

Racial Disparities in the Capital of Capital Punishment

Scott Phillips
University of Denver

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Abstract

Despite decades of research on race and capital punishment, “reasonably well-controlled” studies have not been conducted in the five most active death states: Texas, Virginia, Oklahoma, Missouri, and Florida. To begin to address this limitation, the current research examines the impact of race on the District Attorney’s (DA) decision to pursue a death trial and the jury’s decision to impose a death sentence against adult defendants indicted for capital murder in Harris County (Houston), Texas from 1992 to 1999 (n = 504). The findings challenge conventional wisdom by suggesting that the race of the defendant and victim are both pivotal in the capital of capital punishment: death was more likely to be imposed against black defendants than white defendants; death was more likely to be imposed on behalf of white victims than black victims. The black-white disparities stem from an intriguing interplay between race, the seriousness of a murder, and the stages of capital litigation. The current research also represents one of the few attempts to extend traditional black-white comparisons to include Hispanics; no Hispanic-white disparities were observed. The research concludes with a call to action for scholars to initiate “reasonably well-controlled” studies in the most active death jurisdictions in the United States.

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Racial Disparities in the Capital of Capital Punishment

Justice is supposed to be blind – meted out according to the legal characteristics of a case rather than the social characteristics of the defendant and victim. Decades of research on race and capital punishment, however, demonstrate that blind justice is a mirage (United States General Accounting Office 1990; Baldus and Woodworth 2003a, 2003b; Paternoster, Brame, and Bacon 2008).

Ironically, the most rigorous research on race and capital punishment has not been conducted in the jurisdictions that execute the most offenders. In a recent comprehensive review of the literature, David Baldus and George Woodworth, leading scholars in the field, argue that “reasonably well-controlled” studies have been conducted in the following jurisdictions: California, Colorado, Georgia, Kentucky, Maryland, Mississippi, Nebraska, New Jersey, North Carolina, Philadelphia, and South Carolina (2003a:519). The list of jurisdictions with “reasonably well-controlled” studies is striking due to glaring omissions – the list does not include the five most active death states: Texas, Virginia, Oklahoma, Missouri, and Florida. Such states account for 719 of the 1,099 executions in the modern era, defined as the Supreme Court’s reinstatement of capital punishment in 1976 to the present.

The current paper advances the field of race and capital punishment by conducting “reasonably well-controlled” research in one of the most active death jurisdictions in the United States. To do so, I examine whether race influenced the District Attorney’s (DA) decision to pursue a death trial or the jury’s decision to impose a death sentence against adult defendants indicted for capital murder in Harris County, Texas from 1992-1999 (n = 504).¹

¹ Baldus and Woodworth define “reasonably well-controlled” studies as those including “statistical controls for 10 or more legitimate non-racial case characteristics” (2003a:519). The current research meets the Baldus/Woodworth standard of being “reasonably well-controlled.” To be clear, the current research does not claim to be in the same league as Baldus and

Though the entire state of Texas has earned a reputation for execution, Harris County – home to Houston and surrounding areas – is arguably the capital of capital punishment. With 102 executions in the modern era, Harris County has often captured the national and international spotlight in the death penalty debate (see e.g. Amnesty International, 2007). Table 1 demonstrates three compelling patterns: if Harris County were a state it would rank second in executions after Texas, recently passing Virginia; Harris County has executed more offenders than all the other major urban counties in Texas, combined; and Harris County has executed more than twice as many offenders as the top death jurisdiction that has been subject to “reasonably well-controlled” research on race and capital punishment. The period from 1992 to 1999 is also critical because the number of death sentences in Harris County climbed to historic highs. From 1976 to 1991, Texas’ death row received an average of six offenders per year from Harris County. But from 1992 to 1999, the average almost doubled to 11 offenders per year – about one a month. The average dropped to 5 offenders per year from 2000 to 2007 (Texas Department of Criminal Justice, 2008).^{2 3}

colleagues’ seminal research. The Baldus study remains the most rigorous research on race and capital punishment by far, and arguably the most impressive research on any topic in the field of Criminology.

² One could argue that it is inaccurate to call Harris County the “capital of capital punishment.” In an important article that provides the first comprehensive examination of death sentences for the entire nation, Blume and colleagues (2004) demonstrate that the death sentence rate in Texas is below the national average (the death sentence rate is defined as the number of death sentences divided by the number of murders). In fact, the death sentence rate in Texas ranks 16th among the 31 states that sent more than 10 offenders to death row from 1977 to 1999. The authors also note in a New York Times article that the death sentence rate in Harris County is average for Texas (Liptak 2004). Thus, the considerable number of executions in Texas is not a product of a high death sentence rate, but rather a large number of murders coupled with the state’s propensity to execute inmates who are sentenced to death (Blume, Eisenberg, and Wells 2004). Given Blume and colleagues’ (2004) findings, how can Harris County be called the capital of capital punishment? Consider the following: (1) The execution rate is arguably more important than the death sentence rate – a death sentence is a pivotal and crucial moment in a capital case, but execution is the quintessence of capital punishment. Calculating the execution rate reveals that Texas catapults from 16th to 3rd in the national rankings (the execution rate is defined as the

[Table 1 Here]

To anticipate, the results challenge conventional wisdom regarding the basic relationship between race and capital punishment. Conventional wisdom holds that the race of the victim is pivotal, but the race of the defendant is not (United States General Accounting Office 1990). The current research suggests that the race of the defendant and victim are both pivotal in the capital of capital punishment: death was more likely to be imposed against black defendants than white defendants, and death was more likely to be imposed on behalf of white victims than black victims. No Hispanic-white disparities were observed.

Before proceeding it is important to note that the central claim of the research – racial disparities exist – does not insinuate that judicial actors intend to discriminate. Because human motivations are unobservable, scientific methods cannot be used to determine whether disparities are intentional or unintentional, conscious or unconscious (Black 1995). The word “disparities” is used throughout the research to denote aggregate numerical differences, while the word “discrimination” has been avoided because it unfairly impugns motives.

number of executions divided by the number of murders). (2) Raw numbers and rates both matter. The following example from baseball illustrates the point. Barry Bonds holds the career homerun record at 762 even though Bonds hit a homerun in 7.7 percent of at bats (762/9,847) compared to Babe Ruth who hit a homerun in 8.5 percent of at bats (714/8,398). Ty Cobb holds the career batting average record at .366 even though Cobb had a total of 4,189 hits compared to Pete Rose who had 4,256 hits (www.baseball-reference.com/leaders/). Bonds’ raw number of homeruns is not diminished by Ruth’s homerun rate, nor is Cobb’s batting rate diminished by Rose’s raw number of hits. In most areas of life, including baseball and capital punishment, raw numbers and rates both contain important information needed to determine rankings. (3) The phrase “capital of capital punishment” is not meant to suggest that Harris County would be rated as the most prolific death penalty jurisdiction under any possible standard. Rather, the phrase is a heuristic device used to call attention to the indisputable fact that Harris County is one of the most active death jurisdictions in the nation.

³ The annual number of death sentences from Harris County was calculated from the Texas Department of Criminal Justice website which lists the county of conviction for each offender and the date the offender was received on death row.

I. RACE AND CAPITAL PUNISHMENT

Rather than attempt to summarize the immense body of scholarship on race and capital punishment, the following review focuses on five issues that are relevant to the current project: (1) landmark Supreme Court cases, (2) seminal research conducted by Baldus and colleagues, (3) existing reviews of the literature, (4) prior research in Texas, and (5) the limitations of prior research in Texas.

In *Furman v. Georgia* (1972), the Supreme Court ruled on a 5-4 vote that capital punishment was administered in an arbitrary manner that constituted cruel and unusual punishment. Most of the justices in the majority used the word “arbitrary” to refer to numerical disparities, arguing that there was no legal basis for distinguishing the handful of defendants who were sentenced to death from the large number of defendants who committed equally reprehensible crimes but were not condemned. But two justices, Douglas and Marshall, also used the word “arbitrary” to refer to racial disparities in the imposition of capital punishment.

After the Supreme Court’s decision in *Furman*, states began to revise their laws and reinstate capital punishment. Some states eliminated arbitrariness by making the death penalty mandatory for defendants convicted of certain crimes. Other states adopted “guided discretion,” an approach that narrowed and specified the range of crimes eligible for death, separated the guilt and sentencing phases of a capital trial (allowing the prosecution and defense to introduce evidence of aggravating and mitigating circumstances during the sentencing phase that could not have been introduced during the guilt phase), and required automatic appellate review of death sentences. In *Woodson v. North Carolina* (1976) and the companion case of *Roberts v. Louisiana* (1976), the Supreme Court struck down mandatory death statutes arguing that the protection of human dignity required individual consideration of each case. But the Supreme

Court upheld guided discretion statutes in *Gregg v. Georgia* (1976) and the companion cases of *Proffitt v. Florida* (1976) and *Jurek v. Texas* (1976), beginning the modern era of capital punishment. Guided discretion statutes soon proliferated as states passed legislation that would comply with the ruling in *Gregg*.

Following the Supreme Court decision in *Gregg* (1976), social scientists began to examine whether guided discretion eliminated the influence of race on capital punishment. Baldus and colleagues' Procedural Reform Study (PRS) and Charging and Sentencing Study (CSS) remain the most important and rigorous research on the topic (Baldus, Woodworth, and Pulaski 1990). The PRS includes 750 (156 pre-*Furman* and 594 post-*Furman*) murder convictions in Georgia spanning 1970 to 1978, and the CSS includes 1,066 defendants convicted of murder or voluntary manslaughter in Georgia from 1973 to 1979. Both studies control for an enormous number of potential confounders. The statewide post-*Furman* findings reveal that the race of the defendant was not a significant predictor, but the race of the victim was crucial: defendants who killed white victims were 4.3 times more likely to be sentenced to death. Moreover, black defendants who killed white victims were more likely to be sentenced to death than any other racial combination.

The results of the CSS, and to a lesser degree the PRS, became the basis for the most important Supreme Court decision on race and capital punishment: *McCleskey v. Kemp* (1987). McCleskey argued that racial disparities in the administration of capital punishment rendered the ultimate sanction unconstitutional. The Supreme Court did not contest the empirical patterns, but nonetheless rejected McCleskey's challenge on a 5-4 vote. Most centrally, the court argued that statistical evidence of racial disparities alone, without evidence of discrimination in the particular case at hand, does not establish a constitutional violation. The court was also reluctant

to open Pandora's box, reasoning that if social science research regarding racial disparities invalidated capital punishment then social science research could ultimately undermine the entire criminal justice system.

Two comprehensive reviews of research on race and capital punishment have been conducted since the Supreme Court decision in *McCleskey*. The United States General Accounting Office reviewed the 28 studies published from 1972 to 1990, and, more recently, Baldus and Woodworth reviewed the 18 studies reported or published from 1990 to 2003 (United States General Accounting Office 1990; Baldus and Woodworth 2003a, 2003b). Both reviews reach the same conclusion: (1) The race of the defendant does not have a consistent influence on capital punishment: some studies suggest the disparate treatment of black defendants, but most do not. (2) The race of the victim has a consistent and robust influence on capital punishment: almost all studies suggest that death is more apt to be imposed on behalf of white victims.

Drawing on Supplemental Homicide Reports (SHR), scholars have also examined the relationship between race and capital punishment in Texas. The SHR data are used to examine whether race distinguishes the large number of defendants arrested for murder from the small number sentenced to death. The post-*Furman* findings in Texas mirror established patterns: the race of the defendant does not seem to matter; death is more apt to be imposed on behalf of white victims; and minorities who kill whites are more apt to be sentenced to death than any other racial combination (Bowers and Pierce 1980; Ekland-Olson 1988; Sorensen and Marquart 1990-1991; Marquart, Ekland-Olson, and Sorensen 1994; Brock, Cohen, and Sorensen 2000; for pre-*Furman* patterns see e.g. Koeninger 1969; Ralph, Sorensen, and Marquart 1992; Hunter, Ralph, and Marquart 1993).

Existing research in Texas suffers from five important limitations, most of which stem from a reliance on SHR data: (1) SHR data cannot control for critical confounders such as the defendant's prior criminal record or the heinousness of the crime. Hence, no study in Texas meets the Baldus/Woodworth standard for "reasonably well-controlled" research enumerated above. (2) SHR data cannot isolate murder defendants who were eligible for capital punishment under Texas law, so the imperfect comparison includes defendants who were not eligible for death and/or excludes defendants who were eligible for death. (3) If racial disparities emerge, SHR data cannot identify the stage of the process that produced the disparities. Disparities may originate in the decision to charge a defendant with capital murder, the decision to indict a defendant for capital murder, the DA's decision to pursue a death trial, or the jury's decision to impose a death sentence. (4) SHR data are sometimes problematic due to missing values. (5) Existing studies tend to examine the entire state of Texas (for an exception see Brock, Cohen, and Sorensen 2000). Because capital punishment in Texas is the aggregation of capital punishment in 254 counties with different histories, cultures, political climates, and legal actors – including different DA's who decide whether to pursue a death trial – an investigation of race and capital punishment across the state of Texas cannot account for local conditions.

The current research overcomes such limitations by: controlling for critical confounders, focusing exclusively on defendants who were eligible for death, identifying the stage of the process that produced racial disparities, including complete data for all cases, and examining patterns for a single county.

II. RESEARCH METHODS

A. Dependent Variables: Trajectory and Disposition

In Harris County, the path from the commission of a murder to the pronouncement of a death sentence includes four major decisions: the intake prosecutor's decision to charge a defendant with capital murder, the grand jury's decision to indict a defendant for capital murder, the District Attorney's decision to pursue a death trial, and the jury's decision to impose a death sentence. Because the charging and indictment decisions do not appear to exhibit enough variation to warrant an investigation, the current research focuses on whether race influenced the DA's decision to pursue death or the jury's decision to impose death – the trajectory and disposition of a case.^{4 5 6}

The data include the population of adult defendants indicted for capital murder in Harris County, Texas from 1992 to 1999 (n = 504).⁷ The Harris County District Clerk (HCDC) used the Harris County Justice Information Management System (JIMS) to identify the

⁴ John Holmes Jr. was the DA in Harris County during the time period under consideration.

⁵ The Harris County intake division prosecutor must determine whether a homicide can be charged under the Texas capital murder statute. Despite repeated attempts, collecting the data needed to examine the impact of race on the charging decision proved impossible. But the charging decision does not appear to exhibit much variation. To begin, the Texas capital murder statute delineates narrow categories of murder that are death-eligible. The precision of the statute simplifies the charging decision, as opposed to states that define heinous murders as death eligible (see Texas Penal Code, title 5, chapter 19, section 19.03). Moreover, *The Houston Chronicle* reports in a February 2001 special series that the intake prosecutor has “standing orders” to file capital murder charges in all possible cases (Tolson and Brewer, February 4, 2001:A1; the remaining segments in the special series are listed in the reference section for the interested reader). Nonetheless, the inability to examine the charging decision remains a potential weakness of the current research.

⁶ The grand jury must return a “Bill of Indictment” for capital murder in order for the DA to pursue a death trial. This step borders on a formality, as data from the Harris County district clerk indicate that grand juries returned a “No Bill” in just seven capital cases from 1992 to 1999.

⁷ Defendants were excluded if the case was dismissed, the case was disposed but expunged, the defendant was never arrested, the victim's remains could not be identified, or the case had not been disposed at the time the list of cases was requested from the Harris County District Clerk in December 2001. The two Native American defendants were also excluded.

defendants. The HCDC also provided a JIMS file that contained public information about each case, including whether the case resulted in a plea bargain or trial and the disposition. The Harris County District Attorney's office provided archival documents that were used to verify the list of defendants and determine if the DA pursued a death trial.

Figure 1 traces the trajectory, disposition, and current status of the 504 defendants who murdered 614 victims (defendants age 17 or older at the time of the crime were considered adults in Texas during the time period under consideration). The figure reveals that the DA pursued a death trial against 129 of the 504 defendants. Of the 129 defendants who advanced to a death trial, 98 were sentenced to death, 29 were sentenced to life imprisonment, one was sentenced to confinement in the Texas Department of Corrections (TDC) for some period of time less than life, and one was acquitted.⁸ Of the 98 condemned defendants, 32 have been executed to date, 52 remain on death row, and 14 will not be executed (10 were commuted to life imprisonment due to the Supreme Court's 2005 decision regarding juveniles in *Roper v. Simmons*; four died of natural causes on death row). The figure also reveals that the DA pursued a life trial against 218 defendants and reached a plea bargain with 157 defendants.

[Figure 1 Here]

B. Race/Ethnicity

Table 2 describes measurement strategies, data sources, and means for the race/ethnicity of the defendant and victim. Though the terms "race" and "ethnicity" are not interchangeable, in the interest of brevity the generic term "race" is used throughout the remainder of the paper.

[Table 2 Here]

⁸ The inmates sentenced to life imprisonment are eligible for parole because Texas did not pass a life without parole (LWOP) statute until 2005 (defendants in the data who were convicted in 1992 must serve 35 years before becoming eligible for parole; defendants in the data who were convicted between 1993 and the passage of LWOP must serve 40 years before becoming eligible for parole).

Data regarding the defendant's race were obtained from JIMS. The JIMS file included separate indicators for race (white, black, Asian) and ethnic origin (Hispanic). But important clues suggested that JIMS did not distinguish between Hispanic defendants and non-Hispanic defendants in a consistent manner. An examination of defendants' names suggested a problem of under-inclusion: defendants coded as Hispanic tended to have Spanish surnames, but some defendants with Spanish surnames were not coded as Hispanic. The same defendants who appeared to be miscoded tended to murder Hispanic victims, a pattern that supports the presumption of coding errors in JIMS considering the intra-racial nature of most murder. The problem was addressed with a two-pronged approach: (1) If a defendant was coded as Hispanic in JIMS then the original code remained the same. (2) If a defendant was coded as non-Hispanic in JIMS then the defendant's name was compared to the U.S. Census Bureau's 1990 Spanish Surname List (Word and Perkins 1996). The list classifies 12,215 surnames as "Heavily Hispanic," meaning more than 75 percent of Census respondents with the surname reported being Hispanic. Using a conservative standard, capital murder defendants were recoded as Hispanic if at least 80 percent of Census respondents with the same surname reported being Hispanic. After correcting Hispanic origin, the defendants are distributed as follows: 24 percent white, 23 percent Hispanic, 49 percent black, and 3 percent Asian.

Data regarding the victim's race were obtained from a name-identified version of the Texas Department of Health's Vital Statistics Mortality File (VSMF).⁹ Coding the race of the victim required a procedure that could accommodate cases with multiple victims: 75 cases include multiple victims of the same race; 11 cases include multiple victims of different races. If multiple victims are the same race, then one dichotomous indicator represents the victims (if a

⁹ If data were missing in the VSMF, then Harris County Medical Examiner records were used to code the race of the victim.

white defendant murders two Hispanic victims then the indicator for Hispanic victim is coded 1). If multiple victims are of different races, then multiple dichotomous indicators represent the victims (if a white defendant murders a Hispanic victim and a black victim then the indicators for Hispanic victim and black victim are both coded 1). The dichotomous indicators capture the presence or absence of victims of each race. The victims are distributed as follows: 41 percent white, 24 percent Hispanic, 28 percent black, and 10 percent Asian (percentages do not sum to 100 because the dichotomous indicators for each case are not mutually exclusive).

C. Controls

To control for potential confounders, the models also examine the social characteristics of the defendant, the social characteristics of the victim, and the legal dimensions of the case. Table 2 also reports measurement strategies, data sources, and means for the controls.

1. Defendant Social Characteristics

Data regarding defendant social characteristics were drawn from the JIMS file. The multivariate models control for the defendant's sex (1 = male), age (dichotomous indicators for teen 17 to 19, young adult 20 to 29, and adult 30 or more), whether the defendant had a prior violent conviction (discussed below), whether the defendant had a prior non-violent conviction (discussed below), and the defendant's form of legal counsel (discussed below). Measurement of the defendant's prior record and legal counsel require elaboration.

Controlling for the defendant's criminal record is crucial because of the special sentencing issues considered during the punishment phase of a Texas capital murder trial. To sentence a defendant to death, jurors must answer two or three questions depending on whether the defendant was a lone actor or a party to the case: (1) Does the defendant pose a continuing threat to society? (2) If the defendant is a party to the case, did the defendant cause the death of

the victim, intend to cause the death of the victim, or anticipate that a life would be taken? (3) Do mitigating circumstances warrant a life sentence? If the jurors unanimously answer the questions in the following order – yes, yes, no – then the defendant is sentenced to death (Texas Statutes: Code of Criminal Procedure, 2007: Chapter 37, Article 37.071).¹⁰ Research suggests that future dangerousness is the most critical sentencing consideration in Texas: most defendants sentenced to life were spared because jurors concluded that the defendant did not pose a continuing threat, not because jurors concluded that mitigating circumstances warranted mercy (Sorensen and Marquart 2003: 286; Sorensen and Pilgrim 2006:53). Thus, to pursue a death trial the DA must decide if the defendant's criminal record (or some other aspect of the case) supports a prediction of future dangerousness. Although the DA has access to national criminal record data, JIMS criminal record data are limited to Harris County. To address the problem, JIMS data were supplemented with information from the website: www.publicdata.com. The website charges users a fee to access public criminal record data compiled from 45 states, including Texas. Searches were conducted on all defendants. The inquiries revealed that among defendants who had a clean record in JIMS, 13 had a prior violent conviction and 32 had a prior non-violent conviction on the public data website. Merging data from JIMS and the public data

¹⁰ Prior to 1991, jurors considered three different special sentencing issues: (1) Did the defendant deliberately kill the victim? (2) Does the defendant pose a continuing threat to society? (3) If relevant, was the defendant's behavior an unreasonable response to the victim's provocation? If the jury unanimously answered yes to all the questions then the defendant was sentenced to death. The second question regarding future dangerousness was meant to allow the defense to present the types of mitigating circumstances that the Supreme Court required for a statute to pass constitutional muster. However, Penry, a mentally retarded defendant who was a victim of child abuse, maintained that the second special sentencing issue did just the opposite in his case. Specifically, Penry claimed that if he presented the issues of retardation and abuse as mitigating circumstances the jury might conclude that he was more of a future danger, thereby transforming mitigating circumstances into aggravating circumstances. In the 1989 case of *Penry v. Lynaugh*, the Supreme Court upheld the defendant's challenge, leading to the adoption of the current special sentencing issues which explicitly require consideration of mitigating circumstances (Sorensen and Pilgrim 2006:1-8).

website, the indicators for prior violent conviction and prior non-violent conviction are coded 1 = yes, 0 = no.

Controlling for the defendant's form of legal counsel is also important, particularly because Harris County does not have a Public Defender's Office; if a defendant is indigent then the judge appoints defense counsel from a list of qualified attorneys. The JIMS file indicates that 369 defendants were appointed counsel, 31 defendants hired counsel, and 104 defendants had both hired and appointed counsel at different stages of the case. Legal counsel is measured through a dichotomous indicator coded 1 = appointed only, 0 = hired counsel at some point during the case.^{11 12}

2. Victim Social Characteristics

Data regarding victim social characteristics were drawn from the Vital Statistics Mortality File and www.publicdata.com.¹³ The multivariate models control for the victim's sex (1 = female), whether the victim was vulnerable due to age (1 = 6 to 16 or over 60; children 0 to 5 considered below), and whether the victim had a prior violent or non-violent conviction (1 = yes; searches were conducted on all victims on the public data website). Coding the victims' characteristics required a procedure that could accommodate cases with multiple victims. Because each of the characteristics is thought to influence the chance of a death trial and a death sentence – more on behalf of female victims and vulnerable victims, but less on behalf of

¹¹ Legal counsel could also be measured through three dichotomous indicators: appointed, hired, and both. But this approach poses the problem of quasi-complete separation: 1 of the 31 defendants with hired counsel advanced to a death trial; 0 of the 31 defendants with hired counsel received a death sentence (for more on quasi-complete separation see Allison 1999).

¹² The JIMS file does not indicate whether defendants who had both changed from appointed to hired, or hired to appointed (or the date of the change).

¹³ If data were missing in the VSMF, then Harris County Medical Examiner records were used to code the age and sex of the victim.

disreputable victims with a prior criminal record – a case is coded 1 if one or more of the victims meet the specified criterion.

3. Legal Dimensions of Case

Data regarding the legal dimensions of the case were obtained from Grand Jury indictments, the Harris County Medical Examiner (HCME), and *The Houston Chronicle*. The multivariate models control for the heinousness of the crime (discussed below), whether multiple defendants were indicted (1 = yes), the form of capital murder (discussed below), and the method of murder (dichotomous indicators for shot, stabbed, beaten, and asphyxiated). Controls for heinousness and the form of capital murder require elaboration.

To measure the heinousness of the crime, newspaper articles about each case were collected from *The Houston Chronicle* online archive (an average of 6.75 articles per case, for a total of more than 3,400 articles). The aggravating and mitigating circumstances in each case were coded based on a list drawn from Baldus and colleagues' research on race and capital punishment (1990: 526-535). Table 3 lists the aggravating and mitigating circumstances in question. The following formula was used to construct a scale of heinousness: number of aggravating circumstances minus number of mitigating circumstances (the scale ranged from -3 to +7). The original scale was transformed into three dichotomous indicators: Level 1 Heinousness (bottom quartile of scores ranging from -3 to 0), Level 2 Heinousness (middle 50 percent of scores ranging from 1 to 2), and Level 3 Heinousness (top quartile of scores ranging from 3 to 7).

The heinousness measure included missing data because *The Houston Chronicle* did not report on 28 cases. To address the problem, missing cases are assumed to be Level 1. This assumption is based on compelling patterns. To begin, the cliché “if it bleeds it leads”

encapsulates the media's obsession with sensational crimes. Considering the fact that *The Houston Chronicle* reported on 476 of the 504 cases, the 28 capital murders that did not attract media attention are almost sure to be the least heinous of all. In fact, the DA did not pursue a death trial against any of the 28 defendants, bolstering the assumption of minimal heinousness. Because the substantive results are the same regardless of whether the missing cases are excluded or coded as Level 1, the models presented in the results section use the revised indicator of heinousness to ensure complete data for all cases. Thus, the original scale was transformed into three dichotomous indicators to facilitate a solution to the missing data problem (also because several values on the original scale had no cases or just one case).¹⁴

[Table 3 Here]

Grand Jury indictments were used to determine the form of capital murder. Of the forms delineated in the Texas capital murder statute, the following appear in the data: robbery, burglary, multiple victims, kidnapping, rape, remuneration, child 0 to 5 years old, police officer, arson, and obstruction/retaliation. The form of capital murder is measured through dichotomous indicators coded 1 = yes, 0 = no (other includes police officer, arson, and obstruction/retaliation). Because a case can be a capital murder for multiple reasons, the indicators are not mutually exclusive.

D. Modeling

Logistic regression is used to estimate the impact of race on the odds of a death trial (1 = death trial; 0 = all other trajectories) and a death sentence (1 = death sentence; 0 = all other

¹⁴ Heinousness was also coded based on a visceral reaction to the facts of the crime, just as a DA or juror would do. Each case was assigned to Level 1 (relative minimal), Level 2 (intermediate), or Level 3 (extreme). The Baldus measure of heinousness (based on coding of aggravating and mitigating circumstances) and the visceral measure of heinousness produce the same substantive results. The Baldus measure is used here because it provides slightly more conservative estimates of the impact of race on capital punishment.

dispositions). In a logistic model, odds ratios represent the effect of a unit change in the independent variable on the odds of the outcome occurring – a death trial or a death sentence. An odds ratio greater than 1 denotes a direct relationship, an odds ratio less than 1 denotes an inverse relationship, and an odds ratio of 1 suggests that the independent variable has no influence on the outcome. So, for example, an odds ratio of 1.5 would suggest that being a black defendant, relative to the reference of being a white defendant, increases the odds of a death trial by 50 percent (or, the odds of a death trial are 1.5 times greater for black defendants than white defendants). An odds ratio of .7 would suggest that being a black defendant, relative to the reference of being a white defendant, reduces the odds of a death trial by 30 percent ($1 - .7 = .3$).

Because the data include a population rather than a random sample, statistical significance becomes meaningless (Cowger 1984, 1985).¹⁵ Tests of statistical significance examine a narrow question: the probability of making a Type 1 or Type 2 error in generalizing from a sample to a population. The current research does not generalize from a sample to a population, but rather describes the impact of race on capital punishment for a population of cases. The critical issue in the current research is substantive significance, not statistical significance. Thus, I focus on the magnitude of population parameters (Bollen 1995:468). Specifically, regression coefficients are converted to predicted probabilities in order to examine the cost of racial disparities in human lives. Ignoring statistical significance also eliminates the need to correct for non-independent observations (clustering occurs because multiple defendants are often indicted for the same crime). Non-independent observations can produce correlated error terms leading to biased standard errors and inaccurate tests of statistical significance (McClendon, 1994). But correlated error terms do not influence population parameters.

¹⁵ For more on the topic of statistical significance and population data see: Berk, Western, and Weiss 1995a, 1995b; Firebaugh 1995; Rubin 1995.

It is important to note that the data do not include enough Asian defendants or Asian victims to produce robust parameters (for defendants the DA pursued a death trial in 4 of 15 cases and jurors imposed death in 3 of 15 cases; for victims the DA pursued death in 8 of 48 cases and jurors imposed death in 6 of 48 cases). To preserve the population of cases, Asian defendants and Asian victims are included in the multivariate models. But the parameters for Asian defendant and Asian victim are reported in table footnotes and should not be interpreted.¹⁶

E. Limitations

The most significant limitation is the inability to control for the strength of evidence in each case, an important consideration in the DA's decision to pursue a death trial and the jury's decision to impose a death sentence. This is not a fatal flaw. The only reason to control for a potential confounder is if the confounder is correlated with both race and the trajectory or disposition of cases. Strength of evidence could be related to race if members of certain racial groups tend to be defendants/victims in capital murders that naturally produce more evidence. If, for example, beating a rape victim to death produces more evidence than shooting a robbery victim, and if certain racial groups are more apt to be defendants/victims in the former murder than the latter, then apparent racial disparities might be a legitimate response to differences in the strength of evidence across cases. But the models control for the form and method of murder, so the data include proxies for strength of evidence. Strength of evidence could also be related to race if the police conduct more thorough investigations against certain racial groups, or on behalf of certain racial groups. If so, then controlling for strength of evidence might locate the source of racial disparities in the police department rather than the DA's office or the jurors' deliberation room, but would not eliminate the existence of racial disparities. It is also worth

¹⁶ Because Asians are often considered the "model minority," whites and Asians could be combined into a single category. But whites and Asians are treated differently (see Table 4), so combining the groups would dilute black-white and Hispanic-white comparisons.

noting that the only study to measure strength of evidence in capital cases found that inclusion of the evidence variable did not change the race findings (Nakell and Hardy 1987). Moreover, in the current data 496 of the 504 defendants were convicted, suggesting that insufficient evidence was rarely a problem for the Harris County DA.

III. RESULTS

A. Bivariate Patterns

Table 4 presents percentage distributions for case trajectory and case disposition by race. Panel A demonstrates the equal treatment of defendants: the DA pursued a death trial against 27 percent of white defendants, 25 percent of Hispanic defendants, and 25 percent of black defendants; a death sentence was imposed against 21 percent of white defendants, 19 percent of Hispanic defendants, and 19 percent of black defendants.

Panel B demonstrates the relatively equal treatment of Hispanic and white victims, but suggests disparities in the treatment of black victims compared to white victims: the DA pursued a death trial on behalf of 30 percent of white victims and 26 percent of Hispanic victims, but just 23 percent of black victims; a death sentence was imposed on behalf of 23 percent of white victims and 21 percent of Hispanic victims, but just 18 percent of black victims.

[Table 4 Here]

B. Multivariate Patterns: Death Trial

Do the bivariate patterns regarding death trials hold in a multivariate context? Table 5 reports odds ratios from the logistic regression of death trial on race. The results present a surprising twist. The bivariate comparison of Hispanics to whites holds: Hispanic and white defendants and victims are treated the same. But the bivariate comparison of blacks to whites does not.

1. Black and White Defendants

The percentage distribution suggested that the DA pursued death against black defendants and white defendants at the same rate, but controlling for confounders reveals disparities in the treatment of black defendants: the odds ratio for black defendant changes from .91 in the bivariate logistic model (available upon request) to 1.75 in the multivariate logistic model. The transformation occurs because black defendants committed murders that were less “serious.” Here, the term “serious” refers to the features of a murder that increase the chance of a death trial at the bivariate level in the current data. Table 6 demonstrates that black defendants were less likely than white defendants to:

- ∞ murder white victims;
- ∞ commit the most heinous murders;
- ∞ commit murders involving burglary, kidnapping, rape, remuneration, or a child;
- ∞ commit murder by beating, stabbing, or asphyxiating the victim;
- ∞ commit murder as an adult;
- ∞ murder victims who were vulnerable due to age;
- ∞ murder women.

So the DA pursued death against black defendants and white defendants at the same rate despite the fact that black defendants committed less serious murders along several dimensions – meaning black defendants committed murders that were less likely to include the features that tend to increase the chance of a death trial in Harris County. Put differently, the bar appears to have been set lower for pursuing death against black defendants. Comparing the percentage distribution to the multivariate finding leads to the following conclusion: to impose equal punishment against unequal crimes is to impose unequal punishment.

2. Black and White Victims

The percentage distribution suggested that the DA was less likely to pursue death on behalf of black victims than white victims, but controlling for confounders amplifies the original disparity: the odds ratio for black victim changes from .75 in the bivariate logistic model (available upon request) to .57 in the multivariate logistic model. The transformation occurs because black victims were twice as likely to be killed in murders with multiple victims: 24 percent of black victim cases had multiple victims compared to just 11 percent of white victim cases. So the DA pursued death less on behalf of black victims than white victims despite the fact that black victims were killed in more serious murders with multiple victims. Put differently, the bar appears to have been set higher for pursuing death on behalf of black victims.

[Table 5 and Table 6 Here]

C. Multivariate Patterns: Death Sentence

The DA decides whether to pursue a death trial, but jurors decide whether to impose a death sentence. If jurors treated all cases the same regardless of race, then disparities in death trials would be duplicated in death sentences. But jurors could also strengthen, attenuate, or eliminate disparities that originate in the DA's office. Table 7 reports odds ratios from the logistic regression of death sentence on race.

[Table 7 Here]

The results suggest duplication and slight attenuation. Duplicating the existing patterns, Hispanic and white defendants and victims are treated the same. But jurors attenuate the differential treatment of blacks and whites: the odds of a death trial are 1.75 times higher against black defendants than white defendants, but drop to 1.49 times higher for a death sentence; the odds of a death trial are 43 percent lower on behalf of black victims relative to white victims, but

drop to 38 percent lower for a death sentence. Presumably, the partial correction by jurors is a response to the DA occasionally overreaching against black defendants and on behalf of white victims. But the correction is partial – disparities in death sentences remain.¹⁷

D. Using Predicted Probabilities to Examine the Magnitude of Black-White Disparities

The results suggest that capital punishment in Harris County is stratified according to race – Hispanics and whites are treated the same, but blacks and whites are not. How substantial are the black-white disparities? To provide a more interpretable metric, Table 8 presents predicted probabilities of death trials and death sentences (confounders held constant at the mean). The predicted probabilities are then used to calculate the conditional probability of juries imposing a death sentence against defendants who advance to a death trial. To illustrate the calculation of conditional probabilities, consider the following example. For black defendants, the predicted probability of a death trial is .23 and the predicted probability of a death sentence is .17. Thus, the conditional probability of juries imposing a death sentence is: $.23x = .17$; $x = .17/.23$; $x = .74$.

[Table 8 Here]

Panel A examines the impact of defendant race. Assume, hypothetically, that 100 black defendants and 100 white defendants were indicted for capital murder. The predicted probabilities suggest the following: the DA would pursue death against 23 black defendants and jurors would impose death in 74 percent of the cases, so 17 black defendants would be condemned; the DA would pursue death against 15 white defendants and jurors would impose

¹⁷ The multivariate models for death trial and death sentence were also run controlling for the relationship between the defendant and victim. Data regarding the defendant-victim relationship were drawn from newspaper articles about each case (stranger = 1, non-stranger = 0). If the newspaper did not mention a relationship then the defendant and victim were considered to be strangers. Controlling for the defendant-victim relationship did not change the substantive results. However, the relationship variable is not included in the tables due to missing data and the obvious problems of relying on the newspaper for such information.

death in 80 percent of the cases, so 12 white defendants would be condemned. The probabilities translate abstract numbers into human lives: five black defendants would be sentenced to the ultimate state sanction because of race.

Panel B examines the impact of victim race. Here, assume, hypothetically, that 100 defendants murdered white victims and 100 defendants murdered black victims. The predicted probabilities suggest the following: the DA would pursue death on behalf of 22 white victims and jurors would impose death in 68 percent of the cases, so 15 defendants would be condemned; the DA would pursue death on behalf of 13 black victims and jurors would impose death in 77 percent of the cases, so 10 defendants would be condemned. The impact in terms of human lives is the same: five defendants would be sentenced to the ultimate state sanction because the victim is white.

The predicted probabilities also demonstrate how jurors provide a partial correction to disparities that arise in the DA's decision to pursue a death trial. The DA is considerably more likely to pursue death against black defendants and on behalf of white victims, but jurors are slightly more likely to impose death against white defendants and on behalf of black victims. The net effect is that jurors attenuate but do not eliminate the overall black-white disparities – black defendants and defendants who kill whites are still more likely to be sentenced to death, all else equal. The bottom line is clear: race continues to shape case outcomes decades after the Supreme Court declared in *Gregg v Georgia* (1976) that guided discretion would eliminate arbitrariness in the administration of capital punishment.

IV. CONCLUSION

The race and capital punishment literature is somewhat paradoxical. Numerous studies have been conducted over the years, but no “reasonably well-controlled” research has been done in the five most active death states: Texas, Virginia, Oklahoma, Missouri, and Florida. The current research begins to address this paradox by focusing on the capital of capital punishment. Harris County is exceptional in the modern era of execution. Not only has the county executed 102 inmates, 123 more inmates from Harris County are currently awaiting execution on Texas’ death row. Because the pipeline is full, Harris County will probably continue to be one of the most active death jurisdictions in the United States for the foreseeable future.

Some might consider the focus on Harris County to be a limitation rather than an asset – because Harris County is exceptional the findings do not tell us much about the relationship between race and capital punishment in a broader context. But this potential critique misses the mark. No research on race and capital punishment can be generalized to other places or time periods. Seminal research in Georgia (Baldus et al. 1990) and Maryland (Paternoster et al. 2004), for example, cannot be generalized to Harris County, nor can research in Harris County be generalized to Georgia or Maryland. Research in Harris County cannot even be generalized to the rest of Texas – Texas does not have a singular capital punishment regime, but rather 254 capital punishment regimes operating in separate counties authorized by state law. The fact that all research on the topic is confined to particular places and time periods might seem dire, but such a pessimistic conclusion is unwarranted. Our understanding of the relationship between race and capital punishment has always expanded through individual studies that cannot be generalized, but nonetheless combine to form a composite picture – the current research adds an important pixel.

How does the current pixel sharpen the existing image? The findings challenge conventional wisdom by suggesting that the race of the defendant and victim are both pivotal in the capital of capital punishment: death is more likely to be imposed against black defendants than white defendants, and death is more likely to be imposed on behalf of white victims than black victims. The central pattern stems from an intriguing interplay between race, the seriousness of a murder, and the stages of capital litigation. Defendants and victims are considered in turn.

- ∞ Defendants: The DA pursued death against black defendants and white defendants at the same rate, but controlling for confounders revealed disparate treatment because black defendants committed murders that were less “serious” along several dimensions. Although the DA was considerably more likely to pursue death against black defendants, juries were slightly more likely to impose death against white defendants. Presumably, the jurors’ behavior is a response to the DA’s occasional overreaching against black defendants, a possibility that should be investigated in future research. The net effect is that juries attenuate but do not eliminate disparities between black and white defendants that originate in the DA’s office.
- ∞ Victims: The DA was considerably more likely to pursue death on behalf of white victims than black victims, particularly given the fact that black victims tended to be killed in murders that were more serious due to the presence of multiple victims. But jurors were slightly more likely to impose death on behalf of black victims. Again, the jurors’ behavior is assumed to be a response to the DA’s occasional overreaching on behalf of white victims. The net effect is that juries attenuate but do not eliminate disparities between black and white victims that originate in the DA’s office.

Perhaps surprisingly, the findings also suggest that Hispanics and whites are treated the same. This pattern could be a product of the demographic landscape: whites and Hispanics represent an equal share of Harris County residents at 38 percent each, compared to 18 percent for blacks. Such numbers suggest that Hispanics wield more political power and are a greater presence within criminal justice, such as on juries (U.S. Census Bureau 2007). More research is needed to understand the juxtaposition of black-white disparities but Hispanic-white parities.

The capital punishment literature is marked by exemplary research (see e.g. Bowers and Pierce 1980; Radelet 1981; Foley and Powell 1982; Paternoster 1984; Nakell and Hardy 1987; Gross and Mauro 1989; Keil and Vito 1989; Baldus et al. 1990; Paternoster et al. 2004; Blume et al. 2004; Pierce and Radelet 2005; Hindson et al. 2006). The current research contributes to a crowded field by: focusing on the capital of capital punishment; challenging conventional wisdom regarding the basic relationship between race and capital punishment; demonstrating the nuanced interplay between race, the seriousness of a murder, and the stages of capital litigation; translating abstract odds ratios into interpretable predicted probabilities that are accessible to policymakers; and serving as a call to action for scholars to initiate “reasonably well-controlled” studies in the most active death jurisdictions in the United States.

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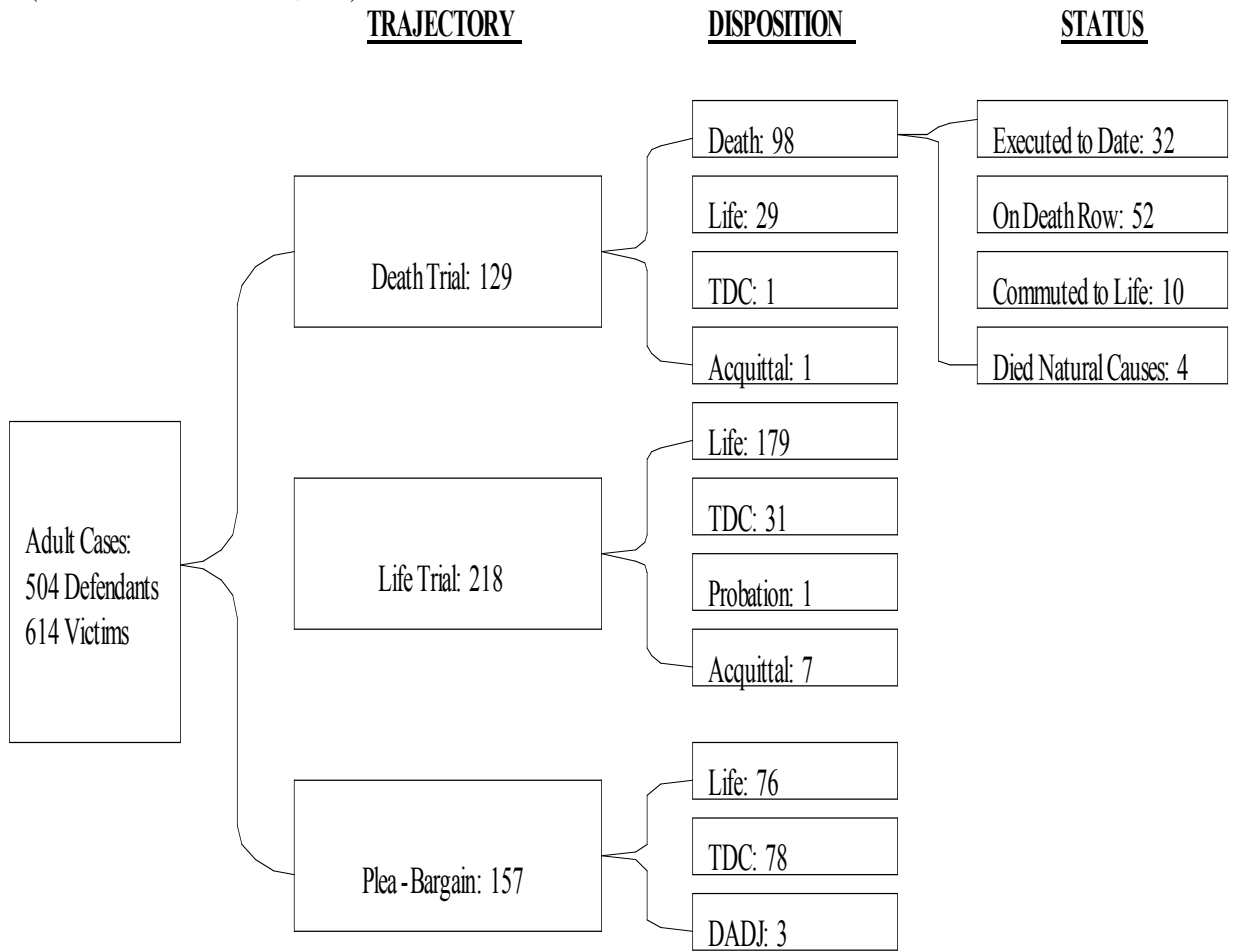
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Table 1. Number of Executions in Selected Jurisdictions, 1976 to Present					
Top 10 States		Texas' Urban Counties		Jurisdictions with "Reasonably Well-Controlled" Research	
Texas	405	Harris County (Houston)	102	Harris County (Houston)	102
Harris County (Houston)	102	Dallas County (Dallas)	34	North Carolina	43
Virginia	98	Tarrant County (Fort Worth)	27	Georgia	40
Oklahoma	86	Bexar County (San Antonio)	26	South Carolina	37
Missouri	66	Travis County (Austin)	7	California	13
Florida	64			Mississippi	8
North Carolina	43			Maryland	5
Georgia	40			Philadelphia	3
Alabama	38			Nebraska	3
South Carolina	37			Kentucky	2
Louisiana	27			Colorado	1
				New Jersey	0

Notes:

1. Current as of March 27, 2008.
2. Data on Texas come from the Texas Department of Criminal Justice website. Data for the remaining states come from the Death Penalty Information Center website.
3. Numbers for Philadelphia represent Pennsylvania.

Figure 1: Trajectory, Disposition, and Status of Adult Defendants Indicted for Capital Murder in Harris County, Texas from 1992 to 1999 (status current as of March 27, 2008)



Abbreviations: TDC= Texas Department of Corrections; DADJ=Deferred Adjudication.

Table 2. Measurement Strategies, Data Sources, and Means for the Independent Variables			
Variable	Measurement	Data Source¹	Mean
Defendant Race			
White	1 = yes	JIMS	.24
Hispanic	1 = yes	JIMS	.23
Black	1 = yes	JIMS	.49
Asian	1 = yes	JIMS	.03
Victim Race			
White	1 = yes	VSMF	.41
Hispanic	1 = yes	VSMF	.24
Black	1 = yes	VSMF	.28
Asian	1 = yes	VSMF	.10
Controls			
<i>Legal Dimensions of Case</i>			
Heinous Level 1	1 = yes	HC	.27
Heinous Level 2	1 = yes	HC	.51
Heinous Level 3	1 = yes	HC	.22
Multiple Defendants Indicted on Case	1 = yes	GJI	.49
Form of Capital Murder: Robbery	1 = yes	GJI	.72
Form of Capital Murder: Burglary	1 = yes	GJI	.10
Form of Capital Murder: Multiple Victims	1 = yes	GJI	.17
Form of Capital Murder: Kidnapping	1 = yes	GJI	.10
Form of Capital Murder: Rape	1 = yes	GJI	.06
Form of Capital Murder: Remunerate	1 = yes	GJI	.05
Form of Capital Murder: Child	1 = age 0 to 5	GJI	.03
Form of Capital Murder: Other	1 = yes	GJI	.02
Method of Murder: Shot	1 = yes	HCME	.74
Method of Murder: Beaten	1 = yes	HCME	.14
Method of Murder: Stabbed	1 = yes	HCME	.10
Method of Murder: Asphyxiated	1 = yes	HCME	.09
<i>Defendant Social Characteristics</i>			
Teen	1 = 17 to 19	JIMS	.37
Young Adult	1 = 20 to 29	JIMS	.44
Adult	1 = \geq 30	JIMS	.19
Sex	1 = male	JIMS	.95
Prior Violent Conviction	1 = yes	JIMS	.19
Prior Non-Violent Conviction	1 = yes	JIMS	.45
Appointed Attorney	1 = appointed only	JIMS	.73
<i>Victim Social Characteristics</i>			
Vulnerable Age	1 = age 6-16 or > 60	VSMF	.12
Sex	1 = female	VSMF	.27
Prior Conviction	1 = yes	www.publicdata.com	.14
Note:			
1. Abbreviations: JIMS = Justice Information Management System; VSMF = Vital Statistics Mortality File; HC = <i>The Houston Chronicle</i> ; GJI = Grand Jury Indictment; HCME = Harris County Medical Examiner.			

Aggravating Circumstances	Mitigating Circumstances
<ul style="list-style-type: none"> ∞ Victim vulnerable (e.g. handicapped, mental retardation, frail, pregnant, etc.) ∞ Victim suffered physical torture (methodical infliction of severe pain) ∞ Victim suffered mental torture (e.g. hostage informed of impending death before homicide) ∞ Unnecessary pain (pain that is not necessary to kill the victim given the method of killing) ∞ Victim suffered lingering death ∞ Victim suffered brutal beating – stomping, clubbing, etc ∞ Victim bound/gagged ∞ Victim ambushed ∞ Execution style murder (methodical, passionless killing of subdued/defenseless victim) ∞ Killing unnecessary to complete felony (e.g. store-keeper turns over money and then shot) ∞ Victim plead for life ∞ Defendant expressed pleasure regarding killing ∞ Defendant violated victim's dead body (e.g. mutilation, sexual assault) ∞ Victim disrobed ∞ Defendant engaged in significant planning for murder ∞ Defendant attempted to dispose/conceal body of the victim ∞ Victim killed in presence of family members or friends ∞ Defendant used multiple methods for killing ∞ Overkill 	<ul style="list-style-type: none"> ∞ Defendant showed remorse ∞ Victim aroused defendant's sexual desire at time of homicide ∞ Victim aroused defendant's fear for life at time of homicide ∞ Victim provoked defendant – verbal abuse or physical attack at time of homicide ∞ Victim provoked defendant – verbal abuse or physical attack of someone defendant cares about ∞ Victim aroused defendant's hate on a previous occasion ∞ Victim had used alcohol or drugs immediately prior to crime ∞ Victim showing or talking about large amounts of money ∞ History of bad blood between defendant and victim ∞ Victim consents to killing ∞ Victim was a participant in the crime ∞ Victim engaged in questionable behavior ∞ Defendant mental impairment
The list of aggravating and mitigating circumstances was derived from Baldus et al. (1990: 526-535).	

Table 4: Case Trajectory and Case Disposition by Race (N=504)
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	Trajectory (in percentages)			Disposition (in percentages)						(N)
	Plea Bargain	Life Trial	Death Trial	Acquit	Deferred Adjudication	Probation	TDC	Life	Death Sentence	
Panel A: Defendant Race										
White	38	35	27	2	2	0	24	52	21	122
Hispanic	31	45	25	1	1	1	23	56	19	118
Black	28	47	25	2	0	0	22	57	19	249
Asian	33	40	27	0	0	0	0	80	20	15
Panel B: Victim Race										
White	30	40	30	1	1	1	22	53	23	205
Hispanic	30	45	26	3	1	0	21	55	21	121
Black	29	48	23	2	0	0	24	56	18	141
Asian	42	42	17	0	2	0	13	73	13	48

Notes:

1. Abbreviation: TDC refers to a period of confinement in the Texas Department of Corrections for some period less than life.
2. Panel A has 504 cases because the data include 504 defendants. Panel B has 515 cases because 11 defendants killed multiple victims of two different races.

Table 5. Odds Ratios from the Logistic Regression of Case Trajectory on Race (n = 504)

	Death Trial
Defendant Race	
Hispanic	1.043
Black	1.752
Victim Race	
Hispanic	1.045
Black	.565
Control	
<i>Legal Dimensions of Case</i>	
Heinous Level 2	1.890
Heinous Level 3	2.285
Multiple Defendants Indicted On Case	.268
Type of Capital Murder: Burglary	.497
Type of Capital Murder: Multiple Victims	2.508
Type of Capital Murder: Kidnapping	2.235
Type of Capital Murder: Rape	2.565
Type of Capital Murder: Remunerate	11.900
Type of Capital Murder: Child	.794
Type of Capital Murder: Other	10.376
Method of Murder: Beaten	1.031
Method of Murder: Stabbed	1.617
Method of Murder: Asphyxiated	1.103
<i>Defendant Social Characteristics</i>	
Young Adult	1.056
Adult	1.050
Male	5.822
Prior Violent Conviction	2.030
Prior Non-Violent Conviction	1.278
Appointed Attorney	1.237
<i>Victim Social Characteristics</i>	
Vulnerable Age	1.748
Female	2.697
Prior Conviction	.511
Notes:	
1. Reference categories: defendant race = white; victim race = white; heinousness = level 1; type of capital murder = robbery; method of murder = shot; defendant age = teen.	
2. Other type of capital murder includes arson, obstruction/retaliation, and killing a police officer.	
3. The odds ratio for Asian defendant is 1.773. The odds ratio for Asian victim is .853.	

Table 6. Explaining the Relationship Between Black Defendant and Case Trajectory

	Black Defendant (in percentages)	White Defendant (in percentages)	Death Trial (in percentages)
Victim Race			
White	26	77	30
Hispanic	16	13	26
Black	53	3	23
Asian	8	8	17
Heinousness			
Level 1	28	22	14
Level 2	54	55	26
Level 3	18	23	38
Type of Capital Murder			
Robbery	79	61	19
Burglary	8	12	24
Child	2	7	35
Multiple Victims	15	16	38
Kidnapping	8	14	41
Remunerate	4	9	50
Rape	4	6	63
Other	1	2	75
Method of Murder			
Shot	86	47	23
Beaten	8	25	29
Stabbed	7	20	35
Asphyxiated	6	16	46
Defendant Age			
Teen	37	27	18
Young Adult	49	36	26
Adult	14	37	39
Victim Vulnerable Age			
17 to 60	89	79	23
6 to 16 or > 60	9	15	46
Victim Gender			
Male	74	62	17
Female	26	38	49

Table 7. Odds Ratios from Logistic Regression of Case Disposition on Race (N = 504)

	Death Sentence
Defendant Race	
Hispanic	.966
Black	1.491
Victim Race	
Hispanic	1.186
Black	.615
Controls	
<i>Legal Dimensions of Case</i>	
Heinous Level 2	1.162
Heinous Level 3	2.793
Multiple Defendants Indicted On Case	.316
Type of Capital Murder: Burglary	.621
Type of Capital Murder: Multiple Victims	1.886
Type of Capital Murder: Kidnapping	1.474
Type of Capital Murder: Rape	2.104
Type of Capital Murder: Remunerate	7.166
Type of Capital Murder: Child	.523
Type of Capital Murder: Other	2.964
Method of Murder: Beaten	1.038
Method of Murder: Stabbed	1.803
Method of Murder: Asphyxiated	1.624
<i>Defendant Social Characteristics</i>	
Young Adult	.997
Adult	.940
Male	3.816
Prior Violent Conviction	1.966
Prior Non-Violent Conviction	.908
Appointed Attorney	2.154
<i>Victim Social Characteristics</i>	
Vulnerable Age	1.505
Female	2.044
Prior Conviction	.569
Notes:	
1. Reference categories: defendant race = white; victim race = white; heinousness = level 1; type of capital murder = robbery; method of murder = shot; defendant age = teen.	
2. Other type of capital murder includes arson, obstruction/retaliation, and killing a police officer.	
3. The odds ratio for Asian defendant is 1.518. The odds ratio for Asian victim is .865.	

Table 8. Using Predicted Probabilities (PP) to Illuminate Black-White Disparities

	Death	Conditional Probability: Death Sentence if Death Trial	Death
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	Trial	$(PP \text{ Death Trial})(X) = PP \text{ Death Sentence}$ $X = (PP \text{ Death Sentence}) / (PP \text{ Death Trial})$	Sentence
Panel A. Race of Defendant			
Black	.23	.74	.17
White	.15	.80	.12
Panel B. Race of Victim			
White	.22	.68	.15
Black	.13	.77	.10