

Hypo: Death Penalty

In 2005, Warren Smith, an African-American living in Ashton, Tennessee, was tried for robbing a convenience store and for the gruesome murder of its night clerk. After a lengthy, well-publicized trial, Smith was convicted of two counts of armed robbery and one count of murder in the Superior Court of Ashton County, Tennessee. At the sentencing hearing, the jury found beyond a reasonable doubt that the murder was committed during the course of an armed robbery and recommended the death penalty. The presiding judge followed the jury's recommendation and, pursuant to Tennessee law, sentenced Smith to death.

On appeal to the federal courts, Smith's lawyers argued that Tennessee's capital sentencing law was administered in a racially discriminatory manner in violation of the Equal Protection clause of the Fourteenth Amendment. Smith's lawyers based their claims on a famous and well-publicized 1998 study conducted by two University of Tennessee professors, Dr. Thomas Bayes and Dr. R.A. Fisher (the "Bayes-Fisher study"), that indicated a risk that racial considerations entered into capital sentencing determinations. The Bayes-Fisher study examined roughly 2,500 murder cases in Tennessee during the 1990s. The raw data indicate that prosecutors sought the death penalty in 70% of the cases involving black defendants and white victims; 32% of the cases involving white defendants and white victims; 15% of the cases involving black defendants and black victims; and 19% of the cases involving white defendants and black victims.

Professors Bayes and Fisher also subjected their data to an extensive statistical analysis, running numerous models that take into account (collectively) over 200 control variables that could have explained the disparities on nonracial grounds. One of their models concludes that, even after controlling for 39 nonracial variables, defendants charged with killing white victims were 4.3 times as likely to receive a sentence as defendants charged with killing blacks. According to this same model, black defendants were 1.1 times as likely to receive a death sentence as non-black defendants.

The case is now before the Supreme Court. Both parties have stipulated that the Bayes-Fisher study is statistically sound. Both parties also agree that the the sentencing law---which was recently revised by a panel comprised of legislators, civil rights lawyers, and prosecutors---does not mention race explicitly.

You represent either Smith or the state of Tennessee. What are your best arguments and why? What cases and facts support or contradict your position?