ANNUAL REVIEWS

The Influence of Latino Ethnicity on the Imposition of the Death Penalty

Sheri Lynn Johnson

Cornell Law School, Ithaca, New York 14853-4901, USA; email: Slj8@cornell.edu

ANNUAL REVIEWS CONNECT

Keywords

Latino, Hispanic, death penalty, capital punishment, Latinx

Abstract

With respect to African Americans, the history of racial discrimination in the imposition of the death penalty is well-known, and the persistence of racial disparities in the modern era of capital punishment is well-documented. In contrast, the influence of Latino ethnicity on the imposition of the death penalty has been studied very little. A review of the limited literature reveals evidence of discrimination against Latinos. Archival studies generally find ethnicity-of-victim discrimination, and some of those studies find ethnicity-of-defendant discrimination disadvantaging Latino defendants; these findings parallel the findings of the much more robust literature investigating bias against African American defendants and victims. The controlled experimental studies generally show both ethnicity-of-defendant and ethnicity-of-victim discrimination disadvantaging Latinos. Related literature investigating stereotypes, animosity, and discrimination in other criminal justice decisions further suggests the likelihood of ethnicity discrimination in the imposition of capital punishment, as well as the need for further research.

1. INTRODUCTION

"[I]f any basis can be discerned for the selection of these few to be sentenced to die, it is the constitutionally impermissible basis of race." So wrote Justice Stewart, concurring in *Furman v. Georgia* (1972) almost half a century ago. His comment reflected both the empirical evidence of the day and the National Association for the Advancement of Colored People's extended campaign to make the court face that evidence. *Furman* overturned standardless capital punishment, but *Gregg v. Georgia* (1976) upheld so-called guided discretion statutes, statutes that would, the *Gregg* majority assumed, eliminate the constitutionally problematic race discrimination that helped doom the pre-*Furman* capital sentencing regimes. Guided discretion, however, did not eliminate interest in racial disparities. Since *Gregg*, a host of studies, with widely ranging methodologies, have challenged *Gregg*'s assumption that discrimination could be eliminated by narrowing the range of capital crimes. Indeed, by 1990, the number of studies was large enough to inspire a US Government Accountability Office (GAO) review of the literature, one that concluded that the evidence of significant race-of-victim disparities (disparities in the likelihood that death will be imposed based upon the race of the victim) was strong and evidence of significant race-of-defendant disparities (disparities in the likelihood that death will be imposed based on the race of the defendant) was mixed (US Gov. Account. Off. 1990). A more recent review of 36 post-1990 studies reached similar conclusions (Grosso et al. 2014).

But all of the studies reviewed by the GAO, as well as almost all of the studies conducted since the GAO review, employed a black–white paradigm; researchers asked whether cases with African American victims are significantly less like to result in death sentences than are cases involving white victims, and whether cases involving African American defendants are significantly more likely to result in death sentences than are cases involving white defendants. Does racial/ethnic bias influence the imposition of the death penalty on Latinos? In this article, I summarize the limited empirical studies addressing that question, consider related data that bear on the likelihood that such bias affects death sentencing, and describe issues that need further research.

2. A SUMMARY OF THE LITERATURE ON LATINOS AND CAPITAL PUNISHMENT

There are at least two important grounds for hypothesizing that bias against Latinos in the imposition of death sentences resembles bias against African Americans. First, Latinos, like African Americans, are an identifiable group who are perceived as outsiders, a perception likely to be intensified when prosecutors and jurors are asked to judge a lawbreaker, and likely to enhance willingness to impose the ultimate sanction. Second, some of the stereotypes of Latinos—like some stereotypes of African Americans—involve propensity to commit crimes, which may affect perceptions of future dangerousness, which in turn affect conclusions about the appropriateness of the death penalty in a particular case. One might therefore expect that researchers would be interested in questions such as whether bias infects decisions involving Latino defendants and victims, whether the magnitude of its influence is the same as it is in cases involving African Americans, whether particular states (or counties) evidence greater degrees of bias, or whether particular kinds of death-eligible offenses are more or less likely to evoke biased responses. Because African Americans and Latinos are burdened with somewhat different (albeit overlapping) stereotypes, and because they sometimes elicit different emotional reactions from majority group members, "both the nature and the magnitude of bias in jury decision making may differ substantially across target groups" (Hunt 2015, p. 280). Nonetheless, very few studies have explored the relationship between Latino ethnicity and the imposition of the death penalty.

The dearth of research on Latinos and capital punishment is part of a larger phenomenon: Discrimination against Latinos is relatively understudied despite their growing numbers in the population (Charles & Guryan 2011, Espinoza & Willis-Esqueda 2008). One impediment to studying any form of discrimination against Latinos is their readily apparent diversity. To lump together the experiences of Cuban Americans, Puerto Ricans, Chicanos, and Mexicans seems foolhardy, and to adequately distinguish them, daunting. Although black–white discrimination paradigms may obscure differences between members of the African diaspora, the overwhelming number of black individuals in the United States are African American, which makes generalizations less likely to be overbroad. Another obstacle is the lack of data; in particular, although the federal government has long collected and made available criminal justice data that include the race of the defendant, these reports depended upon state data sources, and many states until very recently did not record the Latino (or more often, "Hispanic") identity of either the defendant or the victim (Goncalves 2020).

2.1. Archival Studies

The quality of the archival studies is uneven, and their scope varies both temporally and geographically. Only two nationwide archival studies address the capital punishment of Latinos; one is a historical summary of cases with Latino defendants that does not attempt to measure bias, and the other focuses on federal prosecutions. Four statewide studies and five county studies in some way examine the influence of Latino ethnicity on capital punishment; these studies differ in whether they investigate race-of-defendant effects, race-of-victim effects, or both, and in whether they focus on the prosecutor's decision to seek death and or the jury's decision to impose it.

2.1.1. Nationwide studies.
Professor Martin Urbina (2004) published a study of Latinos executed in the first 20 years after *Furman v. Georgia*, a study he deemed largely "qualitative," and from which he concluded that all of the executed Latinos were indigent and many were intellectually disabled and lacked competent legal representation. That inaugural work was expanded and updated recently (Urbina & Peña 2019). That study revealed different patterns for Latinx defendants depending on their gender. Although many Latinas (mostly Mexicans) were lynched, hanged, or legally executed before the twentieth century began (and although 54 women—18 African American and 36 white—were executed in this country from the beginning of the twentieth century to the present), no Latinas were executed in the United States after 1900. However, between *Furman* and the end of 2018, 127 Latino men were executed, 103 of whom were of Mexican origin. Even more striking, however, is the geographic disparity: 107 of those 127 were executed in Texas.

Another study examines racial and ethnic variation in the imposition of the death penalty in the federal system. The Department of Justice under Attorney General Janet Reno compared cases submitted by US attorneys to the Attorney General for review of the decision to seek the death penalty and found (*a*) that the proportions of African American and Latino defendants were much greater than the proportions of African Americans and Latinos in the general population, and (*b*) that of the 682 cases submitted between 1995 and 2000, 20% were white, 48% were black, and 29% were Latino. Ultimately, the US Attorney General's review of these decisions affected the proportions very little: Of 159 cases approved for federal death penalty prosecution, 72% involved minority defendants. Equally noteworthy were the disparities in plea bargains that took death off the table; almost half of the white defendants who were noticed for death received pretrial waivers in a plea agreement, but only 25% of African American defendants and 28% of Hispanic defendants received such waivers. However, the study did not control for possible differences in the offenses or criminal histories of the defendants (Dep. Justice 2001).

2.1.2. State studies. Four statewide studies isolate the influence of Latino ethnicity on the imposition of the death penalty. (I do not report here studies that report on "minority" disparities without disaggregation.) In a study of Arizona cases, researchers found strong race-of-victim effects in the expected direction comparing white victim cases with Latino victim cases, but they also found what initially appears to be perverse race/ethnicity-of-defendant effects, with white defendants being 50% more likely to be sentenced to death for homicide than black or Latino defendants. However, the study suffered from several serious methodological weaknesses. The researchers failed to limit the sample to death-eligible cases, failed to control for the aggravation level of the crime, and perhaps most importantly, failed to consider interactions between defendant and victim race/ethnicity (Thomson 1997). Because most homicides are intraracial, failing to control for the race of the victim when reporting race-of-defendant disparities may confound the two effects, creating the impression that Latino defendants are favored when in fact they appear to be favored only because they disproportionately kill Latino victims.

There are two California studies. The first analyzed all of the reported homicides committed in the state in the 1990s, comparing those that resulted in a death sentence with those that did not (Pierce & Radelet 2005). Controlling for independent variables lessened raw differentials but did not eliminate them: The odds of receiving a death sentence for killing an African American were 60% lower than the odds of receiving a death sentence for killing a white victim and yet lower—67% lower—for killing a Latino victim (Pierce & Radelet 2005).

The more recent California study employs sophisticated tools for reliably determining Latino ethnicity and examines the racial effects of the radical expansion of death-eligible offenses in California. It finds that individual special circumstances apply to defendants disparately by race and ethnicity, even after controlling for case culpability, victim race, and year. In particular, in cases with the aggravators of gang membership and drive-by shooting, the researchers find overwhelming discrimination against African American and Latino defendants, with the very largest disparities in application occurring in gang member aggravator cases (Grosso et al. 2019).

A Pennsylvania study investigated the decision to seek and impose death during the first 11 years of this century. Although prosecutors sought death against a greater proportion of Latino murder defendants as compared to white or black defendants, with the addition of controls, researchers found no pattern of disparity disadvantaging either black or Latino defendants in prosecutors' decisions to seek (or, if sought, to retract) the death penalty. Controlling for several factors, including aggravation and prior record, the only comparison that was statistically significant in the decision to seek death was for cases with Latino victims, which had a 21% greater probability of having the death penalty filed (Kramer et al. 2017). With respect to jurors' decisions to impose a death sentence, neither black nor Latino defendants were disadvantaged relative to white defendants. However, there were modest race-of-victim effects; cases with white victims were 8% more likely to receive the death penalty, and cases with black victims, 6% less likely to do so.

Thus, of the statewide studies, one California study revealed race-of-victim bias against Latino and black victims, and one revealed race of defendant bias against both Latino and black defendants. The Pennsylvania study found modest effects, and the Arizona study is too compromised by its methodology to support reliable conclusions.

2.1.3. County studies. There are five county studies. One in Cook County, Illinois, found that Latinos and African Americans who killed whites were much more likely to receive death than other racial combinations, but the study did not control for offense characteristics (Murphy 1984). Another in Fresno, California, found that both the ethnicity of the offender and the ethnicity of the victim were significant factors in deciding whether to seek the death penalty against a defendant. Compared with white offenders, Latino offenders were approximately four times more

likely to have the death penalty sought against them. Even more dramatically, offenders who were charged with having killed a white victim were 14 times more likely to be charged with special circumstances than offenders who were charged with having killed a Latino/a (Garcia 1994). A third county study examined all death-eligible homicides in San Joaquin County, California, from 1977 through 1986. Using logistic regression analysis, the investigation uncovered patterns of racial (and gender) bias, finding defendants in Latino-victim cases were less likely to face a death-eligible charge than defendants in white-victim cases (Lee 2007).

There have been two studies of Harris County, Texas, which includes Houston. They encompass different time periods and come to different conclusions. The first, which covers 1992 to 1999, does not find bias against Latino defendants. Controlling for confounders, Phillips (2008) found that prosecutors discriminated against black defendants and against defendants who killed nonblack victims in their decisions to seek death. Juries attenuated, but did not eliminate, the racial disparities that originated in the district attorney's office. Most relevant here, the researcher concluded that the data suggest that Latinos and whites are treated the same. He hypothesized that the pattern could be a product of the demography of Houston, where whites and Latinos represent an equal share of Harris County residents at 38% each, compared with 19% for blacks. Perhaps, but as the author also noted, more research is needed to understand how Latinos fit into black–white disparities (Phillips 2008).

Interestingly, a later study of Harris County by the same researcher covered 2001 to 2008, the period after the elected district attorney changed, and the findings of that study with respect to Latinos are quite different: They do find discrimination in cases with Latino victims (Phillips 2012). Among the cases resulting in a death sentence, black-victim death sentence cases were proportional to the number of black-victim homicides, white-victim homicide cases were overrepresented, and Latino-victim cases were dramatically underrepresented. Moreover, although Phillips was not satisfied with his control of possible confounds, he did examine the degree of aggravation in the crimes and found that minority-victim cases were more aggravated than were white-victim cases; thus, considering the nature of the offense, the raw statistical disparities likely understated the degree of discrimination against Latino victims and concealed discrimination against black victims (Phillips 2012).

A third study of Harris County seems warranted. In 2005, the Texas state legislature adopted life without parole as a sentencing option in capital murder cases. This alternative has both decreased the number of death sentences and increased apparent racial and ethnic disparities: It appears to have virtually eliminated death sentences for white offenders, though not for black or Latino defendants (Rogers 2016).

Taken together, the archival studies, although limited in number, strongly suggest that sometimes (or perhaps, in some places) the likelihood of a death sentence is increased when the defendant is Latino and decreased when the victim is Latino. Archival analyses, however, always have their limits. Two are particularly salient here: the impossibility of controlling for all relevant factors and the impossibility of collecting sufficient data to account for every local variation. Controlled experiments are helpful in addressing these obstacles to form a complete picture.

2.2. Controlled Experiments

Unfortunately, only a handful of experimental studies are available. In the first, undergraduates read a trial transcript that varied defendant ethnicity (Mexican American or European American) and socioeconomic status (SES). Mock jurors' judgments of the low-SES, Mexican American defendant were significantly harshest by several measures. Low-SES Mexican American defendants were more likely to be found guilty and more likely to be sentenced to death when found guilty.

Participants rated them more responsible, more vicious, and more blameworthy. They also found them less intelligent, more aggressive, less competent, and less ethical than European American defendants or high-SES Mexican American defendants (Espinoza 2009).

For the second study, Espinoza & Willis-Esqueda (2015) obtained 561 actual venire persons as participants. Participants read a capital trial transcript that varied the defendant's ethnicity, his SES, and the strength of the mitigating circumstances. European American jurors recommended the death penalty most often for the low-SES Mexican American defendant when mitigation evidence was weak. They also assigned this defendant higher culpability ratings and lower ratings on positive personality trait measures when compared with all other conditions. Strong mitigation evidence contributed to lower culpability ratings by European American jurors for the high-SES European American defendants but not for the Mexican American defendants. In contrast, Latino participants' ratings were not affected by the defendant's ethnicity or SES (Espinoza & Willis-Esqueda 2015).

A third study investigated the influence of race/ethnicity on determinations of intellectual disability (Johnson et al. 2019). The subjects were 726 Mechanical Turk subjects, who were asked to determine whether a capital defendant was intellectually disabled after being informed—as the Constitution requires—that such a finding precludes the imposition of the death penalty. Participants were presented with ambiguous evidence of intellectual disability and shown 1 of 12 possible photographs of the defendant, which depicted men from 4 different racial or ethnic groups (white, African American, Latino, and Asian). Photographs were selected from the Chicago Face Database for their high levels of prototypicality. Only 39% of participants shown a Latino defendant and ambiguous evidence found that the defendant was a person with intellectual disability, as compared with 42% shown African American defendants, 55% shown white defendants, and 55% shown Asian defendants. To investigate the possibility that the less-unfavorable treatment of African American (as compared with Latino) defendants was the result of greater representation of African Americans in the participant pool, the authors separated out the responses of white participants. Confining the analysis to only white participants both increased the size of the race/ethnicity effects and caused African American and Latino defendants to be treated equally (badly). Thus, although there are only three experimental studies, they all that found subjects were more likely to sentence Latino defendants to death than to sentence white defendants to death.

3. RELATED DATA

From the summary above, it is obvious that relatively little work has investigated whether (and the extent to which) the imposition of the death penalty is biased against Latinos. It is therefore worth noting (though by no means fully canvassing) other literature that suggests such bias is likely, both because that literature contributes to the case for further research and because it points to specific questions that ought to be investigated further.

3.1. Hostility, Stereotypes, and Implicit Bias

Approximately 60% of hate crimes motivated by race or ethnicity target Latinos, and in the last decade, hate crimes against Latinos rose disproportionally to other hate crimes. Perhaps relatedly, nativist groups who respond negatively to immigration have also grown over the last decade (Perez 2018).

Numerous studies have found that Latinos are viewed as innately criminal, violent, and dangerous. In addition, stereotypes that Latinos are drug traffickers and gang members are common (Goncalves 2020). Media portrayals of Latinos exacerbate these stereotypes. Although Latinos

comprise more than 17% of the US population, stories about Latinos and Latino issues constitute less than 1% of national news programs—and the primary topics of that coverage are negative and generally connected to immigration and crime (Goncalves 2020).

A burgeoning literature explores automatic associations that individuals may make about various groups. Researchers have devised measures such as the implicit attitude test and shooter studies that capture associations individuals may deny, and of which they are often unaware. A wealth of literature explores black–white associations. Very few studies focus on implicit attitudes toward Latinos (Weyant 2005), but one such study found that subjects had more difficulty associating Hispanic names with intelligence (Weyant 2005), and another found more negative associations with Latino immigrants than with white immigrants (Garza & Gasquoie 2012). Even health care providers exhibit implicit bias against Latinos (Blair et al. 2013).

3.2. Noncapital Archival Studies of Criminal Justice Decisions

There are many more noncapital (than capital) archival studies. One federal study found that black and Latino defendants are more likely to be incarcerated than are white defendants, and when incarcerated, they receive substantially longer sentences than do white defendants (Mustard 2001). A recent summary of the literature reports numerous studies finding that Latinos and African Americans are more likely than white people to be denied bail, required to pay bail, or obligated to pay a higher bail to be released (Nejdl 2018). A 2019 review of the literature concluded that most research continues to find that African Americans are more likely than whites to receive prison sentences, even when accounting for racial differences in criminal history and crime severity, and that a similar pattern exists for Latinos relative to non-Latino whites, a difference that is even more pronounced for noncitizens (King & Light 2019).

3.3. Noncapital Guilt Attribution Studies

In one recent study, researchers asked 320 mock juror participants to read a trial transcript that varied defendants' immigration status (documented or undocumented), defendant country of origin (Canada or Mexico), and defendant race/ethnicity (white or Latino). White mock jurors were significantly more likely to find undocumented, Latino immigrants from Mexico guilty as compared to all other defendants. They found the same defendants to be more culpable and rated those defendants more negatively on various trait measures in comparison with all other conditions. Latino mock jurors, however, did not demonstrate either ingroup favoritism or outgroup bias (Minero & Espinoza 2016).

In another study, 247 participants read a trial transcript that varied defendant race/ethnicity (white or Latino), defense attorney race/ethnicity (white or Latino), and defendant SES (lower or upper middle class). Bias against Latino defendants was strongest when the defendant was of low SES and represented by a Latino defense attorney. In addition, attorneys representing low-SES Mexican American defendants were perceived as less competent and rated lower on several trait measures (Espinoza & Willis-Esqueda 2008).

3.4. Latino Exonerees

A study of Latino exonerees (some of whom were capital defendants and some who were not) suggests three sources of error particularly likely to affect Latino defendants (O'Brien et al. 2019). First, some Latino defendants are more vulnerable to tactics that induce false confession because of the language barriers they face: Of the 29 Latino exonerees who falsely confessed, 12 did not fully

understand spoken English. O'Brien and colleagues speculate that inadequate translation also may prejudice such defendants, making them seem evasive or inconsistent and therefore less credible, though the authors acknowledge they cannot estimate how often this may lead to false convictions. Second, cross-racial misidentifications were more common in the cases of Latino exonerees than in those of white exonerees, though less so than in African American exonerees' cases. Finally, they found exoneration cases where law enforcement exploited the immigration status of witnesses to manipulate cases, primarily by deporting witnesses with exculpatory testimony.

3.5. History

As my review of the limited existing literature on Latinos and capital punishment demonstrates, it is paltry in comparison to the literature on African Americans and capital punishment. Although the lesser availability of data on the Latino ethnicity of homicide defendants may have contributed to this disparity, undoubtedly it is not the entire, or even the most important, cause. Rather, it is likely at least partially attributable to the horrible history of discriminatory imposition of capital punishment on African Americans in the pre-*Furman* era, along with the not-so-distant history of widespread lynching of African Americans. No Latino capital punishment data analogous to the pre-*Furman* black–white statistics exist, but there is a substantial history of mob violence against Latinos in the American Southwest. Researchers have cataloged 597 lynchings of persons of Mexican origin or descent in the United States (Carrigan & Webb 2003). Thus, history too suggests a likelihood of bias.

4. THE NEED FOR FUTURE RESEARCH

My interest in this topic began with my representation of Ramiro Hernandez Llanas, executed by the state of Texas in 2014. I was appalled at the blatant ethnic prejudice expressed by purported experts and tolerated by the courts (Johnson 2016)—and surprised. Though I began my academic career almost 40 years ago, and have been focused on the influence of race in the criminal process from its start, and though my litigation of capital cases began 25 years ago, until I represented Ramiro, I had never given much thought to whether or in what ways the death penalty discriminated against Latinos. In part, this is the accident of personal and professional connection to African Americans, but it was not an idiosyncratic blind spot. When I sought social science literature to help me understand the nature of the bias Latino capital defendants face, I was again surprised, for there was almost nothing to consult. Moreover, the number of publications was so small that I had to notice that virtually all of them were produced by a handful of Latino researchers.

So wearing one of my hats—that of a capital defense attorney—I hope to see future research both to illuminate the bias facing Latino capital defendants and to aid their defense counsel in attacking the sources and manifestations of that bias. Although no amount of social science evidence has led to judicial interest in remedying the effects of covert or unconscious bias against African American capital defendants [*McCleskey v. Kemp* (1987)], the Supreme Court has been willing to police some of the blatant expressions of bias against them [*Buck v. Davis* (2017), *Flowers v. Mississippi* (2019)]. Perhaps in part because of the lack of supporting social evidence, courts have been much less interested in claims of ethnic/racial discrimination harming Latinos than in such claims by African Americans. That relative disinterest has left even explicit bias against Latinos a free rein (Johnson 2017), and I am hopeful that development of evidence of anti-Latino bias in the administration of the death penalty might spur some judicial action to counteract it.

Wearing another hat—that of an academic with a lifelong interest in racial discrimination—I hope to see more research because there is just so much left to understand. This is true of

prejudice and discrimination against Latinos in general (Dovidio et al. 2010) and particularly true of discrimination in the imposition of capital punishment.

Archival studies have only begun to establish the extent to which Latino ethnicity influences the imposition of the death penalty. More studies with better statistical controls are needed. As noted earlier, such studies have been seen as impossible in the states where homicide reports did not include Latino ethnicity of offenders or victims. For states that have only recently been collecting and reporting that data, it will be a long time before the FBI supplemental homicide reports provide the baseline offense rates against which death sentences can be compared; use of other, more cumbersome methods of ascertaining Latino ethnicity will be necessary (Grosso et al. 2019).

And studies in more localities are needed. Archival studies of the decisions to seek and impose death on Latino offenders in Texas may tell us little about those decisions in California, because the attitudes of the decision makers toward Latinos (and toward the death penalty) may be quite different. More specifically yet, discrimination in Houston may be quite different than discrimination in the Rio Grande Valley. Further complicating the picture is the question of which Latinos might be experiencing discrimination. Relevant stereotypes of Cuban Americans may be quite different from stereotypes of Mexican Americans or Colombian Americans. Moreover, there are questions of intersectionality; most saliently, bias toward members of each group may be different than bias toward persons of the same national origin who are foreign nationals. Doubtless, this variety cannot be covered comprehensively, but theory might inform which studies are most likely to be generalizable and where narrower studies are necessary. One possible response to such variety is for researchers to focus archival studies on jurisdictions with the largest proportions of Latinos and/or the largest numbers of death sentences.

Experimental studies may be better tools for exploring intersectionality than are archival studies and are also needed to understand the mechanism by which biased outcomes are produced. For example, are white jurors or prosecutors less receptive to mitigation evidence (or some particular kinds of mitigation evidence, such as mental illness, brain damage, or drug addiction) when the defendant is Latino? Are they less willing to credit—or less able to detect—evidence of remorse in Latino defendants? Are they less receptive to prior good act evidence, and does receptivity depend on the ethnicity of the witness attesting to the prior good acts? Are white jurors or prosecutors more likely to find a murder committed by a Latino defendant to be especially heinous or more likely to predict a Latino defendant will be dangerous in the future? Do Latino (or African American or Asian American) jurors and prosecutors exhibit the same biases? Are these biased responses due to conscious stereotypes? To implicit associations? To animosity? To lack of empathy?

Answers to these questions should provoke questions related to reduction of bias and amelioration or remedy of its effects. Are there measures that reduce bias in either prosecutorial decisions to seek death or jury decisions to impose it? Are these measures ones that district attorneys' offices would adopt or that courts would impose? The questions of how to diminish bias and how to cabin its effects bedevil much of the social science literature on prejudice and discrimination, and in no context has it produced easy answers (Devine et al. 2012). Nonetheless, at least where death is at stake, it is imperative to investigate the questions, and I hope that some readers of this review will endeavor to do so.

DISCLOSURE STATEMENT

national, and Rodolfo Medrano, a Latino US citizen, and that previously she represented Ramiro Hernandez Llanas, a Mexican national who was executed by the State of Texas in 2014.

ACKNOWLEDGMENTS

LITERATURE CITED

Blair IV, Havranek EP, Price DW, Hanratty R, Fairclough DL, et al. 2013. Assessment of biases against Latinxs and African Americans among primary care providers and community members. *Am. J. Public Health* 103:92–98

Buck v. Davis, 580 U.S. ___ (2017)

Carrigan WD, Webb C. 2003. The lynching of persons of Mexican origin or descent in the United States, 1848 to 1928. *J. Soc. Hist.* 37:411–38

Charles KK, Guryan JE. 2011. Studying discrimination: fundamental challenges and recent progress. *Annu. Rev. Econ.* 4:479–511

Dep. Justice. 2001. *The federal death penalty system: supplementary data, analysis and revised protocols for capital case review*. Doc., Dep. Justice, Washington, DC

Devine PG, Forscher PS, Austin AJ, Cox WTL. 2012. Long-term reduction in implicit race bias: a prejudice habit-breaking intervention. *J. Exp. Soc. Psychol.* 48:1267–78

Dovidio JF, Gluszek A, John M-S, Ditlmann R, Lagunes P. 2010. Understanding bias toward Latinos: discrimination, dimensions of difference, and experience of exclusion. *J. Soc. Issues* 66:59–78

Espinoza RKE. 2009. Juror bias and the death penalty: deleterious effects of ethnicity, SES and case circumstances. *Am. Assoc. Behav. Soc. Sci.* 2009:33–42

Espinoza RKE, Willis-Esqueda C. 2008. Defendant and defense attorney characteristics and their effects on juror decision making and prejudice against Mexican Americans. *Cult. Divers. Ethn. Minor. Psychol.* 14:364–71

Espinoza RKE, Willis-Esqueda C. 2015. The influence of mitigation evidence, ethnicity, and SES on death penalty decisions by European American and Latino venire persons. *Cult. Divers. Ethn. Minor. Psychol.* 21:288–99

Flowers v. Mississippi, 588 U.S. ___ (2019)

Furman v. Georgia, 408 U.S. 238, 210 (1972)

Garcia R. 1994. Latinos and criminal justice. *Chicano-Lat. Law Rev.* 14:6–19

Garza CF, Gasquoie PG. 2012. Implicit race/ethnic prejudice in Mexican Americans. *Hisp. J. Behav. Sci.* 35:121–33

Goncalves WI. 2020. Narrative, culture, and individuation: a criminal defense lawyer's race-conscious approach to reduce implicit bias for Latinxs. *Seattle J. Soc. Just.* 17:15

Gregg v. Georgia, 428 U.S. 153 (1976)

Grosso CM, Fagan J, Laurence M, Baldus D, Woodworth G, Newell R. 2019. Death by stereotype: race, ethnicity, and California's failure to implement *Furman*'s narrowing requirement. *UCLA Law Rev.* 66:1394–43

Grosso CM, O'Brien B, Taylor A, Woodworth G. 2014. Race discrimination and the death penalty: an empirical and legal overview. In *America's Experiment with Capital Punishment: Reflections on the Past, Present, and Future of the Ultimate Penal Sanction*, ed. J Acker, RM Bohm, CS Lanier, pp. 525–77. Durham, NC: Carolina Acad. Press

Hunt JS. 2015. Race, ethnicity, and culture in jury decision making. *Annu. Rev. Law Soc. Sci.* 11:269–88

Johnson SL. 2016. A legal obituary for Ramiro. *Univ. Mich. J. Law Reform* 50:291–38

Johnson SL. 2017. *Buck v. Davis* from the left. *Ohio State J. Crim. Law* 15:247–70

Johnson SL, Blume JH, Hritz AC, Royer CE. 2019. Race, intellectual disability, and death: an empirical inquiry into invidious influences on *Atkins* determinations. *UCLA Law Rev*. 66:1506–31

King RD, Light MT. 2019. Have racial and ethnic disparities in sentencing declined? *Crime J*. 48:365–437

Kramer J, Ulmer J, Zajac G. 2017. *Capital punishment decisions in Pennsylvania 2000–2010: implications for racial, ethnic, and other disparate impacts*. Rep., Pa. Interbranch Comm. Gend. Racial Ethn. Fairness, Pittsburgh, PA

Lee C. 2007. Hispanics and the death penalty: discriminatory charging practices in San Joaquin County, California. *J. Crim. Just.* 35:117–27

McCleskey v. Kemp, 481 U.S. 279 (1987)

Minero LP, Espinoza RKE. 2016. The influence of defendant immigration status, country of origin, and ethnicity on juror decisions: an aversive racism explanation for juror bias. *Hisp. J. Behav. Sci.* 38:55–74

Murphy EL. 1984. Application of the death penalty in Cook County. *Ill. Bar J.* 73:90–95

Mustard DB. 2001. Racial, ethnic, and gender disparities in sentencing: evidence from the U.S. federal courts. *J. Law Econ.* 44:285–314

Nejdl CS. 2018. Race, poverty, and bail: an annotated bibliography. *North. Ill. Univ. Law Rev.* 38:487–503

O'Brien B, Grosso C, Possley M, Stephens K. 2019. Latinx defendants, false convictions, and the difficult road to exoneration. *UCLA Law Rev*. 66:1682–716

Perez M. 2018. Los lazos viven: California's death row and systematic Latino lynching. *Whittier Law Rev*. 37:377–400

Phillips S. 2008. Racial disparities in the capital of capital punishment. *Hous. Law Rev.* 45:807–40

Phillips S. 2012. Continued racial disparities in the capital of capital punishment: the Rosenthal era. *Hous. Law Rev.* 50:131–56

Pierce GL, Radelet ML. 2005. The impact of legally inappropriate factors on death sentencing for California homicides, 1990–1999. *Santa Clara Law Rev*. 46:1–47

Rogers B. 2016. Harris County stands out for death penalty cases, study finds. *Houston Chronicle*, Aug. 26. **https://www.houstonchronicle.com/news/houston-texas/article/Harris-County-stands-out-for-death-penalty-cases-9187154.php**

Thomson E. 1997. Discrimination and the death penalty in Arizona. *Crim. Just. Rev.* 22:65–76

Urbina MG. 2004. A qualitative analysis of Latinos executed in the United States between 1975 and 1995: Who were they? *Soc. Justice* 31:242–67

Urbina MG, Peña IA. 2019. Capital punishment, Latinos, and the United States legal system: doing justice or an illusion of justice, legitimated oppression, and reinforcement of structural hierarchies. *UCLA Law Rev*. 66:1762–817

US Gov. Account. Off. 1990. *Death penalty sentencing: Research indicates pattern of racial disparities*. Rep., US Gov. Account. Off., Washington, DC

Weyant JE. 2005. Implicit stereotyping of Hispanics: development and validity of a Hispanic version of the Implicit Association Test. *Hisp. J. Behav. Sci.* 27:355–63