

Narratives of the Death Sentence: Toward a Theory of Legal Narrativity

Benjamin Fleury-Steiner

This article investigates how the consciousness of ordinary citizens enlisted as jurors in death penalty trials is racialized. The study draws on post-trial interviews with some 66 white and black jurors who served on 24 capital trials in which either a white or black defendant received the death sentence. Findings among white jurors reveal a hegemonic tale of racial inferiority. However, other characteristics such as social class or relevant biographical experiences help explain how jurors' stories are racialized. More specifically, racial inferiority is articulated in four congruous narratives: "individual responsibility," "the tragedy of the 'black' group," "the bad kid and the caring family," and "the threatening outsider." Furthermore, black jurors' stories are influenced by their background experiences as well. More-educated black jurors employ a sympathetic discourse toward the "culturally distant whites." On the other hand, working-class blacks that have had negative experiences with whites in public are found to employ a narrative of "resisting white racism." Understanding the subtle influences of legal agents' multiple identities in the remaking of racial hegemony has broader implications for a revised constitutive perspective of law—what I call a "theory of legal narrativity."

The stories of those who take part in the operations of state law, including jurors in death penalty cases, frame and impart meanings of "race." Racial discourses constitute taken-for-granted understandings and practices. They serve as "mechanisms of social control" because they assert and instantiate a dif-

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ferentiation but do not reveal the basis of those distinctions—do not bring them to the surface for examination and resistance—and thus “conceal the social organization of their production and plausibility” (Ewick & Silbey 1995:213). These discourses have the capacity to “colonize consciousness” (Ewick & Silbey 1995:214) because they are used colloquially without elaboration or explanation.

How racial meaning is elaborated also depends on the identities of the individuals employing such discourses. As Kimberlee Crenshaw (1995) has observed, identities are not all of a piece; they intersect with each other. For example, a black person living in a marginalized community may have a very different position on the death penalty than one who lives in a middle-class neighborhood. Indeed, they may have very different moral orientations, because “morality is bound to a sense of self, helps determine our sense of others, and then becomes the grounds to legitimate who ‘I’ am, who I think ‘you’ are and how ‘we’ should go on” (Oberweis & Musheno 2001:64). Jurors who have different identities might be expected to “see” themselves, and thus the defendants they sit in judgment of, *differently*.

In the sections that follow, I present a theoretical context for investigating race as a hegemonic narrative (section I). Next, I describe the data from which I draw (section II) and the methodology I employed (section III). The findings presented in section IV demonstrate contrasting and complementary theories of racial inferiority in white capital jurors’ stories. By contrast, educated black jurors employ a narrative of “culturally distant whites,” while more working-class blacks tell a more explicit tale of “resisting white racism.” In closing, I discuss the implications of these findings for what I call a “theory of legal narrativity.”

I. A Perspective on Hegemony, Identity, and Legal Consciousness

In this article, I call attention to how individuals’ racialized discourses of crime and criminals confirm taken-for-granted *understandings* and how these understandings imply broader hegemonic stories (Ewick & Silbey 1995). By *hegemonic*, I refer to the taken-for-granted wisdom of the majority that is both situational and historically specific: stories that “everyone knows” and is familiar with. In this way, hegemonic tales embody general understandings that “go without saying, because, being axiomatic, they come without saying” (Comaroff & Comaroff 1991:23).

Austin Sarat’s (1993) study of narratives of violence in attorneys’ arguments in capital trials demonstrates the hegemonic character embedded in capital trial narratives. Problematising the prosecution’s argument—“*We have a right, the prosecutor claimed, “to be vindicated and protected”*” (emphasis added)—Sarat

elucidates how such narrating simultaneously serves to reinforce whiteness as a legally protected, dominant group “interest”:

“We” is both an inclusive and a violent naming, a naming fraught with racial meaning. Who is included in the “we”? While this “we” reaches from this world to the next as a remembrance of and identification with [the white victim], at the same time, it makes the black [defendant] an outsider in a community that needs protection from people like him. It excludes him by claiming law as an entitlement against him. Law’s violence is necessary both to vindicate and protect “us” from him. (Sarat 1993:49)

Beyond race as a taken-for-granted story of “us” and “them,” the multiple social identities of those who *do* hegemony has implications for understanding how legal consciousness is constituted. Trish Oberweis and Michael Musheno’s (2001) study of legal consciousness among street-level bureaucrats persuasively reveals how moral decision-making is inextricably bound up in state actors’ “ordinary,” historically specific, and institutionally constrained identities. Focusing on the narratives of police officers and social services administrators, their study provides a fascinating window of how multiple identities constitute discretionary judgments. Having respondents sketch stories about how their own perspectives of morality informed their decision-making (see Oberweis & Musheno 2001:109–12), they present a window into the interconnectedness of identity, morality, and the law-in-action. Describing the arrest of a woman identified as pregnant, a prostitute and an alcoholic, a respondent from their study, a white police officer, Clinton Hinkley, stated:

She blew a .225 [on a breath test for intoxication], which is over twice the legal limit. . . . She was real happy about it and didn’t think anything about the fact that she was drinking. She thought that she was doing good because she was cutting down. That right there caused me a lot of problems, especially because I have a seven-month-old baby. That just really bothers me. My wife didn’t touch a single sip of alcohol, didn’t take any medications or anything, just because she didn’t want any possible thing wrong with the baby. And this one’s going to grow up with a mother who doesn’t even know who the father is of her unborn child and she’s out here drinking up. . . . The only way you can do anything about it is if they make abortions illegal. My understanding is that there are a lot of people who get home abortions and have their own ways of aborting their children. Some of which is through alcohol and drugs, so it’s just a form of abortion. That way if you have prostitutes or people out there that are doing drugs or alcohol while they’re pregnant, then we can force them into custody for the term of the pregnancy to keep them from abusing the baby. . . . The only other way to help prevent this is to give all drug addicted females, or female prostitutes a hysterectomy (Oberweis & Musheno 2001:75).

Officer Hinkley's story of the intoxicated and pregnant prostitute powerfully demonstrates how morality is constructed at the intersections of experiential, institutional, and historically specific identities. As a "good parent" in the latter half of the twentieth century, Officer Hinkley, a white working-class male, mobilizes a pro-life politics of gendered immorality. Drawing on conservative stories of "welfare queens" and immoral single mothers, Hinkley as both officer and "good parent" wants to "force *them* into custody." In other words, the female suspect represents to him a breed of immoral outsiders who have taken full advantage of "liberal" abortion policies (e.g., "The only way you can do anything about it is if they make abortions illegal.") and therefore must be punished harshly. Framing his arrest story in the context of his own privilege vis-à-vis his wife's pregnancy, he, by implication, ignores the female suspect's marginality. Officer Hinkley blames the "dishonest," "morally reprehensible" victim for her impoverished and marginalized identity (e.g., "She thought that she was doing good"). At the same time, he mobilizes his institutional role as "law enforcer" "to enforce his moral view to the extent that he can, with rather significant consequences for the woman involved" (Oberweis & Musheno 2001:75).

Likewise, how identities are constituted in capital jurors' stories of their life or death decisions has implications for understanding legal consciousness in death penalty judgments. Thus, in this article I build on recent research in legal consciousness theory (Ewick & Silbey 1998; Nielsen 2000) by demonstrating how law as hegemonic narratives is mobilized and resisted at the intersection of the identities of both the punisher *and* the punished.

II. The Data

Jurors' stories come from the Capital Jury Project (CJP), a national study of jury discretion in death penalty cases. While the CJP did not strategically sample for jurors with regard to race, approximately 10 percent (9.8%) were African American.¹ This analysis draws on 66 jurors' stories from some 24 cases in which either a black or white defendant was sentenced to death.² Table

¹ Less than 4 percent (3.6%) of the sample was made up of Hispanic, Asian, or other racial or ethnic minority jurors and thus did not provide adequate numbers of jurors for the foregoing analysis.

² To ensure reliability in the comparison of jurors' interviews from black and white defendant death cases, they were closely matched according to two criteria. First, cases were matched according to circumstances surrounding the crime. More specifically, all 24 cases are relatively similar in the levels of aggravation: 23 of 24 (95.8%) are single victim homicides involving either shootings in the course of a robbery (31.0% black defendants v. 26.0% white defendants) or homicides involving strangers (46.3% black defendant v. 48.7% white defendants), 2 cases (1 black defendant and 1 white defendant) involve multiple aggravating circumstances including either kidnapping, robbery, or rape prior to

1 provides a demographic picture of the jurors who served on these cases.³

The survey instrument was designed to chronicle the respondents' entire capital jury experience from *voir dire* to their final decisions whether to impose the life or death sentence.⁴ By employing both closed-ended and open-ended questions, the interviewers were able to gather information on what legal or extra legal factors might have influenced jurors' decision making across both the guilt and punishment phases of a bifurcated capital trial. Interviewers also encouraged jurors to expound in their own words on various issues, including "their own impressions of the defendant" and "how the jury arrived at its punishment decision." While such questions did not explicitly focus on the influence of race on jurors' sentencing decisions, they did prove crucial to this analysis of white and African American capital jurors' racialized consciousness; that is to say, as ordinary citizens charged with making life or death decisions, capital jurors could and sometimes did speak of the "natural and normal way of doing things . . . their commonsense understanding of the world" (Merry 1990:5), including their commonsense understandings of racial identities as they pertained to their experiences as capital sentencing jurors.

the killing. Second, because the vast majority of juries made their decisions in a relatively short period of time (especially in black defendant death cases especially), to ensure comparability, I selected only those cases decided in four hours or less. The distribution of black and white defendant death cases by the amount of time it took the jury to reach its punishment decision is presented below:

Time it took the jury to reach its punishment decision

	≤4 Hours	>4 Hours
White defendant death cases	66.7%	33.3%
No. of jurors	(N = 28)	(N = 14)
Black defendant death cases	88.4%	11.6%
No. of jurors	(N = 38)	(N = 5)

³ To ensure that differences in jurors' responses are not due to jurors serving on different cases, the present analysis draws only from those cases in which both whites and blacks were interviewed.

⁴ Since the CJP began, some 1,155 former capital jurors from 340 capital trials in 14 states have been interviewed. The original sampling plan for each state focused on an equal representation of capital trials ending in life and death sentences. Moreover, investigators in each state used various strategies to stratify and balance the representation of sentencing outcomes in terms of regions within the state or of urban and rural locations. While the CJP was restricted from selecting cases from all regions of every state in the sample—indeed, states such as California, Texas, and Florida were simply too large and thus statewide sampling became impractical—investigators in some states did conduct interviews with more than the required four jurors. The CJP data include 24 trials represented by five jurors, 8 by six jurors, and 1 by eight jurors. Unfortunately, in some instances, jurors refused to be interviewed, despite a \$20 incentive. More specifically, 39 trials are represented by a single juror, 41 by two jurors, 68 by three, 148 by four, 29 by five, 1 by seven, and 1 by eight. (For additional details concerning the CJP's methodology, see Bowers 1995).

Table 1. Demographic Characteristics of Jurors in White and Black Defendant Death Cases

	White Defendant Death Cases	Number of Jurors (<i>N</i>)	Black Defendant Death Cases	Number of Jurors (<i>N</i>)
Number of defendants	12	28	12	38
Race				
White	71.4%	20	71.1%	27
Black	28.6%	8	28.9%	11
Total	100.0%	28	100.0%	38
Gender				
Male	71.4%	20	55.3%	21
Female	28.6%	8	44.3%	17
Total	100.0%	28	100.0%	38
Race and gender				
White Males	50.0%	14	42.1%	16
White Females	21.4%	6	28.9%	11
Black Males	21.4%	6	13.2%	5
Black Females	7.1%	2	15.8%	6
Total	100.0%	28	100.0%	38
Socioeconomic status				
Upper	32.1%	9	31.6%	12
Middle	17.9%	5	13.2%	5
Low	28.6%	8	23.7%	9
Missing	21.4%	6	31.6%	12
Total	100.0%	28	100.0%	38
State identification				
Alabama	10.7%	3	5.3%	2
California	7.0%	2	—	—
Florida	40.5%	10	13.2%	5
Georgia	—	—	7.9%	3
Indiana	7.0%	2	—	—
Kentucky	17.9%	5	—	—
Louisiana	10.7%	3	5.3%	2
Missouri	—	—	—	—
North Carolina	—	—	13.2%	5
Pennsylvania	—	—	13.2%	5
South Carolina	17.9%	5	41.9%	16
Tennessee	—	—	—	—
Texas	—	—	—	—
Virginia	—	—	—	—
Total	100.0%	28	100.0%	38

The Death Qualified Sample

The sample consists of a population of individuals with a unique set of attitudes and beliefs. As “death qualified” capital jurors, such individuals have been shown by social psychological studies to demonstrate greater punitive orientations toward crime and the criminal justice system (Fleury-Steiner 2003) and a greater proneness toward conviction (Thompson 1989). Studies of capital jurors find that white male juries are disproportionately far more likely to impose the death sentence when the defendant is black and the victim is white (Bowers et al. 2001). Furthermore, an imposing collection of studies on racialized stereotypes

(Barkan & Cohn 1994; Sweeny & Haney 1992) and racialized fears of crime find increased punitiveness among whites (Sunnafrank & Fontes 1983). More sophisticated studies demonstrate that white respondents presented with vignettes of violent crimes committed by black offenders yield stronger correlations between the factors of race and punitiveness than the diffuse indicators of crime and punitiveness:

[R]acial stereotypes [are] only modestly correlated with attitudes toward generic crime issues (e.g., the death penalty), our punitiveness and civil liberties scales, and so on. . . . The conditional impact of race, however, in no way minimizes its importance. Violent crimes committed by blacks, and the policies designed to punish them, are the very images which drive public fears. . . . They are conflated by the media, by individuals like Charles Stewart and Susan Smith (both of whom blamed African American males for crimes they, themselves, committed), and by cynical political messengers who “Willie Hortonize” campaigns (Hurwitz & Peffley 1997:395–396; see also Hurwitz & Peffley 1998).

Thus, we might expect former capital jurors to employ similar racialized discourses in their stories of *actually making* their sentencing decisions. Indeed, these data offer the unique opportunity to study such stereotypical discourses in punishment decision-making among a sample of citizens who are expected to hold these attitudes and beliefs but differ by identities (see Table 1).

III. Methodology

Narrative analysis takes as its object of investigation the story itself. . . . The purpose is to see how respondents in interviews impose order on the flow of experience to make sense of events and actions in their lives. The methodological approach examines the informant’s story and analyzes how it is put together, the linguistic and cultural resources it draws on, and how it persuades a listener of authenticity. Analysis in narrative studies opens up the forms of telling about experience, not simply the content to which language refers. We ask, why was the story told *that way*? (Riessman 1993)

To encourage respondents to tell stories about their experiences, the CJP survey explicitly asked jurors to *tell* about important moments during the trial, deliberations, and their impressions of the defendant. The goal of these questions was to help jurors construct their responses in their own ways. For example, when asked to tell about their sentencing decisions, jurors would often give a chronological accounting of what the jury did to reach its punishment decision (e.g., “First we took a vote to see where everybody stood on punishment”). While jurors may have told stories of their decisions from only this perspective, others

broke from a strict accounting of the jury's decision-making protocol to tell a story about other experiences. Given the leeway to answer as they saw fit, in many instances jurors' stories emerged when least expected. For example, in response to their impressions of the defendant, many jurors took the floor and told extended stories.

Each interview lasted approximately two hours and in most cases was tape recorded. Several teams of undergraduate research assistants and I transcribed jurors' verbatim responses, then computerized and analyzed them. Subsequently, I went through the texts of jurors' responses, coding striking features that I marked for reanalysis. Although I was not overly concerned with interruptions or pauses that occurred during the interviews, I noticed that sometimes transcribers had inserted exclamation marks, or had written notes in parentheses describing jurors' reactions (e.g., "Juror seems annoyed by this question," or "Juror got very serious when answering"). To better understand these comments, whenever possible, I listened to the tapes again.

Following Riessman's (1993:57) methodology, I instructed a research assistant to transcribe a juror's entire response, even if it "wasn't in answer to the question." Indeed, many jurors describing their sentencing decisions told stories about America's "broken justice system" more broadly, as this comment from Leslie Odom, a 34-year-old white homemaker illustrates:

I read the papers everyday, and I'd say 60 percent to 70 percent of the crime committed in my area is committed by people who've been in prison and got out early on several different occasions. We have had a quite a few murders, and early release is the cause of it.

From this response it is clear that analytic induction is extremely useful. *What* is the juror saying? *Why*, in response to, "Tell me how the jury made its punishment decision," does the juror tell a story about early release from prison in her community? The more I scrutinized jurors' responses in the context of my prior theoretical expectations regarding hegemony, identity, and legal consciousness, the more the features of discourse "jumped out" at me (Riessman 1993:57).

My interests in critical race theory (e.g., Bell 1987; Butler 1997; Carbado 1999; Crenshaw et al. 1996; Haney-Lopez 1996; Lawrence 1987; Matsuda 1989; Morrison 1997) in the context of identity as a "pervasive two-role social process (Goffman 1963:138),"⁵ played a central function throughout the analysis as well. Consider the following from Sheila Brooks, a 38-year-old white, college-educated hairdresser, in response to a question

⁵ "The normal and the stigmatized are not persons but rather *perspectives* (emphasis added) (Goffman 1963:138).

concerning her impressions of the defendant (analyzed in detail later):

I saw the defendant as a very typical product of the lower, socio-economic, black group who grew up with no values, no ideals, no authority, no morals, no leadership, and this has come down from generation to generation. And that was one of the problems we had, for me, and in the jury. Because some of the jurors were looking at him as your average white kid: he wasn't a white kid. He came from a totally different environment. I'm just saying that he was the one that was the defendant. And I just saw him as a loser from day one, as soon as he was born into that environment, and into that set of people who basically were into drugs, alcohol, illegitimacy, AIDS, the whole nine yards. This kid didn't have a chance. That's how I saw the defendant. And there are 10,000 others like him out there, which is very tragic.

Brooks's response is obviously more than a simple description of the defendant. She tells a rich, detailed story that draws on themes of racial identity, morality, and tragedy. However, from Goffmanian and critical race perspectives her story raises several fascinating questions: *How* does identifying the defendant's blackness enable her to understand her own "white" identity? *What* is the purpose of telling a story of her fellow jurors' reactions to the defendant? *How* does her use of ambiguous identifiers such as "that," "totally different," "that set of people," and the "whole nine yards" help her make sense of the defendant's identity? *What* does the statement, "There are 10,000 others like him out there, which is very tragic" say about the role of *tragedy* in Sheila Brooks's story?

The development of these theoretically grounded questions, in combination with my analytical refinement of jurors' stories, was a long and painstaking process. Through numerous rounds of retranscribing and revising, I was able to clarify my interpretations of jurors' stories. Ultimately, I was able to make the difficult decision of how to represent respondents' discourses in the texts presented here. "Determining where a narrative begins and ends and the listener/questioner's place in producing it are textual as well as analytic issues" (Riessman 1993:58).

The Present Study

In this project I drew on the insights gained from seeing law as not separate from prevailing social arrangements, including racial inequality.⁶ As a basis, I examined research regarding the popular consciousness of law among ordinary citizens (Ewick & Silbey 1998). I looked at studies of citizen's consciousness of free

⁶ For a recent review, see Feagin 2000.

speech and their experiences with public harassment (Nielsen 2000). I also considered work on the moral production of identities in the experiences of street-level bureaucrats (Oberweis & Musheno 2001).

To study how the consciousness of African American and white jurors racialized, I focused on ordinary citizens enlisted by the state to make the *extraordinary* decision of life or death. This project does not explore capital jurors in cases that ended in life sentences. Nevertheless, it does provide one important window on how the consciousness of African Americans and whites as jurors in death penalty cases is formed.

I conducted close readings of each of these 66 jurors' responses to open-ended questions concerning their decisions on punishment and their impressions of the defendant. In my examination of jurors' interviews in white defendant death cases, I did not find any explicitly racialized discourses.⁷ While my failure to mention race alone is not a reason to exclude such cases from the analysis,⁸ given my focus on criminal punishment, and because discourses around black criminality are particularly problematic in the United States,⁹ I focused only on black defendant death cases in the foregoing analysis of jurors' stories.

My analysis of black defendant death cases revealed several inconsistencies in jurors' racialized discourses. For example, more-educated¹⁰ white jurors were more likely to express an understanding and sympathy toward a black defendant's upbringing and disadvantaged surroundings. In contrast, less-educated whites made more explicit allusions to "us" and "them." Black jurors' stories also varied. More-educated blacks were more likely to sympathize with the difficulties whites had in relating to a black defendant's marginality. Alternatively, less-educated blacks expressed frustration with their more explicitly racist white counterparts. Although I do not mean to suggest there are no other references or allusions in jurors' responses, I do believe that the narratives I present were the most common and often repeated.

⁷ In a larger analysis of these data involving jurors' identity stories in both life and death cases (Fleury-Steiner, forthcoming), I discovered that jurors in white defendant cases do invoke class marginality and other outsider tropes. Furthermore, regardless of the defendant's race, many jurors justify their sentencing decisions by default, because, in their words, "life is not life" (Steiner, Bowers, & Sarat 1999).

⁸ Indeed, that jurors do not mention race reveals only that "white" is an invisible or default racial category in the United States (e.g., Haney-Lopez 1996) and thus may be represented in jurors' discourse in other important ways.

⁹ Perhaps the broadest indicator of how crime discourse in America has been racialized "black" is the vastly disproportionate level of incarceration for African Americans as compared to whites (e.g., Mauer 2000).

¹⁰ To examine socioeconomic status, jurors were asked questions about their level education and annual income. A combined measure of high, medium, and low jurors' SES appears in Table 1.

IV. The Tale of Racial Inferiority

White jurors were asked to reflect on the defendant they had sentenced to death. Some chose to tell a story that establishes from the outset “what kind of person (in the defendant) they were dealing with.” These stories reveal a hegemonic narrative of *racial inferiority* and white superiority or supremacy. While the racial inferiority narrative may be “built on concepts and explanatory schemes . . . that are themselves abstractions (Sommers & Gibson 1994:59),” whites make the tale of African Americans’ racial inferiority *real* in a taken-for-granted story of “not living up to the standards of the white majority.”

Whites tell stories that represent the defendant as lacking individual characteristics, as a member of an inferior “other.” In short, they tell *cultural distance* stories. Such tales involve the emplotting¹¹ of episodes from personal experience or popular culture that reveal how they have come to see the defendant as racially inferior. I explicate this narrative in the following presentation of jurors’ stories

Cultural Distance Stories

Whites’ cultural distance stories are replete with “place images” or with “various discrete meanings associated with real places or regions regardless of their character in reality” (Shields 1991:60). They encompass a broader “cultural distance talk” not unlike what Lisa Frohmann (1997), in her study of prosecutorial decision making in sexual assault cases, has termed “discordant locales.” In this way, jurors “construct distinct groups with different cultures who live in geographically separate spaces and have different schemes under which they interpret the everyday world” (1997:533).

How do whites *accomplish* cultural distance in their stories? My analysis reveals that jurors’ differing personal experiences and educational backgrounds help explain how cultural distance can vary along four axes of narrative interpretation: (1) individual responsibility, (2) the tragedy of the disadvantaged, (3) the bad kid and the caring family, and (4) the threatening outsider. Although these designations are by no means mutually exclusive—indeed they often overlap and serve to reinforce one another—they are always situational. That is, they vary according to the juror’s and defendant’s identities and the circumstances sur-

¹¹ Emplotment is a critical concept for understanding how narratives across time and space continue to “make sense” to storytellers. As Margaret R. Sommers and Gloria D. Gibson (1994:59) cogently observe: “[E]mplotment gives significance to independent instances, not their chronological or categorical order. . . . [I]t is emplotment which translates events into episodes.”

rounding the crime or trial. To clarify the utility of each, however, it is important to describe them separately.

The Story of Individual Responsibility

Generally speaking, cultural distance reveals how whites objectify the black defendant—how they come to see him as representative of an inferior race.¹² More specifically, how jurors see themselves and their surroundings may influence such discourse in one of two ways. First, more-educated whites resort to a more explicitly race-neutral or “color-blind” discourse that reveals a heightened awareness of both time and place. They *do* contemporary racial hegemony by emplotting stories of their own experiences into the broader narrative of evaluating the defendant’s responsibility for the crime. As a means of understanding who the defendant “is” and thus “why people like him act this way,” they may also tell individual responsibility stories of a “weak” or “faulty” criminal justice system or other government institutions (e.g., “The welfare system makes these people”). As Bonnie Mayer, a 53-year-old white homemaker, explains:

I lived in a poor community, and I knew of families that were not too far from the defendant’s family level of poverty. They had difficult lives. They didn’t have a lot of personal possessions. During the trial, the psychologist brought up that Cal didn’t have shoes or clothes to wear [as a child]. Both the lack of these things he had growing up, and the fact that he didn’t have a mother and father in the house to discipline him and to really love him. I believe that really did affect the defendant. But I had seen other people in poverty that did not go onto lead a life of crime. That’s no excuse. I’m sorry, I felt very bad that he had no life, but that’s no reason to do what he did.

The Tragedy of the “Black” Group

The tragedy of the black group narrative enables whites to rationalize away any doubts about what the defendant they are dealing with represents. The plot of this story, in effect, is “the defendant’s life may be a tragedy but he is still one of *them*.” Deflecting a more explicit commitment to a tale of racial inferiority, jurors thus “play the tragedy card,” which enables them to articulate feelings of “failure or catastrophe as the ultimate end of the story” (Jacobs 2001:224). As Avery Anderson, a 42-year-old white, college-educated business executive, observes: “It was a very sad situation all the way around, he was black, raised in the ghetto, and so on.”

¹² Less 2% of the cases in the CJP sample involved female defendants.

The Bad Kid and the Caring Family

Interconnections between race and gender identities are revealed in the story of the “bad kid and the caring family.” More specifically, whites present themselves as disappointed or angry “parents” of an African American defendant. Such a paternalistic narrative goes back to slave times (Litwack 1979) and is emplotted here to belittle the nonwhite defendant, thus to *simplify away* the complexities of his life. According to Deidre Lund a 51-year-old white sales representative, “This kid got lost in system. Like a lost sheep, he had a pitiful background. He’s basically a street kid. I’m not so sure he knows right from wrong like the rest of us.”

Moreover, as paternalistic figures, whites must deal with members whose views deviate from the rest of the group. Focusing on convincing a nonwhite holdout to join the pro-death majority, they tell stories of lending a sympathetic ear to the African American holdout’s plight. As I show in a case study to follow, in effect they tell a story of coaxing the holdout back into the caring “graces of the family.” Most typically, compliance is reached by easing the holdout into confronting whether she is “with the jury or against it,” “for justice or against it.”

The Threatening Outsider

Relying on the only cultural capital they may possess, that indeed *makes sense* to them in the decision to take a life, jurors resort to telling stories of a threatening outsider. In this way, doing death is accomplished in explicit stories of racialized or gendered identities. Jurors focus on the defendant’s dark, cold, or menacing appearance or hypermasculinity. However, “threatening outsider” stories often defy simple categorizations of the defendant. In other words, these tales are windows into how jurors construct identities as threatening and how they respond to such identities vis-à-vis punishment. As Shirley Loman, a 58-year-old white secretary stated in response to the question “During the punishment phase did any of the defense witnesses backfire?”:

His mother, really his reaction to his mother’s testimony, he was very unemotional through the whole trial and when his mother got on the stand and pleaded for his life he didn’t bat an eye, not a tear, no emotion at all, that pretty much put him in the electric chair.

Sheila Brooks: “He wasn’t a white kid . . .”

Sheila Brooks, a white college-educated hairdresser and mother of two, served on a capital jury that sentenced to death Ray Floyd Cornish a 20-year-old black male convicted of shooting

a white male convenience store clerk. This was Sheila Brooks's first time serving on a jury.

Sheila Brooks told the interviewer that her decision to impose the death sentence "was a very hard decision." While she believes the jury made the right choice on punishment, she would prefer not to serve on a capital case again. In the course of her three-hour interview, she did not offer many stories. Indeed, most of her answers were short and straight to the point. However, she was far more forthcoming when the interviewer asked, "During the trial, what were your impressions of the defendant?"

I saw the defendant as a very typical product of the lower socio-economic, black group who grew up with no values, no ideals, no authority, no morals, no leadership, and this has come down from generation to generation. And that was one of the problems we had, for me, and in the jury. Because some of the jurors were looking at him as your average white kid: he wasn't a white kid. He came from a totally different environment. I'm just saying that he was the one that was the defendant. And I just saw him as a loser from day one, as soon as he was born into that environment, and into that set of people who basically were into drugs, alcohol, illegitimacy, AIDS, the whole nine yards. This kid didn't have a chance. That's how I saw the defendant. And there are 10,000 others like him out there, which is very tragic.

Sheila Brooks's tragedy of the "black" group tale conveys what might best be called a "white racial dialectic." Labeling the defendant as part of a valueless, "black" group, she simultaneously reinforces her own superior "white" identity. Comparing her own view to that of her counterparts on the jury, Sheila informs them that "he wasn't a *white* kid." Moreover, her use of ambiguous adjectives and phrases such as "that," "totally different," "that set of people," and the "whole nine yards" reveals a broader and more pervasive ideological means for distancing herself from a defendant she sees as lacking in individuality. Indeed, she sees him as part of a subordinate "black" subculture. Nevertheless, she observes, "there are 10,000 others like him out there, which is very tragic." The defendant is thus just another "character" in her story. Indeed, for Sheila Brooks, Cornish's "black life" fits a tragedy that is *all too familiar*.

In this story, Cornish's life is part of a tragic story that blacks "don't have a chance" *at the same time* that they are pitiful losers. Having difficulty relating to a defendant "born into *that* environment," Sheila Brooks marks entire places as breeding grounds for black inferiority, as drug-ridden, AIDS-infested places—places far away (albeit, tragically) from where "average white kids" live. Next, she responds to the question, "In your mind, how well do the following words describe the defendant: severely abused as a child?":

I believe that was what he endured most as a child: Severe neglect. They were from the lower socioeconomic black group. From what we read about in the paper a lot, he was definitely from that group.

The popular media, as Antonio Gramsci classically observed, is a key transmitter of hegemony. For Sheila Brooks, media confirms that “black” is more than just a category for designating the defendant Cornish, but a story of what “these people are.” Next, she emplots an individual responsibility story of her husband’s struggles with addiction into her broader cultural distance narrative:

I did think about my first husband who was a drug addict and that’s how I know what a drug addict is. And they didn’t prove that to me. And drug addicts don’t go out and kill people.

The final sentence serves as an important hegemonic end in Sheila Brooks’s story. By plotting the story of her husband’s addiction as a matrix for understanding the defendant’s addiction, she is able to see Cornish as culturally remote; that is, she is able to confirm what she already *knows* about drug addicts. At the same time, the story of her husband allows her to come across as “color-blind” or race neutral. Because “drug addicts don’t go out and kill people,” she is able to rationalize away the complexities of Cornish’s *own* problems with illicit drugs. In contrast to her earlier story of the “lower socioeconomic black group,” by comparing the defendant’s and her husband’s addictions she allows herself to seamlessly make the transition to an evaluation of Cornish’s culpability for murder.

Employing episodes from their private lives, white jurors tell stories that are inconsistent and often contradictory explanations for how they came to *know* the defendant. It is precisely such inconsistencies and contradictions that help explain how the racial inferiority narrative is a taken-for-granted part of “doing” death on the racially defined other. Unlike the subordinate racial group, white jurors need not be consistent. They need only to confirm what they already believe—that the defendant is everything or anything that *they* are not (e.g., “black” and “addicted”).

Melvin Seagal: “I call them lost souls. . .”

Stories of personal experiences lend an air of authority to jurors’ stories. Consider Melvin Seagal, a 63-year-old, retired, white social worker who sat in judgment of Frank Sharpe, a 33-year-old African American male convicted of shooting to death his 72-year-old uncle:

I lived in New York City for 17 years, and I saw a lot of youngsters like him in the ghettos up there, who were just lost souls. I

call them lost souls. They have the propensity to do great harm to others because they have a lot of rage. They have a lot of unresolved anger. So, yes, I've seen young men and women who very much reminded me of him. They're powder kegs, they're just . . . their emotions are just simmering beneath the surface. And that's where I was exposed to a lot of people like him, when I was living in New York City.

Comparing his own experiences of working with “ghetto youngsters” with Sharpe’s experiences bolsters the veracity of Melvin Seagal’s story. In contrast to Sheila Brooks’s explicitly lay, nonexpert tale of a “lower socioeconomic black group,” Melvin Seagal employs his identity as an experienced *insider*. Yet Seagal’s story conveys essentially the same plot as Brooks’s: Blacks such as Frank Sharpe are “lost souls”; “they have the propensity to do great harm”; “they have a lot of rage.” Drawing on his own experiences with blacks, he in effect represents himself as an expert *testifying* to the defendant’s outsider identity. By emplotting the story of “ghetto lost souls” into his evaluation of the defendant, Seagal *avoids* evaluating the specific complexities of Frank Sharpe’s life.

From Racial Tragedy to Racial Contempt

Media and jurors’ personal resources give meaning to an underlying clash of cultures in jurors’ cultural distance stories. Both popular culture and personal experiences help them confirm what they already know about “blacks” like the defendant. Using such cultural and personal capital enables jurors to see the defendant as “other” and indeed *worthy* of the death sentence.

“Death worthiness” in whites’ stories may also be told through the prism of the defendant’s crime. In this way, whites combine an emotionally charged tale of “black violence” with their reactions to the murder. Unlike the previous examples, the tragedy of the “black” group tale gives way to a story of contempt for the defendant and *what* he represents. Such stories convey contempt for the black defendant as part of a broader epidemic that needs to be avenged.

Robert Waingrow: “The blacks are killing the blacks. . . . Just like a gorilla . . . like Rodney King”

This high-school-educated 43-year-old white construction worker served on a case involving the defendant Ivan Strayhorn, an African American man who murdered his stepmother. He begins by telling the “tragically familiar” story of “the blacks are killing the blacks.” Here, he offers his reactions to the murder of Strayhorn’s stepmother:

[I]t's a shame, a woman that lived a good life, you know? And it's just a shame to see the way she went. I'm not going to be racial about it, but you have to state the facts: The blacks are killing the blacks. And you don't punish gently. It's just brutal. You think that he would do that to somebody who put her hand out to help him?

Robert Waingrow's story of the "all too familiar" escalating black-on-black violence is a matrix for understanding Strayhorn's responsibility for the crime. Indeed, it helps Waingrow make sense of the defendant's senselessness. Trying to save face (e.g., "I'm not going to be racial about it"), Waingrow "knows the facts." He is far less subtle, however, in his representation of Strayhorn's altercation with the courtroom deputies during the trial:

During the trial we determined he was a very violent person, because he jumped up and grabbed a deputy and tried to get the pistol out of his holster in the court, in front of everybody. It took six guys to subdue him. One of the detectives went over, and Strayhorn damn near got his gun and probably would have shot him. And the judge is yelling, "get the jury out, get the jury out!" And everybody is going "oh my god, oh my god!" People scattered like you wouldn't believe. This guy was big, you know. And these big deputies are jumping all over him, and he's just dragging them along. Just like a gorilla. Like Rodney King, you know the same situation.

Robert Waingrow's racial inferiority tale speaks for itself. The black body is but a racist caricature in his story. Drawing on the Rodney King spectacle, he presents Strayhorn as an inhuman beast, a chained gorilla. If "black-on-black" violence helped him broadly locate the defendant's murder of his stepmother, then seeing Strayhorn in this courtroom altercation only confirms for Robert Waingrow *what he already knew* about blacks "like" Rodney King. Waingrow knows from the beginning "who" Ivan Strayhorn "is" and "how" he will vote on punishment. Employing a tale of racial inferiority, Waingrow dehumanizes Strayhorn as a "chained gorilla . . . like Rodney King." Like Toni Morrison's eloquent observation of how race and inhumanity were conflated in the O. J. Simpson spectacle, for Robert Waingrow

race is itself primitive. . . . What might be illogical for a white is easily possible for a black who has never been required to make, assumed to make, or described as making "sense." Therefore when race is at play the leap from one judgment (faithful dog) to its complete opposite (treacherous snake) is a trained reflex. From this reductive point of view blacks are seen to live outside "reason" in a world of phenomena in which motive or its absence is sheltered from debate. Or, as a William Faulkner character put it, "a nigger is not a person so much as a form of behavior." (Morrison 1997:xi)

Ralph Lewis: "Every time . . . I meet a nigger. . ."

Older, less-educated white jurors' stories convey an even more explicit contempt for blacks. Such jurors weave racial epithets into their stories; they explicitly see blacks as inferior. Marking the defendant with a racial identity rooted in a hopeless and savagely violent black group, they express an utter lack of surprise over the defendant's actions.

Ralph Lewis, a 62-year-old, white, retired farmer was born and raised in Alabama and is *proud* of his Southern background. Indeed, throughout his interview he seemed to take great pride in "how thick my accent is." While there were some audio problems and thus some difficulties transcribing his three-hour interview, Lewis's description of Alfred Watson, a black man convicted of shooting a black victim in an apparently failed drug deal, was captured by the tape recorder:

Anybody that was born and raised in the South when I was born and raised in the South and says they're not prejudice is a liar. I try very, very hard to get over it. Every time . . . I meet a nigger, and I don't like white ones anymore than I do black ones. That's the way it is. And what difference [there] [is] between me and anybody else is that I admit it . . . I mean, like when I heard about the killing, I thought, well, they're just wiping each other out again. You know, if they'd been white people, I would've had a different attitude.

Obviously, Ralph Lewis's overt racism elucidates his underlying contempt toward African Americans such as Alfred Watson. While only one other juror in the sample referred to the defendant as a "nigger," such contempt stories, albeit more explicitly than Robert Waingrow's story, convey a very similar point: that this defendant's violence is indicative of a racially inferior group. However, the statements "they're just wiping each out again" and "if they'd been white people, I would've had a different attitude" are more than racist blather. Viewed through the lens of punishment at the hands of the state, Lewis's story reveals how sentencing the "other" has as much to do with constructing black identities as it has to do with *confirming* whiteness.

When Blacks Hold Out for Life

The story of the caring family is a matrix for how the white majority is able to convince a black holdout to impose the death sentence. Describing the holdout's reluctance to impose the death sentence because of the holdout's identification with the defendant's race, or more generally her mistrust of the criminal justice system, jurors in the majority tell stories of a sympathetic

attempt to understand the fellow jurors' "differences" with the group.

White male jurors, rather than resorting to outright intimidation of the minority, tell a story of "the caring father," in an almost cordial approach, to convince the nonwhite holdout. As Mary R. Jackman (1996:74) observes:

Within these constraints, the dominant group relies more on love or reasoning as instruments of coercion than on hostility and force. These efforts do not fall into a void, but set the moral parameters of the dialogue with the subordinates. If the structure of the relationship is conducive, subordinates may be trapped into generous compliance.

White males tell stories that show their attempt to understand, or at least acknowledge, the subordinate's point of view. What distinguishes such attempts, however, is how paternalism becomes an especially effective discourse, indeed, a means for trapping the holdout by the serenade into "generous compliance."

Fred Dawson: ". . . the fact that it is one of your brothers"

Fred Dawson, a 38-year-old business executive, served on the Cornish case with Sheila Brooks. The jury was made up of eleven whites (six females and five males) and one black woman. At the sentencing phase, all of the jurors except the black woman had made up their minds that Cornish deserved death. Here Dawson tells how the jury was able to persuade her this one juror to join the majority:

The only disagreement was with the black lady. She was a bright, a very nice lady. She had problems before. . . . Her son had been picked up, accused of a crime falsely, because he was black. She was a little bit sour on the system, but he got out of it. They found the other two black kids. So we were talking about that, and she looked across the table and she said, "I was the one who voted for life, you know?" I said, "you don't have to tell me that." I said, "but I know you were having trouble, the fact that it is one of your brothers" And she said, "he really aint no brother of mine, he's a bad dude, bad." So I said, "well, that's up to you." She said, "Why don't we vote again?" And it was 12-0. And then she sat there and cried for 20 minutes. But she was a good lady.

Dawson's story of "the caring father" immediately draws attention to the "very nice," "bright," "black" lady. Conveying a sense of sympathy, Dawson then quickly shifts to a story of what "made her different from us." Dawson is indeed careful to acknowledge the validity of the African American holdout's mistrust of a criminal justice system that falsely "accused" her son of a crime. In addition, his introduction creates a sense of rising

curiosity in the reader; the focus now is almost completely on the “good black lady.”

Dawson’s story is also a tragic one. Speaking in the black woman’s voice, he is able to sound both sympathetic and understanding of her “black” plight. However, it is not until Dawson recounts her response to the challenge of “having to sentence one of your brothers” that the utility of paternalism as a device for achieving compliance is revealed. Dawson simultaneously expresses sympathy for the black juror’s predicament *and* turns the tables on her. Employing a “dominance of care,” he coaxes her into confronting what he perceives as her own black protectionism. But Dawson is careful to represent himself as a caring and sympathetic father figure (e.g., “Well, that’s up to you.”). In a word, care and sympathy allow him to avoid the implications of the obviously racial tactics he has used to make the black holdout *see things his way*. Indeed, paternalism, especially in the context of the give-and-take of deliberations, is perhaps the most effective and indeed subtle discourse for creating the illusion of a “color-blind” and sympathetic decision-making process.

While paternalism and sympathy played a roll in the jury’s deliberations, Fred Dawson was anything but sympathetic toward the defendant and what he represents. Consider Dawson’s responses to the following questions concerning his impressions of the defendant, his family, and the crime:

INTERVIEWER: *Did you have the following thoughts or feelings about the defendant: “You felt anger or rage toward him?”*

DAWSON: *I was angry because hundreds of thousands of people are like this throughout the country who cause all this aggravation and money to be spent on the court system. It’s just ridiculous! It’s wasting my time.*

INTERVIEWER: *Did you feel contempt or hatred for the defendant’s family?*

DAWSON: *I don’t hate anyone. It’s the same bullshit that never stops. There’s too much of it. Our welfare system makes these people. Our dollars we give them. It’s terrible and awful.*

INTERVIEWER: *In your mind how well do the following words describe the killing: It made you sick to think about it?*

DAWSON: *No, because that is a personal thing. I don't get upset about people like that. I just want to put him away from society. Hang them if they have to be hung, or the death penalty, whatever. I am sick and tired of this. It's a fairly universal attitude of people today. There is so much stupid crime! It's ridiculous, you know? We have so many liberal "do wells"—those bleeding heart liberals. This is nonsense. The guy knew what he was doing when he pumped four shots into the guy.*

The nexus of white middle-class male identity and conservative tough-on-crime rhetoric is audible in each of Fred Dawson's responses. Replete with racially coded phrases such as "these" people and "the same bullshit that never stops," his angry responses stem not only from the defendant's actions but also from *whom* Cornish and his family represent. Thus Dawson's individual responsibility story has little to do with an "individualized" assessment of the defendant's conduct. Rather, Dawson's identity is one of a "conservative avenger"—he sees himself as "evening the score" against the pro-welfare, liberal establishment he blames for producing "the Ray Floyd Cornishs of America"—a racialized discourse heavily employed during the Reagan and Bush presidencies (Omi & Winant 1986).

Fred Dawson focuses his contempt for Cornish's crime on the liberal "do wells." In effect, he reconciles the contradiction in his fellow juror Sheila Brooks's assessment of the defendant as *both* responsible for his actions and a product of his tragic "black" environment. Indeed, in Dawson's story anti-liberal rhetoric is a justification in and of itself; it is taken for granted as the *way things are* (e.g., "a fairly universal attitude"). And it enables Dawson to make Cornish's crime *personal* (e.g., "Our dollars we give them") at the same time that it obscures his own racist stereotypes of a dangerous black welfare class.

V. The Stories of Black Capital Crimes' Jurors

The African Americans in this study challenge the racial inferiority tales of their fellow white jurors. In effect, they offer critiques of whites' localized knowledge that they describe as forms of both white elitism and racial bias against black defendants. The more-educated blacks draw on specific examples of something their fellow white jurors said or did as a basis for presenting a broader critique of the entire capital jury system itself. More of the working-class black jurors tell stories directed at white folks whom they describe as individual racists.

Ronald Fredrickson: “They wanted to fry those black boys . . .”

Working-class black males, such as Ronald Fredrickson, voice strong resistance toward their fellow white counterparts on the jury. Fredrickson, a 53-year-old auto mechanic who served on the case of Arthur Chester, a black man convicted of murdering a white police officer, gives this response to the question, “In your own words, can you tell me what the jury did to reach its decision about the defendant’s punishment?”:

They wanted to fry those black boys. I’m serious, that’s the feeling I got. I felt that they didn’t give a shit one way or the other. They wanted to go home to their husbands or to the football game instead of worrying about whether these people were going to die or not. They felt like these two black boys took a white man’s life: We’re going to burn them. That’s the impression I got from a lot of the jurors . . . I really believe they wanted to burn both of those guys because they were black and because the white defendant had a plea bargain and we didn’t even hear his testimony. He was there just as much as the other black guy was.

Fredrickson’s story reveals a deep alienation and hostility toward the white majority. He expresses resistance to the pervasive white hegemony of black inferiority, of which he is acutely aware. The phrase “to their husbands” is perhaps the clearest example of his resistance to a system he views as privileging whites. His use of the generalized descriptive “their” suggests a more global perspective of the struggle for racial justice as well. Moreover, “football games”—as a trope for white indifference—serves both to articulate to the interviewer the lack of concern the white majority had toward Chester’s life and also to suggest a critique of the privileged “white” suburban lifestyle. Fredrickson, as a working-class high-school-educated man, employs a racialized discourse of a society deeply polarized by race and class inequality.

While Ronald Fredrickson never joined the pro-death majority—indeed, he was outnumbered in an eventual majority-rule decision for death—his last two sentences highlight his awareness of racial inequity in the criminal justice system (i.e., “he was there just as much”). Yet Fredrickson’s story reveals more than a diffuse mistrust of the criminal justice system. That is, such a broad belief in the context of the Chester case can be heard as galvanizing Fredrickson’s own internal resistance toward people such as Ralph Lewis—those who believe that blacks are an inferior race.

Harold Brown: “totally different perspective of what happens in the inner-city . . .”

Other African American jurors share familiar experiences with whites. These stories confirm why they resist white racism.

Another black juror, Harold Brown, a 54-year-old high-school-educated carpenter, explained how the jury made its decision to sentence to death Dwayne Whitmore, an African American convicted of killing another African American in an apparent gang-related dispute:

People got their opinion before the trial actually started. Like this guy from up North. He had a totally different perspective of what happens in the inner city compared to the guy out in the suburbs who thinks, "If it's a black thing then its automatic guilty." The white woman on the jury says the same thing. The white woman from West city who gets on the elevator with me, she got a problem. If something went down, the first thing that's gonna come out of her mouth, "It was a black guy." It's an automatic thing. And it's a shame to think that way when these white jurors hooked up that they were so disinterested. They were more concerned about what we were gonna have for lunch, and how long was lunch, and when we're [we] gonna get out of there.

Like Ronald Fredrickson, Harold Brown tells a story that reveals a powerful sense of resistance toward the racially biased white jurors. He emplots a story from outside the jury room into his broader resisting-white-racism narrative. In this way the hypothetical "elevator episode" serves not only to highlight racial bias among white jurors but also to convey it as taken for granted. In other words, Brown's story can be interpreted as saying, "If whites are racists in elevators, then obviously they will be racist when deciding whether or not to sentence a black defendant to death."

Shirley Sharpe: "I felt like an outsider . . ."

Shirley Sharpe, a college-educated secretary tells a more sympathetic story of *culturally distant whites*. She begins by describing her attempt to "educate" the white jurors who are unfamiliar with poor, blacks' lifestyles:

The main problem I had with the jury as a whole was that they were not considering what background this kid came out of. They were looking at it from a white middle-class point of view. Let me give you an example. There was testimony where they said that the defendant stayed out until eleven o'clock at night. But we are looking at a different kid here. This kid came out of a broken home where there was no structure, no authority figures. . . . He just came as he went. Of course he's going to stay out until eleven o'clock at night! He's going to stay up beyond that. And they were arguing, "Well, my kid comes in at such and such."

Nevertheless, sympathy for her white counterparts gave way to frustration in Sharpe's story:

And I was frustrated. I felt there had to be more blacks on the jury. Because I think that was a big frustration for me. Because they were looking at this thing from a white middle-class perspective, and you have to put yourself into that black lifestyle this kid came out of. That particular lifestyle where there was not a good home, no supervision, there were no authority figures for this kid. So why waste time on talking about, my god, what time this kid comes in the house! There were a lot of little instances like that. That's why I felt like an outsider at times, because I felt I should have been more forceful at trying to get these people to understand. We had to look at it like the lifestyle he came out of, the background he came out of. But nobody wanted to listen. They all wanted to talk. I'm not strong-willed. I'm not forceful enough. That's why I felt like an outsider. So, rather, than get into it, I didn't say much. I mean, I deliberated, but I didn't say much about those types of things. So that was a biggie, and it didn't make me happy. And I felt there should have been more blacks on the jury to balance that out.

Shirley Sharpe employs two distinct racialized discourses. On one hand, she speaks as an educated black juror who is sympathetic to her culturally distant white counterparts. On the other hand, however, she is unable to educate them on the realities of social disorganization and the absence of social control, so she turns to a narrative of *resisting white racism*. In this story the problem with the jury system is all too clear: Whites are too socially estranged from blacks to *make sense* of their murderous actions. Thus Shirley Sharpe feels like an “outsider” who lacked the will to persuade the whites.

Moreover, it is important to note that this shift in her story from racial educator to resister is emplotted against the very specific backdrop of being the only African American character in this tale. Indeed, this reality and her failure to persuade the white majority help explain her profound sense of racial disconnection, which manifest itself in her own personal estrangement and ultimately in her feelings that the system is in desperate need of reform. This narrative shift can be heard as elucidating *both* a local and a global consciousness. Such a “double consciousness” (Du Bois [1896] 1981) as an African American capital juror *and* as a member of the black community helps explain why black jurors may come to resent the white majority jurors they see as utterly estranged from “black” life outside the legal system.

VI. Conclusion

Racialized discourses among the death qualified jurors are not all of a piece. Whites articulate a tale of racial inferiority, but how such a narrative is made and remade hegemonic is more

complex. White jurors are found to employ cultural distance stories of individual responsibility, the tragic “black” group, the “bad kid” and “the caring family,” and “the threatening outsider.” Who a juror *is*, however, has implications for how such stories make sense to them—indeed, for understanding how the tale of racial inferiority remains taken for granted.

In contrast, African American jurors, who represent a very small percentage of the death qualified jurors (Bowers et al. 2001), tell stories of “culturally distant whites” and “resisting white racism.” In a word, blacks clearly “see” things differently than whites in death cases involving black defendants. But there are also subtle differences *within* the sample of blacks. More-educated jurors, such as Shirley Sharpe, are more sympathetic to the defendant and tend to tell stories that are closer in tone to those of their educated white counterparts (e.g., Sheila Brooks’s “He wasn’t a white kid” story). Alternatively, less-educated working-class blacks such as Ronald Fredickson are far less sympathetic; indeed they are openly hostile to the white majority they perceive as utterly indifferent to the lives of African Americans.

Prior research has attempted to present a more nuanced, “situational” perspective of legal consciousness (Nielsen, 2001), one that looks at legal discourses across *categories* of race, class, and gender. As a complement to Nielsen’s perspective, this research points to a far more fluid perspective of the “law” as constituted by respondents’ *multiple* identities. In the remainder of this paper I highlight some critical directions for what I have called a “theory of legal narrativity.”

Toward a Theory of Legal Narrativity

A theory of legal narrativity posits “that it is through narrativity that we come to know, understand, and make sense of the social world, and it is through narratives and narrativity that we constitute our social identities” (Sommers & Gibson 1994:58). From this perspective, legal consciousness is understood by elucidating both the stories that give meaning to actors’ identities (e.g., Oberweis & Musheno 2001) *and in turn* how such identities give meaning to “law” (e.g., Phillips & Grattet 2000; Richman 2002) as a site for competing hegemonic and subversive narratives (e.g., Ewick & Silbey 1995). It is only through the explication of identity stories (e.g., narrativity) and the hegemonic force that constitutes such stories (i.e., which makes law’s dominance taken for granted) that we can more fully come to understand the subtleties of legal consciousness.

A theory of legal narrativity also presents a complementary methodological focus to the theory of situational legal consciousness (Nielsen 2001). More specifically, in addition to focusing on “variation across group when examining legal consciousness”

(Nielsen 2001:1088), a focus on narrativity moves beyond an analysis of law as a single isolated phenomenon occurring across or among isolated social groups. In this way, events are made episodic. This is accomplished by focusing on “emplotment”:

It is emplotment that gives significance to independent instances, not their chronological or categorical order. . . . As a mode of explanation, causal emplotment is an accounting (however fantastic or implicit) of why a narrative has the story line that it does. (Sommers and Gibson 1994:59)

It is also through the emplotment of identity stories that we learn *how* the law’s hegemonic potential is mobilized and resisted.

Thus these data demonstrate the subtle intersections and tensions among race, identity, and hegemony in death cases. Undoubtedly, “race” has been demonstrated to be a pervasive and complex grammar for “doing” death. Racialized discourses are truly far more complex than “obvious” racial stereotypes of “black” criminals. For example, capital jurors’ racialized discourses are constituted by both their “ordinary” identities—as, for example, in Sheila Brooks’s story as a “wife of an addict” *and* more broadly by their popular wisdom—as in the example of the use of the trope of “the low socioeconomic, black group” more broadly. Nevertheless, it is only through the explication of narrativity in this context that we are able to see such subtle connections. To better understand legal consciousness in other sites, future research should pay greater attention to hegemonic narratives as both constituting and constituted by multiple identities.

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