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RACE AND DEATH SENTENCING IN NORTH CAROLINA, 1980–2007*

MICHAEL L. RADELET & GLENN L. PIERCE**

For the past several years the North Carolina General Assembly has been interested in the question of whether there are racial disparities in the administration of the death penalty in the state. As researchers who have studied this issue in several states over the past three decades, we designed a study to determine if patterns of death sentencing in North Carolina are correlated with the race of the victim and/or the race of the defendant among homicides with similar levels of aggravation.

After reviewing past research that has examined this issue, we gathered data on approximately 15,000 North Carolina homicides, from 1980 to 2007, of which 352 cases resulted in death sentences. We only included data on cases where the defendant and victim were either Black or White. In addition to the race variables, we gathered information that allowed us to ascertain the impact of two “Additional Legally Relevant Factors” in death sentencing: the number of victims in the homicide event and the number of contemporaneous felonies that occurred at the time of the homicide.

We found that both the race of the suspect and the race of the victim are associated with death sentencing, although the effect of the suspect’s race disappears when we statistically control for the other variables in the analysis. Those who kill Whites are more likely to be sentenced to death than those who kill Blacks among

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cases where no Additional Legally Relevant Factors were present, among cases with one Additional Legally Relevant Factor present, and among cases with two Additional Legally Relevant Factors present. Thus, it is implausible to argue that the reason why those who kill Whites are sentenced to death more frequently than those who kill Blacks is because the former cases are “worse” or more aggravated.

Our final analysis enters all the relevant variables into a predictive equation. The data lead to the conclusion that overall, for homicides in North Carolina from 1980 to 2007, the odds of a death sentence for those suspected of killing Whites are approximately three times higher than the odds of a death sentence for those suspected of killing Blacks.

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INTRODUCTION

Concerns about the possibility of conscious or unconscious racial bias in the application of the death penalty in North Carolina have a very long history. In 1987, those voicing such concerns suffered a significant defeat when the Supreme Court ruled that absent evidence

of intentional discrimination, statistical evidence of racial disparities in death penalty cases could not be used to prove a constitutional violation.¹ Although the Court explicitly invited legislatures to address the issue of race in application of the death penalty,² it would be several years before enabling legislation was finally enacted.

A federal bill, commonly referred to as the “Racial Justice Act,” was first introduced into Congress in 1988.³ The bill would have allowed defendants to use statistical evidence as proof of discrimination in an individual case.⁴ It failed to pass either house, and a revised version, introduced in 1994, failed to pass the Senate.⁵ In 1998, Kentucky became the first state to pass a Racial Justice Act.⁶ The second Racial Justice Act was passed in North Carolina in 2009.⁷

North Carolina’s Racial Justice Act allows the use of statistical evidence in claims that race was a significant factor in decisions to

1. *McCleskey v. Kemp*, 481 U.S. 279, 313 (1987).

2. *Id.* at 319 (“McCleskey’s arguments are best presented to the legislative bodies.”).

3. In response to *McCleskey*, the first Racial Justice Act was introduced into the House of Representatives by Congressman John Conyers in 1988. Racial Justice Act of 1988, H.R. 4442, 100th Cong. (1988). Senator Edward Kennedy introduced a similar bill into the Senate the following year. Racial Justice Act of 1989, S. 1696, 101st Cong. (1989).

4. See H.R. 4442 § 3(a); see also S. 1696 § 3(a) (proposing to add a new chapter to title 28 of the United States Code that would allow capital defendants in federal and state cases to use “ordinary methods of statistical proof” to demonstrate a prohibited “racially discriminatory pattern” regarding imposition of the death penalty).

5. The proposed 1994 Racial Justice Act, like the 1988 and 1989 versions offered in the House and Senate, would have allowed death row inmates to use statistical evidence to demonstrate racial discrimination in the application of the death penalty. Racial Justice Act, H.R. 4017, 103d Cong. (1994). For an account of the events surrounding the 1994 attempt to pass a federal Racial Justice Act, see David C. Baldus, George Woodworth & Catherine M. Grosso, *Race and Proportionality Since McCleskey v. Kemp (1987): Different Actors with Mixed Strategies of Denial and Avoidance*, 39 COLUM. HUM. RTS. L. REV. 143, 146 n.12 (2007); Erwin Chemerinsky, *Eliminating Discrimination in Administering the Death Penalty: The Need for the Racial Justice Act*, 35 SANTA CLARA L. REV. 519, 529–30 (1995).

6. Kentucky Racial Justice Act, ch. 252, 1998 Ky. Acts 941, 941–42 (codified at KY. REV. STAT. ANN. §§ 532.300 – .309 (West 2011)). For additional background information on the Kentucky Racial Justice Act, see generally Gennaro F. Vito, *The Racial Justice Act in Kentucky*, 37 N. KY. L. REV. 273 (2010) (discussing the Kentucky Racial Justice Act in detail). Legislators in other states have tried unsuccessfully to pass similar legislation. Carol S. Steiker & Jordan M. Steiker, *Part II: Report to the ALI Concerning Capital Punishment*, 89 TEX. L. REV. 367, 400 (2010) (“Many state legislatures have considered similar legislation (including Georgia, Illinois, and North Carolina), but to date only Kentucky has enacted such a provision.”).

7. North Carolina Racial Justice Act, ch. 464, 2009 N.C. Sess. Laws 1,213 (codified at N.C. GEN. STAT. §§ 15A-2010 to -2012 (2009)); Seth Kotch & Robert P. Mosteller, *The Racial Justice Act and the Long Struggle with Race and the Death Penalty in North Carolina*, 88 N.C. L. REV. 2031, 2111–25 (2010). The full text of the Act is reprinted in Kotch & Mosteller, *supra*, at 2,129–31.

seek (prosecutorial behavior) or impose (jury behavior) the death penalty.⁸ The Act entitles defendants under death sentences to present evidence that (1) “[d]eath sentences were sought or imposed significantly more frequently upon persons of one race than upon persons of another race,” (2) death sentences were sought or imposed more frequently for offenses against persons of one race than for offenses against persons of another race, or (3) that “[r]ace was a significant factor in decisions to exercise peremptory challenges during jury selection.”⁹ If the defendant prevails, the death sentence is vacated, and he or she is resentenced to a penalty of life imprisonment without parole.¹⁰ The Act was retroactive, allowing virtually all North Carolina inmates under a sentence of death who believed they had a meritorious claim to raise it, provided they did so before August 11, 2010 (one year after the bill officially became law).¹¹ In the end, some 152 death row inmates—95% of those on North Carolina’s death row—filed for relief under the Racial Justice Act.¹² At the time of this writing, these cases are pending in courts throughout the state.¹³

As researchers with a longstanding interest in studying racial disparities in death sentencing,¹⁴ we decided to undertake a study that would shed light on possible racial inequities in the imposition of

8. N.C. GEN. STAT. § 15A-210 (2009) (“No person shall be subject to or given a sentence of death or shall be executed pursuant to any judgment that was *sought* or *obtained* on the basis of race.” (emphasis added)).

9. § 15A-211(b).

10. § 15A-212(a)(3).

11. § 2, 2009 N.C. Sess. Laws at 1,215 (authorizing defendants under a sentence of death on the date of the passage of the Act, August 11, 2009, to file a motion for appropriate relief “within one year of the effective date of this act”).

12. Nathan Koppel, *Death Penalty Goes on Trial in North Carolina*, WALL ST. J., Sept. 20, 2010, at A6. The large number of death row inmates who filed claims can be explained by the breadth of the statute. For example, even defendants who do not have claims based on discrimination of race of the defendant or victim may have viable claims that the state discriminated in jury selection. See § 15A-212(a)(3) (providing racial discrimination can be established if the defendant can show that “[r]ace was a significant factor in decisions to exercise peremptory challenges during jury selection”).

13. In February 2011, a superior court judge in Forsyth County heard the first legal arguments in the State on the Racial Justice Act. See Michael Hewlett, *Racial Justice Act Upheld*, WINSTON-SALEM J., Feb. 11, 2011, at A1. Judge William Z. Wood ruled that the law was constitutional and rejected arguments by prosecutors that the Racial Justice Act was “too vague and broad and subject to multiple interpretations.” *Id.*

14. Our first publications on this topic were William J. Bowers & Glenn L. Pierce, *Arbitrariness and Discrimination Under Post-Furman Capital Statutes*, 26 CRIME & DELINQ. 563 (1980); Michael L. Radelet, *Racial Characteristics and the Imposition of the Death Penalty*, 46 AM. SOC. REV. 918 (1981). We began collaborating some twenty-five years ago. See Michael L. Radelet & Glenn L. Pierce, *Race and Prosecutorial Discretion in Homicide Cases*, 19 LAW & SOC’Y REV. 587 (1985).

North Carolina death sentences. In this Article we report the results of that project. We examine data on 15,281 homicides in North Carolina that occurred between January 1, 1980 and December 31, 2007, of which 368 resulted in death sentences for the convicted perpetrators. Our goal is to discover what role, if any, the race of the suspect and victim plays, controlling for legally relevant factors, in explaining who is sentenced to death. The existing research leads us to construct a hypothesis postulating that the race of the victim is associated with the current application of the death penalty in North Carolina.

Our analysis proceeds as follows. Part I provides a historical overview of the administration of the death penalty in North Carolina and a review of empirical studies that have examined possible racial disparities in the administration of the death penalty in the state. In Part II, we describe how we gathered the data utilized in the present study, including data on all homicides in the state from 1980 through 2007, data on death penalty cases during that time span, measures of the defendant's and victim's races, year of the homicide, number of victims, and whether the homicide involved contemporaneous felonies. Part III summarizes the findings from our analyses. After entering all the data into predictive equations, we show that once legally relevant factors (number of victims and additional felony circumstances) are statistically controlled, the race of the victim, but not the race of the suspect, is associated with the decision to impose death sentences in the twenty-eight years studied, 1980 through 2007. Finally, in our Conclusion we discuss what the data do and do not tell us, how they compare with the findings of other similar studies, and implications of this study for policy-makers.

I. HISTORICAL BACKGROUND AND PREVIOUS STUDIES

A. *Historical Perspective on the Administration of the Death Penalty in North Carolina*

There are few states in the United States, if any, that have attracted as much attention over the years from death penalty scholars as North Carolina.¹⁵ In part this may be because of the

15. See, e.g., SAMUEL R. GROSS & ROBERT MAURO, *DEATH AND DISCRIMINATION: RACIAL DISPARITIES IN CAPITAL SENTENCING* 35 (1989); BARRY NAKELL & KENNETH A. HARDY, *THE ARBITRARINESS OF THE DEATH PENALTY* 90 (1987); Harold Garfinkel, *Research Note on Inter- and Intra-Racial Homicides*, 27 *SOC. FORCES* 369, 369 (1949); Elmer H. Johnson, *Selective Forces in Capital Punishment*, 36 *SOC. FORCES* 165, 165

historical breadth of the North Carolina criminal code. As Hugo Adam Bedau observed:

As late as 1837, North Carolina required death for all the following crimes: murder, rape, statutory rape, arson, castration, burglary, highway robbery, stealing bank notes, slave-stealing, “the crime against nature” (buggery, sodomy, bestiality), duelling if death ensues, burning a public building, assault with intent to kill, breaking out of jail if under a capital indictment, concealing a slave with intent to free him, taking a free Negro or mulatto out of the state with intent to sell him into slavery; the second offense of forgery, mayhem, inciting slaves to insurrection, or of circulating seditious literature among slaves; being an accessory to murder, robbery, burglary, arson, or mayhem. Highway robbery and bigamy, both capitally punishable, were also clergyable. This harsh code persisted so long in North Carolina partly because the state had no penitentiary and thus had no suitable alternative to the death penalty.¹⁶

In part because of these broad statutes, North Carolina hosted some 784 known executions between August 26, 1726, the earliest recorded execution in North Carolina, and October 27, 1961.¹⁷ This number ranks fifth among states behind Virginia, New York, Pennsylvania, and Georgia.¹⁸ The races of those executed were¹⁹:

(1957); ISAAC UNAH & JOHN CHARLES BOGER, RACE, POLITICS, AND THE PROCESS OF CAPITAL PUNISHMENT IN NORTH CAROLINA 2 (2009), available at <http://www.ncids.org/Motions%20Bank/RacialJustice/Unah-Boger%20Study.pdf>.

16. Hugo Adam Bedau, *General Introduction*, in THE DEATH PENALTY IN AMERICA: AN ANTHOLOGY 1, 6–7 (Hugo Adam Bedau ed., rev. ed. 1967). By “clergyable,” Professor Bedau means that the offenses were eligible for “benefit of clergy,” wherein members of the clergy (and later, laypeople as well) could have death sentences reduced to less severe sanctions. *Id.* at 4 n.6.

17. *Executions is [sic] the U.S. 1608–2002*, DEATH PENALTY INFO. CTR., 189–210, <http://www.deathpenaltyinfo.org/documents/ESPYstate.pdf> (last visited Aug. 22, 2011) [hereinafter *Executions in the U.S.*]. For a list of those executed from 1910 to present, see *Persons Executed in North Carolina*, N.C. DEP’T OF CORR., <http://www.doc.state.nc.us/dop/deathpenalty/personsexecuted.htm> (last visited Aug. 22, 2011).

18. See *Executions in the United States, 1608–1976, By State*, DEATH PENALTY INFO. CTR., <http://www.deathpenaltyinfo.org/executions-united-states-1608-1976-state> (last visited Aug. 22, 2011).

19. These data were obtained from *Executions in the U.S.*, *supra* note 17, at 189–210.

Table 1: North Carolina Number of Persons Executed, 1726 to 1961, by Race

Race of Defendant	Number Executed	Proportion of All Executions ²⁰
Black	569	0.745
White	186	0.243
Native American	9	0.012
Unknown	20	

The data do not show any executions of Hispanic defendants. The crimes for which these 784 executions were carried out were²¹:

Table 2: North Carolina Number of Persons Executed, 1726 to 1961, by Crime

Crime	Number Executed	Proportion of All Executions ²²
Murder	481	0.688
Rape	102	0.146
Burglary	38	0.054
Slave Revolt	25	0.036
Desertion	22	0.031
Treason	6	0.009
Horse Theft	5	0.007
Arson	5	0.007
Robbery	5	0.007
Other	5	0.007
Attempted Runaway Slave	2	0.003
Attempted Murder	1	0.001
Poisoning	1	0.001
Counterfeiting	1	0.001
Unknown	85	

20. This excludes the twenty cases where the defendant's race is unknown, and thus uses a denominator of 764.

21. *Executions in the U.S.*, *supra* note 17, at 189-210.

22. This excludes the eighty-five cases where the type of crime is unknown, and thus the denominator is 699. *Id.*

By the early 1970s, the death penalty statute in North Carolina allowed executions for murder, rape, burglary, arson, and carnal knowledge of a child aged twelve or younger.²³ The death penalty was mandatory for a murder caused by train wrecking.²⁴

After October 1961 there were no more executions until March 1984.²⁵ Since then another forty-two men and one woman have been executed in the state, four of whom dropped their appeals and volunteered for execution.²⁶ Two were asphyxiated, while the other forty-one died from lethal injections.²⁷ At the time of this writing in August 2011, there had not been any executions in the state since August 2006.²⁸

23. Hugo Adam Bedau, *Offenses Punishable by Death*, in *THE DEATH PENALTY IN AMERICA: AN ANTHOLOGY* 39, 50 (Hugo Adam Bedau ed., rev. ed. 1967). For an excellent overview of the North Carolina death penalty statute from 1946 through 1968, including data on the number of executions and life sentences, see Clarence H. Patrick, *Capital Punishment and Life Imprisonment in North Carolina, 1946 to 1968: Implications for Abolition of the Death Penalty*, 6 *WAKE FOREST INTRAMURAL L. REV.* 417, 423 (1970). Because a decline in the number of executions did not increase first degree murder rates, the author advocated the abolition of capital punishment in the state. *Id.* at 427.

24. Bedau, *supra* note 23, at 50.

25. See *Persons Executed in North Carolina*, *supra* note 17. In 1972 the Supreme Court concluded that the application of unguided discretion by juries in the administration of the death penalty violated the Eighth Amendment. *Furman v. Georgia*, 408 U.S. 238, 239–40 (1972) (per curiam) (holding that the imposition and carrying out of the death penalty in the cases under review violated the Eighth and Fourteenth Amendments). The Supreme Court struck down North Carolina's mandatory death penalty statute three years later. *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (holding that the then-current mandatory death penalty statute in North Carolina violated the Eighth and Fourteenth Amendments). North Carolina passed a revised death penalty statute in 1974, Act of Apr. 8, 1974, ch. 1201, § 1, 1974 N.C. Sess. Laws 323, 323 (codified at N.C. GEN. STAT. § 14-17 (2009)), and in 1984 the first North Carolina death row prisoner was executed under this statute. *Executions Carried Out Under Current Death Penalty Statute*, N.C. DEPT OF CORR., <http://www.doc.state.nc.us/dop/deathpenalty/executed.htm> (last visited Aug. 22, 2011).

26. These figures are current as of May 4, 2011. *Executions Carried Out Under Current Death Penalty Statute*, *supra* note 25.

27. *Id.*

28. *Id.*

The races of the forty-three inmates executed since 1984 and the races of their victims are²⁹:

Table 3: Races of Those Executed in North Carolina Since 1984 and Races of Their Victims

Race of Defendant ³⁰	Race of Victim	Number of Cases	Proportion
White	White	27	0.628
Black	Black	7	0.163
Black	White	6	0.140
White	Black	1	0.023
Native American	Native American	1	0.023
Other ³¹	White	1	0.023

Thus, 79.1% of those executed in North Carolina between 1984 and mid-2011 were convicted of killing Whites. Table A-1³² shows that between 2000 and 2009, the proportion of homicide victims who were White ranged from 0.469 (in 2001) to 0.389 (in 2009), and, overall, only 43.2% of homicides in North Carolina victimized Whites. Because these figures come from two different (although overlapping) time periods, any comparisons are only approximate, but the data suggest that in recent years White victims are present in less than half of all homicides, but nearly in 80% of the cases resulting in execution in the state.

Tables A-1 and A-2 present data on the races of homicide offenders and victims statewide, from 2000 to 2009. Statewide, the United States Census Bureau estimated that the 2010 population of North Carolina was 68.5% White, 21.5% Black, and 8.4% Hispanic.³³

29. *Id.*

30. *Id.* Throughout this Article, we use the classifications of race provided by the different data owners and collectors.

31. Elias Hanna Syriani, convicted of killing his wife, was executed on November 18, 2005. Syriani was born in Jerusalem (Palestine) and later became a member of the Jordanian Army. For a short biographical sketch of Elias Syriani, see Biff Hollingsworth & Tim West, *Elias Syriani Biography*, FACING CONTROVERSY: STRUGGLING WITH CAPITAL PUNISHMENT IN NORTH CAROLINA (2008), <http://www.lib.unc.edu/mss/exhibits/penalty/syriani.html>.

32. Table numbers preceded by the letter "A" are available in the Appendix. The Appendix contains the statistical results of this study of the administration of the death penalty. These results are discussed in further detail in Part III, *infra*.

33. See *State & County QuickFacts, North Carolina*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/37000.html> (last visited Aug. 23, 2011). "The

The data show that compared to the representation in the state's population as a whole, Blacks are disproportionately identified as homicide suspects (21.6% of the population and 62% of homicide suspects),³⁴ and Blacks are also more likely to be victims of homicide (21.6% of the population and 52.9% of the homicide victims).³⁵

In May 2011 there were 154 men and four women under death sentences in North Carolina,³⁶ together making up the sixth largest death row population in the United States.³⁷ The racial backgrounds of the 158 condemned prisoners are:

Table 4: Racial Composition of North Carolina Death Row

Race of Defendant	Number of Cases	Proportion
Black	84	0.532
White	62	0.392
Native American	8	0.051
Other	4	0.025 ³⁸

As of mid-July 2011, 196 inmates who had been sentenced to death since 1977 had been removed from death row by trial or appellate courts (mainly because of serious flaws in the original trial), through executive clemency, or by passing away from causes other than execution.³⁹

In 2009 there were 482 homicides recorded in North Carolina, a 20% drop from 2008.⁴⁰ The proportion of homicides that result in the

concept of race as used by the Census Bureau reflects self-identification by people according to the race or races with which they most closely identify." *State & County QuickFacts, Race*, U.S. CENSUS BUREAU, http://quickfacts.census.gov/qfd/meta/long_RHI625209.htm (last visited Aug. 22, 2011).

34. See *infra* Table A-2.

35. See *infra* Table A-1.

36. See *Offenders on Death Row*, N.C. DEP'T OF CORR., <http://www.doc.state.nc.us/dop/deathpenalty/deathrow.htm> (last visited Aug. 22, 2011).

37. *Death Row U.S.A.*, NAACP LEGAL DEF. & EDUC. FUND, INC., 32-33 (Fall 2010), http://naacpldf.org/files/publications/DRUSA_Fall_2010.pdf. North Carolina's rank is current as of October 1, 2010. *Id.* at 1.

38. See *Offenders on Death Row*, *supra* note 36. The North Carolina Department of Corrections does not provide information on how the races of inmates are determined, but it is likely that in almost all cases the race is self-disclosed by the inmate.

39. See *Persons Removed from Death Row*, N.C. DEP'T OF CORR., <http://www.doc.state.nc.us/dop/deathpenalty/removed.htm> (last visited Aug. 22, 2011).

40. *Crime in North Carolina—2009*, N.C. DEP'T OF JUSTICE, 2 (July 2010), <http://crimereporting.ncdoj.gov/public/2009/ASR/2009%20Annual%20Summary.pdf>. The 482 murders in 2009 was the lowest total recorded in the preceding ten years. *Id.* at 8.

arrest of a suspect is considerably higher than in the United States as a whole. Whereas just over 60% of homicides in the United States are solved,⁴¹ the clearance rate in North Carolina is remarkably higher. Table 5 presents data on the number of homicides and clearances for the ten-year period from 2000 to 2009.

Table 5: Total Murder Offenses and Clearances, North Carolina⁴²

Year	Homicides	Clearances	Percentage Cleared
2000	563	420	74.6
2001	511	411	80.4
2002	548	442	80.7
2003	508	397	78.1
2004	522	391	74.9
2005	575	443	77.0
2006	539	416	77.2
2007	606	444	73.3
2008	602	481	79.9
2009	482	415	86.1
Total	5,456	4,260	78.1

41. *Homicide Trends in the U.S.*, U.S. BUREAU OF JUSTICE STAT., <http://bjs.ojp.usdoj.gov/content/homicide/cleared.cfm> (last visited Aug. 22, 2011).

42. See *2009 Annual Summary Report, 2009 Crime Statistics in Detailed Reports, Murder, Murder Offenses and Clearances, Ten Year Trend*, N.C. DEP'T OF JUSTICE, <http://crimereporting.ncdoj.gov/> (click "View Crime Statistics" hyperlink; then click "Submit" next to year 2009; then follow "Murder" hyperlink under "Index Offenses-Analysis" subheading; then follow "Murder Offenses and Clearances, Ten Year Trend" hyperlink) (last visited Aug. 22, 2011). For annual North Carolina crime statistics published by the North Carolina Department of Justice, see *Crime in North Carolina*, N.C. DEP'T OF JUSTICE, <http://crimereporting.ncdoj.gov/> (last visited Aug. 22, 2011).

We now turn our attention to scholarly studies that have examined the role of race in death sentencing in North Carolina.

B. Pre-Furman⁴³ Studies

Data on slave executions in North Carolina were included in one of the earliest data sets that allowed for the analysis of the role of race in death sentencing decisions.⁴⁴ Prior to the Revolutionary War, all colonies except those in New England provided compensation for slave owners if a slave was executed or given severe corporal punishment.⁴⁵ This policy allowed the slave owners to avoid the choice between either punishing the slave or protecting their capital investment in the cost of the slave. The North Carolina slave code of 1715 “provided compensation to owners for executed slave criminals, for slaves who died as a result of corporal punishment ordered by a court, for outlaws or runaways killed when apprehended, and for slaves killed in the act of committing a crime.”⁴⁶ In fact, during some periods this compensation was higher than the cost of replacing the slave.⁴⁷ Compensation ensured that the slave owners would not be financially harmed when their slaves were executed and eliminated the financial incentives that may have pressured authorities to convert death sentences to lesser punishments.

43. In 1972, the United States Supreme Court, in effect, invalidated all existing death penalty statutes. See *Furman v. Georgia*, 408 U.S. 238, 239–40 (1972) (per curiam) (holding that the imposition and carrying out of the death penalty in the cases under review violated the Eighth and Fourteenth Amendments). The first post-*Furman* death penalty statute, and thus the oldest death penalty statute in effect today, was enacted in Florida in 1972. Charles W. Ehrhardt & L. Harold Levinson, *Florida’s Legislative Response to Furman: An Exercise in Futility?*, 64 J. CRIM. L. & CRIMINOLOGY 10, 10 (1973). At the time of *Furman*, there were 120 inmates on death row in North Carolina, all of whom were resentenced to prison terms. See *History of Capital Punishment in North Carolina*, N.C. DEP’T OF CORR., <http://www.doc.state.nc.us/dop/deathpenalty/DPhistory.htm> (last visited Aug. 22, 2011).

44. Marvin L. Kay & Lorin Lee Cary, “*The Planters Suffer Little or Nothing*”: *North Carolina Compensations for Executed Slaves, 1748–1772*, 40 SCI. & SOC’Y 288, 288 (1976) (describing the workings of the North Carolina system for compensating slave owners if their slaves were executed). For information on slave courts, see generally Ernest James Clark, Jr., *Aspects of the North Carolina Slave Code, 1715–1860*, 39 N.C. HIST. REV. 148 (1962) (arguing that during the eighteenth and nineteenth century in North Carolina there was a general trend to extend to slaves the same procedural privileges afforded to Whites); Alan D. Watson, *North Carolina Slave Courts, 1715–1785*, 60 N.C. HIST. REV. 24 (1983) (describing eighteenth-century procedures dealing with alleged criminality by slaves).

45. Kay & Cary, *supra* note 44, at 289.

46. *Id.* at 292.

47. *Id.* at 296 (“[B]etween 1748 and 1758 compensations were considerably higher than were market prices for slaves.”).

Charles Phillips examined data on 48 lynchings and 104 legal executions in North Carolina from 1889 to 1918.⁴⁸ He found that lynchings and executions complemented each other, serving similar social functions.⁴⁹ Substitution of executions for lynchings occurred only after Blacks were disenfranchised in 1900.⁵⁰ Phillips argued that once Blacks were disenfranchised, there was less need for overt repression in the form of lynching.⁵¹

In a second study, Phillips examined 217 executions that occurred in 261 counties in North Carolina and Georgia in the eleven-year span from 1925 through 1935.⁵² For each county he created a variable measuring the difference between the Black execution rate (number of executions of Blacks per 1,000 Black population) and the White execution rate (number of executions of Whites per 1,000 White population).⁵³ Race differences in execution rates were related to the county's urbanization and minority presence.⁵⁴ However, after limiting the analysis to only those counties where the execution rates for Blacks exceeded the execution rates for Whites, he found that the biggest differences in the rates of execution for Blacks compared to Whites were in the counties with the lowest Black population.⁵⁵ He suggested the differences may be explained by the emotion and visibility of executions as they "may be hazardous to use on a large but fairly quiescent population."⁵⁶

In a seminal investigation of the significance of the race of the offender and race of the victim in the severity of punishment, Harold Garfinkel examined death certificates and court data related to 821 homicide offenders and 673 homicides from ten North Carolina counties over an eleven-year period from 1930 to 1940.⁵⁷ Ninety percent of the homicides were intra-racial.⁵⁸ While no additional

48. Charles David Phillips, *Exploring Relations Among Forms of Social Control: The Lynching and Execution of Blacks in North Carolina, 1889-1918*, 21 LAW & SOC'Y REV. 361, 368 (1987).

49. *Id.* at 364-67.

50. *Id.* at 368.

51. *Id.*

52. See Charles David Phillips, *Social Structure and Social Control: Modeling the Discriminatory Execution of Blacks in Georgia and North Carolina, 1925-35*, 65 SOC. FORCES 458, 467 (1986).

53. *Id.* at 465.

54. *Id.* at 469.

55. *Id.* at 470.

56. *Id.* at 473.

57. Garfinkel, *supra* note 15, at 369. Garfinkel's data came from death certificates filed in ten North Carolina counties. *Id.*

58. *Id.* at 370.

characteristics of the crime were measured, Garfinkel's data showed that Black defendants who killed White victims were treated more harshly than other homicide cases at all stages of the criminal justice process, from indictment through conviction to sentence.⁵⁹

Similarly, Elmer Johnson studied the records of 660 death row inmates in North Carolina between 1909, when the State took over responsibility for executions from local governments, and 1954.⁶⁰ While he did not introduce any control variables that measured the "severity" of the capital offenses, he reported execution rates by race and type of crime, finding that only 24% of the burglars who were sentenced to death were ultimately executed, compared to 55.6% of rapists and 56.3% of convicted murderers.⁶¹ Overall, 42.9% of the Whites sentenced to death were executed, compared to 57.9% of the Blacks.⁶² The execution rate for those convicted of rape was highest for those with White victims.⁶³ Finally, Johnson concluded that social class was an important determinant of who was executed, finding that "capital punishment appears to be directed largely at the economically and socially underprivileged," as measured by educational attainment and occupational status.⁶⁴ Executive clemency was granted in 229 cases, so it was not unusual for those on death row to be resentenced to prison terms.⁶⁵

C. *Post-Furman Legal Scholarship*

The *Furman* decision, in effect, invalidated all existing death penalty statutes in the United States.⁶⁶ In April 1974, the North Carolina legislature reacted to the *Furman* decision by passing a mandatory death penalty law in an attempt to remove disparities in

59. *Id.* at 371, 374. For example, those most likely to be charged with first degree murder and sentenced to death were Blacks with White victims, followed by Whites with White victims and then Blacks with Black victims. *Id.*

60. *See* Johnson, *supra* note 15, at 165-66.

61. *Id.* at 166.

62. These figures are computed from the data presented by Johnson. *Id.* at 169.

63. *Id.* at 166.

64. *Id.* at 167.

65. *Id.* at 166. Unfortunately, Johnson did not report the numbers of commutations by the race of the defendant.

66. For an excellent overview of the background and content of this decision, see generally MICHAEL MELTSNER, CRUEL AND UNUSUAL: THE SUPREME COURT AND CAPITAL PUNISHMENT (1973) (describing the history of Supreme Court battles over the constitutionality of capital punishment).

death sentencing.⁶⁷ That death penalty statute was invalidated by the Supreme Court in 1976.⁶⁸

In the wake of the Supreme Court's ruling, in 1977 North Carolina passed a revised death penalty statute.⁶⁹ In an early analysis, Joel Craig explained the development and content of the statute, reviewed the aggravating and mitigating circumstances, and discussed how appellate courts initially interpreted them.⁷⁰ In an analysis that focused on proportionality review, Carolyn Sievers Reed explained the process of proportionality review and how the present procedures emerged.⁷¹ James Exum, at the time an Associate Justice of the Supreme Court of North Carolina and former head of a committee established by the American Bar Association to study the costs of the death penalty, wrote a similar article that reviewed how the death penalty functioned in North Carolina.⁷² A foe of the death penalty,⁷³ Justice Exum took the

67. Act of Apr. 8, 1974, ch. 1201, § 1, 1974 N.C. Sess. Laws 323, 323 (current version codified at N.C. GEN. STAT. § 14-17 (2009)). This statute specified that all those convicted of first degree murder "shall be punished with death." *Id.*

68. *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (holding that the then-current mandatory death penalty statute in North Carolina violated the Eighth and Fourteenth Amendments). The Supreme Court held that mandatory sentencing violated the Eighth Amendment in three ways. First, it violated the evolving standards of decency imposed by the Eighth Amendment because mandatory capital sentencing had been rejected by American juries and legislators for years. *Id.* at 298. Second, by failing to give juries any guidelines, mandatory capital sentencing increased the risk that juries would act lawlessly. *Id.* at 303. Finally, mandatory sentencing failed "to allow the particularized consideration of relevant aspects of the character and record of each convicted defendant before the imposition upon him of a sentence of death." *Id.* For a more in-depth analysis of this and related decisions, see generally Michael D. Rhoades, *Resurrection of Capital Punishment: The 1976 Death Penalty Cases*, 81 DICK. L. REV. 543 (1977); L.S. Tao, *The Constitutional Status of Capital Punishment: An Analysis of Gregg, Jurek, Roberts, and Woodson*, 54 U. DET. J. URB. L. 345 (1977) (discussing several death penalty decisions handed down by the Supreme Court in 1976).

69. This statute, with slight revisions, is still in force today. See N.C. GEN. STAT. § 15A-2000 (2009).

70. See generally Joel M. Craig, Comment, *Capital Punishment in North Carolina: The 1977 Death Penalty Statute and the North Carolina Supreme Court*, 59 N.C. L. REV. 911 (1981) (explaining the development and content of the present North Carolina death penalty statute, including the aggravating and mitigating circumstances, and how appellate courts have interpreted them to date).

71. See generally Carolyn Sievers Reed, Note, *The Evolution of North Carolina's Comparative Proportionality Review in Capital Cases*, 63 N.C. L. REV. 1146 (1985) (explaining how proportionality review emerged in North Carolina).

72. See generally James G. Exum, Jr., *The Death Penalty in North Carolina*, 8 CAMPBELL L. REV. 1 (1985) (explaining how the death penalty works in North Carolina pursuant to the death penalty statute which provided for a bifurcated proceeding in capital cases).

73. See *Interview with Alumnus/Alumna of the Month, The Honorable James G. Exum, Jr. ('60)*, NYU Law, <http://www.law.nyu.edu/alumni/almo/pastalmo/20032004almos/jamesrexumjrpril/index.htm#interview> (last visited Aug. 22, 2011).

position that the North Carolina statute did not suffer from any glaring constitutional defects.⁷⁴ On the other hand, Geoffrey Mangum examined how the Supreme Court of North Carolina interpreted and applied the provisions of the state's death penalty law in the immediate aftermath of its passage.⁷⁵ He argued that the aggravating circumstances in the statute were too broad and vague to be uniformly applied.⁷⁶

D. *Post-Furman Race Studies*

Barry Nakell and Kenneth Hardy published the first study to empirically examine the possible effects of race on death penalty decisions in North Carolina in the modern era.⁷⁷ They studied the disposition of homicides involving 661 victims and 611 defendants⁷⁸ in North Carolina that occurred in the twelve months following June 1, 1977.⁷⁹ Despite the small number of cases, the authors found that the race of the victim exerted a statistically significant effect in distinguishing which cases resulted in a conviction for first degree murder: "All other factors being equal, including the quality of the evidence and the seriousness of the offense, defendants in cases with white victims were six times more likely to be found guilty of first degree murder than defendants in cases with nonwhite victims."⁸⁰

Second, in the 1980s, Samuel Gross and Robert Mauro included North Carolina in their extensive analysis of death sentencing patterns in eight states: Georgia, Florida, Illinois, Oklahoma, North Carolina, Mississippi, Virginia, and Arkansas.⁸¹ While the patterns showed slight variations between the states, the victim's race was associated with death sentencing in all eight states.⁸² For their North Carolina analysis, they compared FBI records of all homicides in the state from June 1977

74. See Exum, *supra* note 72, at 6 (stating that the author was "satisfied" that North Carolina's statute was constitutional).

75. Geoffrey Carlyle Mangum, Comment, *Vague and Overlapping Guidelines: A Study of North Carolina's Capital Sentencing Statute*, 16 WAKE FOREST L. REV. 765, 765-66 (1980).

76. *Id.* at 818.

77. NAKELL & HARDY, *supra* note 15, at 93-97 (explaining the design and scope of the empirical study of North Carolina death penalty decisions).

78. *Id.* at 93. Of these defendants, nine were sentenced to death. *Id.* In fact, "[t]here were only 18 first degree murder convictions during the study year, too small for any kind of further evaluation by statistical method." *Id.* at 97.

79. *Id.* at 93.

80. *Id.* at 146-48.

81. GROSS & MAURO, *supra* note 15, at 35.

82. In Georgia, Florida, and Illinois, "the race of the victim had a sizeable and statistically significant effect on the odds of a defendant receiving a death sentence." *Id.* at 65. The data from the remaining five states "show a remarkably consistent pattern of racial disparities." *Id.* at 89.

to December 31, 1980, to the circumstances accompanying murder convictions for those sentenced to death.⁸³ They divided homicides into two categories: (1) those with additional felony circumstances, and (2) those with no additional felony circumstances. In both groups, those with White victims were more likely than those with Black victims to be sentenced to death.⁸⁴ Among the homicides with additional felony circumstances present, they found that 13.6% of those suspected of killing Whites were sentenced to death, compared to 4.3% of those suspected of killing Blacks.⁸⁵

The third study to examine the relationship between racial characteristics and death sentencing in North Carolina in the modern era was written by two professors at the University of North Carolina at Chapel Hill: political scientist Isaac Unah and John Boger, Dean of the University of North Carolina School of Law.⁸⁶ They gathered data on 3,990 homicides⁸⁷ with identified perpetrators that occurred in eighty of North Carolina's 100 counties between January 1, 1993 and December 31, 1997.⁸⁸ Death sentences were handed down in ninety-nine of the cases.⁸⁹ When all the explanatory variables were entered into one predictive model, the researchers found that for similar homicides, the odds of a death sentence for defendants, regardless of their race, convicted of killing Whites were approximately 3.5 times higher than the odds of a death sentence for those convicted of killing non-Whites.⁹⁰

E. Hypotheses

All three post-*Furman* studies of death sentencing in North Carolina found that the race of the victim, and not the race of the defendant, was the principal non-legal factor associated with contemporary death sentencing in the State. This finding is consistent with post-*Furman* research on the application of the death penalty in other states. In 1990, the United States General Accounting Office ("GAO") examined some twenty-eight studies that had studied issues of race and arbitrariness in death sentencing in various American

83. *Id.* at 35–36, 233–34 (explaining the methods used for the death penalty analysis, the North Carolina statute used, and the dates covered by the study).

84. *Id.* at 89.

85. *Id.*

86. UNAH & BOGER, *supra* note 15.

87. *Id.* at 18.

88. *Id.* at 5.

89. *Id.* at 18.

90. ISAAC UNAH & JACK BOGER, RACE AND THE DEATH PENALTY IN NORTH CAROLINA—AN EMPIRICAL ANALYSIS: 1993–1997, at 4 (2001), available at <http://www.unc.edu/~jcboger/NCDeathPenaltyReport2001.pdf>.

jurisdictions since 1972.⁹¹ The GAO synthesis of the twenty-eight studies revealed

a pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty after the *Furman* decision. In 82 percent of the studies, race of victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty This finding was remarkably consistent across data sets, data collection methods, and analytic techniques.⁹²

The GAO found that the evidence for a race-of-defendant impact was less clear, and hence the evidence supporting a defendant's race effect "was equivocal."⁹³

Since the GAO report was released in 1990, several other studies from across the United States have continued to find significant race-of-victim effects on death sentencing.⁹⁴ The research in North Carolina, however, badly needs updating. Two of the three studies that examined this in North Carolina used data primarily from the 1970s,⁹⁵ and the third, which has not yet been published, contained data only through 1997.⁹⁶ We thus designed a study to update the existing North Carolina studies to see if any race effects continue to exist, if they are consistent with what has been found in other states, and, more specifically, to ascertain if the race of the victim is associated with the current application of the death penalty in North Carolina.

II. STUDY DESIGN AND METHODOLOGY

In this Part, we will describe the data that we obtained for this study. We drew on two data sources on North Carolina homicides. We used (1) Supplemental Homicide Reports from the FBI to obtain

91. U.S. GEN. ACCOUNTING OFFICE, GAO/GGD-90-57, DEATH PENALTY SENTENCING: RESEARCH INDICATES PATTERN OF RACIAL DISPARITIES 1-2 (1990).

92. *Id.* at 5.

93. *Id.* at 6.

94. For an overview of the studies conducted prior to 2003, see David C. Baldus & George Woodworth, *Race Discrimination in the Administration of the Death Penalty: An Overview of the Empirical Evidence with Special Emphasis on the Post-1990 Research*, 39 CRIM. L. BULL. 194, 202-26 (2003) (looking at various empirical studies on the influence of race discrimination in death penalty sentences conducted from 1973 to 2003).

95. GROSS & MAURO, *supra* note 15, at 234 (using data from mid-1977 through the end of 1980); NAKELL & HARDY, *supra* note 15, at 93 (using data from mid-1977 through mid-1978).

96. UNAH & BOGER, *supra* note 15, at 5 (using data from calendar years 1993 to 1997).

data on homicide suspects in North Carolina, and (2) information on the 368 defendants in North Carolina sentenced to death for homicides that occurred between January 1, 1980 and December 31, 2007.

A. *Supplemental Homicide Reports*

To begin, we assembled a data set on all North Carolina homicides with an identified perpetrator over a twenty-eight year period from 1980 to 2007. We obtained these data from the FBI's Supplemental Homicide Reports ("SHRs"). SHRs are compiled after local law enforcement agencies throughout the United States report homicide data to a central state agency, which in turn reports them to the FBI in Washington for inclusion in its Uniform Crime Reports.⁹⁷ While the SHRs do not list the suspects' or victims' names, they do include the following information: the month, year, and county of the homicide; the age, gender, race,⁹⁸ and ethnicity of the suspects and victims; the victim-suspect relationship, weapon used, and information on whether the homicide was accompanied by additional felonies (e.g., robbery or rape).⁹⁹ Local law enforcement agencies usually report these data long before the defendant has been convicted, so offender data are for "suspects," not convicted offenders.¹⁰⁰

97. See FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTING HANDBOOK 104-07 (2004), http://www.fbi.gov/about-us/cjis/ucr/additional-ucr-publications/ucr_handbook.pdf [hereinafter UCR HANDBOOK]. We have used SHR data in other research projects, and an earlier version of this paragraph was included in an article on a related subject. See Glenn L. Pierce & Michael L. Radelet, *The Impact of Legally Inappropriate Factors on Death Sentencing for California Homicides, 1990-99*, 46 SANTA CLARA L. REV. 1, 15 (2005).

98. See UCR HANDBOOK, *supra* note 97, at 97, 105-06. The racial designations used in the UCR are defined as follows:

[1] White. A person having origins in any of the original peoples of Europe, North Africa, or the Middle East. [2] Black. A person having origins in any of the black racial groups of Africa. [3] American Indian or Alaskan Native. A person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition. [4] Asian or Pacific Islander. A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

Id. at 97. There is also a category for "Unknown" race. *Id.* at 106.

99. See *id.* at 106-07.

100. *Id.* at 104-07.

The SHRs include information on all murders and non-negligent manslaughters, but they do not differentiate between the two types of homicides. They define murders and non-negligent manslaughters as “the willful (non-negligent) killing of one human being by another. Deaths caused by negligence, attempts to kill, assaults to kill, suicides, and accidental deaths are excluded.”¹⁰¹

In addition, the SHRs have a separate classification for justifiable homicides, which are defined as “the killing of a felon by a law enforcement officer in the line of duty; or the killing of a felon, during the commission of a felony, by a private citizen.”¹⁰² Because the data come from police agencies, not all the identified suspects were eventually convicted of the homicide.

For our project, a total of 15,281 homicide suspects were identified from North Carolina SHRs for homicides committed during the period 1980 through 2007. Only those SHR cases that recorded the gender of the homicide suspect were included in the sample, effectively eliminating those cases in which no suspect was identified. In other words, for SHR homicide cases where no suspect gender information was recorded, we assumed that the police had not been able to identify a suspect for that particular homicide incident, rendering sentencing decisions irrelevant. In addition, in most of the analyses presented herein, we eliminated 532 homicide suspect cases where the victim’s race information was either mixed (i.e., multiple murder with victims of different races), or some race category other than White or Black. In the end, our sample consisted of 15,281 homicide suspects, of which 14,749 were individuals suspected of homicides in which the victim or victims were either Black or White. We used the complete data set only for analyses that do not examine the race of the victim.

In addition to the race of the victim, the SHR data include information on the number of homicide victims in each case and what additional felonies, if any, occurred at the same time as the homicide. These variables are key to the analysis reported below.

B. Death Row Data Set

The Death Row Data Set was constructed with information from 368 cases in which defendants in North Carolina were sentenced to death for homicides that occurred between January 1, 1980 and December 31, 2007. We eliminated 16 cases in which the race of the

101. See *UCR Offense Definitions*, U.S. Dep’t of Justice, <http://www.ucrdatatool.gov/offenses.cfm> (last visited Aug. 22, 2011).

102. UCR HANDBOOK, *supra* note 97, at 152.

victim was neither White nor Black, leaving 352 cases for analysis. Cases were identified from a master list of all North Carolina death row inmates maintained by the North Carolina Department of Correction (“DOC”),¹⁰³ as well as from a list of individuals who at one time had been sentenced to death but who are no longer on death row.¹⁰⁴

Once the master list of death penalty cases was assembled, an attorney working with the research team read direct appeal decisions by the Supreme Court of North Carolina in all the cases. For each case, she identified the defendant’s and victim’s race and sex, date and county of offense, county of conviction, number of victims, and information on accompanying felonies from both the DOC data and the direct appeal decisions. The latter two variables are included in both the SHR data and in the Death Row Data Set, enabling us to compare frequencies by race of victim for both (1) all homicides and (2) all homicides that resulted in a death sentence.

To conduct our analyses, we merged the Death Row Data Set with the FBI/SHR homicide suspect data set. Cases were matched based on the victim’s race (White only and Black only victim homicides), year of offense categorized into two periods (1980 to 1989 and 1990 to 2007),¹⁰⁵ and Additional Legally Relevant Factors (no Additional Factors, one Additional Factor, or two Additional Factors). We define an Additional Legally Relevant Factor (“Additional Factors”) as either (1) multiple victim homicide, or (2) a homicide with accompanying felony circumstances.¹⁰⁶ In other words, we used two characteristics of the homicide event to measure Additional Factors: whether the homicide event took the lives of two or more victims, and whether there was evidence of additional

103. *Offenders on Death Row*, *supra* note 36.

104. *Persons Removed from Death Row*, *supra* note 39.

105. We chose 1990 as a temporal breaking point because of the significant change to North Carolina’s capital sentencing that resulted from the Supreme Court’s decision in *McKoy v. North Carolina*, 494 U.S. 433 (1990). *McKoy* held that capital jurors did not have to be unanimous in finding the presence of mitigating circumstances argued by the defense in death penalty cases. *Id.* at 435. After that decision, “the number of mitigating circumstances presented to and accepted by capital juries in North Carolina doubled” Janine Kremling et al., *The Role of Mitigating Factors in Capital Sentencing Before and After McKoy v. North Carolina*, 24 JUST. Q. 357, 358 (2007).

106. This is similar to the methodology used in other studies we have conducted using information from the Supplemental Homicide Reports. See Glenn L. Pierce & Michael L. Radelet, *Death Sentencing in East Baton Rouge Parish, 1990–2008*, 71 LA. L. REV. 647, 666–70 (2011); Pierce & Radelet, *supra* note 97, at 20–24, 45–47; Michael L. Radelet & Glenn L. Pierce, *Choosing Those Who Will Die: Race and the Death Penalty in Florida*, 43 FLA. L. REV. 1, 21–25 (1991). This methodology was developed and first used in GROSS & MAURO, *supra* note 15, at 35–42.

felonies (e.g., rape, robbery) that occurred at the same time as the homicide.¹⁰⁷ As will be discussed below, both of these factors are relevant when distinguishing death penalty cases from other homicides. We were able to match all 352 cases from the Death Row Data Set in which the victims were “White only” or “Black only” with the 14,749 homicide suspects in the SHR data set that had also had “White only” or “Black only” victims.¹⁰⁸

III. FINDINGS

A. Cross-Tabulations

Table A-3(a) presents an important finding: over the twenty-eight years studied in North Carolina, those who are suspected of killing Whites are over three times more likely to be sentenced to death than those who are suspected of killing Blacks. Overall, 1.2% of those suspected of killing Blacks are sentenced to death, compared to 3.9% of those suspected of killing Whites, for a ratio of 3.25. This disparity is statistically significant, with a p-value of less than 0.001.¹⁰⁹ This disparity needs further investigation.

There is, however, more to the story. Table A-3(b) shows that in a given homicide, White suspects are more likely to be sentenced to death than Black suspects.¹¹⁰ The primary reason why White suspects are more likely to be sentenced to death than Black suspects (among

107. As shown in Table A-4, this results in 12,290 cases with zero Additional Factors, 2,844 with one Additional Factor, and only 147 with two Additional Factors. See *infra* Table A-4. Adding a third factor here would leave too few cases for meaningful analysis.

108. Other researchers who have used this matching method note that “[o]ften more than one SHR case would correspond to a given death row case; however, since this matching was done only for the purpose of analyzing data on variables that were reported in both sources, it did not matter whether a particular death row case was identified with a unique SHR case.” GROSS & MAURO, *supra* note 15, at 38–39.

109. See *infra* Table A-3(a). Using the chi-square test, the data in Table A-3(a) form a statistically significant relationship. is a test to determine if two variables (e.g., race and death sentencing) are independent, or if there is an association between the two. The observed results are compared to what would be expected if the two variables are indeed independent. Traditionally, relationships are said to be statistically significant if the chances that the observed results would come from a population in which the variables are indeed independent are less than or equal to 5%. In Table A-3(a), the probability that these patterns would be obtained if death sentencing is, in reality, unrelated to the race of the victim is less than one out of 1,000. A p-value of .001 is the probability that the chi-squared statistic would take a value at least as large as observed if the variables were actually independent. See *infra* Table A-3(a).

110. However, as we will show in Table A-10(b), the effect of the race of the suspect disappears when we statistically control for other variables. See *infra* Table A-10(b). Because of that, Tables A-6, A-8, and A-9 will focus only on the race of the victim. See *infra* Table A-6, Table A-8, and Table A-9.

all homicides) is that homicides are primarily an intra-racial crime (i.e., Whites tend to kill Whites and Blacks tend to kill Blacks). Since the death penalty is more likely in cases where Whites are killed, this increases the likelihood of White suspects being sentenced to death. Table A-3(c) examines the probability of a death sentence controlling for both the race of the suspect and the race of the victim. For White victims, Black suspects are twice as likely to receive a death sentence as White suspects. For Black victims this effect is reversed, although the number of White-on-Black cases is relatively small and thus the overall contribution to the effect of victim's race on death sentencing decisions is also small. The race of the victim effect is largest for Black suspects suspected of killing White victims, who are five times more likely to be sentenced to death than Black suspects with Black victims.

Table A-4 shows that our measures of Additional Factors are excellent predictors of who is sentenced to death. Overall, only 1% of the cases in which there are no Additional Factors end with a death sentence, compared to 7.1% of those with one Additional Factor present and 32% of those with two. If homicides with White victims have more Additional Factors present than homicides with Black victims, then the relationship observed in Table A-3(c) between victim's race and death sentencing would be explained by legally relevant factors.

Table A-5 shows that in each of the time periods analyzed (1980 to 1989 and 1990 to 2007), the higher the number of Additional Factors, the higher the probability of a death sentence. Regardless of whether there are zero, one, or two Additional Factors, death sentencing rates were higher in the 1980s than in the latter time period.¹¹¹

However, the data in Table A-6 show that the reason why the probability of a death sentence is higher for those who are suspected of killing Whites than for those who are suspected of killing Blacks is not because the former cases tend to have more Additional Factors. Regardless of whether there are zero, one, or two Additional Factors present, cases with White victims are more likely to result in a death sentence than are cases with Black victims. In cases with no Additional Factors, those with White victims are 2.5 times more likely to end with a death sentence than those with Black victims. In cases

111. This reduction may be in part attributable to *McKoy v. North Carolina*, 494 U.S. 433 (1990). See *supra* note 105 (discussing the impact of *McKoy* on the administration of the death penalty in North Carolina).

where one Additional Factor is present, those with White victims are three times more likely to result in a death sentence than homicides with Black victims. In cases with two Additional Factors, the ratio is 2.07. Thus, the data show that the reason why White victim cases are more likely than Black victim cases to result in a death sentence is not because the former types of homicides are more likely to include Additional Factors.

Table A-7 shows that the probability of a death sentence is remarkably consistent across time periods. In the 1980s, before the *McKoy* decision,¹¹² 2.7% of all homicides resulted in a death sentence, compared to 2.3% in the period from 1990 to 2007. This difference in death sentencing rates between time periods is not statistically significant. Similarly, Table A-8 shows that the probability of death sentences by the race of the victim has changed little between the two time periods. In the 1980s, those suspected of killing Whites were 3.3 times more likely to be sentenced to death than those suspected of killing Blacks. Between 1990 and 2007, this ratio declined a bit to 3.0. In each time period, these differences are statistically significant.

Finally, Table A-9 cross-classifies the probabilities of a death sentence with the three major variables used in this study: victim's race, number of Additional Factors, and time period (1980–89 and 1990–2007). In both time periods and for each number of Additional Factors, the data show that those who are suspected of killing Whites are more likely to be sentenced to death than those who are suspected of killing Blacks.¹¹³ All of these relationships are statistically significant with the exception of cases from the 1980s where there were two Additional Factors present. In that cell, cases with White victims are still much more likely than those with Black victims to end in a death sentence (66.7% as opposed to 44.4%), but the small number of cases causes the difference to not attain statistical significance.

112. *See supra* note 105.

113. This can be seen by simply subtracting the death sentencing rates for homicides with Black victims from the death sentencing rates for homicides with White victims using the data presented in Table A-9. *See infra* Table A-9. Where no Additional Factors are present, the death sentencing rate for White Victims is 1.3% higher than for Black Victims in the 1980s and 0.7% higher in the 1990–2007 data. Where one Additional Factor is present, the death sentencing rate in the 1980s is 5.6% higher for White victims and 6.9% higher in the later time period. Where two Additional Factors are present, the death sentencing rate for White victims in the 1980s is 22.3% higher in the 1980s for White victims, and 24.5% higher in the 1990–2007 data. *See infra* Table A-9.

B. Multiple Regression Models

The remaining Tables presented in this Article use a statistical technique called logistic regression.¹¹⁴ This technique is used to predict a dependent variable that has two categories, such as whether or not a death sentence is imposed.

Tables A-3(a) through Table A-9 show that four factors are associated with who is sentenced to death for murders in North Carolina: the race of the victim, race of the suspect, the presence of additional felony circumstances, and the number of victims. Because the data in Table A-7 do not show marked variation in death sentencing rates between our two time periods, this variable was not used, although we will present identical models for both time periods so the patterns can be compared.

Tables A-10(a), A-10(b), and A-10(c) present the results of the logistic regression analysis for the entire twenty-eight years of the study.¹¹⁵ The independent variables are suspect's and victim's races

114. In logistic regression, the dependent variable is predicted with a series of independent variables, such as gender, income, etc. The model predicts the dependent variable with a series of independent variables, and the unique predictive utility of each independent variable can be ascertained. As we have explained elsewhere,

Logistic regression models estimate the average effect of each independent variable (predictor) on the odds that a convicted felon would receive a sentence of death. An odds ratio is simply the ratio of the probability of a death sentence to the probability of a sentence other than death. Thus, when one's likelihood of receiving a death sentence is .75 (P), then the probability of receiving a non-death sentence is .25 (1-P). The odds ratio in this example is .75/.25 or 3 to 1. Simply put, the odds of getting the death sentence in this case are 3 to 1. The dependent variable is a natural logarithm of the odds ratio, y , of having received the death penalty. Thus, $y = P / 1 - P$ and; $(1) \ln(y) = \hat{\alpha}_0 + X\hat{\alpha} + \xi_i$, where $\hat{\alpha}_0$ is an intercept, $\hat{\alpha}_i$ are the i coefficients for the i independent variables, X is the matrix of observations on the independent variables, and ξ_i is the error term. Results for the logistic model are reported as odds ratios. Recall that when interpreting odds ratios, an odds ratio of one means that someone with that specific characteristic is just as likely to receive a capital sentence as not. Odds ratios of greater than one indicate a higher likelihood of the death penalty for those offenders who have a positive value for that particular independent variable. When the independent variable is continuous, the odds ratio indicates the increase in the odds of receiving the death penalty for each unitary increase in the predictor.

Glenn L. Pierce & Michael L. Radelet, *Race, Region, and Death Sentencing in Illinois, 1988-1997*, 81 OR. L. REV. 39, 59 (2002).

115. Logistic regression is a statistical method to predict the value of one variable with a series of other variables. The technique is regularly used in studies of race and death sentencing. See, e.g., DAVID C. BALDUS, GEORGE WOODWORTH, & CHARLES A. PULASKI, JR., EQUAL JUSTICE AND THE DEATH PENALTY 78 n.55 (1990) (explaining how logistic regression models can be used to calculate the odds of a death sentence); GROSS & MAURO, *supra* note 15, at 248-52 (using a logistic regression model to help predict the

(White or Black), and the number of Additional Factors (none, one or two, where an Additional Legally Relevant Factor is either (1) a multiple victim homicide (where the number of victims was coded as one or two or more), or (2) a homicide with accompanying felony circumstances.) For purposes of this analysis, Additional Factors were measured by two separate variables: (1) one factor versus none, (2) two factors versus none. The remaining comparison of one factor versus two factors can be estimated by subtracting the two corresponding model parameter estimates. The reference category for these two variables is no Additional Factors.

Table A-10(a) shows that, as expected, the two Additional Factors both exert significant ability in predicting who is sentenced to death. Table A-10(b) adds the races of the suspect and the victim into the equation. Here we see that the race of the victim is statistically significant, but the race of the suspect is not. In other words, despite the original finding displayed in Table A-3(b) that shows that the race of the suspect is initially correlated with death sentencing, this effect disappears when we statistically control for the other variables in the analysis. The reason why White suspects are more likely to be sentenced to death than Black suspects (among all homicides) is that Whites tend to kill Whites and Blacks tend to kill Blacks, and the death penalty is far more likely in cases where Whites are killed. In the end, the race of the suspect is not statistically significant and does not add anything to our understanding of who is sentenced to death.

Therefore, in Table A-10(c) we remove the suspect's race from the equation. This procedure results in the model that best fits the data presented in this Article. Comparing Tables A-10(a) and A-10(c), we can see that even after the presence of our two Additional Factors is used to explain all the variation in death sentencing that they can (Table A-10(a)), adding the race of the victim to the equation (Table A-10(c)) adds statistically significant additional explanatory power.¹¹⁶ The Exp (β) for the race of the victim in Table A-10(c) reveals a strong effect. This shows that the odds of receiving a death sentence for killing one or more White victims increase by a factor of 2.96, controlling for the other independent variables in the equation. Thus, 2.96 (the Exp (β) value for White victims) is the odds

probability of a death sentence); Raymond Paternoster et al., *Justice by Geography and Race: The Administration of the Death Penalty in Maryland, 1978-1999*, 4 MARGINS 1, 31-44 (2004) (using logistic regression to address the relationship between victim and offender race).

116. Adding the victim's race to the equation increases the overall model Chi-Square by 87.765, which is statistically significant at less than .001.

ratio for an offender who is suspected of killing a White victim being sentenced to death. An odds ratio of exactly 1.0 means that the likelihood of receiving a death sentence changed by a factor of 1, or not at all.¹¹⁷ Here, we see the main conclusion from this research: after controlling for the legally relevant factors, in North Carolina from 1980 to 2007, the odds of receiving a death sentence in a White victim homicide case were, on average, 2.96 times higher than the odds of receiving a death sentence in a Black victim case.

Tables A-11(a) and A-11(b) repeat this analysis with only the cases from the 1980s, and Tables A-12(a) and A-12(b) use only cases from 1990 to 2007. For each time period, adding the variable measuring race of the victim significantly increases the predictive power of the model. For the 1980s, as shown in Table A-11(b), adding the race of the victim to the predictive equation improves the model chi-square by 19.873, which is a significant improvement. Here the odds of a death sentence for those who kill Whites are 2.51 times higher than the odds for cases with Black victims. For the years 1990 to 2007, as shown in Table A-12(b), the odds of a death sentence for White victim cases are 3.02 higher than the odds of a death sentence in Black victim cases. As one would hope and expect, the Additional Factors are very strong predictors of who is sentenced to death, but even after these factors are controlled, race still matters.

CONCLUSION

The data presented in this Article show that in the twenty-eight year period from 1980 to 2007, the race of the victim in homicide cases is a strong predictor of who is sentenced to death in North Carolina. Even after statistically controlling for the level of Additional Factors in the case, the victim's race remains a powerful predictor of who is and who is not sentenced to death. Overall, for homicides in North Carolina from 1980 to 2007, the odds of a death sentence for those who are suspected of killing Whites are approximately three times higher than the odds of a death sentence for those suspected of killing Blacks. This odds ratio varies little if we break the data into two time periods (1980 to 1989 and 1990 to 2007). In short, the data support the conclusion that at least in the period

117. Courts generally recognize that an odds ratio, or relative risk, of greater than 2.0 shows the presence of a causal effect. *See, e.g.*, *Landrigan v. Celotex Corp.*, 605 A.2d 1079, 1087 (N.J. 1992) (discussing a lower court opinion that favorably cited a line of cases in which an odds ratio of 2.0 was required to show the presence of a causal effect).

from 1980 to 2007, the race of the victim is a significant factor in the decision to seek and/or impose the death penalty.¹¹⁸

Of course, not every factor used by prosecutors in decisions to seek the death penalty or jurors to impose death is included in this study, although, as shown in Table A-4, the Additional Legally Relevant Factors we measured are strong predictors of who is sentenced to death. Still, it may be, for example, that the race effect could be explained by such factors as the suspect's prior record of criminality, the defendant-victim relationship (family versus stranger), the amount of premeditation, or any number of other legally relevant factors.¹¹⁹ On the other hand, it is equally possible that controlling for those factors could augment the race effects. Those who remain convinced that the death penalty in North Carolina is applied without racial bias should build on this study and gather data that might reveal how other, non-measured factors might increase or decrease the racial disparities that we have observed herein.¹²⁰ In the end, defenders of the death penalty might assert that because all homicide cases and defendants are different, grouping of homicides into similar categories for statistical analysis is impossible.¹²¹ Although we are limited in our abilities to control for other factors in this study, other studies that have examined the

118. Despite differences in data sources and methodology, these results are consistent with those reached in the other three research projects that have examined post-*Furman* patterns of death sentencing in North Carolina. See GROSS & MAURO, *supra* note 15, at 91 (“In each state, [including North Carolina,] the overall odds that an offender would receive the death penalty were much greater for killing a white victim than for killing a black victim.”); NAKELL & HARDY, *supra* note 15, at 159 (“[A] defendant charged with murder of a white was six times more likely to be convicted than a defendant charged with murdering a nonwhite.”); UNAH & BOGER, *supra* note 15, at 20 (“[C]onsistent with racial threat theory there is a stark difference in death-sentencing rates between white and nonwhite victim cases.”).

119. Future researchers in this area will also want to look into county-by-county variations in death sentencing. See Robert J. Smith, *The Geography of the Death Penalty and Its Ramifications*, 92 B.U. L. REV. (forthcoming 2012) (manuscript at 8) (on file with authors) (“Just 10% of counties in the country account for all death sentences imposed between 2004–2009.”).

120. For a review of these studies, see generally Baldus & Woodworth, *supra* note 94 (reviewing various empirical studies conducted from 1973 to 2003 on the influence of race discrimination in death penalty sentencing).

121. That precise point was made in *McCleskey v. Kemp*, when Justice Powell wrote, “[t]he capital sentencing decision requires the individual jurors to focus their collective judgment on the unique characteristics of a particular criminal defendant. It is not surprising that such collective judgments often are difficult to explain.” 481 U.S. 279, 311 (1987). These judgments, Justice Powell contended, “defy codification.” *Id.* Of course, when legislators specify what factors increase or decrease the appropriateness of the death penalty for a given type of homicide, they are doing this same sort of categorizing.

ability of additional variables to explain racial disparities in death sentencing have failed to account for race-of-victim effects in death sentencing.¹²²

More sophisticated studies, however, are neither easy nor inexpensive. Unfortunately, the State of North Carolina collects little data on homicide cases, so no data set that would allow the precise identification of which homicide cases are and are not eligible for the death penalty (and the attributes of those cases) exists. If such data were available, researchers could determine which cases were eligible for the death penalty, and, of those, which cases became a death penalty prosecution, which of those ended in a plea bargain where the death penalty was taken off the table, and which of those ended in a jury verdict where the offender was sentenced to a prison term rather than death.

A more comprehensive study of race and death sentencing in North Carolina might also examine factors such as the races of the prosecutors or trial judges involved in death penalty decisions.¹²³ It is possible, for example, that potential jurors who are Black are more likely to be excluded from jury service than potential jurors who are White.¹²⁴ Much more also needs to be learned about plea bargaining. For example, we have no information about which of our death penalty cases involved a deal in which the defendant could have avoided the death penalty through a guilty plea. Are such pleas more likely to be offered by White prosecutors in cases in which the murder victim is Black?¹²⁵

In the end, the data reported in this Article reveal strong racial disparities in death sentencing in North Carolina. However, the data do not tell us if the racial bias is intentional or unintentional,

122. See, e.g., Baldus & Woodworth, *supra* note 94, at 212 (discussing a study in which the variables used to explain racial disparities in capital sentencing included prosecutorial striking of black members from the potential jury pool).

123. We know of no major studies that have examined these variables.

124. One recent study has found such a pattern. EQUAL JUSTICE INITIATIVE, ILLEGAL RACIAL DISCRIMINATION IN JURY SELECTION: A CONTINUING LEGACY 5–6 (2010), available at <http://eji.org/eji/files/62510%20Eited%20Tutwiler%20version%20Final%20Report%20from%20printer%20online.pdf>.

125. We know of no research that has examined if the race of the prosecutor affects death penalty decisions. Measuring whether or not a plea bargain is offered is not as easy as it may sound. Some defense attorneys may vigorously pursue a deal, whereas others may not. The latter may result from a defendant's dogged desire not to plea ("I would rather be executed than be sentenced to life imprisonment without parole"), or a defendant's unwavering insistence on innocence.

conscious or unconscious.¹²⁶ Teachers, for example, might treat their male and female students differently without even being aware of it.¹²⁷ While it is possible that the data reflect intentional or overt discrimination by prosecutors, judges, and/or jurors, the racial disparities revealed in this research project may exist without the actors in the system being aware of it.

Two decades ago, when confronted with similar statistical data showing racial biases in death sentencing in Georgia, Supreme Court Justice William Brennan made the following observation:

Warren McCleskey's evidence confronts us with the subtle and persistent influence of the past. His message is a disturbing one to a society that has formally repudiated racism, and a frustrating one to a Nation accustomed to regarding its destiny as the product of its own will. Nonetheless, we ignore him at our peril, for we remain imprisoned by the past as long as we deny its influence in the present. . . . [T]he way in which we chose those who will die reveals the depth of moral commitment among the living.¹²⁸

The data presented in this Article show that Justice Brennan's words remain an important challenge to those who aspire to construct a criminal justice system that is indeed color blind.¹²⁹

126. Sheri Lynn Johnson, *Unconscious Racism and the Criminal Law*, 73 CORNELL L. REV. 1016, 1016–17 (1988) (criticizing the Supreme Court's decision in *McCleskey v. Kemp* for neglecting the possibility that "unconscious racism" infects judicial decisions).

127. Myra Sadker & David M. Sadker, *Sexism in the Schoolroom of the '80s*, 19 PSYCHOL. TODAY, Mar. 1985, at 54, 54–57 (reporting results of research showing boys in grade-school classrooms received more attention and praise than girls from teachers notwithstanding teachers' assertions to the contrary).

128. *McCleskey v. Kemp*, 481 U.S. 279, 344 (1987) (Brennan, J., dissenting). On a 5–4 vote, the decision took the position that statistical evidence of racial disparities in the application of the death penalty was insufficient to challenge death sentences under the Eighth and Fourteenth Amendments. *Id.* at 313. The decision was written by Justice Powell, who was then serving his last year on the Court. *Id.* at 282. Four years later, Powell's biographer asked the retired justice if he wished he could change his vote in any single case. JOHN C. JEFFRIES, JR., JUSTICE LEWIS F. POWELL, JR. 451 (1994). "Yes," Powell replied. "*McCleskey v. Kemp*." *Id.* Powell, who dissented in *Furman* and in his tenure on the Court remained among the justices who regularly voted to sustain death sentences, had changed his mind. *Id.* "I have come to think that capital punishment should be abolished . . . [because it] serves no useful purpose." *Id.* at 451–52. Had Powell had this realization a few years earlier, it is quite likely that the death penalty would have been, at least temporarily, abolished.

129. The opportunity to explore the role of race in capital sentencing presented by North Carolina's Racial Justice Act may be a limited one. Legislators in North Carolina have introduced legislation that would repeal the new protections of the Racial Justice Act if passed. No Discriminatory Purpose in Death Penalty, H.B. 615, 2011 Gen. Assemb., Reg. Sess. (N.C. 2011) (proposing to amend the Racial Justice Act to require death row

APPENDIX

Table A-1: Homicides by Victim Race¹³⁰

Year	White	Black	Native American	Asian	Unknown	Total	Total with Race Known
2000	236 (0.422)	302 (0.541)	18 (0.032)	3 (0.005)	4	563	559
2001	235 (0.469)	245 (0.489)	12 (0.024)	9 (0.018)	10	511	501
2002	245 (0.453)	274 (0.506)	18 (0.033)	4 (0.007)	7	548	541
2003	206 (0.414)	274 (0.550)	9 (0.018)	9 (0.018)	10	508	498
2004	221 (0.439)	255 (0.507)	17 (0.034)	10 (0.020)	9	512	503
2005	260 (0.459)	285 (0.503)	17 (0.030)	5 (0.009)	8	575	567
2006	215 (0.403)	298 (0.558)	16 (0.030)	5 (0.009)	5	539	534
2007	244 (0.411)	330 (0.556)	13 (0.022)	6 (0.010)	13	606	593
2008	269 (0.457)	297 (0.504)	17 (0.029)	6 (0.010)	13	602	589
2009	186 (0.389)	277 (0.579)	5 (0.010)	10 (0.021)	4	482	478
Total	2,317 (0.432)	2,837 (0.529)	142 (0.026)	67 (0.012)	83	5,446	5,363

inmates to demonstrate a discriminatory purpose in capital sentencing without being able to rely on statistical evidence of racial discrimination). For additional coverage of this proposal, see Anna Stolley Persky, *Numbers Tell the Tale: North Carolina's Death Row Inmates Let Statistics Back Up Bias Claims*, A.B.A. J., May 2011, at 18, 19 (stating that some legislators are planning to attempt to repeal or significantly narrow the Racial Justice Act); Erin Zureick, *Bill Would Gut Death-Row Inmates' Access to Racial-Bias Claim*, STARNEWS ONLINE (Apr. 7, 2011), <http://www.starnewsonline.com/article/20110407/ARTICLES/110409699/-1/sports01?p=1&tc=pg> (describing proposals to repeal the Racial Justice Act).

130. See 2009 Annual Summary Report, 2009 Crime Statistics in Detailed Reports, *Murder, Murder Victims by Race, Ten Year Trend*, N.C. DEPT OF JUSTICE, <http://crimereporting.ncdoj.gov/> (click "View Crime Statistics" hyperlink; then click "Submit" next to year 2009; then follow "Murder" hyperlink under "Index Offenses – Analysis" subheading; then follow "Murder Victims by Race, Ten Year Trend" hyperlink) (last visited Aug. 22, 2011).

Table A-2: Homicides by Offender Race¹³¹

Year	White	Black	Native Americans	Asian	Unknown	Total	Total with Race Known
2000	182 (0.319)	368 (0.644)	13 (0.23)	8 (0.014)	127	698	571
2001	176 (0.357)	301 (0.611)	14 (0.28)	2 (0.004)	148	641	493
2002	208 (0.394)	308 (0.583)	10 (0.019)	2 (0.004)	131	659	528
2003	182 (0.324)	363 (0.646)	8 (0.014)	9 (0.016)	115	677	562
2004	182 (0.363)	304 (0.607)	9 (0.018)	6 (0.012)	135	636	501
2005	243 (0.411)	337 (0.570)	11 (0.019)	0	152	743	591
2006	176 (0.313)	378 (0.673)	7 (0.012)	1 (0.002)	154	716	562
2007	209 (0.324)	423 (0.655)	12 (0.019)	2 (0.003)	172	818	646
2008	236 (0.402)	341 (0.581)	6 (0.010)	4 (0.007)	164	751	587
2009	167 (0.357)	294 (0.628)	3 (0.006)	4 (0.009)	147	615	468
Total	1,961 (0.356)	3,417 (0.620)	93 (0.017)	38 (0.007)	1445	6,954	5,509

131. See 2009 Annual Summary Report, 2009 Crime Statistics in Detailed Reports, Murder, Murder Offenders by Race, Ten Year Trend, N.C. DEP'T OF JUSTICE, <http://crimereporting.ncdoj.gov/> (click "View Crime Statistics" hyperlink; then click "Submit" next to year 2009; then follow "Murder" hyperlink under "Index Offenses – Analysis" subheading; then follow "Murder Offenders by Race, Ten Year Trend" hyperlink) (last visited Aug. 22, 2011). We have been unable to find data on homicides in North Carolina for the years prior to 1999 by race of offender or victim. Annual numbers of homicides, 1978–1999, are: 1978: 594; 1979: 590; 1980: 608; 1981: 531; 1982: 538; 1983: 480; 1984: 459; 1985: 504; 1986: 510; 1987: 514; 1988: 511; 1989: 615; 1990: 691; 1991: 773; 1992: 710; 1993: 793; 1994: 759; 1995: 673; 1996: 621; 1997: 608; 1998: 607; 1999: 536. See N.C. DEP'T OF JUSTICE, CRIME IN NORTH CAROLINA—1999, 2 (2000), <http://crimereporting.ncdoj.gov/public/1999/Publications/sumrpt99.pdf> (providing murder data for 1998 and 1999); N.C. DEP'T OF JUSTICE, NORTH CAROLINA INDEX CRIME TRENDS: 1978–1997 (1997), <http://crimereporting.ncdoj.gov/public/1997/78-97trd.pdf> (providing murder data from 1978 to 1997).

Table A-3(a): Race of Victim with Death Sentencing, 1980–2007
(n = 14,749)¹³²

Death	Black Victim	White Victim
No	8,238 (0.988)	6,159 (0.961)
Yes	104 (0.012)	248 (0.039)
<i>n</i>	8,342	6,407
Chi-Square = 107.1; df = 1; p < 0.001		

Table A-3(b): Race of Suspect with Death Sentencing, 1980–2007
(n = 14,709)¹³³

Death	Black Suspect	White Suspect
No	9,188 (0.980)	5,181 (0.971)
Yes	183 (0.020)	157 (0.029)
<i>n</i>	9,371	5,388
Chi-Square = 14.712; df = 1; p < 0.001		

132. There were 532 cases excluded from this analysis. This is because the race of the victim was of a race other than Black or White, mixed race, or race was unknown.

133. There were 572 cases excluded from this analysis. This is because the race of the suspect was of a race other than Black or White, mixed race, or race was unknown.

Table A-3(c): Race of Suspect and Victim with Death Sentencing, 1980-2007 (n = 14,501)¹³⁴

Death	Black-Black	White-Black	Black-White	White-White
No	7,757 (0.988)	385 (0.972)	1,318 (0.939)	4,713 (0.971)
Yes	91 (0.012)	11 (0.028)	85 (0.061)	141 (0.029)
<i>n</i>	7,848	396	1,403	4,854
Chi-Square = 144.165; df = 3; p < 0.001				

Table A-4: Number of Additional Legally Relevant Factors and Death Sentencing (n = 15,281)

Death	Number of Additional Legally Relevant Factors		
	0	1	2
No	12,171 (0.990)	2,642 (0.929)	100 (0.680)
Yes	119 (0.010)	202 (0.071)	47 (0.320)
<i>n</i>	12,290	2,844	147
Chi-Square = 921.81; df = 2; p < 0.001			

134. This Table excludes 780 cases excluded from this analysis. This is because the race of the victim or suspect was of a race other than Black or White, mixed race, or race was unknown.

Table A-5: Death Sentences by Number of Additional Legally Relevant Factors by Year (n = 15,281)

Year	Death	Number of Additional Legally Relevant Factors		
		0	1	2
1980-1989	No	4,110 (0.989)	634 (0.894)	9 (0.474)
	Yes	46 (0.011)	75 (0.106)	10 (0.526)
	N	4,156	709	19
Chi-Square = 390.47; df = 2; p < 0.001				
1990-2007	No	8,061 (0.991)	2,008 (0.941)	91 (0.711)
	Yes	73 (0.009)	127 (0.059)	37 (0.289)
	N	8,134	2,135	128
Chi-Square = 606.17; df = 2; p < 0.001				

Table A-6: Death Sentences by Victim's Race by Number of Additional Legally Relevant Factors, 1980-2007 (n = 14,749)

Number of Additional Legally Relevant Factors	Death	Victim's Race	
		Black	White
0 Chi-Square = 25.38; p < 0.001	No	6,843 (0.994)	4,925 (0.985)
	Yes	41 (0.006)	76 (0.015)
	N	6,884	5,001
1 Chi-Square = 53.42; p < 0.001	No	1,347 (0.965)	1,201 (0.894)
	Yes	49 (0.035)	143 (0.106)
	N	1,396	1,344
2 Chi-Square = 8.01; p = 0.005	No	48 (0.774)	33 (0.532)
	Yes	14 (0.226)	29 (0.468)
	N	62	62

Table A-7: Death Sentencing by Year (n = 15,281)

Death	1980-1989	1990-2007
No	4,753 (0.973)	10,160 (0.977)
Yes	131 (0.027)	237 (0.023)
<i>n</i>	4,884	10,397
Chi-Square = 2.29; df = 1; p = 0.130		

Table A-8: Victim's Race by Death Sentencing by Year ($n = 14,749$)

Year	Death	Victim's Race	
		Black	White
1980–1989 Chi-Square = 41.9; $p < 0.001$	No	2,527 (0.987)	2,093 (0.957)
	Yes	33 (0.013)	95 (0.043)
	<i>n</i>	2,560	2,188
1990–2007 Chi-Square = 64.08; $p < 0.001$	No	5,711 (0.988)	4,066 (0.964)
	Yes	71 (0.012)	153 (0.036)
	<i>n</i>	5,782	4,219

Table A-9: Death Sentences by Victim's Race by Number of Additional Legally Relevant Factors by Year (n = 14,749)

Year	Number of Additional Legally Relevant Factors	Death	Victim's Race	
			Black	White
1980-1989	0 Chi-Square = 15.14; p < 0.001	No	2,304 (0.994)	1,687 (0.981)
		Yes	13 (0.006)	32 (0.019)
		<i>n</i>	2,317	1,719
	1 Chi-Square = 5.08; p = 0.024	No	218 (0.932)	403 (0.876)
		Yes	16 (0.068)	57 (0.124)
		<i>n</i>	234	460
	2 Chi-Square = 0.900; p = 0.343	No	5 (0.556)	3 (0.333)
		Yes	4 (0.444)	6 (0.667)
		<i>n</i>	9	9
1990-2007	0 Chi-Square = 11.12; p = 0.001	No	4,539 (0.994)	3,238 (0.987)
		Yes	28 (0.006)	44 (0.013)
		<i>n</i>	4,567	3,282
	1 Chi-Square = 43.49; p < 0.001	No	1,129 (0.972)	798 (0.903)
		Yes	33 (0.028)	86 (0.097)
		<i>n</i>	1,162	884
	2 Chi-Square = 7.44; p = 0.006	No	43 (0.811)	30 (0.566)
		Yes	10 (0.189)	23 (0.434)
		<i>n</i>	53	53

*Table A-10(a): Logistic Regression Analysis of Victim's Race and Number of Additional Legally Relevant Factors on the Imposition of a Death Sentence, 1980-2007 (n = 14,749)**

Independent Variables	β	Sig.	Exp (β)
1 Additional Factor**	2.025	< 0.001	7.58
2 Additional Factors**	3.98	< 0.001	53.395
Constant	-4.611	< 0.001	0.010
*Death Sentence is coded: 0 = no death sentence (n = 14,397); 1 = death sentence (n = 352) ** 0 = Not present; 1 = Present. -2 Log Likelihood = 2,865.17; Chi-Square = 460.015; df = 2, p < 0.001.			

*Table A-10(b): Logistic Regression Analysis of Suspect and Victim's Race and Number of Additional Legally Relevant Factors on the Imposition of a Death Sentence, 1980-2007 (n = 14,501)**

Independent Variables	β	Sig.	Exp (β)
Suspect Race**	0.172	0.236	1.187
Victim Race**	0.912	< 0.001	2.489
1 Additional Factor***	2.020	< 0.001	7.539
2 Additional Factors***	3.977	< 0.001	53.377
Constant	-5.256	< 0.001	0.005
*Death Sentence is coded: 0 = no death sentence (n = 14,173); 1 = death sentence (n = 328) ** 0 = Black; 1 = White. ***0 = Not present; 1 = present -2 Log Likelihood = 2,704.07; Chi-Square = 503.81; df = 4, p < 0.001.			

*Table A-10(c): Logistic Regression Analysis of Victim's Race and Number of Additional Legally Relevant Factors on the Imposition of a Death Sentence, 1980-2007 (n = 14,749)**

Independent Variables	β	Sig	Exp (β)
Victim Race**	1.086	< 0.001	2.96
1 Additional Factor***	1.968	< 0.001	7.16
2 Additional Factors***	3.988	< 0.001	53.946
Constant	-5.210	< 0.001	0.005

*Death Sentence is coded: 0 = no death sentence (n = 14,397); 1 = death sentence (n = 352)
 ** 0 = Black; 1 = White.
 ***0 = Not present; 1 = present
 -2 Log Likelihood = 2,777.40; Chi-Square = 547.781; df = 3, p < 0.001.
 Model improvement Chi-Square from Table 10(a) = 87.765; df = 1; p = < 0.001

*Table A-11(a): Logistic Regression Analysis of Victim's Race and Number of Additional Legally Relevant Factors on the Imposition of a Death Sentence, 1980-1989 (n = 4,748)**

Independent Variables	β	Sig	Exp (β)
1 Additional Factor**	2.344	< 0.001	10.43
2 Additional Factors**	4.708	< 0.001	110.861
Constant	-4.485	< 0.001	0.011

*Death Sentence is coded: 0 = no death sentence (n = 4,620); 1 = death sentence (n = 128).
 ** 0 = Not present; 1 = Present.
 -2 Log Likelihood = 985.729; Chi-Square = 191.832; df = 2, p < 0.001.

*Table A-11(b): Logistic Regression Analysis of Victim's Race and Number of Additional Legally Relevant Factors on the Imposition of a Death Sentence, 1980-1989 (n = 4,748)**

Independent Variables	β	Sig.	Exp (β)
Victim Race**	0.919	< 0.001	2.51
1 Additional Factor***	2.159	< 0.001	8.66
2 Additional Factors***	4.754	< 0.001	116.08
Constant	-4.979	< 0.001	0.007
*Death Sentence is coded: 0 = no death sentence (n = 4,620); 1 = death sentence (n = 128) ** 0 = Black; 1 = White. ***0 = Not present; 1 = present -2 Log Likelihood = 965.86; Chi-Square = 211.705; df = 2, p < 0.001. Model improvement Chi-Square = 19.873; df = 1, p = < 0.001			

*Table A-12(a): Logistic Regression Analysis of Victim's Race and Number of Additional Legally Relevant Factors on the Imposition of a Death Sentence, 1990-2007 (n = 10,001)**

Independent Variables	β	Sig.	Exp (β)
1 Additional Factor**	1.898	< 0.001	6.67
2 Additional Factors**	3.888	< 0.001	48.828
Constant	-4.682	< 0.001	0.009
*Death Sentence is coded: 0 = no death sentence (n = 9,777); 1 = death sentence (n = 224). ** 0 = Not present; 1 = Present. -2 Log Likelihood = 1,858.32; Chi-Square = 286.487; df = 2, p < 0.001.			

*Table A-12(b): Logistic Regression Analysis of Victim's Race and Number of Additional Legally Relevant Factors on the Imposition of a Death Sentence, 1990-2007 (n = 10,001)**

Independent Variables	β	Sig.	Exp (B)
Victim Race**	1.106	< 0.001	3.02
1 Additional Factor***	1.897	< 0.001	6.66
2 Additional Factors***	3.887	< 0.001	48.76
Constant	-5.292	< 0.001	0.005

*Death Sentence is coded: 0 = no death sentence (n = 9,777); 1 = death sentence (n = 224)
 ** 0 = Black; 1 = White.
 ***0 = Not present; 1 = present
 -2 Log Likelihood = 1798.705; Chi-Square = 346.100; df = 3, p < 0.001.
 Model improvement Chi-Square = 59.613; df = 1; p = < 0.001