

Summary of Analysis: *State of Florida v. George Porter*

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Case Summary

George Porter was convicted of committing two murders and sentenced to death in Florida. Porter's trial counsel failed to present mitigation evidence about Porter's childhood traumas and military service-related injuries.¹

Issue for Analysis

How did the omission of mitigation evidence during Porter's sentencing affect the probability of a death sentence? In a post-conviction proceeding, the petitioner bears the burden of proving that the error was harmful.²

Method of Analysis

1,213 research participants were recruited via Amazon Mechanical Turk to complete a survey for minor compensation.³ A questionnaire covered basic demographic data, qualifications for jury service, and impartiality for death sentencing.⁴ Participants were randomly assigned to one of two conditions: actual trial condition (facts of the case followed by limited mitigation) or the hypothetical, error-free trial condition (facts of case followed by mitigation evidence that effective counsel would have presented).⁵ After reading their assigned trial summaries, research participants were asked whether they would vote for death penalty or life imprisonment.⁶ At the end of the survey, participants were invited to volunteer comments.⁷

Sample Profile

The full sample was weighted to represent a typical Florida jury pool.⁸ Analysis was limited to 761 participants who met standard jury qualifications (e.g., citizens, non-felons) and are qualified for death sentencing.⁹

| | |
|-------------------|-------|
| Mean age | 42.4 |
| College graduates | 28.6% |
| Female | 62.2% |
| Hispanic | 16.4% |
| African American | 14.6% |
| Income over \$50k | 44.0% |

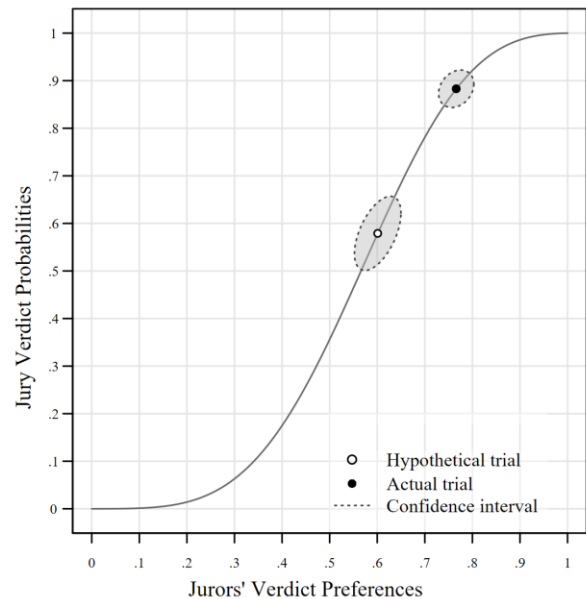
Sentencing Preferences

In the *actual* trial condition, 76.6% of respondents ($n = 761$) voted for the death sentence. In the *hypothetical* trial condition, 60.1% of respondents ($n = 761$) voted for the death sentence.

Sentence Probabilities

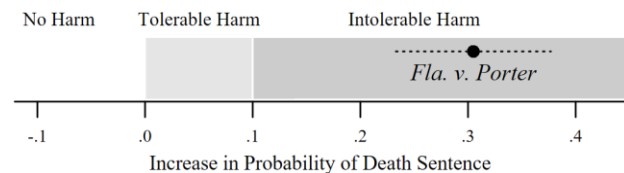
Juror sentencing preferences correspond to specific verdict probabilities.¹⁰ Based on this relationship, the probability of a death sentence can be calculated for both the actual and hypothetical trial conditions. Here, the death sentence probabilities are .883 in Porter's actual trial and .579 in a hypothetical, error-free trial.

Margins of error for all estimated values are graphed as confidence intervals.



Estimate of Harm

The harm caused by ineffective assistance of counsel is estimated as the difference between sentencing probabilities.¹¹ Here, omitting mitigation evidence increased the probability of a death sentence by $.304 \pm .072$ (30.4 percentage points, ± 7.2 percentage points).¹²



Comments from Respondents

Respondents indicated that mitigation evidence of childhood trauma and service-related injuries affects their perceptions of Porter and the punishment he deserves. "I changed my mind solely on his involvement in the war." "The PTSD from his time in the military made me change my mind about his punishment." "This evidence humanized him for me." "Without hearing the evidence of trauma, I would have seen him as purely a cold-blooded killer." "Knowing about his childhood trauma doesn't excuse his actions, but it makes me more sympathetic." "I didn't change my mind, but this information gives me more compassion for what he went through."

Conclusion

Assuming the threshold of tolerable harm (T) is less than .232,¹³ scientific analysis demonstrates that the error in Porter's trial was harmful to a reasonable degree of certainty.

Notes:

¹ For additional case information, see *Porter v. State*, 788 So. 2d 917 (Fla. 2001); *Porter v. McCollum*, 558 U.S. 30 (2009).

² See generally Barry Edwards, *A Scientific Framework for Analyzing the Harmfulness of Trial Errors*, 8 UCLA CRIM. J. L. R. 1 (2024).

³ Mechanical Turk is widely used to efficiently obtain quality survey responses from a diverse population. See, e.g., Alexander Coppock, *Generalizing from Survey Experiments Conducted on Mechanical Turk: A Replication Approach*, 7 POL. SCI. RSCH. & METHODS 613 (2019); Christoph Bartneck, et al., *Comparing the Similarity of Responses Received from Studies in Amazon's Mechanical Turk to Studies Conducted Online and with Direct Recruitment*, 10 PLOS ONE e0121595 (2015); Justin M. Stritch, et al., *Crowdsourced Data in Public Administration Research: A Review and Look to the Future*, PUB. ADMIN. REV. (Early view) (2024).

⁴ Analysis is limited to participants meeting the following requirements: U.S. citizenship, 18 years of age, no disqualifying mental or physical condition, no felony charges, and no felony convictions. Active-duty military, police officers, first-responders, and full-time public officials are exempted. See Fla. Stat. § 40.013 (enumerating qualifications and exemptions). Participants who indicate that they would never or always support the death penalty for murder are also disqualified. See *Wainwright v. Witt*, 469 U.S. 412, 424 (1985); *Morgan v. Illinois*, 504 U.S. 719 (1992). Disqualified respondents are still compensated for participating in the research.

⁵ Researchers have demonstrated the validity of estimating jurors' verdict preferences using survey respondents' responses to written vignettes. See, e.g., Steffen Bieneck, *How Adequate is the Vignette Technique as a Research Tool for Psycho-Legal Research*, in SOCIAL PSYCHOLOGY OF PUNISHMENT OF CRIME (Margit E. Oswald, et al. eds., 2009); Michael J Saks, *What Do Jury Experiments Tell Us About How Juries (Should) Make Decisions?*, 6 S. CAL. INTERDISC. LJ 1 (1997).

⁶ After voting in the trial condition initially assigned, respondents were asked to reconsider their vote given the alternative trial condition. This crossover research design, often employed in medical research, increases the number of responses to each condition and ensures that the groups are equivalent. See Thomas A Louis, et al., *Crossover and Self-Controlled Designs in Clinical Research*, 310 NEW ENG. J. MED. 24 (1984).

⁷ Original survey instruments, codebooks, and raw data have been saved.

⁸ See Pierre Lavallée & Jean-François Beaumont, *Why We Should Put Some Weight on Weights*, SURVEY METHODS: INSIGHTS FROM THE FIELD (Feb. 20, 2015), <https://surveyinsights.org/?p=6255>; Graham Kalton & Ismael Flores-Cervantes, *Weighting Methods*, 19 J. OFFICIAL STATS. 81 (2003). The sampling weights used in this analysis are based on iterative proportional fitting, more commonly called raking. The raking method finds weights that balance the sample and population along multiple dimensions simultaneously. The method resembles leveling a patch of ground with a rake: you smooth the ground in one direction, then rake sideways to fill in low spots, alternating until the patch is level in all directions. This iterative process is necessary because the dimensions being balanced may be correlated. See Andrew Mercer, et al., *For Weighting Online Opt-In Samples, What Matters Most?*, PEW RESEARCH CENTER (Jan. 26, 2018), <https://www.pewresearch.org/methods/wp-content/uploads/sites/10/2018/01/Weighting-Online-Opt-In-Samples.pdf>

⁹ Sample weights are calculated so the full sample of 1,213 respondents represents Florida's adult population. The qualified sample of 761 respondents does not mirror the population because juror qualifications disproportionately exclude some groups. For example, excluding felons, active-duty military, and firefighters from analysis affects more men than women.

¹⁰ The underlying analytic functions are freely available for the open-source R program for statistical computing. The package includes detailed explanations of analytic routines with examples of code usage. See Barry Edwards, *sate: Scientific Analysis of Trial Errors*, v. 2.2.1, THE COMPREHENSIVE R ARCHIVE NETWORK (Dec. 5, 2024), <https://cran.r-project.org/package=sate>. The relationship between the number of jurors in favor of a death sentence and the probability of a death sentence reflects the patterns observed in decades of research on deliberating juries across a variety of settings. See Barry C. Edwards, *If the Jury Only Knew: The Effect of Omitted Mitigation Evidence on the Probability of a Death Sentence*, VA. J. SOC. POL'Y & L (forthcoming 2025); Dennis J Devine, et al., *Jury Decision Making: 45 Years of Empirical Research on Deliberating Groups*, 7 PSYCHOL., PUB. POL'Y, AND L. 622 (2001); HARRY KALVEN & HANS ZEISEL, THE AMERICAN JURY (1966).

¹¹ These estimated verdict probabilities account for jury size and peremptory strikes. Florida employs twelve-person juries in capital trials and allows each side 10 peremptory challenges. See Fla. R. Crim. P. 3.350(a)(1).

¹² The estimate of harm, a .304 increase in the probability of a death sentence, has a margin of error of .072 (primarily due to finite sample size). Therefore, the lowest plausible harm caused by the omitted evidence is a .232 increase in the probability of a death sentence.

¹³ The petitioner must prove that there is a "reasonable probability" that, if not for counsel's errors, the outcome of his trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984). A reasonable probability of a different outcome is more than a mere possibility, but the petitioner "need not show that counsel's deficient conduct more likely than not altered the outcome in the case." *Id.*, at 693. Reasonable probability is "a probability sufficient to undermine confidence in the outcome." *Id.* at 694. I have suggested that .10 is a probability sufficient to undermine confidence in the criminal trial context and may be the threshold of tolerable harm. See Edwards, *supra*, note 2. In scientific contexts, .05 is the conventional probability value sufficient to undermine confidence. See PHILIP H POLLOCK III & BARRY C EDWARDS, THE ESSENTIALS OF POLITICAL ANALYSIS, 6TH EDITION (2019).