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Multiple Defendant Cases: When the Death Penalty is Imposed on the Less Culpable Offender

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When more than one person is involved in a crime resulting in death, in most jurisdictions the felony murder doctrine operates to render everyone equally responsible for murder. Lay people often find it surprising, and somewhat disturbing, that the ?lookout? is exposed to the same range of penalties, generally including life sentences, as the person who actually pulled the trigger. The stakes are even higher in jurisdictions with the death penalty. The Supreme Court has limited application of capital punishment in the felony murder context to ?major participants? in the felony who displayed at least ?reckless indifference to the value of human life.? Nonetheless, the triggerman may well receive a life sentence, or even a term of years, while another participant is sentenced to death. Indeed, the person against whom the evidence is the strongest has the greatest incentive to agree to enter a guilty plea and testify against his accomplices in exchange for a prosecutor's promise not to seek a death sentence. The facts of cases as described in court opinions at times suggest that accomplices who testify minimize their own role so as to enable the prosecution to secure a death sentence against another participant. Accordingly, defendants may be executed based on unreliable accomplice testimony while the more culpable participant in the events leading to the victim's death receives a lesser penalty. Interviews with jurors who deliberated on cases involving accomplices confirm the difficulties of sorting out the relative culpability of various participants. This Essay suggests that multiple defendant capital cases pose particular challenges for fair and even-handed application of capital punishment that warrant more careful scrutiny than they have so far received.

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