

## A Sub-Cultural Mitigation Defense: Explaining Behaviors Scripted From Ideas

Craig J. Forsyth\*

Picard Center, Department of Sociology, University of Louisiana, P.O. Box 42730, Lafayette, LA 70504 2730, USA

### Abstract

In this paper, I examine the role of a sociologist as a mitigation expert in two cases of violent crime. Both cases used a subculture of violence defense. Case I involved a young black male defendant and a white victim who was an on-duty police officer. In Case II both victim and defendant were young black males. What makes these cases similar is that both involved a cultural defense in the sentencing phase. The author of this paper, testified at both of these sentencing hearings. The author is a Professor of Sociology, at the University of Louisiana at Lafayette. He has worked on over 300 violent crime cases since 1988, most of which were capital murder, but also include second degree murder, manslaughter, armed robbery, rape, and habitual offender hearings.

**Keywords:** Sociology and Mitigation; The Subculture of Violence

### Sociology and Mitigation

The trial of a first degree murder case is divided into two phases. 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 United States Supreme Court in [1] has straightforwardly repudiated mandatory death sentences for capital crimes. Individualized sentencing is required for meeting the requirements of due process. In response, individual states have adopted statutes that provide for bifurcated trials in capital cases [2].

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, but with the same actors in the same settings. It is the same jury, same judge, but perhaps a different prosecutor, and 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. The sentencing or penalty phase of the trial cannot begin sooner than 12 hours after the guilt phase. The judge can allow a longer period of time. The importance of this phase is that the ultimate punishment of death is possible [3-8].

Any matter the judge regards as relevant to sentencing may be offered as evidence and 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 [9]. The jury weighs aggravating and mitigating circumstances before imposing sentences of death or life in prison without parole. The position is an imposing one because these twelve individuals have just found beyond a reasonable doubt that the defendant committed first degree murder. But now the defense is asking that the defendant not be sentenced to death because of the defendant's admirable qualities or due to a life which predisposed him or her to the crime.

The most consequential ingredients for the defense are mitigating factors. 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 [10]. Louisiana law recognizes any relevant evidence as plausible mitigating testimony, but 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, working on the case, several of these or at least the latter will frame the testimony. The prosecution offers 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 [10]. 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.

Sociology has immense utility for criminal defense [3-5,8,11-14]. The foundation of sociology's contribution to the explanation of crime stands upon a subtle principle of law, that is "by happenstance" criminal penalties cannot be inflicted upon a person for being in a condition that the individual is powerless to change. The legal basis for mitigation is that there are aspects of the defendant's life which demonstrate that

**\*Corresponding author:** : Craig J. Forsyth, Picard Center, Department of Sociology, University of Louisiana, P.O. Box 42730, Lafayette, LA 70504 2730, USA, Tel: 337-482-5372; E-mail: [cjf5714@louisiana.edu](mailto:cjf5714@louisiana.edu)

**Received** November 08, 2013; **Accepted** December 04, 2013; **Published** December 07, 2013

**Citation:** Forsyth CJ (2013) A Sub-Cultural Mitigation Defense: Explaining Behaviors Scripted From Ideas. J Civil Legal Sci 3: 109. doi:[10.4172/2169-0170.1000109](https://doi.org/10.4172/2169-0170.1000109)

**Copyright:** © 2013 Forsyth CJ. This is an open-access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

he/she are not deserving of the maximum penalty for a crime; hence he should receive a shorter/lesser sentence. 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.

Such mitigation can also be used to negotiate a plea so that a trial never takes place. The sociologist's report can be filed in the record to be used at later hearings to reduce the sentence of the client. Finally, the sociologist's data can be used on appeal to convince the reviewing court that legal errors have more worth because of an inappropriate or disproportionate sentence. The use of sociology may be clearest in the penalty phase of a capital murder 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 specific case is to present one explanation to the jury that has various distinct but parallel parts.

In essence, arguments focus on two adversarial positions: the circumstances of the crime versus the social psychological qualities of the client [3-5,8,12,15-17]. Sociology is relevant to the questions of sentencing in capital murder cases. Sociology expands and explains the boundaries of mitigating factors. The expert/sociologist will attempt the more difficult job of explaining why structural, cultural and familial factors are at least partially to blame for the circumstances of the crime. Any conviction for a violent crime has a sentencing phase or hearing. A sentencing hearing is less dramatic than that of first degree murder because the stakes are not as high, it can take place months after the trial rather than the next day, and there is no jury.

## The Subculture of Violence

One of the best theories yet advanced to account for variations in the prevalence and incidence of violence was developed by Marvin Wolfgang and Franco Ferracuti [18] in their classic *Subcultures of Violence*. This theory relied somewhat on Wolfgang's earlier research of homicide in Philadelphia. Wolfgang had found that a significant number of the homicides that occurred among lower-class people resulted from very trivial events (from his perspective at least) that took on great importance to the combatants because of mutually held expectations about how people would behave. Wolfgang interpreted these events in theoretical terms taken from Sutherland's [19] Theory. An illustration from Wolfgang's [20] study of Philadelphia homicides and shows the sub cultural meanings, values and expectations among different groups:

the significance of a slightly derogatory remark, or the appearance of a weapon in the hands of an adversary are stimuli differentially perceived and interpreted by Negroes and whites, males and females. Social expectations of responses in particular types of social interaction result in differential "definitions of the situation." A male is usually expected to defend the name and honor of his mother, the virtue of womanhood...and to accept no derogation about his race (even from a member of his own race), his age, or his masculinity. Quick resort to physical combat as a measure of daring, courage, or defense of status appears to be a cultural expectation, especially for lower socioeconomic class males of both races. When such a cultural norm response is elicited from an individual engaged in social interplay with others who harbor the same response mechanism, physical assaults, altercations, and violent domestic quarrels that result in homicide are likely to be common.

Their theory has been the seedbed for a number of other studies on criminal violence that have developed into a theory designed to explain one type of homicide, the passion crimes that were neither planned intentional killings nor manifestations of extreme mental illness. With their theory Wolfgang and Ferracuti argue that the immediate causes of these passion homicides are ideas--values, norms, and expectations of behavior.

Cultural and sub cultural theories also focus on the role of ideas in causing criminal behaviors. These theories are typified by the argument that it is the ideas themselves, rather than the social conditions, that directly cause criminal behavior [20-24]. The subculture had arisen in the past for specific historical reasons, but it is transmitted from generation to generation as a set of ideas that can be understood apart from those original social conditions[25,26]. Each individual independently encounters these social environments, and to a degree his behavior is a response to the social environment. But each individual also learns ideas and interpretations of these conditions from others who face similar conditions, and to a certain degree his behavior is a reply to those interpretations. The basic ecological process of segregation aggregates people of like kind and thereby fosters the way for conflicts from which occurs homicide. These communities consist of concentrations of peoples whose values and lifestyles are especially likely to produce violent behavior. Violence is a common outcome of the interaction of life circumstances, culture and patterns of social interaction of these groups. Thus any policy recommendations supported by this literature did not require dealing with general social conditions, but only required doing something to break up the patterns of ideas that constituted the subculture of violence. For example, one of their major policy recommendations was to disperse the subculture by scattering low-income housing projects throughout the city rather than concentrating them in inner-city areas. Once the subculture was dispersed, individuals would gradually be assimilated into the dominant culture and the violent behaviors would cease to occur.

In this subculture "getting over on someone" gives the victim a feminine attribute, in a culture which forces "manliness." In a subculture of violence, which preys on weakness, it is a label that either must be avoided or countered. This cultural trait combined with a "brittle defensiveness" many times leads to heated standoffs in situations that others may find trivial. Some individuals have good verbal skills and may handle these confrontations without resorting to physical force. Others, however, lack verbal skills, and resort to physical violence to show they are real men (or women) who will not be taken advantage of. This results in a high number of murders and assaults among friends and in families.

Members of violent subcultures see violence as a significant element of their lives, and integral part of their way of life, and they make judgments about its proper use in interpersonal relations.

A presence of a subculture of violence is inferred by the existence of certain attitudes, behaviors, and conditions common to a group of people. In America, a subculture of violence might be inferred to exist if we found the following:

1. Relatively high rates of violence - homicide, assault, child and spouse abuse, sexual violence.
2. Common use or threats of violence in everyday disputes among friends and intimates.
3. Weapons carrying and other behaviors indicating anticipation of violence.

4. Relatively high rates of violence among the young, whose socialization exposes them to the subculture during the formative years.
5. Relatively high rates of victim precipitation - if violence is a dominant theme in life, people are likely to be "keyed up" for it and ready to provoke one another.
6. Criminal records and other personal histories indicating the repetition of violent crime.
7. The persistence of the above characteristics over time: subcultures do not develop overnight, nor do they disappear at the drop of a hat.

We know that lower-class, inner-city black males are found disproportionately in homicide statistics. We also know that the typical homicide involves people who know each other, who are young rather than old, and who are of the same race. When such a cultural norm response is elicited from an individual engaged in social interplay with others who harbor the same response mechanism, physical assaults, altercations, and violent domestic quarrels that result in homicide are likely to be common.

Research in Houston led to the conclusion that the basic ecological process of urban segregation centralizes people of like kind, throws them together at common institutions, occasions their association on levels of intimacy, and thereby paves the way for conflicts out of which homicides occur. Violence is a common outcome of the life circumstances and social interaction of these groups [27].

Evidence on this point also comes from St. Louis. A series of investigations of the proposition that blacks commonly carry weapons and that the arrest rates for weapons offenses are much higher among blacks than whites. Fifty black offenders convicted of possession of dangerous weapons were interviewed. These violators offered a number of reasons for carrying guns: Some did so to commit crimes; others did so to force payment of debts owed them. However, 70 percent declared that they carried weapons because they anticipated attack from others in their environment; carrying a weapon was a defensive act. This group voiced a chronic concern about being attacked and the need for self-defense and assumed automatically that others in their environment were also carrying weapons, or if not actually carrying weapons, acted as if they were [28].

Violence usually occurs in social situations: 1. where one is drinking; 2. physiological arousal is high (anger); 3. interpersonal conflict is evident; and 4. judgment and reasoning are impaired. The connection of alcohol with crimes of violence is understandable and the empirical evidence linking alcohol with the commission of violent acts is overwhelming [29, 30]. Alcohol is implicated in an extremely high proportion of all homicides [31]. Alcohol disinhibits impulses that are normally held in check although there are wide cultural variations. For example, there is heavy drinking in college bars, but relatively little violence, in lower class neighborhoods, violence is almost always associated with substance abuse. If the individual expects that alcohol will make him act aggressively and if the social environment provides appropriate cues, aggression or violent behavior will be facilitated [32]. Even low doses of alcohol decreases inhibitions (euphoria); at moderate/high levels self-confidence increases, more daring behavior occurs, and judgment is impaired.

The significance of a derogatory remark or jester from an adversary are differentially perceived and interpreted by lower class males. Social expectations of responses in particular types of social interaction

result in differential definitions of the situation. Lower socioeconomic class males are usually expected to accept no derogation about their masculinity. Quick resort to physical combat as a measure of deference of status appears to be a cultural expectation in this group (Wolfgang and Ferracuti 1981).

Subcultures of violence are made up of groups whose values sanction the use of violence and who are quick to use force in interpersonal relations. The result is a quick responsive culture in which there is either a lot of fighting or a lot of killing depending on the nature of interaction and the presence of firearms. According to many sociologists, the grinding poverty, unstable community organization, and disorganized family life in such areas lead to the emergence of certain lower-class values or focal concerns. Miller (1958) offered one such cultural theory, focusing on the explanation of lower class culture as a cause of delinquency. He argued that the lower class has an identifiable culture, which is distinct from middle class culture. He identified one of these values as "trouble," or suspicion of others and a generalized anticipation of difficulty from police officers, welfare agencies, schools, and fellow citizens. Another focal concern is "excitement," or pursuit of hedonistic pleasures, particularly on weekends and holidays, to counterbalance the drabness of weekdays. Another value identified by Miller (1958) was toughness (masculinity, endurance, strength, etc., are all highly valued). Miller described this lower-class culture as a generating milieu for delinquency because it interacts with several social conditions typically found in poor areas. Lower-class families are frequently headed by females, so that male children do not have a masculine role model in the family. These boys may then acquire an exaggerated sense of masculinity. In addition, crowded conditions in lower class homes means that the boys tend to hang out on the street. The delinquent nature of much activity is a consequence of these ideas of the lower-class culture. These motivations along with circumstances of close contact increase the likelihood for violence.

The existence of a subculture of violence means that violence will have predictable features. Far from being senseless and random, aggression will be patterned and quite rational when viewed in light of the sub cultural values, norms, and expectations governing its use. All subcultures contain cognitive and behavioral elements that together provide meaning, legitimation, and justification and help stabilize group life. Actions that may appear senseless to outsiders are not so to members, and it is precisely because they are predictable that they endure over time. People in the subculture of violence tend to value honor more highly than people in the dominant culture. On the other hand they tend to value human life less highly. There are also normative conflicts between the subculture of violence and the dominant culture. Those refer to "rules" about what behaviors are expected in response to the trivial jostles or remarks that were the cause of so many homicides. Those norms are backed up with social rewards and punishments; people who do not follow the norms are criticized or ridiculed by other people in the subculture, and those who follow them are admired and respected. These norms take on a certain life of their own, independent of whether they are approved by the individuals who follow them, since the failure to follow the norms may result in the person becoming a victim of the violence. Encounters which involve bullying, however slight, represent a threat to one's manliness. There is no option of not responding to continued threat; that option is not available. To walk away in this culture is to surrender your masculinity and be characterized as weak; becoming prey [18,24,29,33].

Curtis (1975) connects the subculture of violence to the general social conditions that form it. He characterizes culture as a fundamental

intervening variable between social conditions and the behaviors of each individual. Curtis includes the use of repressive violence by police in poor black neighbors and the general absence of economic opportunity. Police officers, with a different set of cultural ideals, may fail to understand the severity of situations or the implications of their own words and actions.

## CASE I

The victim in Case I was a police officer. Witnesses indicated a lack of victim precipitation. However, victim precipitation from the perspective of this subculture is not readily intelligible. Encounters which involve bullying, however slight, represent a threat to one's manliness. Police officers are seen as bullies within this subculture. In addition, members of the lower class often will strike out at the agents who they perceive to be responsible for one's position in life or those who are close at hand [6]. A police officer arresting a suspect respects all of these factors.

Katz [34] discusses the killing of police officers, an extreme application of the subculture of violence thesis, in what he calls a "righteous slaughter." It is the killer's impassioned attempt to restore dignity by obliterating the source of the humiliation, the victim. It is an effort to reclaim respect and dignity. Many killers claim they had to do it. Although this represents an exaggeration of most societal standards, the killer feels he has little choice (Katz 1988). He cannot live with the humiliation. He murders because it reconstructs his dignity regardless of the consequences.

Righteousness is not the product of rage; it is the essential stepping stone from humiliation to rage...The experience of public degradation carries the fear of bearing the disgrace eternally...humiliation and rage are both experienced as aggressive powers reaching into the soul [35].

Frank (a pseudonym) was born in Louisiana in 1972. In December of 1992 he shot a city police officer of a small Louisiana town, which will be referred to here as South City. The police officer was white and the son of the city's police chief. Frank is black and the son of a convicted felon. This is in reference to his biological father, who was a known "criminal character" in the South City area. There was no apparent motive for the murder. The police officer was in the process of arresting the driver of a car for a minor offense in which Frank was a passenger. Frank was not being arrested, indeed, he was told to leave the scene. Witnesses said that the police officer was putting the handcuffed suspect (the driver) in the police car when Frank walked up to the officer and shot him in the back of the head. The fact that Frank had killed a police officer performing his lawful duties made this a case of capital murder. There are seven circumstances which can lead to a charge of capital murder in Louisiana. One of these is when the offender has killed a police officer engaged in the performance of his/her lawful duties. This is the circumstance under which Frank was charged with first degree murder. Although not a point of debate in this case, what circumstances define lawful duties is rather fluid. For example, if the officer is killed while off duty and not performing a lawful duty or on duty and not performing a lawful duty.

During the penalty phase the author testified regarding the circumstances of Frank's life and drew sociological based conclusions regarding the relationship between his life experiences and the crime. The conclusions were based on the data obtained in dozens of interviews with Frank and his relatives, friends, co-workers and teachers. The author also had the services of an investigator and read his interviews and summaries. Conclusions were also based upon verbal reports from

a psychologist who had examined Frank, upon verbal reports from an educational consultant who had examined Frank's school records and interviews with and reports of a social worker who had worked with the defendant since his incarceration.

The reasons individuals usually end up in circumstances like Frank are many and perhaps individualized, but can generally be assorted into the following categories: 1.A long criminal history which starts at a young age and gradually escalates; 2.drug use which starts at a late age propelling the defendant into a life of crime; 3.primary homicide, an act committed in a rage; 4.pathological reasons; 5.an organic influence other than drugs (brain dysfunction; depressive disorder); 6.having a history of abuse or being around it; 7.being part of a culture of violence; and/or 8.being under the influence of alcohol and/or drugs at the time of the crime. These areas or the combination of these domains may result in violent behavior.

Frank had no criminal background; no significant history of drug or alcohol use, he had finished high school, attempted college, had a fairly good job record, was a member of the national guard, and was an academic tutor for younger children. This was the profile of a normal youth. But Frank had two facets of his life which, that night, positioned him to commit an act of murder: he is under the influence of alcohol and situated within a subculture of violence.

A marginal man is one who is caught between two conflicting cultures [36,37]. The person's commitment is divided between the two cultures, and therefore fails to fully identify with either group. He is not a full member of either group, consequently he is an uninformed participant. Frank lived with his mother and stepfather in a large north Louisiana city. He had little contact with his biological father. His mother had always attempted to shield him from the "bad environments" in which they lived. As a consequence the family moved many times and he transferred school 17 times. His family could not afford to move completely away from such neighborhoods, so he is always in the vicinity of them. All this moving around meant he was an outsider with few friends. Being an outsider meant people were always attempting to take advantage of him. On several occasions, kids in the neighborhood took money from him and his stepfather had to confront the other kids. When these neighborhoods "became too rough" and their residents determined to be bad influences, the family would move to elude their control. One of the other consequences of these frequent moves was that he did not learn to maneuver in this element; he could not hold his own among this group; he is culturally different than those in these lower class neighborhoods although he still lives among them. An excellent example of his not fitting into this element is an encounter he had when he worked the night shift at a convenience store. A local resident who had been intimidating him was hanging in front of the store one night. Frank was so afraid of this person he locked up the store and left. He was subsequently fired from this job.

Because he had developed few friendships he was compelled to return to south city on several occasions to visit his relatives and friends. Many of these individuals had criminal records. In the Spring of 1991, Frank is allowed to move back to south city and live with his paternal grandmother, in order to attend high school and graduate. Again he finds himself an outsider, but his parents are not around to shield him from "bad influences."

His associates are castoffs, mostly his relatives or friends of relatives, who have criminal histories. His life after graduation from high school involves living with his mother and going back and forth for extended periods to visit his friends in South City. In north Louisiana his

environment is controlled by his mother and stepfather, in south city there are few restraints regarding his associates. In south city, to quote several of his friends, “everybody just got over on him.” Eventually Frank has a girlfriend, who is not “faithful” to him. Everyone knows this and a few days before this crime this fact becomes known to Frank. It is another example of him not being able to maneuver in a social environment in which he does not fit in. On the day of crime he found out that one of his “best friends” had “been fooling around with his girlfriend.”

In frustration he starts drinking and gets into an argument with his girlfriend. He shot at a car that night. He is seen as weak in an environment that preys on weakest and kindness. Frank leaves the scene of this encounter with a friend, who is subsequently stopped by the police officer (victim). Frank never admitted to the shooting, although there were eye witnesses who said he did murder the police officer. Frank is involved in a series of events in which people are taking advantage of him. His girlfriend is having affairs with his friends. He is drinking; frustrated; emotionally charged and consequently exercising little restraint. He is in a reactive mode; his behavior is determined by events which occur in his proximity. He was found guilty of one count of first degree murder. The author testified in the penalty phase of the trial. The defendant did not receive the death penalty; a life sentence.

## CASE II

Case II examines the role a sociologist in the sentencing phase of a conviction of manslaughter. This was originally a capital murder case involving a defendant and victim who were both black. In June 2010, Sam (a pseudonym) was convicted of manslaughter. The original charge was first degree murder, which was later reduced to second degree murder. The defendant asked for a bench trial (no jury). The judge found him guilty of manslaughter. My original role was to testify at the penalty phase if there was one. My new role was to testify at the sentencing hearing and to file a report containing the same, albeit more detailed information [38].

My testimony began with comments regarding punishment. Manslaughter has a punishment of 0 to 40 years. Before the law was changed in the 1990s the maximum sentence was 21 years; with good time most men only served a 7 year sentence. The same crime under the present law would have a sentence of 34 years. [2] This change represents the most drastic increase for any degree of homicide. But the legislature created a very plastic sentence with the new law; indeed they had the prudence to foresee a great variation of circumstances within this crime. They contemplated a circumstance in which there would be a sentence of 0 years; indeed a probative sentence. The statute speaks for itself. Some statutes indicate a minimum sentence, manslaughter does not. The question is what category of manslaughter fits a sentence of zero years. It is my hope that the following mitigation offered in Sam's behalf will convince you to give him no prison time.

In March 2010, after a fist fight between Sam and Keith (a pseudonym); Sam shot Keith. It was my opinion, given the cultural context in which these two young men lived and the circumstances of their confrontation that the shooting nearly descends to the level of justifiable homicide. The shooting was neither planned nor intentional. This crime is the least culpable form of manslaughter and deserved a sentence of zero years.

### Circumstances of the Crime

Keith has two children with Susan (a pseudonym); they no longer live together. Susan has had several protective orders to keep Keith

away from her residence. Susan now lives with Sam. This is the basis of Keith's humiliation and his anger and jealousy toward Sam. Sam is involved in a series of events in which Keith is threatening him. The mother of Keith's children is living with Sam; each of their meetings is emotionally charged for Keith.

Previous to the crime/incident Keith and Sam had several confrontations. Each of these confrontations was initiated by Keith. On several of these occasions Keith pulled a gun from his truck and displayed it as a threat to Sam. The message was clear. This was a volatile situation. Indeed, this is why a witness at trial said he stayed away from situations like this; what he referred to as women problems; because it is predictable.

People from backgrounds like Sam stay away from situations like this because they have seen the end result. Sam did not react to the insults and callouts of Keith in spite of the humiliation. He thought that Keith would eventually tire of threatening him and the call outs would stop. They did not. The fight that night was another call out, he had to go to the fight or face humiliation again. Many members of the community knew Keith wanted to fight him in the park and that Sam had continually backed down from Keith's threats. Sam realized that his continuing to back down from Keith was not going to work. Sam believed that if he fought him that would be the end of it. There were informal rules set up that there would be no weapons. Sam brought two men with him to the fight and Keith brought three.

Sam brought a gun to the fight; because he expected Keith to have a gun. Keith had displayed the gun/threat on several occasions. The question is not if Keith had a gun but why would he not have a gun. One would assume that Keith was carrying a gun because he always had a gun. There is no reason to assume otherwise. As one witness in court said you always bring a gun to a fight.

On the night of the incident Sam gave up his gun by handing it to one of his friends to hold during the fight. Keith began fighting with brass knuckles, violating a pre-condition. The fight breaks up when Keith bites a piece of flesh from Sam's face. When the fight breaks up Keith runs to the passenger side of his truck. Sam assumes he is going for his gun. He had produced the gun in the past from the glove box located on the passenger side of the truck. The question which begs for an answer is: For what other reason would he be running to the passenger door of his truck? Sam hollers “give me my gun”. Sam shoots Keith twice before he can get into his truck; there were no shots fired at Sam. Sam's friends testified that they also thought that Keith was going to get his gun. Keith's friends testified that Keith did not have a gun that night. But one of these friends testified that you always bring a gun to a fight. (This same friend said he did not have a gun that night).

There was no gun found at the crime scene. I testified that Keith's gun could have been removed from the scene for a number of reasons. It is quite common for witnesses to “pick the crime scene clean” in these circumstances. This occurs for a number of reasons:

1. leaving the crime scene as is helps the police; because-police rarely help people in this area, why help them?
2. A gun has value; easily turned into cash; would you expect to find a roll of money to remain at a crime scene in these circumstances.
3. Witnesses think it will help their “buddy” to remove the gun.

My further testimony involved explaining the culture that surrounds this incident. Both Keith and Sam are involved in a subculture of

violence. These families were once close friends. Sam's father had coached both of these men on youth baseball teams for several years [34]. Sam received a sentence of 8 years. At the present time violent offenders serve 85% of their sentence. This will be reduced in the near future as states handle budget cuts. Various bills have circulated through the legislature including reducing the percentage violent offenders have to serve and allowing first time violent offenders (excluding first degree murder) to have the same good time as non-violent offenders. The good time for non-violent offenders has already been increased to 35 days for every 30 days served. A manslaughter conviction brings a sentence of 0 to 40 years. What happened between Keith and Sam represents a scripted tragedy. Like any performance/play it is repeated many times each day. There are many versions. One must understand the context of the story in order to grasp its significance. In real life the tragedy is perceived both senseless and predictable.

## Implications

In this paper I have offered a description and interpretation of the contextual influences on a criminal act [6-8,38]. 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 the interaction of those ideas. Like many crimes of violence it is also an accumulation of social-psychological experiences. Cultural and sub cultural theories also focus on the role of ideas in causing criminal behaviors. Although very recurring concepts to social scientists, the terms culture and subculture may not be familiar to judges and jurors or if they are well-known the meanings usually do not rise to the level of explanatory. The expert should have an explanation prepared. These theories, like Sutherland (1939); Cloward and Ohlin (1960); Cohen (1955); Miller (1958), may explore the sources of those ideas in general social conditions, but they are characterized by the argument that it is the ideas themselves, rather than the social conditions, that directly cause criminal behavior [25,26]. These motivations along with situations of close contact heighten the potential for violent incidents and go far toward accounting for high rates of homicide among lower-class citizens. This argument makes it unnecessary to invoke personality pathology to account for homicide.

Illustrated in these two cases is 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 "justify" grievous and heinous acts, absolve the murderer of a sufficient amount of guilt to spare his life or get a lesser sentence. These are circumstances sociologists face as experts. Culture is the least understood factor in the calculus of crime. The criminal justice system although captivated by the effects of culture has been reluctant to embrace such explanation. The diversity of America's population means that judges and juries need more insight into the cultural backgrounds of defendants and associated motivations. Culture is the least understood factor in the calculus of crime. Culture captivates the criminal justice system; a system that appears to have little tolerance for such explanations.

## References

1. Furman v. Georgia, 408 U.S. 238
2. Hall MG, 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.
3. Forsyth CJ (1995) The Sociologist as Mitigation Expert in First Degree Murder Cases. *Clinical Sociology Review* 13:134-144.
4. Forsyth CJ (1996) Sociology and Capital Murder: A Question of Life or Death.
5. Forsyth CJ (1997) Using Sociology and Establishing Sociological Turf: The Sociologist As Expert In Capital Murder Cases. *Sociological Spectrum* 17:375-388.
6. Forsyth CJ (1998) The Use Of The Subculture Of Violence As Mitigation In A Capital Murder Case. *Journal of Police And Criminal Psychology* 13:67-75.
7. Forsyth CJ (1999) Too Terrible To Talk About: A Case Study of the Rape And Murder Of A Child. *International Journal of Sociology of the Family* 29:97-106.
8. Forsyth CJ, Carl LB (1997) Mitigation in a Capital Murder Case With a Vietnamese Defendant: The Interpretation Of Social Context. *Journal of Applied Sociology* 14: 47-165.
9. Lewis PW, Kenneth DP (1978) the Supreme Court and The Criminal Process.
10. Oran D (1983) Oran's Dictionary of the Law.
11. Forsyth CJ (2007) Recurring Criminal Scripts: The Routinization of Cases Involving the Murder of a Child. *Applied Social Science* 1: 62-68.
12. Dayan M (1991) the Penalty Phase of the Capital Case: Good Character Evidence. *The Champion* 15:14-17.
13. Forsyth CJ, Ouida FF (2007) A Story Telling of Tragedy: Mental Illness, Molestation, Suicide, and the Penalty of Death. *Journal of Offender Rehabilitation* 45: 59-68.
14. Rose AM (1967) the Sociologist as an Expert Witness in Court Cases.
15. Brodsky SL (1991) Testifying In Court: Guidelines And Maxims For The Expert Witness. American Psychological Association.
16. Najmi MA (1992) Sociologist As Expert Witness. *The Useful Sociologist* 13: 4
17. Thoresen JH (1993) the Sociologist As Expert Witness. *Clinical Sociological Review* 11:109-122
18. Wolfgang ME, Franco Ferracuti (1967) *The Subculture of Violence*. London: Tavistock
19. Sutherland EH (1939) *Principals of Criminology*.
20. Wolfgang ME (1958) *Patterns in Homicide*. Philadelphia: University of Pennsylvania Press.
21. Cloward RA, Lloyd EO (1960) *Delinquency and Opportunity*. Glencoe, Illinois: The Free Press
22. Cohen AK (1955) *Delinquent Boys*. Glencoe, Illinois: The Free Press.
23. Miller WB (1958) Lower Class Culture As A Generating Milieu Of Gang Delinquency. *Journal of Social Issues* 14: 5-19.
24. Vold GB, Thomas JB (1986) *Theoretical Criminology*. New York: Oxford University Press.
25. Erlanger HS (1974) the Empirical Status of the Subculture of Violence Thesis. *Social Problems* 22: 280-292.
26. Erlanger HS (1976) is there a Subculture of Violence in the South? *Journal of Criminal Law and Criminology* 66:483-490.
27. Bullock HA (1955) Urban Homicide in Theory and fact. *Journal of Criminal Law, Criminology, and Police Science* 45: 565-575
28. Schultz LG (1962) Why the Negro Carries Weapons. *Journal of Criminal Law, Criminology, and Police Science* 53: 476-483.
29. Bartol CR (1991) *Criminal Behavior: A Psychosocial Approach*.
30. Parker RN, Linda AR (1995) *Alcohol and Homicide: A Deadly Combination of Two American Traditions*. Albany: State University of New York Press.
31. Wieczorek WF, Welte JW, Abel EL (1990) Alcohol, Drugs, And Murder: A Study Of Convicted Homicide Offenders. *Journal Of Criminal Justice* 18:217-227.
32. Critchlow B (1986) the Powers of John Barelycorn: Beliefs About The Effects of Alcohol on Social Behavior. *American Psychologist* 41: 751-764.
33. Barlow HD (1987) *Introduction to Criminology*. Boston Mass.: Little, Brown and Company.

34. Curtis LA (1975) Violence, Race, and Culture. Lexington Mass.: Heath Publishing.
35. Katz Jack (1988) Seductions of Crime: Moral And Sensual Attractions of Doing Evil. New York: Basic Books.
36. Forsyth CJ (1989) The American Merchant Seaman and His Industry: Struggle and Stigma. New York: Taylor and Francis.
37. Park Robert (1928) Human Migration and the Marginal Man. American Journal Of Sociology 33:881-893.
38. Forsyth CJ (2014) the Work of the Sociologist as Mitigation Expert in Cases of Violent Crime.

**Citation:** Forsyth CJ (2013) A Sub-Cultural Mitigation Defense: Explaining Behaviors Scripted From Ideas. J Civil Legal Sci 3: 109. doi:[10.4172/2169-0170.1000109](https://doi.org/10.4172/2169-0170.1000109)

### Submit your next manuscript and get advantages of OMICS Group submissions

#### Unique features:

- User friendly/feasible website-translation of your paper to 50 world's leading languages
- Audio Version of published paper
- Digital articles to share and explore

#### Special features:

- 300 Open Access Journals
- 25,000 editorial team
- 21 days rapid review process
- Quality and quick editorial, review and publication processing
- Indexing at PubMed (partial), Scopus, EBSCO, Index Copernicus and Google Scholar etc
- Sharing Option: Social Networking Enabled
- Authors, Reviewers and Editors rewarded with online Scientific Credits
- Better discount for your subsequent articles

Submit your manuscript at: [www.omicsonline.org/submission](http://www.omicsonline.org/submission)

