



---

Mitigation in a Capital Murder Case with a Vietnamese Defendant: The Interpretation of Social Context

Author(s): Craig J. Forsyth and Carl L. Bankston III

Source: *Journal of Applied Sociology*, 1996/1997, Vol. 13/14, No. 2/1, SPECIAL DOUBLE ISSUE (1996/1997), pp. 147-165

Published by: Sage Publications, Inc.

Stable URL: <http://www.jstor.com/stable/43482542>

---

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



Sage Publications, Inc. is collaborating with JSTOR to digitize, preserve and extend access to *Journal of Applied Sociology*

JSTOR

## **Mitigation in a Capital Murder Case with a Vietnamese Defendant: The Interpretation of Social Context**

**Craig J. Forsyth**

and

**Carl L. Bankston III**

University of Southwestern Louisiana

*This study examines the role of a sociologist in a capital murder case involving a Vietnamese defendant. It argues that the sociologist can be particularly important in the penalty phase of a trial, by presenting an interpretation of the mitigating social contexts of a crime. It illustrates this point by describing a case study and by showing how the life history of a young Vietnamese man charged with capital murder shaped his decision to take a life. The study provides an example of a situation sociologists will be likely to face as expert witnesses in the future. There are large numbers of young Vietnamese with background experiences similar to those of the defendant in this case, and the increasing diversity of America's population means that judges and juries will need more insight into varying motivations and histories.*

### **INTRODUCTION**

This study examines the role of a sociologist in a capital murder case involving a Vietnamese defendant. The first author of this paper testified in this specific case and has worked as a sociologist in over 50 capital murder cases (Forsyth 1995, 1996, 1997; Foster and Forsyth 1993). The second author has both extensive research and practical experience with Vietnamese both in America and abroad (Bankston 1995a; Bankston and Caldas 1996).

The study will describe the background of the client in this case, using research findings that served as the basis of the first author's testimony at the trial. We will then relate the circumstances of this defendant to the more general issue of the growing crime problem among Vietnamese Americans. The causes of this problem will be shown to be the interre-

lated factors of modes of Vietnamese immigration and the lack of social integration into their families, communities and American society.

### **THE SOCIOLOGIST AS EXPERT IN A CAPITAL MURDER CASE**

The trial of a first degree murder case is divided into two phases.<sup>1</sup> The first phase is to determine the guilt or innocence of the defendant. If the defendant is found not guilty or guilty of a lesser offense, the trial ends. If a defendant is found guilty of capital murder and he or she is not legally insane, the jury must decide on a punishment. This represents the second phase and involves another trial--with the same judge, jury, and attorneys in the same settings--and it begins 12 hours after the first verdict.<sup>2</sup> In this second phase, the ultimate punishment of death becomes an immediate possibility (Forsyth 1995; 1996; 1997; Charvat 1996).

Any matter the judge regards as relevant to sentencing may be offered as evidence in the second phase, and the second phase must include matters relating to certain legislatively specified aggravating and mitigating circumstances. Both the prosecution and the defense may present arguments on whether or not the death penalty should be used (Lewis and Peoples 1978). The jury weighs aggravating and mitigating circumstances before imposing sentences of death or life in prison without parole.

Mitigating circumstances are among the most important elements of a trial for the defense. Mitigating circumstances are facts that do not justify or excuse an action but can lower the amount of moral blame, and thus lower the criminal penalty for the action (Oran 1983).<sup>3</sup> The prosecution, on the other hand, presents aggravating circumstances. Generally, aggravation includes actions or occurrences that lead to an increase in the seriousness of a crime but are not part of the legal definition of that crime (Oran 1983).<sup>4</sup>

In essence, arguments about sentencing focus on two adversarial positions: the circumstances of the crime versus the social psychological qualities of the client (Brodsky 1991; Dayan 1991; Forsyth 1995; 1996; 1997; Najmi 1992; Thoresen 1993; Foster and Forsyth 1993).<sup>5</sup> Sociology is relevant to the questions of sentencing in capital murder cases because it expands and explains the boundaries of mitigating factors. The expert/sociologist, in addressing the issue of sentencing, attempts the difficult job of explaining how structural, cultural and familial factors have, at least partially, shaped the circumstances of capital murder.

### **Sociologist Among Lawyers and Other Experts**

Rose (1967, p. 116) has argued that “social science, particularly sociology, has tremendous potential utility for the lawyer.” As we have suggested above, the utility of sociology in a murder case may be clearest in the penalty phase of the trial. The job of the defense in the penalty phase is to explain the criminal behavior of the client so that he or she will not be sentenced to death. The goal of the attorneys and the various experts involved in a particular case is to present one explanation to the jury that has various distinct but parallel parts.

The testimony of the sociologist is shaped both by legal theory and by the knowledge that there are twelve individuals on the jury, who are neither lawyers nor experts.<sup>6</sup> The legal basis for mitigation has already been stated above, but one could add that any aspects of the defendant’s life which demonstrate that he/she is not deserving of the death penalty would also be considered mitigating circumstances. The foundation of the sociological contribution to the explanation of crime stands upon a subtle principle of law, that is the “by happenstance” principle--the principle that criminal penalties cannot be inflicted upon a person for being in a condition that the individual is powerless to change.<sup>7</sup>

### **The Expert Work of Sociology: A Case Study**

Having offered a general description of the work of the sociologist as an expert witness in capital murder cases, we now focus on a specific case study. We begin by placing this case study in the emerging literature on Vietnamese immigrants. Then, we offer a summary of the case, drawn from the work of one of the authors in the penalty phase of a case involving a Vietnamese defendant. This case illustrates the readiness of the judicial system to consider arguments that embed a defendant in social and cultural worlds that, even if they do not necessarily “explain” or “justify” grievous and heinous acts, absolve the murderer of a sufficient amount of guilt to spare his life. The defendant introduced below was found guilty of one count of first degree murder and received a life sentence instead of the death penalty. Finally, we bring together our observations on the sociologist as expert witness and our description of the case study by offering an interpretation of the social context surrounding the case in a manner that can enable others to make sense of the actions of the defendant.

**VIETNAMESE RESETTLEMENT IN AMERICA:  
THE CONTEXT OF A CASE STUDY**

Before 1975, there were only about 15,000 Vietnamese residing in the United States, most of whom were wives of U.S. servicemen or students and trainees on non-immigrant visas (Skinner 1980). After the fall of Saigon, this number increased rapidly. By 1980, the Vietnamese population had reached nearly 300,000 and by 1990 it had reached over 615,000 (U.S. Bureau of the Census 1996).

This sudden appearance of a major population group has drawn a great deal of scholarly attention. Much of the literature on the Vietnamese in America has focused on their situation as an uprooted group whose members face problems of economic and psychological adjustment to a radically new environment (Kelly 1977; Nhu 1976; Liu, Lamanna, and Murata 1979; Allen and Hiller 1985; Caplan, Whitmore, and Bui 1985; Haines 1985; Haines 1987; Bach and Carroll-Seguín 1986; Rumbaut and Weeks 1986; Starr and Jones 1985; Starr and Roberts 1982; Rumbaut 1989; Matsuoka and Ryujin 1989/90; Tran 1991). This large body of literature has concentrated on issues such as the emotional trauma of resettlement and on finding jobs and housing for new arrivals.

As Vietnamese refugees began experiencing hostility or suspicion from some local communities, issues of racial and ethnic conflict became another theme in the literature. Concern over social changes resulting from Vietnamese settlement spurred a number of impact assessment studies (New Orleans Indochinese Resettlement Task Force 1979; Baldwin 1982). In the 1980's, conflict over fishing and shrimping on the Gulf Coast became a notable area of examination (Starr 1981).

Both refugee adjustment and conflict with non-Vietnamese have continued to be topics of interest. However, the literature has expanded into other areas as the roots of the Vietnamese people have gone deeper into American soil. As Vietnamese communities have emerged, researchers have become interested in the structures and functions of these ethnic communities (Haines, Rutherford, and Thomas 1981; Starr and Roberts 1985; Muzny 1989; Gold 1992; Nash 1992; Rutledge 1992). Vietnamese young people have attracted attention as a result of their apparent success in American schools (Caplan, Choy, and Whitmore 1991; Bankston and Zhou 1995; Bankston 1997; Rumbaut 1995). At the same time, criminal activity among Vietnamese, particularly among Vietnamese youth has become an increasingly salient issue (Vigil and Yu 1990; English 1994; Du Phuoc Long 1996).

The contradictory images of Vietnamese young people as scholastic successes and criminals has led Kibria (1993) to speak of the “valedictorian/delinquent” stereotype. In one of the most insightful books to date on Vietnamese young people in America, Kibria describes how the transition from Vietnam to America has reshaped Vietnamese families and resulted in a variety of outcomes for young Vietnamese.

In interpreting the case study that we describe below, we will attempt to show how many of the issues in the literature on Vietnamese Americans may be conceptualized as layers of social influence. These layers of social influence, we will maintain, can be seen as providing contexts of social action that can mitigate a criminal act.

### **A Case of Capital Murder**

Hao Chi Nguyen was born in South Vietnam on January 20, 1973. He came to the United States on December 13, 1990. On October 15, 1995 Hao shot three white males. One of these young men died. The fact that Hao was charged with killing one individual and attempting to kill two others made this a case of capital murder.<sup>8</sup> During the penalty phase the sociologist testified as follows regarding Hao’s life in Vietnam and life after coming to the United States:

Hao’s mother, Gioi, came to the United States during the fall of Saigon in 1975. She was separated from her family and was compelled to leave when a brief window of opportunity arose. She had two children with her: Ngoc and Vu (see table 1). Hao was 2 years of age when his mother came to the United States. Hao remained in Vietnam with his father, Quyen, and his older sister Thuy. They lived with their grandparents in a small coastal village. Quyen, the father, had been in the South Vietnamese army so he was treated harshly. Hao’s grandfather and his father were fishermen, so what supervision he received at this time was from his elderly grandmother. In 1977 Hao’s father left in a fishing boat with three other men, their ultimate destination being the United States. They arrived in the United States in early 1979. No children accompanied the father. This was very unusual. There were three patterns of Vietnamese immigration to the United States: (from most to least frequent they were): whole family came at same time; children came first, then parents followed at a later date; and the rarest case, parents came first, and children followed at a later date.

Hao was age five when his father left. The grandparents had little time for these children. In 1985 Hao's grandmother died. Hao had lost his supervisor. Hao also dropped out of school. After dropping out, there was no returning to this school system. He was now supervised by his 17 year old sister, but not for long, as she entered into a relationship and left the home. Hao now had virtually no supervision, receiving only token direction from his frequently absent grandfather. In 1988 even this guidance vanished when Hao's grandfather died. Hao's life in Vietnam became very hectic at that point. He was forced to survive on the streets. In a sense, he roamed with complete freedom; there were no rules. He needed only to avoid detection by the communist soldiers. If boys his age were caught by the soldiers they were drafted into service. This would be an acute problem for Hao whose father was a former soldier in the army of South Vietnam.

The village in which Hao lived did not feel responsible for either Hao or his sister Thuy. During this period villagers would care for orphans and for those whose relatives in the United States would send money for their care. Hao and Thuy were not in either of these of categories. The villagers did not feel responsible because they had family in the United States, hence Hao and Thuy were the responsibility of their parents.

On the 12th of December, 1990, having obtained permission to migrate to the U.S., Hao and Thuy were reunited with their mother whom they had not seen in over 15 years and their father whom they had not seen in over 13 years. They were also reunited with their sister Ngoc, who was 5 years of age when she left Vietnam and their brother Vu, who was one year of age when he left Vietnam. In 1990 Ngoc was 20 and Vu was 16. None of these children had any memory of the others. In addition, there were now five other children who had been born in the United States. As shown in Table 1, they were: Thuan, a brother who was born in 1979; Hoa, a brother who was born in 1981 and three sisters Mai, born in 1985, Trang born in 1987 and an infant Ha. None of these children had any knowledge of either Thuy and Hao; they were complete strangers.

Hao was very dependent on Thuy, but this relationship ended when Thuy left her American home in 1991. The father "disowned" Thuy because she had a child with one man in Vietnam and was now in a relationship with another man. According to both Thuy and her father, the father was a part of traditional Vietnamese culture, while Thuy had been oriented to the

**TABLE 1.**

FAMILY OF Hao Chi Nguyen. DATE AND PLACE OF BIRTH OF SIBLINGS, AND ENTRY INTO THE UNITED STATES IF APPLICABLE.

-----

MOTHER: GIOI (leaves Vietnam, enters US in 1975)  
 FATHER: QUYEN (leaves Vietnam in 1977, enters US in 1979)

-----

SIBLINGS:

<u>BORN IN VIETNAM</u>	<u>DOB</u>	<u>IN US</u>
THUY (SISTER)	1968	1990 (12-13)
NGOC (SISTER)	1970	1975
HAO (DEFENDANT)	1973	1990 (12-13)
VU (BROTHER)	1974	1975

-----

<u>BORN IN US</u>	<u>DOB</u>
THUAN (BROTHER)	1979
HOA (BROTHER)	1981
MAI (SISTER)	1985
TRANG (SISTER)	1987
HA (SISTER)	1990

-----

culture of new Vietnam, which was less traditional. In this culture of new Vietnam there was less emphasis on familial hierarchy. Hence, Thuy did not give the father, who had abandoned her, the respect he was “once” due. Once Thuy left, Hao was among strangers. Hao was in constant conflict with his family. They had little control over him. His mother, afraid of the influence of Hao on these other children, told them to stay away from him. In Vietnam Hao was independent, he was free, he lived by his wits, and satisfied his own needs. In the United States his parents were poor and they could give him little of the things he wanted. In Vietnam Hao was used to getting what he needed, not having to accept a fate because of another’s inability.

Since Hao was not integrated into his family he was not integrated into the Vietnamese community in America. Hao returned to the only lifestyle he knew; surviving, staying out all night, sleeping all day. His companions were other displaced Vietnamese youth.

In 1993 these circumstances turned into rage when Hao had a disturbing argument with his mother. Hao left and did not return until early 1995. To support himself he worked for other Vietnamese mostly working on fishing boats. In early 1995 Hao returned home, but the circumstances were only marginally better, as he quickly returned to the routine of sleeping all day and staying out all night. He was periodically employed, almost always on fishing boats. Hao still knew little English principally because all of his companions were Vietnamese, but also because his educational level was so low that he had little basis for taking on another language.

On the night of the crime Hao was out with several of his friends at a nude dancing bar when they came into confrontation with a group of whites. Members of both groups had been consuming alcohol. There had been a considerable amount of racial tension, in this area, between whites (and blacks) and the Vietnamese. The whites resented the Vietnamese contact with the one of the white dancers. Hao had few communicative skills with which to interpret the quickly emerging conflict. He understood neither the words nor the body language. These individuals looked like they were going to hurt him, although none of them were armed. Given the racial tension in this area and having seen this same kind of behavior from soldiers in Vietnam, with the result being injury or death, Hao reacted instinctively. He fired several random shots from a gun which he had in his possession only a few hours.

### **INTERPRETATION OF CRIMINAL ACTION WITHIN SOCIAL CONTEXT**

A popular and misleading stereotype of sociology presents the sociologist as excusing all crimes and acts of violence as products of an unjust society. The job of the sociologist as an expert witness, however, is not to deny the free will of defendants or suggest that "it's all society's fault." Rather, the sociologist seeks to clarify the social contexts within which individuals make decisions.

In this case, Hao's actions may be viewed within several inter-related contextual layers. First, Hao's conception of relationships among people

was shaped by the social disruption that followed the war in Vietnam. Second, his view of authority derived from the delegitimation of authority in re-unified Vietnam. Third, the nature and role of Vietnamese familial ties changed with the process of flight and resettlement in America. Fourth, the Vietnamese American community context is one of insiders and outsiders, and Hao was definitely an outsider. Fifth, when Hao committed his crime, he was acting within the social context of a marginal ethnic youth culture. Each of these contextual layers may be seen in the case description given above.

Before the Vietnam War reached the height of its intensity in the late 1960's and early 1970's, Vietnamese village life was characterized by its traditionalism and its heavy emphasis on family ties (see the classic work on Vietnamese village life by Hickey, 1964). The traditional family system in Vietnam was deeply influenced by Chinese culture, under ten centuries of Chinese domination from 111 B.C. to 939 A.D. One of the legacies of the Chinese in Vietnam was Confucianism (Shaker and Brown 1973). Unlike Buddhism, another dominant religion in Southeast Asia, Confucianism prescribes communal salvation and emphasizes ancestor worship, respect for authority, a belief in consensus, and the willingness to put the interests of the family before those of the individual.

In Vietnam, the family was the most central institution and represented the chief source of social identity for the individual. In a study of the Vietnamese family, Phung Thi Hanh observed:

For the Vietnamese, the family is the strongest motivating source in force in his life, stronger than his religion and his country. Anything a man does, he does out of family consideration rather than for himself as an individual. Each person in the family, in fact, must come second to the family as a whole (Hanh 1979, p.77).

Roles among villagers were conceived of in family terms. The "status pronouns" used by Vietnamese to address one another are actually terms of relationship. Thus, *ong* ("sir" or "Mr.") literally means "grandfather." Older people traditionally address younger people as *con* ("child," in the sense of offspring) (Bulteau 1953).

These terms continue to be part of the Vietnamese vocabulary, and they continue to describe ideals about relationships among people. The realities of these relationships, though, were greatly disrupted by the war. In the early 1960's, the South Vietnamese government, with the Americans, began forcibly relocating civilians to deprive the Viet Cong of bases of op-

eration, greatly disrupting traditional patterns of village life (Hickey 1964). During the long years of war that followed, many areas of the countryside were almost completely abandoned, and cities became over-crowded with peasants seeking to flee the ravaged rural areas.

The government of the newly unified Vietnam became increasingly exclusive and repressive after it took control over the South. Although large-scale executions of former enemies in the South did not occur, former South Vietnamese officers and government officials were assigned to reeducation camps, in which conditions were worse than conditions usually found in Western prisons. Even the southern Vietnamese guerrillas, who were allied with the North in the American Vietnam War, were largely shut out of the political process as the Hanoi government sought to impose its will on the conquered territory (Bankston 1995b).

We can see the consequences of these events in Hao's life. Little of the paternalistic family structure of pre-war Vietnam remained. In the harsh economic circumstances of post-war Vietnam, relations among villagers had become narrow and strictly reciprocal. In Vietnam, then, Hao led a life largely without meaningful ties to other people. Post-war disruptions had left him, and others like him, in a Hobbesian struggle for individual survival. The only controlling power was the military, seen by Hao and other southern Vietnamese as alien, coercive, and largely illegitimate. Hao's past experiences, which would provide much of his information for making decisions and taking actions, came with him to America.

Hao's actions cannot be made intelligible only by reference to experiences in Vietnam, however. His five-year period in the United States also helped to shape his understanding of his world and his response to it. To see this five year period in perspective, we need some grasp of contemporary Vietnamese American life.

We have noted, above, the extraordinary growth in numbers of Vietnamese immigrants in the U.S. during the 1970's and 1980's. The adaptation of these immigrants to American life varied. Contributing to the Vietnamese adjustment was the policy of the federal government of scattering the immigrants throughout the fifty states. This initial policy of social integration was intended to accelerate acculturation to America. Since the method of social integration of immigrants groups generally, and the Vietnamese particularly, is through their own ethnic communities this denied these Vietnamese this social and emotional support network (Matsuoka 1990;

Starr and Roberts 1982). Gradually the Vietnamese Americans began to relocate near one another. These concentrations led to the development of ethnic neighborhoods and social networks.

In developing ethnic communities, Vietnamese Americans drew on ideas of extended family that had survived the stresses of post-war social disruption. Resettlement in the new country simultaneously strengthened and weakened Vietnamese family ties. It strengthened family ties because the new arrivals needed to develop networks for providing assistance to one another in the strange land. Therefore, many started “remembering” kinship ties that they had begun to forget in Vietnam. Distant cousins were drawn into revived or newly created extended families as a consequence of the pressures of adaptation (on the role of life in America in producing “traditional” Vietnamese families, see Kibria, 1993).

Within nuclear families, also, the importance of family relationships was heightened by resettlement in America. Vietnamese cultural values traditionally placed a great deal of emphasis on connections between parents and children and between siblings. Cultural values, though, are only beliefs about what people should do. Their circumstances will greatly influence how they act on these beliefs. In Vietnam, as we have seen, the “family first, self second” values toward family were greatly undermined by the stresses of social disruption. In America, however, family became a major source of psychological comfort and a source of material support. By banding together in close, cooperative units, Vietnamese American family members were able to help one another. This nourished the “other-oriented” family norms that the Vietnamese considered characteristic of their culture (Zhou and Bankston 1994).

Ironically, while life in America strengthened family ties in some ways and for some people, the resettlement process also weakened or dissolved those ties for others, particularly for young people. Although the flight of entire families was the most common pattern for Vietnamese refugees, many families did break apart or, as in Hao’s case, family members arrived in the United States at different times, as shown in Table 1. Once in the United States, Vietnamese culture and American culture often pulled members of families in different directions. Parents have often been unable to exercise the life-long authority over their children mandated by traditional Vietnamese expectations. In Hao’s life, we can see that the break with his family came after a bitter argument with his mother.

Bankston and Caldas (1996) have argued that Vietnamese American communities are based on connections among families and that families therefore constitute the means by which young Vietnamese are integrated into wider systems of ethnic social relations (on family as the basis of Vietnamese community, see also Haines, Rutherford, and Thomas 1981). Joane Nagel (1994, p. 167) has pointed out that both ethnicity and ethnic communities are socially constructed from "the interplay between ethnic group actions and the larger social structures with which they interact." Thus, the Vietnamese community and its attitudes and expectations are not simply cultural transfers from across the sea--they represent attempts by a group of people to draw on their historical past to find means of meeting present challenges. The Vietnamese communities that have emerged in the United States not only exist in a strange, new society, but most of them have sprung up in relatively low-income neighborhoods. Thus, a "circle the wagons" attitude tends to prevail within these communities.

One consequence of this attitude is that Vietnamese American communities often make sharp distinctions between insiders and outsiders (Bankston 1995a). Non-Vietnamese are clearly outsiders. Some Vietnamese, though, may also be seen as outsiders. In particular, young people who do not conform to the types of behavior seen as traditional by their elders are classified as outsiders. Observers of social trends in this new immigrant group, therefore, have noted a tendency toward the "bifurcation" of Vietnamese youth. The insiders, those tightly integrated into their closely interknit families and ethnic communities, receive support, encouragement, and pressure to conform and to achieve from all of those around them. The outsiders, those who may bring troubled backgrounds from Vietnam and who live in weak or nonexistent families in the United States, tend to be labeled as failures and "bad kids" by their co-ethnics (Bankston and Zhou, 1997).

Young people like Hao, then, do not fit into their own ethnic societies. At the same time, though, they do not fit into the larger American society, which may often even be hostile to them. Still, they are not simply isolated individuals, without social contacts. Their social contacts are drawn largely from their peers, other young Vietnamese in similar circumstances. For this reason, Vigil and Yu (1990) suggest that multiple marginality is the key to Vietnamese gang membership. A marginal Vietnamese youth culture has emerged, characterized by marginality with regard to families, to their ethnic communities, and to the larger American society (Du Phuoc

Long 1996; Bankston, forthcoming). Those within this marginal Vietnamese youth culture tend to utilize their own categories of insiders and outsiders. The insiders are their own friends and associates. The outsiders are all others.

We can see all of these layers of social context at play in the instant that Hao committed his crime. From post-war southern Vietnam, he brings the view of life as a lawless struggle for survival. There are no guardians of the peace, only official oppressors without legitimacy. In America, Hao is an outsider: outside of American society, outside of the community of his co-ethnics, and outside of his own family. He is an insider only to other Vietnamese youths, whose standing in the new country is as tentative as his own. When Hao's friends come into conflict with the group of young whites, for Hao this is the equivalent of war.

## CONCLUSION

This paper has offered a description and interpretation of the contextual influences on a criminal act. It will be noted that the mitigating factors in this case differ somewhat from cultural defenses of violations of the law. Cultural defenses usually consist of maintaining that norms and beliefs of particular cultural groups may lead their members to commit acts that are not crimes in their own eyes, although they are crimes in the eyes of the larger society. In this case, the mitigating factor is not cultural, but an accumulation of social-psychological experiences.

We suggest that this is not simply an interesting case study, but an example of a situation sociologists will be likely to face as expert witnesses in the future. There are large numbers of young Vietnamese with background experiences similar to Hao's, and the increasing diversity of America's population means that judges and juries will need more insight into varying motivations and histories.

## NOTES

1. Since the United States Supreme Court's landmark ruling in *Furman v. Georgia* in 1972, the states have tussled with the problem of how to impose the penalty of death on those convicted of capital murder without running afoul of the Constitution. The Court has straightforwardly repudiated mandatory death sentences for capital crimes. Individualized sentencing is required for meeting the requirements of due process. In response, the individual states have adopted statutes that pro-

vide for bifurcated trials in capital cases (Hall and Brace 1994).

2. In Louisiana the penalty phase cannot begin sooner than 12 hours after the guilt phase, the judge can allow a longer period of time. It is the same jury, same judge, same DA, but usually a different defense attorney. The same two defense attorneys both work on the case, but one attorney is usually in charge of the guilt phase of the trial and the other, the lead, most experienced attorney, is in charge of jury selection and the penalty phase. This designation changes according to the factors of each case. There are opening and closing arguments by both sides again, etc.

3. Louisiana law, although recognizing any relevant evidence as plausible mitigating testimony, generally classifies the factors to be appraised as such: The offender has no significant prior history of criminal activity; The offense was committed while the offender was under the influence of extreme mental or emotional disturbance; The offense was committed while the offender was under the influence or under the domination of another person; The offense was committed under circumstances which the offender reasonably believed to provide a moral justification or extenuation for his conduct; At the time of the offense the capacity of the offender to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication; The youth of the offender at the time of the offense; The offender was a principal whose participation was relatively minor; or any other relevant mitigating circumstance. Depending on the expertise of the sociologist several of these or at least the latter will frame the testimony. The U.S. Supreme Court has held that courts must consider any and all relevant mitigating evidence that is available.

4. These are the intentionality of the act, the propensity of the murderer to kill again and the heinous, atrocious and cruel nature of the murder.

5. Jury sentencing during this "second trial" is not required in some states. In those states, the trial judge, after hearing the arguments, determines the sentence to be imposed.

6. The data obtained and delivered by the sociologist has uses other than in the penalty phase. It can be used to negotiate a plea so that a trial never takes place. It can also be used at a sentencing hearing for a conviction of manslaughter which has a range of sentences rather than a determinant sentence. Such data can be used to help shorten the sentence of the client. The sociologist's report can be filed in the record to be used at later hearings to reduce the sentence of the client. Finally, sociological data can be used on appeal to convince the reviewing court of the

questionable moral appropriateness of the death sentence in the client's case, or that the death sentence of the client is disproportionate (Dayan 1991; Forsyth 1997).

7. Prosecutors have not employed their own sociologists to rebut the testimony of the sociologist testifying for the defense. The most common attack upon sociological testimony is that it is only a summary of data and is not the result of a scientific methodology. The sociologist must be ready to explain how conclusions are the result of accepted scientific methods.

8. There are seven circumstances which can lead to a charge of capital murder in Louisiana. One of these is when the offender has a specific intent to kill or inflict great bodily harm upon more than one person. This is the circumstance under which Hao was charged with first degree murder.

## REFERENCES

- Allen, Rebecca and Harry Hiller. 1985. "The Social Organization of Migration: An Analysis of the Uprooting and Flight of Vietnamese Refugees." *International Migration Review* 22:439-451.
- Bach, Robert L. and Rita Carroll-Seguin. 1986. "Labor Force Participation, Household Composition, and Sponsorship Among Southeast Asian Refugees." *International Migration Review* 20:381-404.
- Baldwin, C. Beth. 1982. *Capturing the Change: The Impact of Indochinese Refugees in Orange County, Challenges and Opportunities*. Santa Ana, CA: Immigrant and Refugee Planning Center.
- Bankston, Carl L. III. forthcoming. Youth Gangs and the New Second Generation: A Review Essay. *Aggression and Violent Behavior: A Review Journal*.
- Bankston, Carl L. III. 1995a. "Vietnamese Ethnicity and Adolescent Substance Abuse: Evidence for a Community-Level Approach." *Deviant Behavior* 16:59-80.
- Bankston, Carl L. III. 1995b. "Vietnamese Americans." Pp. 1393-1407 in *Gale Encyclopedia of Multicultural America*, edited by J. Galens, A. Sheets, R.V. Young. Detroit: Gale Research Inc.
- Bankston, Carl L. III. 1997. "Education and Ethnicity: Community and Academic Performance in an Urban Vietnamese Village." In *Beyond Black and White*, edited by L. Weiss and M.S. Seller. New York: State University of New York Press.
- Bankston, Carl L. III and Stephen J. Caldas. 1996. "Adolescents and Deviance in a Vietnamese American Community: A Theoretical Synthesis."

- Deviant Behavior* 17:159-181.
- Bankston, Carl L. III and Min Zhou. 1997. Valedictorians and Delinquents: The Bifurcation of Vietnamese American Youth. *Deviant Behavior* 18:343-363.
- Brodsky, Stanley L. 1991. *Testifying In Court: Guidelines And Maxims For The Expert Witness*. American Psychological Association.
- Bulteau, R. 1953 *Cours d'Annamite*. Paris: Editions Larose.
- Caplan, Nathan, Marcella H. Choy, and John K. Whitmore. 1991. *Children of the Boat People: A Study of Educational Success*. Ann Arbor, MI: University of Michigan Press.
- Caplan, Nathan, John K. Whitmore, and Quang L. Bui. 1985. *Southeast Asian Refugees Self Sufficiency Study: Final Report*. Office of Refugee Resettlement of the Department of Health, Education, and Welfare. Ann Arbor, MI: Institute for Social Research, University of Michigan.
- Charvat, Ann. 1996. "Mitigation Evaluation: Preparation For A Death Penalty Trial." *Clinical Sociology Review* 14:119-135.
- Dayan, Marshall. 1991. "The Penalty Phase Of The Capital Case: Good Character Evidence." *The Champion*: 14-17.
- Du Phuoc Long, Patrick. 1996. *The Dream Shattered: Vietnamese Gangs in America*. Boston: Northeastern University Press.
- English, T.J. 1994. *Born to Kill: America's Most Notorious Vietnamese Gang and the Changing Face of Organized Crime*. New York: Morrow.
- Forsyth, Craig J. 1995. "The Sociologist as Mitigation Expert in First Degree Murder Cases." *Clinical Sociology Review* 13:134-144.
- Forsyth, Craig J. 1996. "Sociology And Capital Murder: A Question Of Life Or Death." Pp. 57-69 in *Witnessing For Sociology: Sociologists In The Courtroom*, edited by P. Jenkins and S. Kroll-Smith. New York: Greenwood Press.
- Forsyth, Craig J. 1997. "Using Sociology And Establishing Sociological Turf: The Sociologist As Expert In Capital Murder Cases." *Sociological Spectrum* 17(4):375-388.
- Foster, Burk and Craig J. Forsyth. 1993. "The Death Penalty Mitigation Team." Presentation at Life In The Balance V, Legal Aid And Defender Association. April 12, New Orleans, Louisiana.
- Glaser, Barney and Anselm Strauss. 1967. *The Discovery Of Grounded Theory: Strategies For Qualitative Research*. Chicago: Aldine.
- Gold, Steven J. 1992. *Refugee Communities: A Comparative Field Study*.

- Newbury Park, CA: Sage Publications.
- Haines, David W. 1985. "Toward Integration into American Society." Pp. 37-55 in *Refugees in the United States: A Reference Handbook*, edited by D.W. Haines. Westport, CT: Greenwood Press.
- Haines, David W. 1987. "Patterns in Southeast Asian Refugee Employment: A Reappraisal of Existing Research." *Ethnic Groups* 7:39-63.
- Haines, David W., Dorothy Rutherford, and Patrick Thomas. 1981. "Family and Community among Vietnamese Refugees." *International Migration Review* 15:310-319.
- Hall, Melinda Gann and Paul Brace. 1994. "The Vicissitudes of Death By Decree: Forces Influencing Capital Punishment Decision Making In State Supreme Courts." *Social Science Quarterly* 75:136-151.
- Hanh, Phung Thi. 1979. "The Family in Vietnam and Its Social Life." Pp. 77-84 in *An Introduction to Indochinese History, Culture, Language and Life*, edited by J.K. Whitmore. Ann Arbor, MI: Center for South and Southeast Asian Studies, University of Michigan.
- Hickey, Gerard Cannon. 1964. *Village in Vietnam*. New Haven: Yale University Press.
- Kelly, Gail Paradise. 1977. *From Vietnam to America: A Chronicle of the Vietnamese Immigration to the United States*. Boulder, CO: Westview Press.
- Kibria, Nazli. 1993. *Family Tightrope: The Changing Lives of Vietnamese Americans*. Princeton University Press, Princeton, New Jersey.
- Lewis, Peter W. and Kenneth D. Peoples. 1978. *The Supreme Court and The Criminal Process*. Philadelphia: W.B. Saunders Company.
- Liu, William T., Maryanne Lamanna, and Alice Murata. 1979. *Transition to Nowhere: Vietnamese Refugees in America*. Nashville, TN: Charter House Publishers.
- Matsuoka, Jon K. 1990. "Differential Acculturation Among Vietnamese Refugees." *Social Work* 35:341-345.
- Matsuoka, Jon K. and Donald H. Ryujin. 1989/90. "Vietnamese Refugees: An Analysis of Contemporary Adjustment Issues." *The Journal of Applied Social Sciences* 14:23-45.
- Muzny, Charles. 1989. *The Vietnamese in Oklahoma City: A Study in Ethnic Change*. New York: AMS Press.
- Nagel, Joane. 1994. "Constructing Ethnicity: Creating and Recreating Ethnic Identity and Culture." *Social Problems* 41:152-176.

- Najmi, M.A. 1992. "Sociologist As Expert Witness." *The Useful Sociologist* 13:4.
- Nash, Jesse W. 1992. *Vietnamese Catholicism*. Harvey, LA: Art Review Press.
- Nhu, Tran Tuong. 1976. "The Trauma of Exile: Viet-Nam Refugees." *Civil Rights Digest* (Fall): 59-62.
- New Orleans Indochinese Resettlement Task Force. 1979. *Impact Analysis of Indochinese Resettlement in the New Orleans Metropolitan Area: A Task Force Study*. New Orleans, LA: Mayor's Office of Policy Planning.
- Oran, Daniel. 1983. *Oran's Dictionary of the Law*. New York: West Publishing Company.
- Rose, Arnold M. 1967. "The Sociologist as an Expert Witness in Court Cases." Pp. 100-118 *The Uses of Sociology*, edited by P.F. Lazarsfeld, W.H. Sewell, and H.L. Wilensky. New York: Basic Books.
- Rumbaut, Ruben G. 1989. "Portrait, Patterns, and Predictors of the Refugee Adaptation Process: Results and Reflections from the IHARP Panel Study." Pp. 138-190 *Refugees as Immigrants: Cambodians, Laotians, and Vietnamese in America*, edited by D.W. Haines. Totowa, NJ: Rowman and Littlefield.
- Rumbaut, Ruben G. 1995. "The New Californians: Comparative Research Findings on the Educational Progress of Immigrant Children. Pp. 17-69 in *California's Immigrant Children: Theory, Research, and Implications for Educational Policy*, edited by R.G. Rumbaut and W.A. Cornelius. San Diego: Center for U.S.-Mexican Studies, University of California-San Diego.
- Rumbaut, Ruben G. and John R. Weeks. 1986. "Fertility and Adaptation: Indochinese Refugees in the United States." *International Migration Review* 20:428-466.
- Rutledge, Paul J. 1992. *The Vietnamese Experience in America*. Bloomington: Indiana University Press.
- Shaker, Peggy and Holmes Brown. 1973. *Indochina Is People*. Philadelphia: United Church Press.
- Skinner, Kenneth A. 1980. "Vietnamese in America: Diversity in Adaptation." *California Sociologist* 3(2):103-124.
- Starr, Paul D. 1981. "Troubled Waters: Vietnamese Fisherfolk on America's Gulf Coast." *International Migration Review* 15:226-238.
- Starr, Paul D. and W. Jones, Jr. 1985. *Indochinese Refugees in America:*

- Problems of Adaptation and Assimilation*. Durham, NC: Duke University Press.
- Starr, Paul D. and Alden E. Roberts. 1982. "Occupational Adaptation of Refugees in the United States." *International Migration Review* 16:25-45.
- Starr, Paul D. and Alden E. Roberts. 1985. "Community Structure and Vietnamese Refugee Adaptation: The Significance of Context." *International Migration Review* 18:595-613.
- Thoresen, Jean H. 1993. "The Sociologist As Expert Witness." *Clinical Sociological Review* 11:109-122.
- Tran, Thanh V. 1991. "Sponsorship and Employment Status among Indochinese Refugees in the United States." *International Migration Review* 25:436-450.
- U.S. Bureau of the Census. 1996. *Statistical Abstracts of The United States*. Washington, DC: US Bureau of the Census.
- Vigil, James Diego and S. Yu. 1990. "Vietnamese Youth Gangs in Southern California." Pp. 146-162 in *Gangs in America: Diffusion, Diversity, and Public Policy*, edited by R. Huff. Beverly Hills, CA: Sage.
- Zhou, Min and Carl L. Bankston III. 1994. "Social Capital and the Adaptation of the Second Generation: The Case of Vietnamese Youth in New Orleans." *International Migration Review* 28: 821-845.