexon<sup>1</sup>



Volume 8 – No. 2 – Fall 2011

---

<sup>1</sup> Department of Criminal Justice, Florida International University, University Park, PCA 366A, 11200 SW 8<sup>th</sup> Street, Miami, FL 33199, USA, Tel: 305-348-0423, email: flexonj@fiu.edu. Considerable thanks are owed to Richard G. Greenleaf, Alan J. Lizotte, and Tony Poveda for reviews and comments of earlier versions of this paper.

## **Abstract**

*Negative views of human nature held by potential capital jurors have been identified in previous research as fueling conviction proneness. Although numerous studies have broadened our understanding of conviction proneness, this research leaves open the question of causes and correlates of a negative view of human nature. Data from the 1990 and 1996 GSS was used in this study in an effort to extend the understanding of juror qualities that lead to conviction proneness. Existing theory is built upon to test the notion that personal fear of crime leads to a negative view of human nature and this may serve to further bias jury deliberation in death penalty cases.*

## **About the Author**

Jamie L. Flexon is an Assistant Professor in the School of International and Public Affairs, Department of Criminal Justice at Florida International University. She received her Ph.D. in 2006 from the School of Criminal Justice, University at Albany. Her primary interests involve the administration of capital punishment, the assessment of criminal justice policy generally, and issues related to race, ethnicity and justice. Her work has appeared in various outlets including *International Journal of Offender Therapy and Comparative Criminology*, *Crime & Delinquency*, *Journal of Criminal Justice*, *Western Criminology Review*, *Journal of Gang Research*, *Victims & Offenders*, among others.

## **Fear, Views of Human Nature and the Potential Consequences for Capital Juries**

### **Introduction**

Consequences to the fear of crime are numerous. Research on the fear of crime suggests that people engage in a variety of behaviors to diminish their anxiety over impending victimizations for themselves and their families (e.g., Barberet & Fisher, 2009; Jackson & Gray, 2010; Warr, 2000; Warr & Ellison, 2000; Wollnough, 2009). Along with these obvious responses is the possibility of diminished trust in individuals either through personal victimization or vicarious exposures to crime and criminality (e.g. living in a high crime area, media coverage, etc.). Hence fear may alter personal attitudes by generating negative views of others and human nature. What are some consequences of the fear of crime if this negative view of others is cultivated? Investigation into this question is needed, and an area ripe for such an examination is in the context of death-qualified, capital juries.

Numerous studies have examined the link between death-qualified jurors' attitudes and capital case outcomes (e.g., Cowen, Thompson, & Ellsworth 1984; Fitzgerald & Ellsworth, 1984; Jurow, 1971; Thompson, Cowen, Ellsworth, & Harrington, 1984; Young, 2004; see also Lynch & Haney, 2000). The focus of that research is whether narrowing the jury pool through the death-qualification process creates a biased, conviction prone jury compared to a jury that represents more diverse attitudes. Death-qualification is the process during *voir dire* that ensures that the jury is capable of rendering a sentence of death and eliminates jurors who cannot or will not, impose the ultimate punishment (*Wainwright v. Witt*, 1985; see also *Witherspoon v. Illinois*, 1968; *Lockhart v. McCree*, 1986). Those who are capable of delivering a verdict of death are referred to as "death-qualified" jurors and are able to sit on a capital jury. Prior studies of capital juror attitudes have found that those harboring a more pessimistic view of human

nature and a rigid adherence to the law predicted a preference for convicting the innocent over letting the guilty go free (Young, 2004, pp. 161-163; see also Jurow, 1971). Thus, consistent with other research, the tendency to err on the side of convicting the innocent is used as a measure of conviction proneness since it suggests a lower threshold for guilt (e.g., Fitzgerald & Ellsworth, 1984; Thompson, Cowan, Ellsworth, & Harrington, 1984). This is problematic for several reasons but particularly since it proposes a threshold for conviction lower than the “beyond a reasonable doubt” standard.

Though the research on attitudinal biasing and conviction proneness is telling, it begs further investigation as to the mechanisms that underlie the negative view of others that leads to these biased outcomes in capital cases. Considering research on the fear of crime may add to the understanding of conviction proneness among those harboring a negative view of others. Given the above, this study attempts to extend the research on conviction proneness by answering whether fear of crime contributes to negative views of others among a death-qualified sample. Drawing from the 1990 and 1996 General Social Survey, OLS and Logistic regression are used to determine if fear of crime predicts a negative view of human nature among death penalty supporters, and in turn, whether fear indirectly affects conviction proneness.

## **Review of the Literature**

### ***Fear of Crime***

The observation that fear of crime is not in direct proportion to the actual risk of victimization has elicited much attention from researchers over the last several decades (Warr, 2000). The precise definition of the fear of crime, however, has been subject of debate. Some have isolated this construct as meaning a personal fear of harm or an immediate threat. Others have viewed it as a perception of risk, an attitude about victimization, a relative anxiety about

potential victimization, or a general, negative emotional state generated by crime (Warr, 2000). In recognition of this problem, Warr (2000) argues that fear of crime is a response to perceived risks (p. 454; see also Warr & Stafford, 1983). Consistent with this, anxiety about crime and a general fear of crime were applied interchangeably in this study (see also Gray, Jackson, & Farrel, 2008).

Several factors have been identified as contributing to the fear of crime. Box, Hale and Andrews (1988) identify the possible headings that these factors may fall under including vulnerability, environmental cues and conditions, personal knowledge of crime and victimization, confidence in the criminal justice systems, perceptions of personal risk, and seriousness of various offenses (p. 341). Further research has aimed to disaggregate those who are more susceptible to this fear from others. Past studies have found that men and woman, old and young, the poor and wealthy, and racial/ethnic minorities have varying levels of fear (see e.g., Box et al., 1988; Fisher & May, 2009; Fox, Nobles, & Piquero, 2009; Lane & Fisher, 2009).

As previously noted, research on the fear of crime suggests that people engage in varied behaviors in an effort to diminish anxiety over potential victimizations for themselves and their families (e.g., Barberet & Fisher, 2009; Jackson & Gray, 2010; Warr, 2000; Warr & Ellison 2000; Wollnough, 2009). Along with these reactions is likely a diminished trust in others based on personal victimization or through vicarious exposures to crime and criminality. However, does this fear result in a diminished view of others and human nature in general?

It has been reported that 40 to 50 percent of the American population report being afraid to walk alone at night near their homes (Warr & Ellison, 2000). People who fear crime often alter their behavioral patterns relative to perceived threats, such as avoiding certain areas or walking down public streets as well as engage in a number of other precautionary and security

measures (Box, Hale, & Andrews, 1988; Warr, 2000; Warr & Ellison, 2000). Yet, there are other social and policy consequences that also result from this fear. According to some scholars, “it reduces the appeal of liberal penal policies, such as decarceration and rehabilitation, thus paving the way for more incarceration and punishment,” (Box et al., 1988, p. 340; see also Cullen, Clark, & Wozniak, 1985). Essentially, attitudes related to crime and justice are altered to align with this fear. If this outcome were a reaction to one’s actual susceptibility to crime, it might not be an issue. However, such rigid or conservative policy preferences may be based on a biased perception of crime and would be unacceptable.

Why is the fear of crime so ubiquitous? Presumably, it comes from a number of sources, among them the media. The media is a prime source of crime and justice information if not the only source for most of the American public (Surette, 2007; Warr, 2000, see also Cook & Lane, 2009). Besides serving this function, Warr (2000) points out that the media serves to magnify crime victimization making local crimes known to millions of viewers in only a few hours; this information may skew perceptions making the uncommon and extraordinary appear common and likely. In this sense, a vicarious victimization occurs when improbable targets of crime are acutely aware of the possibility of victimization (see Fox, Nobles, & Piquero, 2009, p. 26). In short, the fear of crime influences public attitudes by the exaggeration or embellishment of real threats (Holbert, Shah, & Kwak, 2004, see also Chiricos, Padgett, & Gertz, 2000). Consequently, the fear of crime victimization may have a real impact on jurors and the fair administration of justice.

Some of the research examining the link between the fear of crime and criminal justice policy, particularly death penalty support, is informative here. According to a study conducted by Keil and Vito (1991), a relationship existed between fear of crime and support for the death

penalty among Kentucky residents. A number of common predictors of death penalty support were also found to be mediated by the fear of crime (e.g., age, race, education, and victimization). These effects were indirectly predictive of capital punishment support via the fear of crime.

Other researchers have found an association between fear of crime and the death penalty. For example, Holbert et al. (2004) concluded that viewing media stories about crime influenced fear of crime and consequently public acceptance of a harsh penal response (Holbert et al., 2004). Holbert and colleagues examined a host of predictors and found that specifically watching television news predicated fear of crime (see also Chiricos et al., 2000) which resulted in support for the death penalty. Death penalty support was also positively related to watching television crime dramas. This research and that of Keil and Vito (1991) suggest that fear of crime and support for the death penalty may be related (see also Ellsworth, 1993). Remaining questions, then, are whether this link actually contributes to conviction proneness on capital juries and how.

### ***Toward a Negative View of Human Nature***

Under Young's (2004) theoretical approach, "the tendency to convict and support for the death penalty are both a function of a general punishment orientation that is rooted in a generally negative view of human nature," ... "and a strict law-and-order orientation" (Young, 2004, p. 156). Using the NORC General Social Survey (GSS) from 1990 and 1996, his analysis shows that a set of attitudes that lead to the preference for convicting the innocent is more characteristic of those who are allowed to serve on capital juries than those who are excluded from serving. His research highlights an important component toward understanding the constellation of attitudes identified with the death-qualified jury and the associated error preference for convicting the innocent.

In a follow up to that study, Flexon (2011) elaborated a model using statistically death-qualified jurors in finding that age, education, and conservatism were prominent predictors of conviction proneness as measured by a willingness to convict the innocent. Younger, non-African American, death-qualified respondents with less education were also more likely to espouse a belief in a negative view of human nature, which in turn was linked to a willingness to convict the innocent. Such findings warrant further investigation and highlight the need for more detailed theoretical development surrounding how and why people acquire a negative view of human nature.

### **Theory**

A jury's deliberation is affected by the characteristics and beliefs of the members. Research has identified systematic distinctions in this influence between death-qualified and non death-qualified individuals (see e.g., Fitzgerald and Ellsworth, 1984; Young, 2001; 2004; see also Ellsworth, 1993). In efforts to clarify these differences, research on conviction proneness focuses on the effects of bias and the value attitudes have in predicting one verdict over another. For example, Thompson et al. (1984) found the attitudinal and demographic make-up of death-qualified jurors was a salient factor in conviction decisions compared to non death-qualified subjects. According to these researchers and mirroring a common theme, attitudinal biasing resulting in conviction proneness is not directly related to views on the death penalty. Rather, these attitudes, which are related to the criminal justice system, prejudices the evaluative processes of jurors (see Ellsworth, 1993). Juror attitudes regarding the death penalty are essentially an indicator of these criminal justice attitudes and may predict interpretations of evidence favorable toward the prosecution and lower the threshold for conviction (see also Thompson, et al., 1984). This reduced threshold could result in the conviction of the innocent.

According to Thompson et al., (1984), “Death-qualified subjects, who believe strongly that punishment has social utility and that criminals deserve it, view a harsh error [toward convicting the innocent], as regrettable, of course, but do not feel as much regret as the excludables [non death-qualified jurors], who have less faith in the utility and justice of punishment in the first place” (p. 108). This propensity toward punishment is also thought to reflect, “the price society must pay to make sure all guilty defendants are convicted” (p. 108). It is also likely that the death-qualification process results in a concentration of individuals with similar attitudes on a jury. This may create an atmosphere where jurors reinforce each others’ preexisting and skewed views about crime (see also Pennington & Hastie, 1991).

Kalven and Zeisel’s (1966) early work on jury decision making and liberation is also informative. They claim liberation occurs as an “interplay of evidence problems with sentiment” (Kalven & Zeisel, 1966, p. 185). In essence, when evidence is strong in either direction –toward conviction or acquittal, the juror’s verdict will follow. In cases that are more ambiguous, jurors are then *liberated* to draw conclusions based on a number of factors, such as beliefs and values (see also Devine, Buddenbaum, Houp, Studebaker, & Stolle, 2008). Kalven and Zeisel (1966) add that the value system of jurors and the facts of the case are interrelated. It is in this interpretation of evidence, then, that juror biases and values shape the interpretation of evidence (p. 165).

The work of Hastie, Penrod, and Pennington (1983) further supports the above research and should help clarify the contours of juror sentencing decisions. These researchers offer the “Story Model” for jury decision making based on an understanding that jurors construct stories for the evaluation of cases at trial. The model takes a schematic stereotype approach by which jurors construct stories for cases in relation to evidence, global knowledge of similar events, and

knowledge concerning story structures, among other things. The juror then matches the best story to the case at hand. Hastie et al.'s model include three processes. The first is story construction based on evidence evaluation. Here, jurors impose a story that makes the most sense of the evidence. The second process for jurors involves comprehending and learning the definitions of verdicts (e.g., degrees of murder). Information relevant to understanding verdicts may be given at trial through instruction or gained prior to trial from outside sources such as the media. The third process involves a juror matching the constructed story to the best verdict category.

Though this is a simplified account of the “Story Model” for jurors, it is evident that prior attitudes and bias have a place to shape impression formation and evaluative judgments in juror decision making processes. Juror attitudes will operate through the stages of the evaluative process influencing decisions toward one outcome –one that reflects initial attitudes (see Ellsworth, 1993, p. 50). This observation is in tandem with the previous discussion regarding media as a primary source of crime and justice information for the public and a source of fear.

The problem with this story construction process is that jurors regularly look beyond the facts of the case by using inferences in efforts to make sense of the trial at hand (see Pennington & Hastie, 1991). This allows juror subjectivity and bias to enter into deliberations. Another consequence may be that a juror’s fear about crime enters into their deliberations indirectly.

It is known that such fears shape attitudes about crime and justice, particularly regarding acceptable risk. To those having anxiety over crime, an acceptable risk, if it satisfies a preference for safety, might seem more palatable than risks perceived as resulting in dangerous criminals on the street. Hence the proclivity to convict via a reduced error tolerance may even appear to be moral to some people who believe they are acting in accord with their civic duties as a juror,

safeguarding the community against the accused. This specific concern about crime, then, may influence fearful individuals in a direction toward reduced error for letting the guilty go free and a preference for conviction.

The question remains, then, how this fear translates into a preference for convictions. Conceivably, the manifestation of juror anxieties is reflected in a negative view of human nature and this understanding of the world shapes juror constructions. Arguably, there is little objectivity about a presumption of innocence when jurors are predisposed to believe people are bad by nature. A juror's story construction may be biased to mirror that understanding.

Based on the above, an association is anticipated between fear of crime and a negative view of human nature. This is part of a more general picture of how the world works, one that relates to the operation of fear or anxieties about crime generally to conviction proneness in the court room. Interestingly, a heightened concern over crime has already been found among death-qualified juries in previous research (Ellsworth, 1993). Ellsworth (1993) interprets this observed association and claims, "His [the juror's] lack of sympathy for the defendant and his worries about the high levels of crime he perceives in his society will lead him to be relatively unconcerned about the possibility of a mistaken conviction, and may even lower his personal standard of proof to convict for any charge" (p. 50). Interestingly, other research also supports a connection between fear of crime and harsh penal outcomes, such as support for the death penalty (Holbert et al., 2004; Keil and Vito, 1991), the identifying feature of capital juries. However, these researchers failed to examine a model focusing on human nature expressly. It is possible that this effect tapped into by Ellsworth is indirectly related to conviction proneness by way of a negative view of human nature.

Research looking into the fear of crime also shows that this fear is not necessarily a function of actually being victimized (Holbert et al., 2004; Warr, 2000). This fear, rather, is promoted by frequent social, possibly political, and media exposure to discourse and stories of crime, criminality and justice (Chiricos, et al., 2000; Holbert et al., 2004; Warr, 2000). This is important as many people in addition to crime victims may be subject to a social conversation that is informed by views about criminality and prescribed punishments which may be contributing to a negative view of human nature. In other words, fear of crime influences a negative view of human nature, because of a more general concern about the impact of crime. This arguably applies to a large population of capital jurors and influences the “stories” used to guide juror decisions.

### **The Current Study**

While prior studies demonstrate that a negative outlook of human nature is associated with conviction proneness (Flexon, 2011; see also Young 2004), what remains unclear is the mechanism that brings about this pessimistic view. The present approach attempts to sort out the predictors of a negative view of human nature as this perspective on people is directly associated with a predilection to convict the innocent (conviction proneness) in previous research (Flexon, 2011). This approach builds from existing theory and hopefully will clarify how these important concepts which lead to a propensity to convict among capital jurors are related. It is suspected that fears or anxieties about crime lead to a pessimistic view of people –the consequences of which bear out on an error preference for convicting the innocent rather than mistakenly letting the guilty go free.

## **Methods**

Consistent with past research examining conviction proneness, subjects in the current research were statistically death-qualified prior to analyzing potential predictors of a negative view of human nature. This was done simply by selecting only death penalty supporters for the study. Looking only at the death-qualified population was thought to provide a more genuine picture of how concepts are related. A second logistic regression analysis was estimated for a statistically death-qualified population to illustrate the association between a negative view of human nature and conviction proneness controlling for other factors.

## **Data**

The 1990 and 1996 National Opinion Research Center's General Social Survey (GSS) were used in this study (Davis, Smith, & Marsden, 2007). The GSS is a complex, full-probability sample of English speaking, US residents living in households. Participants are 18 years and older. The GSS uses a multistage, cluster, stratified probability sampling technique resulting in a sample that is proportional to the population (Davis & Smith, 1992, p. 31). The data have several characteristics making it valuable to a study of this type, in particular the GSS mirrors several parameters used for being called for jury service, such as age and language requirements. Also, other criteria that have the effect of excluding participants are likewise employed, such as those living in institutions (military, resident halls, elder care homes, etc.). Both are similarly likely to miss marginalized groups.

**TABLE 1. Variables Used in the Equations****(Weighted to the individual level and for design effects; Death Qualified)**

Name	Min.	Max.	Mean	SD
<i>Dependent Variables</i>				
Negative View of Human Nature	3	9	6.22	2.18
Conviction Prone	0	1	.28	.45
<i>Independent Variables</i>				
Obey Law	0	1	.43	.50
Afraid	0	1	.39	.49
Fundamentalist	1	3	2.04	.77
<i>Control Variables</i>				
Age	18	89	43.52	16.63
Female	0	1	.50	.50
Education	1	6	3.79	1.17
Conservatism	1	7	4.31	1.33
<i>Other Controls</i>				
Year	0	1	.33	.47

***Measures***

The variables used in these analyses are: support for capital punishment as a proxy for death-qualification, negative view of human nature, strict adherence to the law, fear of crime and political conservatism. Other variables include age, sex, education, and religious fundamentalism. Table 1 shows the description and coding of variables used in the analysis.<sup>2</sup>

***Dependent Variables***

The measure for negative view of human nature is a summative scale created from the GSS questions asking respondents whether they perceived people to be fair or take advantage of

<sup>2</sup> Using the *Witherspoon* standard, 17.2% of subjects were identified as non-death-qualified (Fitzgerald & Ellsworth, 1984, p. 42; see also *Witherspoon v. Illinois*, 1968). The *Witherspoon* standard removes jurors who said they could never vote to impose the death penalty.

others, helpful or look out for themselves, or trustworthy or untrustworthy.<sup>3</sup> The scale had a range between 3 and 9. Factor analysis was estimated to check the validity of this measure. All variables used for this measure loaded over the customary cut off value of .4 ranging from .713 to .797. The average respondent response for this measure was in the moderate range of about 6.16 with an alpha reliability score of .63. Though the alpha score was on the low side for acceptability, the measure has precedence in the literature (Young, 2004) and factor analysis suggested a unidimensional construct.<sup>4</sup>

Conviction proneness was measured by a dichotomous variable addressing respondents' tolerance for conviction error. Though admittedly conviction proneness deals with a lower "threshold for conviction," this measure reflects the nature of that propensity. Having a preference for convicting the innocent rather than tolerating letting the guilty go free arguably captures those with this lower threshold for conviction. The GSS question used asks respondents which is the worst judicial mistake, to convict the innocent or let a guilty person go free. The variable was coded so that the worst judicial mistake of letting a guilty person go free was coded as 1 and convicting the innocent was coded as the comparison group. Respondents who believed that the worst judicial mistake was letting a guilty person go free were thought to have a lower threshold of conviction than those believing the worst error was convicting the innocent and were considered conviction prone for the study. More people in the sample thought that convicting an innocent person was the worst judicial error.

---

<sup>3</sup> Specific information on data coding is available upon request.

<sup>4</sup> The measure for negative view of human nature was taken from Young 2004. Further factor analysis was estimated to confirm the structure of the measure. One underlying component resulted from the analysis for negative view of human nature.

### *Selection Criteria*

Respondents were selected who indicated agreement with the GSS question asking whether or not they support the death penalty for murder. Though this is admittedly a controversial measure for death-qualifying a sample, using the population of capital punishment supporters is a fair, rough guide (Young, 2004). Support for capital punishment fell at about 80 percent of the sample.

### *Independent Variables*

A dichotomous variable was included in the analysis to measure strict law-and-order orientation—a variable of note in prior research. Respondents believing that they must always obey the law are coded as 1 and a belief that it is important to follow one's conscience was assigned 0. Forty-two percent held a strict adherence to the law. Conservatism was also included in the analysis in observance of previous research findings (Ray, 1985; Young, 2004). Conservatism was measured using a question asking about the respondent's self-reported political identification. The measure ranged from extremely liberal to extremely conservative on a 7-point Likert scale. The average respondent self-identified in the middle of that range.

Fear of crime was also included in the analysis as possibly contributing to a negative view of human nature. Fear of crime was measured using a single indicator that asks respondents whether they are afraid to walk alone in their neighborhood at night. A number of scholars have used this or a similarly worded question to measure the fear of crime among sample respondents (Box, Hale, & Andrews, 1988; see also Warr, 2000). As this question is consistently used to assess the fear of crime, the measure was also chosen to remain consistent with the extent literature (for discussion see Box, et al., 1988). Though others have argued that the fear of crime is a multidimensional construct (Keil & Vito, 1991), data limitations were prohibitive. The

measure used here as in other studies is dichotomous with 1 indicating that the respondent was afraid to walk alone at night and 0 indicating no fear. Of respondents, approximately 40 percent in this sample were not afraid.

Age, sex, education, and religious fundamentalism were used as controls in the analysis. Age was treated as a continuous variable ranging from age 18 through 89.<sup>5</sup> Sex was measured with females coded as 1 and males as the comparison group. The ratio of females to males was about equal. Education was coded on intervals corresponding to grammar school, junior high, high school, some college undergraduate, college graduate, and postgraduate. After some assessment, the coding scheme used for the education variable was not found to influence the findings.<sup>6</sup> The average respondent had a high school education or some college. Also included in the analysis was religious fundamentalism which was included to control for the potential influence of this force on a negative view of human nature. Religious fundamentalism has also been associated with death penalty support, and it was also thought that a fundamentalist orientation may contribute to a negative view of human nature through its influence over world views (Applegate, Cullen, Fisher, & Vander Ven, 2000). Fundamentalists were included in the analysis, because they, almost by definition, believe in a world where people are bad and must be redeemed. It would be troublesome if this variable did not predict a negative view of human nature, because it is a central tenet of Christian Fundamentalists. The measure comes from a question asking respondents how fundamentalist they are. Available responses included fundamentalist, moderate or liberal. The variable was coded so that high values indicated

---

<sup>5</sup> Further analysis was conducted to determine any impact on the equation from the coding scheme used for the age variable. The analysis revealed that irrespective of whether the age variable was kept continuous (18-89) or in intervals of 10, no substantial distinction is seen in significance levels for the model. This is a control variable and no matter how the variable is coded the findings remain the same.

<sup>6</sup> Further analysis was conducted using several different coding schemes -including a set of dummy variables for education categories and one measurement scheme using a more continuous format (coded 1-20). No significant change is observed in the findings of the model regardless of the coding used. Coding was of concern as the original distribution in the GSS resulted in skewing in the lower values of this measure.

fundamentalist beliefs. Most respondents indicated that they were moderates. An additional measure for GSS year was used to control for any influence of data year.

### **Analysis**

OLS regression was used to evaluate the influences of identified variables on a negative view of human nature using SPSS 18.0. Negative view of human nature was regressed on all of the independent variables. Only death penalty supporters were included in the analysis to simulate death-qualification of potential jurors. A logistic regression analysis was then estimated to illustrate the association between a negative view of human nature and conviction proneness.

### ***Weighting and the GSS***

The data were weighted to the individual level for making appropriate inferences since the GSS are household level data. Reportedly, the adjustment is not often made and the weight seldom alters estimates, however, an assessment should be made to determine if the weight significantly impacts estimates (Davis & Smith, 1992, pp. 42-43). The impact of this weight was assessed for these analyses, and based on this evaluation the data was weighted to the individual level.

The GSS also carries a design effect of greater than 1 as a result of data clustering.<sup>7</sup> Previous research at NORC estimates an average design effect of about 1.5, although the effects can vary substantially between variables (Davis & Smith, 1992).<sup>8</sup> In observance of this, the data are also weighted by two thirds (.67) to correct for this estimated, average design effect.<sup>9</sup>

---

<sup>7</sup> Readers should review Davis and Smith (1992) for a discussion of design effects of the GSS.

<sup>8</sup> A study of the GSS for design effects for only 24 variables placed the average design effect at 1.66 giving a weight of about .60 (Davis & Smith, 1992, p. 41). The weight is calculated as  $100/1.66 \approx 60.24 * 100 \approx .60$  weight. Other studies conducted by NORC of similar surveys, however, place the average design effect at 1.5 (Davis & Smith, 1992). The weight is calculated as  $100/1.5 \approx 66.66 * 100 \approx .67$  weight. Based on the various studies estimating design effects and the differential impact of the design on different types of variables this research will use a more conservative estimate of the average 1.5 design effect giving a weight of .67 for purposes of illustration.

<sup>9</sup> A recent example of a study using a similar size design effect of .667 with the GSS data was conducted by James A. Davis (see Davis, 2004).

## **Findings**

### ***Negative View of Human Nature***

Table 2 shows the equation estimated to assess the negative view of human nature for respondents who were statistically death-qualified. The data were weighted to the individual level and for design effects (WTSSALL \* .67) (Davis & Smith, 1992, p. 42; see also Davis, 2004). Previous research found that younger and less educated, statistically death-qualified respondents have a negative view of human nature (Flexon, 2011). This study demonstrated that these relationships hold controlling for other factors. Also significant was being fundamentalist in beliefs. This was expected. Importantly, being afraid of crime was also significant in predicting a negative view of human nature among death-qualified respondents. It was hypothesized that this anxiety over crime altered people's views about human nature in a negative way. The analysis bears this out.

**TABLE 2. Regression equation to explain negative view of human nature among death qualified respondents.**

	Negative View of Human Nature			
	b	SE	B	Sig.
Age	-.036	.007	-.277	.000
Female	-.397	.238	-.091	.096
Education	-.372	.105	-.192	.000
Conservative	-.050	.089	-.029	.574
Obey Law	.329	.240	.074	.173
Afraid	.548	.241	.123	.024
Fundamentalist	.362	.146	.130	.014
Year <sup>1</sup>	.576	.226	-.132	.011
Constant	8.918	.796	---	.000

N = 322

R<sup>2</sup> = .174

<sup>1</sup> Control variable for GSS year

### ***Conviction Proneness***

Logistic regression results are presented in Table 3. The results illustrated that respondents with lower levels of education were about 28 percent more likely to be conviction prone, with conservatives being roughly 35 percent more likely to have an error preference for convicting the innocent, net other factors. The analysis also showed that, controlling for other factors, including the law-and-order orientation and fear of crime, a respondent with a negative view of human nature was about 18 percent more likely to be conviction prone. The analysis suggests that the impact of respondent fear (anxiety) was likely indirect through a negative view of human nature. Respondent's fear impacted views about human nature and this in turn may influence a juror's tolerance for error. This error tolerance may be altered toward convicting the innocent for those viewing human nature as negative based on anxieties about crime. It should be noted that possible interaction effects were modeled for respondent fear and views of human nature, though no effects were found and were not presented for that reason.

The analysis also suggested possible indirect paths for several variables in the model. Age, education and fundamentalism were significantly related to a negative view of human nature, however, there were no direct associations between these variables and an error preference for convicting the innocent. Younger and less educated respondents were more likely to harbor pessimistic views of others; however, there were no direct associations between these variables and an error preference for convicting the innocent. Fundamentalists were also more likely to hold negative views toward human nature, but there was not a direct relationship seen between fundamentalism and conviction proneness. The impact of these variables on conviction proneness, it seems, are mediated by a pessimistic view of others.

**TABLE 3. Logistic regression equation explaining conviction proneness**

	Conviction Proneness			
	b	SE	Exp(B)	Sig.
Age	-.003	.009	.997	.746
Female	.503	.308	1.654	.102
Education	-.332	.146	.717	.023
Conservative	.302	.126	1.353	.017
Obey Law	.128	.306	1.136	.676
Afraid	.002	.308	1.002	.994
Fundamentalist	.158	.190	1.171	.406
Negative Views	.168	.075	1.183	.024
Year <sup>1</sup>	-.223	.299	.800	.455
Constant	-2.489	1.210	.083	.040
N = 253				
X <sup>2</sup> = 25.816				.002
Wald = 36.293				.000

<sup>1</sup> Control Variable for GSS year

### **Discussion and Conclusion**

The fear of crime has been largely overlooked as a potential influence on juror attitudes and world views. These fears about crime, though debatably unwarranted, help shape individuals views about human nature. This can have the effect of tainting the evaluative processes of jurors through altering important presumptions about defendants. Perhaps, jurors holding a pessimistic view of others are likely to be dismissive of the presumption of innocence as reflected in an error preference for convicting the innocent rather than letting the guilty go free. This perspective on human beings may then contaminate jury deliberation and alter error preferences for convicting the innocent rather than releasing a perceived dangerous criminal to the streets. The result is potentially biased outcomes. Problematically, an error preference toward public safety is typically balanced against the individual defendant's liberty interest and in this case is counter to Constitutional principles and mandates.

Though statistically death-qualifying a sample fails to adequately account for the complexities involved in capital case jury selection, this research suggests that the hypothesized relationships are operating in the available juror population. Such findings suggest that similar juror characteristics, particularly those surrounding the fear of crime, may be operating to systematically influence jury deliberation. It is likely, however, that there is a higher concentration on capital juries as opposed to juries for other criminal trials given recent research exploring a connection between fear of crime and support for the death penalty (see Holbert et al., 2004; Keil & Vito, 1991). Recall, only death penalty supporters who can follow the law are able to sit on a capital jury.

Fundamentally, this research highlights the need for more understanding concerning the constellation of beliefs implicated in capital juries' predilection to convict. It appears that by selecting a capital jury based on their initial views of capital punishment that deliberation is impacted through skewing the attitudes represented on the jury. Based on this research, it seems that more general attitudinal biasing may also occur via a general anxiety about crime and potential victimization. Research has shown that narrowing the jury pool through the death-qualification process creates a jury that is more likely to produce biased results than a jury that represents more varied attitudes (e.g., Cowan, et al., 1984; Thompson, et al., 1984; Young, 2004, see also Sandys, 1998). This study adds to this research by showing a possible path that such attitudinal biasing might take. Though, stronger measures and methods could augment these initial findings.

Specifically, findings of this research could be further strengthened by a better measure of the fear of crime. The work of Keil and Vito (1991) make a strong case that fear of crime is a multidimensional construct, although attention to the complex nature of this concept could not be

done with the data used here. Further, Warr and Ellison (2000) claim that a better approach to examining the fear of crime should be to examine altruistic fear. Altruistic fear deals with the precautions and behaviors related to the safety of others and has been relatively unexplored by the scientific community. As aptly noted by one scholar, “It is entirely possible that altruistic fear is as prevalent as personal fear (perhaps more so) and has consequences that are distinct from or amplify those arising from personal fear” (Warr, 2000, p. 456). Although this type of fear could not be captured in this study, future research should include elements of altruistic fear in the conception of the fear of crime in efforts toward understanding individual’s social behaviors toward the protection of others. It may be that serving on a jury is a symbolic gesture of social protection. Motivation toward protection may be skewed when fear is high and error tolerance, at the expense of the individual, is high. In addition, a better measure of the fear of crime would allow for more advanced statistical modeling. As is, the available measurement schemes used in this study present limitations. A further note on the fear of crime is warranted. A number of studies examining the fear of crime show differences in the level of fear between males and females (e.g., Fisher & May, 2009; Fox, Nobles, & Piquero, 2009; Woolnough, 2009; see also Lane & Fisher, 2009). Based on this, differences based on sex were preliminarily examined in this study though not reported. No differences were found in the model examining death-qualified respondents. This might change given better measures for the fear of crime.

### ***Theoretical and Legal Implications***

The discussion surrounding the “liberation hypothesis” for juries is relevant to the findings reported here (Kalven & Zeisel, 1966; see also Smith & Damphousse, 1998). A liberated jury occurs when the evidence (legal factors) wanes and the jury turns to extra-legal considerations in making decisions about a case. This is likely to happen in mid-range cases;

those case where the evidence is moderate and the jury is left to fill in blanks left by the prosecution. Although, the level of ambiguity confronted by a jury in a capital case cannot be measured here, reason suggests that this is likely to apply in cases where the jury is anxious about crime.

As noted by some scholars, a capital sentencing hearing is meant to elicit social and normative ambiguity instead of objective criteria by inciting juror emotions (see Coyne & Entzeroth, 1994; Bowers & Steiner, 1998). Additionally, jurors are often confused by instructions leaving them to consider extra-legal factors (see Lynch & Haney, 2000; Perlman, 1986). The effect is that a system designed to dismantle biased outcomes through statutory guidance (e.g., weighing aggravators and mitigators) may lead to the opposite possibility. Anxieties over crime and attitudes shape perceptions and feed juror inferences about how to construct stories of criminal cases in efforts to decide appropriate verdicts. The problematic result is more arbitrariness in criminal justice decision making. Juror fear seems to be feeding this arbitrariness.

If the current method of death-qualifying a capital jury remains the standard, a reasonable approach is to better screen potential jurors on their biases. Beyond questioning potential jurors on death penalty issues, jurors should be asked about their fears and views of crime as well as tolerances for error. Such an approach, though simple, may assuage the impact of personal inferences drawn by jurors based on personal attitudes and beliefs.

## References

- Applegate, B.K., Cullen, F.T., Fisher, B.S., & Vander Ven, T. (2000). Forgiveness and fundamentalism: Reconsidering the relationship between correctional attitudes and religion. *Criminology*, 38, 719-754.
- Barberet, R. & Fisher, B.S. (2009). Can security beget insecurity? Security and crime prevention awareness and fear of burglary among university students in the east midlands. *Security Journal*, 22, 3-23.
- Bowers, William J., & Steiner, B. D. (1998). Choosing life or death: Sentencing dynamics in capital cases. In J. R. Acker, R. M. Bohm, & C. S. Lanier (Eds.) *America's experiment with capital punishment: Reflections on the past, present, and future of the ultimate penal sanction*, (pp. 309-349). Durham, NC: Carolina Academic Press.
- Box, S., Hale, C., & Andrews, G. (1988). Explaining fear of crime. *British Journal of Criminology*, 28, 340-356.
- Chiricos, T., Padgett, K., & Gertz, M. (2000). Fear, TV news and the reality of crime. *Criminology*, 38, 755-786.
- Cook, C.L. & Lane, J. (2009). The place of public fear in sentencing and correctional policy. *Journal of Criminal Justice*, 37, 586-595.
- Cowan, C. L., Thompson, W. C., & Ellsworth, P. C. (1984). The effects of death-qualification on jurors' predisposition to convict and on the quality of deliberation. *Law and Human Behavior*, 8, 53-79.
- Coyne, R., & Entzeroth, L. (1994). *Capital punishment and the judicial process*. Durham, NC: Carolina Academic Press.
- Cullen, F.T., Clark, G.A., & Wozniak, J.F. (1985). Explaining the get tough movement. *Federal Probation*, 49, 16-24.
- Davis, J. A. (2004). Did growing up in the 1960s leave a permanent mark on attitudes and values?: Evidence from the General Social Survey. *Public Opinion Quarterly*, 68, 161-183.
- Davis, J. A., & Smith, T. W. (1992). *The NORC General Social Survey: A user's guide*. Newbury Park, CA: Sage Publications, Inc.
- Davis, J. A., Smith, T.W., & Marsden, P.V. GENERAL SOCIAL SURVEYS, 1972-2006 [CUMULATIVE FILE] [Computer file]. ICPSR04697-v2. Chicago, IL: National Opinion Research Center [producer], 2007. Storrs, CT: Roper Center for Public Opinion Research, University of Connecticut/Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributors], 2007-09-10.

- Devine, D.J., Buddenbaum, J., Houp, S., Studebaker, N. & Stolle, D.P. (2009). Strength of Evidence, Extraevidentiary Influence, and the Liberation Hypothesis: Data from the Field. *Law and Human Behavior*, 33, 136-148.
- Ellsworth, P. C. (1993). Some steps between attitudes and verdicts. In R. Hastie (Ed.), *Inside the juror: The psychology of juror decision making*, (pp. 42-64). New York, NY: Cambridge University Press.
- Fisher, B.S. & May, D. (2009). College students' crime-related fears on campus: Are fear-provoking cues gendered. *Journal of Contemporary Criminal Justice*, 25, 300-321.
- Fitzgerald, R., & Ellsworth, P. C. (1984). Due process v. crime control: Death-qualification and jury attitudes. *Law and Human Behavior*, 8, 31-51.
- Flexon, J. L. (2011). Does Racism Fuel Conviction Proneness Among Non-African Americans?: Assessing the Impact of Juror Bias at the Conviction Stage of Capital Trials. *Journal of Ethnicity in Criminal Justice*, 9, 218-237.
- Fox, K.A., Nobles, M.R., & Piquero, A.R. (2009). Gender, crime victimization and fear of crime. *Security Journal*, 22, 24-39.
- Gray, E. Jackson, J., & Farrall, S. (2008). Reassessing the fear of crime. *European Journal of Criminology*, 5, 363-380.
- Haney, C. (1984). On the selection of capital juries: The biasing effects of the death-qualification process. *Law and Human Behavior*, 8, 121-132.
- Hastie, R., Penrod, S.D., & Pennington, N. (1983). *Inside the Jury*. Cambridge, MA: Harvard University Press.
- Holbert, R.L., Shah, D.V., & Kwak, N. (2004). Fear, authority, and justice: Crime-related TV viewing and endorsements of capital punishment and gun ownership. *Journalism and Mass Communications Quarterly*, 81, 343-363.
- Jackson, J. & Gray, E. (2010). Functional fear and public insecurities about crime. *British Journal of Criminology*, 50, 1-22.
- Jurow, G. (1971). New data on the effects of a death-qualified jury on the guilt-determination process. *Harvard Law Review*, 84, 567-611.
- Kalven, H. & Zeisel, H. (1966). *The American jury*. Chicago, IL: The University of Chicago Press.
- Keil, T.J., & Vito, G.F. (1991). Fear of crime and attitudes toward capital punishment: A structural equations model. *Justice Quarterly*, 8, 447-464.

- Lane, J. & Fisher, B.S. (2009). Unpacking the relationship between gender and fear of crime: Explaining why there are similarities and differences. *Journal of Contemporary Criminal Justice*, 25, 260-263.
- Lynch, M., & Haney, C. (2000). Discrimination and instructional comprehension: Guided discretion, racial Bias, and the death penalty. *Law and Human Behavior*, 24, 337-358.
- Pennington, N. & Hastie, R. (1991-1992). A cognitive theory of juror decision making: A story model. *Cardozo Law Review*, 13, 519-557.
- Perlman, H. S. (1986). Pattern jury instructions: The application of social science research. *Nebraska Law Review*, 65, 520-557.
- Ray, J.J. (1985). The punitive personality. *The Journal of Social Psychology*, 125, 329-333.
- Sandys, M. (1998). Stacking the deck for guilt and death: The failure of death-qualification to ensure impartiality." In J. R. Acker, R. M. Bohm, & C. S. Lanier (Eds.), *America's experiment with capital punishment: Reflections on the past, present, and future of the ultimate penal sanction*, (pp. 285-308). Durham, North Carolina: Carolina Academic Press.
- Smith, B. L., & Damphousse, K. R. (1998). Terrorism, politics, and punishment: A test of structural-contextual theory and the "liberation hypothesis." *Criminology*, 36 (1), 67-92.
- Supreme Court of the United States. (1986). *Lockhart v. McCree*, 476 U.S. 162
- (1985). *Wainwright v. Witt*, 469 U.S. 412
- (1968). *Witherspoon v. Illinois*, 91 U.S. 510
- Surette, R. (2007). Media, crime, and criminal justice: Images, realities, and policies. Belmont, CA: Thomson Wadsworth.
- Thompson, W., Cowan, C. L. Ellsworth, P. C., & Harrington, J. C. (1984). Death penalty attitudes and conviction proneness: The translation of attitudes into verdicts. *Law and Human Behavior*, 8, 95-113.
- Warr, Mark. (2000). "Fear of Crime in the United States: Avenues for Research and Policy." In *Crime and Justice 2000*. Vol. 4, *Measurement and Analysis of Crime and Justice*. Washington, D.C.: National Institute of Justice, 2000.
- Warr, M. & Ellison, C.G. (2000). Rethinking social reactions to crime: personal and altruistic fear in family households. *American Journal of Sociology*, 106, 551-578.
- Warr, M. & Stafford, M.C. (1983). Fear of victimization: A look at the proximate causes. *Social Forces*, 61, 1033-1043.

Woolnough, A.D. (2009). Fear of crime on campus: Gender differences in use of self-protective behaviors at an urban university. *Security Journal*, 22, 40-55.

Young, R. L. (2004). Guilty until proven innocent: Conviction orientation, racial attitudes, and support for capital punishment. *Deviant Behavior*, 25, 151-167.