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# The Tennessee Death Penalty: Prosecutors, Juries and the Impact of Race

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To the Graduate Council:

I am submitting herewith a dissertation written by Kristin Amber Wagers entitled "The Tennessee Death Penalty: Prosecutors, Juries and the Impact of Race." I have examined the final electronic copy of this dissertation for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, with a major in Political Science.

John M. Scheb, Major Professor

We have read this dissertation and recommend its acceptance:

Nathan Kelly, Otis Stephens, James Black and William Lyons

Accepted for the Council:
Dixie L. Thompson

Vice Provost and Dean of the Graduate School

(Original signatures are on file with official student records.)

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# The Tennessee Death Penalty:

# PROSECUTORS, JURIES AND THE IMPACT OF RACE

A Dissertation
Presented for the
Doctor of Philosophy
Degree
The University of Tennessee, Knoxville

Kristin Amber Wagers
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## Dedication

To my husband, Walter H. Wagers, III. You have without hesitation and self-regard made it possible for me to pursue my academic and professional goals. My accomplishments are our accomplishments because without your endless patience, words of wisdom, encouragement, and ability to make me laugh when desperately needed, this dissertation would not have been possible.

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With all my love, respect, admiration, and gratitude,

Kristin

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I would also like to thank the other members of my committee that have been instrumental in the development of this dissertation. I would like to thank Dr. Nathan Kelly for the time and energy he put into making this dissertation a finished product. While he has only been in the department a few short years, he is a rising star in the field of American government and it would be prudent for the department to keep him as long as possible. Next, I would like to thank Dr. Otis Stephens, constitutional law scholar, for his expertise and guidance in the development of this dissertation. He has a wealth of knowledge grounded in constitutional law that is comparable to no one else. His unique ability to remember the smallest of details in court opinions and to cite them without hesitation is astounding. I thank him for being a part of this dissertation. Third, I would like to thank Dr. James Black for his unique contribution to this dissertation. While I have been mostly focused on quantitative data during my graduate studies, he suggested I incorporate qualitative data, which I must say added great value to this dissertation. Furthermore, I am grateful he agreed to be a part of this committee since he is already in retirement and was under no obligation to be on this committee. Last, but certainly not least, I would like to thank Dr. Bill Lyons for his time and support throughout this project.

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## Abstract

The impact of race within the American criminal justice system has seen long-term debate and has been studied by numerous social scientists. This dissertation examines the criminal justice system by analyzing data created by the Tennessee courts to determine whether race impacts the administration of Tennessee's death penalty. This dissertation examines whether race impacts the overall administration of Tennessee's death penalty, a Tennessee prosecutor's decision to seek death, and a Tennessee jury's decision to impose death. The impact of race at each stage is analyzed by logistic regression to isolate the defendant's race, the victim's race, and the racial interaction between them. Prior empirical research shows black defendants whose victims are white are more likely to receive death than white defendants whose victims are white. Prior research shows defendants whose victims are white, regardless of the race of the defendant, are more likely to receive death than when victims are black.

The regression analyses reveal after controlling for heinousness of crime and the defendant's dangerousness that race is not a predictive factor in whether defendants are sentenced to death in the overall application of the death penalty. The findings show that white victim murders, irrespective of the defendant's race, have slight predictive power in whether prosecutors seek the death penalty, but white victim cases have the least predictive power of all variables that impact prosecutorial decisions. Murders involving black defendants and white victims, irrespective of their racial relationship, decrease the likelihood a jury will return a death sentence. When testing the racial interaction of defendants and victims, the only relationship that is a significant predictor in the Tennessee death penalty are murders with white defendants and white victims. Based on qualitative data from interviews with Knox County criminal court judges, this can be explained by heinousness of crime.

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# CHAPTER 1: INTRODUCTION

Is the death penalty racially discriminatory? Social scientists have long been interested in this question. The question has been raised by political scientists, legal scholars, and practicing attorneys, among others, and certainly this question figures prominently in the ongoing debate over the death penalty in America. This dissertation examines this question using data from the Tennessee courts – data that have not yet been used in academic research on the death penalty. The dissertation will examine three aspects of the death penalty: 1) the overall application of the death penalty in Tennessee from 1977 to 2007;[1] 2) the prosecutor's decision to seek the death penalty; and 3) the jury's decision to impose death. The overall application of the death penalty and both phases of the bifurcated[2] trial structure will be examined in the following chapters to determine whether there is statistical evidence of discrimination, either in terms of the race of the defendant, the race of the victim or the racial interaction between the defendant and victim.

## *Constitutional Background*

Death penalty statutes, as originally enacted in the United States, were mandatory in nature and gave no discretion to judges and juries on whether to impose the death penalty, but by 1963, "all mandatory death sentences had been revised to discretionary death penalty statutes" (Edelman, 2006, 7). As a consequence of jury discretion in the imposition of the death penalty, many observers became concerned that death penalty procedures were unduly prejudicial and discriminatory against minorities. Between the late 1960s to the mid 1970s, the Supreme Court

[1] There was a decline in the number of executions nationwide beginning in the 1950s. There was a "complete cessation of executions from 1968 to 1976 while the constitutionality of the death penalty was being tested in the courts," and this "judicial moratorium ended in 1977" (Bedau, 1997, 13).

[2] Death penalty trials are bifurcated, meaning there are two separate trials. "First, a trial [is held] on the issue of guilt, followed by a second trial for the guilty on the issue of sentence" (Bedau, 1997, 19).

of the United States heard a number of arguments alleging discriminatory application of the death penalty. In *United States v. Jackson* (1968), for example, the Court declared unconstitutional a provision of The Federal Kidnapping Act, 18 U.S.C § 1201, requiring that a death sentence be imposed only upon a jury's recommendation. The Court based its decision on the ground that it violated a defendant's Sixth Amendment right to a trial by jury because such a provision "encouraged defendants to avoid a death sentence by waiving their right to a jury trial" and enter plea agreements (Edelman, 2006, 8). It was not until the 1970s did the Court address the question of whether the death penalty was imposed in a discriminatory manner.

Throughout the 1970s the death penalty gained visibility as an issue before the United States Supreme Court. In both *Crampton v. Ohio* (1970) and *McGutha v. California* (1971), petitioners argued allowing capital juries full discretion to decide if a death sentence is warranted resulted in arbitrary and capricious sentencing outcomes in violation of due process under the Fifth and Fourteenth Amendments. However, the United States Supreme Court upheld both statutes claiming that jury discretion does not deprive a person of life without due process of law. In *Maxwell v. Bishop* (1970), race became the central issue in the death penalty process. The petitioner, William Maxwell, presented social science data that suggested death sentences were unfairly and discriminatorily given to black defendants more often than any other race; therefore, a violation of the Equal Protection Clause of the Fourteenth Amendment.[3] In a similar case, *Spenkeling v. Wainwright* (1979), the petitioner presented social science data that suggested defendants whose victims were white were more likely to be sentenced to death regardless of the

[3] The United States Supreme Court in Bolling v. Sharpe (1954) "concluded that the values underlying the equal protection guarantee are embraced within the broad definition of due process of law." Therefore, the Fifth Amendment's Due Process Clause has an equal protection aspect even though there is no explicit equal protection clause as in the Fourteenth Amendment (Stephens & Scheb, 2003, 721).

race of the defendant; therefore, a violation of the Equal Protection Clause of the Fourteenth Amendment. However, in both cases, the data submitted to the Court were rejected and jury discretion was upheld once again. Not until legal arguments began to target the Eighth Amendment did the Court begin to limit unfettered discretion in capital cases.

In the landmark case *Furman v. Georgia* (1972), the United States Supreme Court held Georgia's death penalty statute unconstitutional as a violation of the Eighth Amendment's ban on "cruel and unusual punishment." The central concern of the Court was the perceived inadequacy of procedures in capital cases, and in particular, the unfettered discretion vested in trial juries to impose the ultimate punishment. Prior to *Furman*, as far back as 1968, a national judicial moratorium on the death penalty was in effect until the Court approved Georgia's revised death penalty statute in *Gregg v. Georgia* (1976). The argument made in *Furman* was the same argument made in *McGutha*, but "claimed the unguided jury discretion prescribed to juries in Georgia's statute could result in arbitrary and capricious sentencing, in violation of the Eighth Amendment" instead of focusing on violations of the Fifth and Fourteenth Amendments (Edelman, 2006, 9). The revised statute in *Gregg* adopted new death penalty procedures, most importantly the "bifurcated trial" structure, that separates the guilt/innocence phase of a criminal trial from the sentencing phase. The bifurcated structure was designed to construct a death penalty procedure that would be less arbitrary and capricious in order to meet constitutional standards. In addition, new death penalty statutes allowed aggravating and mitigating factors to guide the decision on whether to seek the death penalty and for jurors to weigh aggravating and mitigating factors in their sentencing decisions. The Georgia statute allows defendants to present any type of evidence he or she chooses in support of mitigating factors (Edelman, 2006). Juries "must vote unanimously beyond a reasonable doubt that a statutory aggravating factor exists, but

mitigating factors require a lower standard of proof and do not require unanimity" (Edelman, 2006, 10). Additionally, each juror "can choose to encompass mitigating factors in [his or] her decision if he or she so chooses" (Edelman, 2006, 10).

In the wake of *Furman* and *Gregg*, a majority of states enacted new capital punishment laws known as guided discretion statutes modeled after the new Georgia statute. Today, thirty-five states and the federal government have death penalty statutes.[4] While these laws vary procedurally, all are based on the bifurcated trial model upheld in *Gregg v. Georgia*. All of these statutes are predicated on the notion that structuring jury discretion in death penalty cases reduces the potential for arbitrariness and discrimination to a constitutionally acceptable level.

In the American criminal justice system, prosecutors are vested with enormous amounts of discretion. Subject to minimal procedural checks through grand jury proceedings and/or preliminary hearings, prosecutors decide whether to bring criminal charges and which charges to bring. In jurisdictions that have the death penalty, prosecutors must decide whether to seek the death penalty in cases where defendants are charged with first-degree murder. Before such trials begin, prosecutors must formally notify trial courts and the defendants that they intend to seek the death penalty upon conviction. *Gregg v. Georgia* and subsequent judicial decisions have done little, if anything, to reduce prosecutorial discretion to seek the death penalty.

The question of this dissertation becomes the following: in the thirty-three years since the United States Supreme Court's landmark ruling in *Gregg*, has race been excluded from the administration of the Tennessee death penalty? The dissertation seeks to identify the case characteristics that influence prosecutors to seek and juries to impose death.

[4] Death Penalty Information Center, States With and Without the Death Penalty, http://www.deathpenaltyinfo.org/states-and-without-death-penalty, accessed December 15, 2009.

***Case Studies***

In order to illustrate whether race plays a role in a prosecutor's decision to seek the death penalty and a jury's decision to impose a death sentence, I have compiled two cases studies that depict the facts of each case along with relevant background information on both the defendants and victims. Each case contained in these two case studies depicts a murder committed during the commission of a robbery. Case study one examines two first-degree murder cases with similar facts and circumstances where the defendants are black, but the race of the victim varies. Case study two examines two first-degree murder cases with similar facts and circumstances where the defendants are white. Again, the race of the victim varies in each case. I begin with case study one.

***Case Study 1: Black Defendants***[5]

***Black Defendants / Black Victims***

In 1978, 20 year-old Tony Renee Baldwin, black, was indicted, tried and convicted of two counts of first-degree murder, robbery with a deadly weapon and grand larceny in Shelby County, Tennessee. The defendant never married and had no children at the time of the offense. Baldwin was a resident of Shelby County and both parents were alive at the time of the offense. The defendant's highest completed level of education was high school and his intelligence level was evaluated to be medium with an intelligence quotient ranging from 70 to 100. A psychiatric evaluation was performed and Baldwin was deemed competent to stand trial. Baldwin had military history in the United States Marine Corps where he received a less than honorable

[5] Information obtained from the Report of Trial Judge in First-Degree Murder Cases, which is contained in Tennessee Supreme Court Rule 12 Trial Report Database.

discharge after being Absent Without Leave (AWOL) from May through September 1977. At the time of the offense, Baldwin had no previous convictions on his criminal record.

Both of Baldwin's victims were black, 57 and 59 years of age. The victims were not related by blood or marriage to the defendant, but were acquainted with the defendant through previous employment. The victims' reputations were unknown to the trial court. During the course of the offense, neither victim was held hostage, but both were shot with a firearm at close range during the course of a robbery. The locations of the gunshot wounds were not identified in the trial report. There was no evidence presented that Baldwin was under the influence of narcotics, dangerous drugs or alcohol at the time of the offense. Furthermore, no mitigating or aggravating circumstances are cited in the trial report as instructed or found.

In terms of race, the trial report reflects race was not raised by the defense as an issue during the trial. Twenty-five to fifty percent of the local population in Shelby County at the time of the trial was black; however, it is unknown how many blacks served on the jury. The trial report reveals the prosecution did not seek the death penalty, and the sentencing outcome of this black defendant/two black victim murder was two life imprisonment sentences to run concurrently.

***Black Defendants / White Victims***

In 1990, 20 year-old Jonathan Vaughn Evans, black, was indicted, tried and convicted of first-degree murder during the perpetration of a robbery of the By-Lo market in Hamblen County, Tennessee. The defendant never married and had no children at the time of the offense. Evans was a resident of Hamblen County and both parents were alive at the time of the offense. The defendant's highest completed level of education was high school and his intelligence level

was evaluated to be medium with an intelligence quotient ranging from 70 to 100. A psychiatric evaluation was performed and Evans was deemed competent to stand trial. Evans had no military history or criminal history prior to the date of the offense.

Evans' victim was white, 33 years of age. The victim was not related by blood or marriage to the defendant, but was acquainted with the defendant through employment at the local By-Lo market. The victim's reputation was "good" according to the trial report. During the course of the offense, the victim was not held hostage, but was shot in the head during the course of a robbery. There was no evidence presented that Evans was under the influence of narcotics, dangerous drugs or alcohol at the time of the offense. Unlike defendant Baldwin, two statutory aggravating circumstances were found in the actions of defendant Evans. First, it was instructed and found that the murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the defendant or another. Second, it was instructed and found that the murder was committed while the defendant was engaged in committing, or was an accomplice in the commission of, or was attempting to commit, or was fleeing after committing or attempting to commit, any first-degree murder, arson, rape, robbery, burglary, larceny, kidnapping, aircraft piracy, or unlawful throwing, placing or discharging of a destructive device or bomb. In addition, one mitigating circumstance was found indicating the defendant had no significant prior criminal history.

In terms of race, the trial report reflects race was raised by the defense as an issue in the trial. The trial report reflects concern of the composition of the jury. Blacks constituted under 10.0 of the population in Hamblen County at the time of the trial, and it is reported "at least that percentage of blacks in the local population were on the panel, but were excused for cause by the Court." Furthermore, the trial report states there were no blacks on the jury. The report claims

there was no evidence blacks were systematically excluded from the jury. In addition, the defense moved for a change of venue, but the Court denied such a request. The prosecution sought the death penalty, and the sentencing outcome of this black defendant/white victim murder was death.

### *Case Study 1 Summary*

The two first-degree murder cases in this case study have striking similarities as well as one difference. Both defendants are black and have almost identical backgrounds. Neither defendant ever married nor had children. Both were residents of their respective counties in which the trials took place. Both defendants' highest completed level of education was high school with an intelligence quotient ranging from 70 to 100. Both defendants were deemed competent to stand trial by a qualified psychiatrist. Lastly, neither defendant had any prior criminal convictions. The only difference relates to the defendants' military history. Defendant Baldwin received a less than honorable discharge from the Marine Corps in 1977, whereas defendant Evans had no military history in any of the armed forces.

In terms of the facts and elements of the cases as they pertain to the victim, there are two striking similarities as well as a few small differences. None of the victims in these two cases were related to the defendants by blood or marriage. However, each victim was acquainted with the defendant through previous employment. Defendant Baldwin was convicted of murdering two people, both black, whereas defendant Evans was convicted of murdering only one person, white. All of the victims were shot and killed during the commission of a robbery, but none of the victims were tortured at any time. There was no evidence presented that either defendant was under the influence of narcotics, dangerous drugs or alcohol at the time of the offense.

The aggravating circumstances found in each case differ considerably. For defendant Baldwin, who murdered two black victims, no aggravating or mitigating factors were cited in the trial report as instructed by the prosecution or found by the jury. However, for defendant Evans, whose single victim was white, two statutory aggravating circumstances were found. In addition, one mitigating circumstance was found indicating defendant Evans had no prior criminal history. The outcome for defendant Baldwin was life imprisonment for murdering two black victims, whereas the sentencing outcome for defendant Evans for murdering one white victim was death. It is interesting that while a black defendant murders two black victims the sentencing outcome is life imprisonment, but when a black defendant murders one white victim with almost identical facts and evidence the sentence is death. On the surface, it appears the race of the victim may impact sentencing in first-degree murders.[6] Therefore, the question becomes does race truly impact the resolution of capital cases?

### *Case Study 2: White Defendants*[7]

#### *White Defendants / Black Victims*

In 1978, 21 year-old LaDaniel Bowers, white, was indicted, tried and convicted of first-degree murder during the commission of an armed robbery in Wilson County, Tennessee. The defendant was divorced and had one child, two years of age, at the time of the offense. Bowers

[6] However, while it is outside the scope of this dissertation, there may be other factors involved in the administration of the Tennessee death penalty. Does the geographical area within the State of Tennessee impact the outcome of death penalty cases? Defendant Baldwin's murder trial was held in Shelby County, Tennessee located in the far western region of Tennessee. Defendant Evans' murder trial was held in Hamblen County located in East Tennessee, which is known as the most conservative region of the state. It may be that political views on the death penalty play a role in whether the death penalty is sought and imposed in varying areas of the state. In essence, would the outcome of these two cases remain the same if they were tried in the same judicial district of the state?

[7] Information obtained from the Report of Trial Judge in First-Degree Murder Cases, which is contained in Tennessee Supreme Court Rule 12 Trial Report Database.

was a resident of Wilson County and both parents were alive at the time of the offense. The defendant's highest completed level of education was the eleventh grade and there is no record of his intelligence level. A psychiatric evaluation was not performed on defendant Bowers. Bowers had military history in the United States Army where he received an honorable discharge in September 1977. Bowers had no prior criminal record before the current offense.

Bowers' victim was black, 43 years of age. The victim was not related by blood or marriage to the defendant, and was not acquainted with the defendant. The victim was a local resident of Wilson County with a "good" reputation. During the course of the offense, the victim was not held hostage or tortured, but was shot with a firearm during the course of a robbery. The location of the gunshot wound was not identified in the trial report. There was no evidence presented that Bowers was under the influence of narcotics, dangerous drugs or alcohol at the time of the offense. Although eleven statutory aggravating circumstances were instructed, the jury found no aggravating circumstances in the evidence presented. In addition, no mitigating circumstances are cited in the trial report.

The trial report reflects race was not raised by the defense as an issue during the trial. The percent of the local population in Wilson County that was white at the time of the trial is unknown, and the racial composition of the jury is also unknown. The prosecution sought the death penalty, and the sentencing outcome of this white defendant/black victim murder case was life imprisonment with the possibility of parole.

***White Defendants / White Victims***

In 1981, 30 year-old Ronald R. Harries, white, was indicted, tried and convicted of one first-degree murder during the perpetration of a robbery in Sullivan County, Tennessee. The

defendant was divorced and had two children, ages ten and eleven, at the time of the offense. Harries was not a resident of Sullivan County and both parents were alive at the time of the offense. The defendant's highest completed level of education was one year of college and the trial court did not evaluate his intelligence level. A psychiatric evaluation was performed and Harries was deemed competent to stand trial. The defendant served in the United States Marine Corp where he received an undesirable discharge. Harries had prior criminal convictions for breaking and entering, robbery and kidnapping prior to this case.

Harries' victim was white, 18 years of age. The victim was not related by blood or marriage to the defendant, and was not acquainted with the defendant in any manner. The victim was a "transient" according to the trial report, and had a "good" reputation. During the course of the offense, the victim was not held hostage or tortured, but was shot with a firearm during the course of a robbery. The defendant "contended the gun went off accidentally inflicting a fatal wound." There was evidence presented that Harries was under the influence of narcotics, dangerous drugs or alcohol at the time of the offense. Two statutory aggravating circumstances were found. First, it was instructed and found the defendant was previously convicted of one or more felonies, other than the present charge, which involved the use or threat of violence. Second, it was instructed and found that the murder was committed while the defendant was engaged in committing, or was an accomplice in the commission of, or was attempting to commit, or was fleeing after committing or attempting to commit, any first-degree murder, arson, rape, robbery, burglary, larceny, kidnapping, aircraft piracy, or unlawful throwing, placing or discharging of a destructive device or bomb. In addition, one mitigating circumstance was found indicating the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was substantially

impaired as a result of mental disease or defect or intoxication, which was insufficient to establish a defense to the crime, but substantially affected his judgment.

The trial report reflects race was not raised as an issue during the trial. The percent of the local population in Sullivan County that was white at the time of the trial was over 90.0, and all jury members were white. The report claims there was no evidence blacks were systematically excluded from the jury. The prosecution sought the death penalty, and the sentencing outcome of this white defendant/white victim murder was death.

***Case Study 2 Summary***

Again, there are striking similarities between the two first-degree murders in this case study. Both defendants are white. However, defendant Bowers' victim was black and defendant Harries' victim was white. Both defendants were divorced with children and the defendants' parents were all alive at the time of the offense. In terms of education, defendant Bowers did not finish high school, but defendant Harries completed one year of college. There is no record of either defendant's intelligence level. Both defendants had a military history where defendant Bowers received an honorable discharge from the Army and defendant Harries received a less than honorable discharge from the Marines. Defendant Bowers had no prior criminal record, but defendant Harries did have a criminal record of breaking and entering, robbery and kidnapping.

In terms of the facts and elements of the offenses as they relate to the victims, there are again similarities. Neither victim was related by blood or marriage to the defendants nor were the victims acquainted with the defendants. Neither victim was tortured nor held hostage, but both victims were shot during the course of a robbery, even though defendant Harries claimed the gun discharged accidentally. Furthermore, there was no evidence defendant Bowers was

under the influence of any alcohol or narcotics, but there was such evidence presented for defendant Harries. No aggravating or mitigating factors were cited in the trial report related to defendant Bowers, but this is not the case for defendant Harries. In the case against defendant Harries, two statutory aggravating factors were found and one mitigating circumstance was found, which related to Harries being under the influence of alcohol or narcotics. The sentencing outcome in Bowers' case, a white defendant/black victim murder, was life imprisonment, whereas the sentencing outcome in Harries' case, a white defendant/white victim murder, was death. Again, the outcome of these two cases is interesting because when a white defendant murders a black victim the sentence is life imprisonment, but when a white defendant murders a white victim, with almost identical facts and evidence, the sentence is death. Again, the question persists: Does race impact the outcome of capital cases?

***Conclusion***

The case studies presented in this chapter only scratch the surface in determining whether race impacts the application of the death penalty in Tennessee. On the surface it appears the race of the victim impacts the outcome of capital cases. Specifically, when victims are white, it appears prosecutors are more likely to seek the death penalty, and juries are more likely to sentence defendants to death. If this is an accurate depiction, there could be constitutional concerns in the application of the Tennessee death penalty. In recent years, the United States Supreme Court has repeatedly refused to deem the death penalty cruel and unusual punishment under the Eighth Amendment in the post-*Gregg* period. If the new trial procedures deemed constitutional in *Gregg v. Georgia* (1976) have achieved their intended goal, then race will not be statistically significant in the overall application of the death penalty, or in either of the two

death penalty stages. This would imply the Supreme Court's decision to uphold the bifurcated trial structure did in fact remove discrimination in the application of the death penalty resolving any racial constitutional concerns. However, should race be statistically significant in either stage of the death penalty process, the implication is quite different. Should race of the defendant, victim or the racial relationship between them impact the administration of the death penalty, the implication is our current public policy on the death penalty should be reevaluated. If death sentences are being distributed based on the race of the victim, the defendant, or the racial relationship between them, then it implies the United States Supreme Court may want to review the constitutionality of the death penalty, not on Eighth Amendment grounds, but rather to address concerns of due process and equal protection under the Fifth and Fourteenth Amendments.

## CHAPTER 2: THE LITERATURE

The American death penalty dates back "to the arrival of the European settlers" where the first documented execution occurred "in the Jamestown Colony of Virginia in 1608" (Edelman, 2006, 7). Efforts to adjust the American death penalty system can be traced to Thomas Jefferson's attempt to change the Virginia death penalty statute to make only the offenses of murder and treason death penalty eligible (Edelman, 2006). In 1838, states began adopting mandatory death sentences, but by 1963, states changed the mandatory death penalty statutes to discretionary death penalty statutes (Edelman, 2006, 7). In the wake of a discretionary death penalty system, the question of whether the death penalty is racially discriminatory has become a heated and long researched question in political science and other related social science academic fields.

### *Discriminatory Application*

During 2005, 3,254 inmates were under the sentence of death in the United States, of which 1,805 were white and 1,372 were black.[8] During 2006, 53 death row inmates were executed, of which 32 were white and 21 were black,[9] and during 2007, 42 inmates were executed, of which 28 were white and 14 were black.[10] In 2008, 37 death row inmates were

[8] United States Department of Justice, Bureau of Justice Statistics, Capital Punishment Statistics, http://www.ojp.usdoj.gov/bjs/cp.htm, accessed March 03, 2007.

[9] United States Department of Justice, Bureau of Justice Statistics, Capital Punishment Statistics, http://www.ojp.usdoj.gov/bjs/cp.htm, accessed March 03, 2007.

[10] United States Department of Justice, Bureau of Justice Statistics, Capital Punishment Statistics, http://www.ojp.usdoj.gov/bjs/cp.htm, accessed May 27, 2008.

executed, of which 20 were white and 17 were black.[11] While these numbers suggest the executions by race are relatively equal in terms of sheer numbers, a discriminatory application of the death penalty has been a concern for many individuals including the United States Supreme Court for the greater part of thirty years. United States Supreme Court Justice William Brennan said in 1987, "[the] evidence shows that there is a better than even chance that race will influence the decision to impose the death penalty: a majority of defendants in white-victim crimes would not have been sentenced to die if their victims had been black" (Ross, 1994, 32).

In January 1994, the NAACP's "Death Row, U.S.A." publication claimed "40 percent, or 1,117, of the prisoners under a sentence of death in America were black, despite the fact that blacks comprise only about 12 percent of the national population," but "minorities, as considered as a group, comprise 50 percent of those sentenced to die" (Ross, 1994, 32). In the ongoing debate of a discriminatory death penalty, the race of the victim is said to be an important factor. "The 227 prisoners executed between 1976 and January 1994 were convicted of killing 302 victims. Of these victims, 255, or 84 percent, were where white and only 47 percent were black or of another minority group" (Ross, 1994, 33). Ross claims "while 86 black or minority prisoners have been executed for murdering white victims, only two white murderers have been executed for the death of a non-white" (Ross, 1994, 33).

According to Bowers and Pierce (1984), one source of discrimination in application of the death penalty may be a "differential administration of justice" (69). In the justice system, trials contain both evidence and "social values" where "the jury system explicitly brings community sentiments into the judicial decision-making process," even though race cannot be

[11] United States Department of Justice, Bureau of Justice Statistics, Capital Punishment Statistics, http://www.ojp.usdoj.gov/bjs/cp.htm, accessed July 2, 2009.

the basis of deciding guilt or innocence (Bowers and Pierce, 1984, 69). Bowers cites past studies (Johnson, 1957 and Garfinkel, 1949) that reveal "blacks are indicted, charged, convicted, and sentenced to death in disproportionate numbers" (Bowers and Pierce, 1984, 69-70). These same studies found racial discrimination in terms of the perpetrator-victim relationship, indicating "discrimination throughout the justice process was especially concentrated against blacks whose victims were white" (Bowers and Pierce, 1984, 70).

The most comprehensive study on the death penalty sentencing procedures comes from the United States General Accounting Office (GAO)[12] issued to Congress in 1990, which analyzed "twenty-eight post-*Furman* studies based on twenty-three different data sets" (Johnson, 2003, 129). The GAO analysis "shows a pattern of evidence indicating racial disparities in charging, sentencing, and imposition of the death penalty" (Johnson, 2003, 129), and more specifically "supports a strong race of victim influence" and a varied race of offender influence across a number of dimensions (US General Accounting Agency, 1990, 6). Eighty-two percent of the studies analyzed indicate when the victim is white the defendant is more likely to receive a death sentence as compared to black victims "even after controlling for aggravating circumstances and other relevant legal factors" (Johnson, 2003, 129-30). In terms of the race of the defendant, over 50.0 percent of the studies show "the race of the defendant influenced the likelihood of their being charged with a capital crime; and in three-quarters of those, black defendants were more likely to receive the death penalty" (Johnson, 2003, 130).

As a result of the above figures, Welsh White postulates "the fact that killing a white rather than a black victim increases the odds of a death sentence" reflects a society that values a

[12] U.S. General Accounting Office, "Death Penalty Sentencing: Research indicates Pattern of Racial Disparities" (1990).

white life more than a black life (1991, 157). This leads one to consider whether in fact the death penalty is arbitrarily applied, which would be when the death penalty is imposed on "the basis of factors that have no relationship to either the crime committed or the character of the offense" (White, 1991, 157). One such factor is the race of the victim. Considering prior research that cites a relationship to the race of the victim and the increased probability of receiving the death penalty when such a relationship exists, the implication is the death penalty is being "arbitrarily applied" in the criminal justice system (White, 1991, 157).

The above studies refer to general discriminatory trends in the administration of the death penalty. In addition to these general research endeavors, there are numerous studies that focus on specific regions throughout the United States either at the state or county level. In order to understand whether the death penalty is discriminatory, it is imperative to examine the body of literature focusing on specific geographic locations. In an analysis conducted using data from the Supplementary Homicide Reports from the Federal Bureau of Investigation from 1976 to 1982 in the State of Louisiana, M. Dwayne Smith found "the number of death sentences for homicides involving white victims were disproportionate to the number of whites who were murdered; while whites constituted 61.5 percent of victims, 84.9 percent of death sentences were assessed for cases involving white victims. In contrast, 38.5 percent of the cases involved black victims, but only 15.1 percent of death sentences involved black-victim cases" (1987, 281). In terms of the race of the offender, Smith found "discrimination was directed toward *white* offenders" due to 1) "whites being charged with 34.9 percent of all homicides but made up 50.9 percent of those assessed the death penalty" and 2) "black offenders were charged with 65.1 percent of the homicides but were assessed the death penalty in only 49.1 percent of the cases" (1987, 281-82). Smith contends the difference in numbers is associated with the "relative low

frequency in which the death penalty is sought when both the race of the defendant and victim are black" (1987, 282).

Smith also found two statistically significant factors that increase the probability of receiving a death sentence. First, when the race of the victim is white, the defendant is almost two times more likely to receive the death penalty as compared to when the victim is black (Smith, 1987). Second, when the victim is female, defendants are approximately one and one-half times more likely to receive the death penalty as compared to when male victims (Smith, 1987). In terms of the race of the victim, Smith contends this "reflects an in-group consciousness whereby the killing of whites, as opposed to the killing of blacks, evokes greater outrage in a still predominantly white criminal justice system" (1987, 284). Baldus, Pulaski and Woodworth (1983) found similar results. In an examination of 2,000 murder cases from Georgia in the 1970s, Baldus, Pulaski and Woodworth (1983) concluded defendants indicted for killing white victims were significantly more likely to receive the death penalty as compared to defendants indicted for killing black victims.

Although the conclusions reached by Baldus, et al have been found in numerous other studies, criticisms have ensued because according to Katz (1987), Baldus, et al omitted the fact that murders involving white victims were on average more atrocious and heinous than murders involving black victims. Furthermore, it has been argued disparities in sentencing can be explained by how dangerous a defendant is determined to be, and not by the racial classifications of defendants and victims (Heilbrun, Foster and Golden, 1989). Although the degree of violence used by different defendants is an argument against the arbitrary application of the death penalty, most of the research in this area argues there is a correlation between a death sentence and the race of the defendant and/or victim.

In examining the application of the death penalty in the State of Kentucky, Gennaro F. Vito and Thomas J. Keil (1988) examined 458 capital cases where indictments were filed between December 1976 and October 1986. The analysis shows a "higher percentage (47.7%) of black defendants who have white victims proceed to a bifurcated trial mechanism, which is higher than any other racial mixture among defendants and victims" (Vito & Keil, 1988, 498). In this study none of the murder cases that involved white defendants with black victims proceeded to trial, but "of the thirty-three blacks tried for a capital offense, 63.6% had white victims" and "of the eight blacks [that] received a death sentence, approximately 87.5% had murdered whites" (Vito & Keil, 1988, 498).

In an analysis of 114 Florida death row inmates from 1972 to 1977, Hans Zeisel found "forty-seven percent of the black defendants arrested for murdering a white victim were sent to death row, [but] only twenty-four percent of the white defendants arrested for murdering a white victim received the same sentence" (1981, 460). Only "one percent was sentenced to death when both the victim and defendant were black; in comparison not a single white defendant was sentenced to death for killing a black individual" (Zeisel, 1981, 460).

Furthermore, a more recent study that focused on the Illinois criminal justice system by Radelet and Pierce (2006) concludes when victims are white, defendants are more likely to receive the death penalty than when the victims were black. This led, in part, to Illinois Governor George Ryan to commute the death sentences of 167 prisoners on January 11, 2003 (Radelet and Pierce, 2006). The Governor claimed their "capital system is haunted by the demon of error – error in determining guilt, and error in determining who among the guilty deserves to die . . . Because of all of these reasons today I am commuting the sentences of all death row inmates" (Radelet and Pierce, 2006, 117). In particular, "3.8 percent of the first-degree murder

cases where the victim(s) was white resulted in a death sentence" (Radelet and Pierce, 2006, 137). In comparison, only "1.1 percent of cases where the murder victim(s) was black" received the death penalty (Radelet and Pierce, 2006, 137). In terms of the race of the defendant, "4.5 percent of the cases where the offender was white resulted in a death sentence, versus 1.8 percent of the cases where the offender was black" (Radelet and Pierce, 2006, 137).

A statewide analysis of North Carolina's death penalty during the 1990s revealed inherent discrimination throughout the bifurcated trial process, "especially discrimination against defendants (of whatever race) whose murder victims are white" (Unah and Boger, 2001). Researchers concluded "race matters in the initial decision whether to charge a defendant with first-degree murder; it matters in the decision whether to go forward to trial; it matters in the decision whether to seek a death sentence; it matters in the jury's life-or-death decision at the penalty phase of a capital trial" (Unah and Boger, 2001, 3). Not only does the race of victim impact these decisions in the North Carolina death penalty process, the race of the defendant was also concluded to be important. The analysis found "when non-white defendants murder white victims, the death sentencing rate is 6.4 percent; however, when white defendants murder white victims, the death sentencing rate falls by half, to 2.6 percent. When non-whites are both the defendant and the victim, death sentences dip even more, to only 1.7 percent of the cases" (Unah and Boger, 2001, 3). Therefore, the study concludes white victims are considered more valuable overall and also concludes when black defendants murder white victims, the crime is considered more atrocious.

In terms of imposing death, the same North Carolina study found a death sentence is imposed "in 8 percent of all 'death-eligible' white-victim cases, but the capital rate plummets to 4.7 percent in nonwhite victim cases" (Unah and Boger, 2001, 3-4). Also, there is a disparity in

defendants being sentenced to death for murdering white victims. Black defendants who murder white victims receive the death penalty at a rate of 11.6 percent, but the rate drops to 6.1 percent when white defendants murder white victims (Unah and Boger, 2001, 4). A logistic regression analysis indicated the "odds of receiving a death sentence increased by of 3.5 when the murder victim is white" (Unah and Boger, 2001, 4). Unah and Boger argue that the murder of a white victim "operates as a 'silent aggravating circumstance' that makes death significantly more likely" to be sought and imposed, "demonstrating that racial bias is a real and deeply troubling feature of North Carolina's capital punishment system in the 1993-1997 period" (2001, 4-5). The best way to summarize the previous research in the application of the death penalty comes from Michael Radelet and Marian Borg. They conclude that most of the past analyses in the area of discrimination in the application of the death penalty reveal "the death penalty is between three and four times more likely to be imposed in cases in which the victim is white rather than black" (Radelet and Borg, 2000, 47).

***Prosecutorial Discretion***

The preceding literature discusses the application of the death penalty in general, but in order to understand the bifurcated death penalty process, it is important to review what the field currently understands about the role of prosecutors and juries. The next two sections summarize the current state of the literature with regards to how discriminatory action on the part of both prosecutors and juries factor into the administration of the death penalty. One reason prosecutors are an interesting aspect of the death penalty process is because they possess full discretion in determining which cases the death penalty will be sought given the legal requirements to do so. Prosecutors have vast amounts of control in the criminal justice system in terms of capital

punishment. One reason for this high level of control is that prosecutors "formulate the charges that determine whether or not the death penalty is permitted if a conviction is obtained" (Zeisel, 1981, 466). Secondly, it is within prosecutorial discretion to "propose a sentence of life in exchange for a guilty plea in cases where the defendant is eligible for the death penalty" (Zeisel, 1981, 466).

As elected officials, prosecutors must be attentive to their constituency's reaction to crime, which may "influence the prosecutor's decision to seek the death penalty, accept a guilty plea for a lesser sentence, or agree to a plea bargain in exchange for testimony against another defendant" (Bowers and Pierce, 1984, 339). As Bowers and Pierce suggest, elected prosecutors are more likely to seek the death penalty, given the legal requirements to do so, when there is "public outcry for capital punishment in a given case" or when there is "pressure from the police department" (Bowers and Pierce, 1984, 339 and 345).

As a result of *Gregg v. Georgia* (1976), "the standards by which prosecutors decide to charge a capital felony will be the same as those by which a jury will decide questions of guilt and sentence." Bowers and Pierce assert the unfettered discretion exercised by prosecutors may be a vehicle for "arbitrariness and discrimination" in the early stages of capital cases (1984, 340). By analyzing Florida grand jury indictments for criminal homicides, Bowers and Pierce "observed indictment disparities by race and location within the state contribute substantially to the overall level of arbitrariness and discrimination in the process leading to a death sentence" (1984, 340). Their data also indicate "racial factors affect a prosecutor's decision to allege aggravating factors depending on the race of the perpetrator" (Bowers and Pierce, 1984, 340-41). Furthermore, the regression analysis reveals black defendant/white victim murders are a "strong

predictor of the prosecution's decision to seek a first-degree murder indictment," which in turn allows the prosecution to seek the death penalty (Bowers and Pierce, 1984, 343).

There have been numerous findings that suggest prosecutorial discretion may lead to an arbitrary and discriminatory application of the death penalty. For example, Johnson (2003) found in an analysis of five South Carolina counties that "the race of the victim [is] statistically significant" with regards "to a prosecutor's decision to file a notice to seek the death penalty" (131). Furthermore, Johnson also found when the "victim is white, the prosecutor is more likely to seek the death penalty" in various counties in Florida, Missouri, Nevada, California, Illinois, and Alabama (2003, 131).

In a study conducted in North Carolina, prosecutorial discretion was found to be an important factor in deciding to seek the death penalty. At the time of the study, the state was divided into thirty "judicial districts" [13] each with their own elected district attorney (Nakell and Hardy, 1987, 152). The cases analyzed throughout the thirty districts indicates "that the chances of defendants in cases with the same quality of evidence being brought to trial on a first degree murder charge, and therefore at risk of a death sentence, depended on what judicial district processed the case" (Nakell and Hardy, 1987, 152). The "average percentage of cases being brought to trial on first degree murder charges were five to fifteen percent, but some districts had averages as high as forty-two percent" (Nakell and Hardy, 1987, 152). Furthermore, cases with comparable characteristics and evidence were handled differently in different judicial districts. Therefore, a prosecutor's decision to file a notice of intent to seek the death penalty "largely depended on which prosecutor was assigned to any given case" (Nakell and Hardy, 1987, 153). To put it another way, defendants assigned to more eager, forceful prosecutors might be more

[13] North Carolina Constitution, Article IV, § 18; N.C.G.S. §§ 7A-60(a), 7A-61.

likely to be sentenced to death, whereas other defendants with the same case characteristics and legal standards assigned to less eager, less forceful prosecutors might be less likely to be sentenced to death (Nakell and Hardy, 1987). As a result, the criminal justice system becomes open to the question of arbitrary application.

Baldus and his colleagues found when seeking the death penalty "the exercise of prosecutorial discretion is the principal source of the race-of-victim disparities observed in the system" (1990, 403). Previous research conducted in 1983 by Baldus, Pulaski and Woodworth found Georgia's death penalty statute indicated that "black defendants whose victims were white were advanced to a capital sentencing hearing by Georgia prosecutors at a rate nearly five times that of black defendants whose victims were black and more than three times the rate of white defendants whose victims were black" (Bohm, 1994, 322). Radelet and Pierce found "cases in which blacks were accused of killing whites were most likely to be upgraded and least likely to be downgraded," indicating a higher rate of death sentence eligibility (1985, 601).

In Kentucky, state law provides prosecutors with vast discretion in deciding which cases to seek the death penalty, which may lead prosecutors to consider non-legal or extra-legal factors, such as the race of the defendant and victim and the sex of the victim (Vito & Keil, 1988, 500). In a logistic regression, Vito and Keil found "defendants whose victims are female;" and "black defendants whose victims are white have a greater probability of a prosecutor seeking the death penalty" (1988, 501). Therefore, prosecutors are more likely to seek the death penalty when the defendant is black and the victim is white; indicating prosecutors are more likely to seek death under certain racial combinations between defendants and victims.

Similarly, a logistic regression analysis of capital cases in San Francisco County, California found "the odds of a death-eligible charge increase dramatically when there is more

than one victim, when the defendant has been previously convicted of a prior homicide, and when there is a contemporaneous felony or some other aggravator" (Weiss, Berk and Lee, 1996, 618-19). In addition to these factors increasing the likelihood that a San Francisco prosecutor will seek the death penalty, the analysis suggests when the victim is white or Asian, the likelihood that a prosecutor will seek the death penalty is "four times larger" than when the victim is of any other racial classification (Weiss, Berk and & Lee, 1996, 619). Also, the analysis suggests the "defendant's level of education and occupation influence a prosecutor's decision to seek the death penalty," but missing data for these variables made it impossible to identify the precise effects (Weiss, Berk and & Lee, 1996).

In an examination of over "600 homicide indictments in twenty Florida counties in 1976 and 1977, focusing on homicides between strangers," Michael Radelet came to similar conclusions as other studies (1981, 918). In cases that involved black victims, the prosecution sought the death penalty in 6 of 286 cases, or 2.1 percent, as compared to cases involving white victims the prosecution sought the death penalty in 33 of 351 cases, or 9.4 percent (Radelet, 1981, 921-22). Therefore, Radelet concludes "prosecutors are more likely to seek the death penalty when murders involve white victims," and "more likely to result in a death sentence" (Radelet, 1981, 922). In addition, "in the group with black victims and the group with white victims, the probability of a black defendant being indicted for first degree murder," and therefore eligible for the death penalty, "is 10 percent higher than for a white defendant" (Radelet, 1981, 922). Thus, "those accused of murdering whites are significantly more likely to eventually receive the death penalty than those accused of murdering blacks," but interestingly enough, "once indicted for first degree murder, neither race of the defendant, race of the victim, nor the interaction between these two variables are significantly related to the probability of

receiving the death penalty," which indicates race may not be a significant factor for jury deliberation (Radelet, 1981, 925). In essence, the race of the defendant alone has no bearing on a prosecutor's decision to seek the death penalty, but the race of the victim highly correlates to a prosecutor seeking the death penalty. "When broken down by race of the victim, black defendants are more likely to be indicted for first degree murder and sentenced to death among both categories of victim's race," but "there is not enough evidence to conclude that the interaction between victim's race and defendant' s race is a significant correlate of receiving a death sentence" (Radelet, 1981, 926).

Raymond Paternoster analyzed 300 homicide cases and found a "prosecutor is more likely to seek the death penalty when black defendants have white victims and less likely to seek the death penalty when black defendants have black victims" (Paternoster, 1984, 452). Paternoster found prosecutors are "four and a half times more likely" to seek the death penalty when black defendants have white victims (1984, 453). This shows, as does other research, "black offender/white victim homicides are treated as more aggravated killings, and black offender/black victim homicides are treated as less aggravated deaths" (Paternoster, 1984, 453). Another analysis by Raymond Paternoster also "reveals a pattern of racial discrimination on the part of the prosecutor to seek the death penalty" in South Carolina (1983, 766). Paternoster (1983) found prosecutors are "forty times more likely to seek the death penalty when black defendants have killed white victims as compared to black defendants with black victims" (766).

In an attempt to determine whether race impacts the decisions of the Harris County, Texas Prosecutors Office, the death penalty capital of the United States,[14] to seek the death

[14] Approximately "1,100 people have been executed in the United States in the last three decades. Harris County, Texas, which includes Houston, accounts for more than 100 of those executions. Indeed, Harris County has sent more people to the death chamber than any state but Texas itself" (Liptak, New York Times Sidebar, 2008).

penalty, Scott Phillips analyzed 504 capital murder cases from 1992 to 1999 (Phillips, 2008). The logistic regression revealed the district attorney's office "pursued death against black defendants and white defendants at the same rates," indicating the race of the defendant is not a significant factor that impacts a prosecutor's decision to seek the death penalty (Phillips, 2008, 830). However, even though death is pursued at the same rate regardless of the defendant's race, Phillips found a "significantly different treatment of blacks after controlling for various other factors" (2008, 830-31). Phillips found black defendants were less likely than white defendants to "murder white victims; commit the most heinous murders; commit murders involving burglary, kidnapping, rape, remuneration or of a child; commit murders by beating, stabbing, or asphyxiating the victim; commit murder as an adult; murder victims who were vulnerable due to age; and murder women" (Phillips, 2008, 831). In essence, the data reveal the prosecutor "pursued death against black defendants and white defendants at the same rate despite the fact that black defendants committed less serious murders along several dimensions – meaning black defendants committed murders that were less likely to include the features that tend to increase the chance of a death trial in Harris County" (Phillips, 2008, 834). Phillips claims the data show "five black defendants would be sentenced to the ultimate state sanction because of race" (Phillips, 2008, 837). However, "juries were slightly more likely to impose death against white defendants" in which the author argues could be due to a "jury's response to the DA's occasional overreaching against black defendants" (Phillips, 2008, 838). In terms of the race of the victim, Harris County prosecutors were more likely to seek the death penalty when victims were white as compared to black victims, but juries "were slightly more likely to impose death on behalf of black victims" presumably for overreaching actions of prosecutors for white victims (Phillips, 2008, 838).

The overall body of literature shows a correlation between either the race of the defendant, victim, and/or the racial interaction between the defendant and victim, and a prosecutor's decision to seek the death penalty. However, in 2006, the RAND corporation released a report prepared for the National Institute of Justice that examined federal prosecutors' decisions to seek the death penalty. The report examined federal death penalty cases "handled under the revised Death Penalty Protocol of 1995 and processed during Attorney General Janet Reno's term in office" (Klein, Berk and Hickman, 2006, iii). The report concluded that at the federal level, death penalty cases indicated "no sign of a race-of-victim effect" when controlling for the heinousness of the murder in a prosecutor's decision to seek the death penalty, contradicting most of the previous research (Klein, Berk and Hickman, 2006, 48).

***Juries***

Although prosecutors play an integral role in death penalty cases, the outcome of such cases also depends on a twelve-person jury. Jury members are not a unique segment of the general population, and like other individuals, jury members can have preconceived notions of other groups in society. Juries are an interesting portion of the criminal justice system because jurors "embody community sentiments" in that they have their own preconceived notions of societal members (Bowers & Pierce, 1984, 338). As a result, Bowers and Pierce argue "jurors have difficulty replacing their socially conditioned views of victims and offenders with strict legal considerations, especially for the crimes they find most shocking and abhorrent," which allows for "extralegal" factors to intrude on the interpretation of aggravating and mitigating factors presented at sentencing (Bowers and Pierce, 1984, 339).

For jurors to sentence a defendant to death, jurors must be "particularly horrified by the crime and perhaps frightened by the defendant. As the jurors review the circumstances of the crime, they will inevitably consider the personal characteristics of the defendant, and the defendant's race might carry some weight" (Gross and Mauro, 1989, 112). It has been argued that the one aspect of a trial that influences a juror's decision to sentence a defendant to death is the ability to identify with the victim, rather than seeing the victim as a stranger (Gross and Mauro, 1989, 113). In other words, the ability of a juror to identify with a victim in some manner can impact the probability of a defendant's sentence. However, in contemporary times, social and racial classes tend to be generally self-segregated. Taking segregated society into account along with most jurors being white, "jurors are more likely to be horrified by the killing of a white than of a black, and more likely to act against the killer of a white than the killer of a black" (Gross and Mauro, 1989, 113). This is not to say there is a conscious hatred of blacks in contemporary society among the white community, but rather "a natural product of the patterns of interracial relations in society" (Gross and Mauro, 1989, 113).

The impact of the race of the defendant and jurors' social perceptions and stereotypes can be demonstrated in interviews of previous death-qualified jurors (Fleury-Steiner, 2004). An interview with Shelia Brooks, a juror that sentenced Ray Floyd Cornish to death, exhibits how socially constructed views can enter jury deliberations. Mrs. Brooks was asked by an interviewer, "During the trial what were your impressions of the defendant?" (Fleury-Steiner, 2004, 45). Mrs. Brooks, a white college-educated mother of two, stated she saw Mr. Cornish, a black male accused of killing a white male convenient store clerk, as:

> A very typical product of the lower socioeconomic black group who grew up with no values, no ideals, no authority, no morals, no leadership, and this has come down from generation to generation. And that was one of the problems we had, for me, and in the jury.

> Because some of the jurors were looking at him as your average white kid: he wasn't a white kid. He came from a totally different environment. I'm just saying that he was the one that was the defendant. And I just saw him as a loser from day one, as soon as he was born into that environment, and into that set of people who basically were into drugs, alcohol, illegitimacy, AIDS, the whole nine yards. This kid didn't have a chance. That's how I saw the defendant. And there are ten thousand others like him out there, which is very tragic (Fleury-Steiner, 2004, 45).

This depiction is what Fleury-Steiner calls the "white racial dialect" where individuals "label the defendant as part of a valueless black group," which reinforces a "superior white identity" (Fleury-Steiner, 2004, 46). Fleury-Steiner argues Mrs. Brooks' terminology reveals a "pervasive ideological means for distancing herself from a defendant she sees as lacking individuality" (Fleury-Steiner, 2004, 46). Her terminology suggests she distances herself from "that environment" where there are drugs, alcohol, illegitimacy, and disease, which is not where "average white kids live" (Fleury-Steiner, 2004, 46).

Not only do social stereotypes enter a juror's deliberation in death penalty cases, juror's personal experiences can have impact as well. Albert Reynolds, a high school educated white male mechanic and Vietnam veteran, served on the jury that sentenced Barry Lawrence to death, a white male "caught on videotape robbing and shooting to death a Hispanic convenient store clerk." (Fleury-Steiner, 2004, 48). An interview with Reynolds "reveals how important personal experiences can be in jury deliberations in death penalty cases" (Fleury-Steiner, 2004, 48). Reynolds' youth involved confrontations with the criminal justice system, and due to an ultimatum from a judge, armed service or jail, Reynolds entered the Navy in 1965 (Fleury-Steiner, 2004, 48-49). Once in the Navy, Reynolds was in and out of trouble, and was thrown into the brig for fighting on one occasion (Fleury-Steiner, 2004). Reynolds began to turn his life

around to show his "parents [he] could do better in [his] life" (Fleury-Steiner, 2004, 49). Reynolds, when talking about defendant Lawrence stated:

> I felt sorry for him. I just wondered why a person would keep letting his life go on like that. Why didn't he just [turn his life around]? I mean, you go where you have to. I took charge. I didn't let anybody control my life (Fleury-Steiner, 2004, 49).

Fleury-Steiner (2004) finds it interesting that while Reynolds compares his life circumstances to that of defendant Lawrence, Reynolds fails to mention "any detail surrounding Lawrence's life history" (Fleury-Steiner, 2004, 49). "While the jury was informed during the punishment phase that Lawrence, unlike Reynolds, had been abandoned by his family at an early age and had never had a parental figure in his life, Reynolds never discusses these critical differences between his life history and that of the defendant . . . Reynolds fails to recognize that the defendant's life has lacked the privilege that Reynolds possesses" (Fleury-Steiner, 2004, 49). When Reynolds was asked about his decision to impose death, he replied:

> The videotape was very powerful. I own a handgun, and to me, there's only one reason you pull out a handgun, and that's because you're gonna use it. Just the thought of him pulling out a handgun and deliberately shooting another person! It irritates the heck out of me! Even after Vietnam and everything else. I just can't really describe it (Fleury-Steiner, 2004, 49).

Reynolds is unable to understand why Lawrence saw fit to use violence in such a senseless manner, and Fleury-Steiner argues "despite the defense's argument of Lawrence's emotionally abusive childhood, Reynolds is unable to step outside the box of his own life" (2004, 50). Fleury-Steiner claims Reynolds' life story only serves "to reinforce his identity as an insider and the defendant's identity as an immoral outsider" (2004, 50).

As a result of the Brooks and Reynolds interviews, along with countless others, Fleury-Steiner asserts "jurors racialized discourses reveal . . . a society that continues to be characterized

by profound inequalities and a politically divisive climate that reveal that the death penalty is beyond arbitrary" when factoring in the outside influences of jurors (Fleury-Steiner, 2004, 129). Fleury-Steiner argues "punishment that disproportionately focuses on poor whites and marginalized individuals of color invests in a pernicious ideology of inherently moral insiders and inherently immoral outsiders" (2004, 133). Fleury-Steiner believes juror racial stereotypes, juror personal experiences, and "criminal justice policies not only inhibit efforts at social equality," but also "undermine multiculturalism" (Fleury-Steiner, 2004, 50). Regardless of one's personal views regarding the institution of the death penalty, a jury's "effort to decide between life and death is a distinctly human endeavor infused with emotion and moral judgment . . . despite the efforts of legislatures and courts to make the death penalty decision a legal judgment that is reached by following a series of rules" (Sundby, 2005, 177). In the end, the decision to impose life in prison or death rests "unavoidably on the intersection of twelve jurors' individual beliefs and views" (Sundby, 2005, 177).

Specifically, in terms of the race of the defendant, racial stereotypes become relevant in the sentencing phase of a capital trial regarding mitigating factors. United States Supreme Court Justice White first articulated his concern regarding race and the role of mitigating and aggravating factors in *Turner v. Murray* (1986). In *Turner v. Murray*, Justice White believed jury discretion in death penalty cases allows for "a unique opportunity for racial prejudice to operate but remain undetected" (35). Justice White believed racial prejudice would enter the jury deliberation room where jurors "believe minority defendants are prone to violence or morally inferior" (Brewer, 2004, 531). As a result, Justice White thought jurors of this type would be "less receptive to mitigation evidence" and view a defendant as inherently evil rather

than an individual acting under "situational factors" such as acting "under the influence of some mental disturbance" such as duress (Brewer 2004, 532).

Since Justice White's commentary on race and jury deliberation, studies have been published that support his hypothesis. According to a 1990 survey conducted by the National Opinion Research Center of the University of Chicago, a majority of whites feel blacks are more "prone to violence than whites" (Johnson, 2003, 136). In many states, juries are "allowed or required to determine whether the defendant will be dangerous in the future; even in states where future dangerousness is not formally a part of the sentencing process" (Johnson, 2003, 136). Given the survey results and the issue of future dangerousness, Johnson suggests many white jurors think blacks are more likely to be involved in violent behavior, and as a result, more likely to impose death (Johnson, 2003, 137).

It has also been argued that because of these social stereotypes, mitigating factors are less likely to have a significant impact during the sentencing phase of capital cases for blacks because jurors "attribute fewer positive traits to people of color, see them as less intelligent, less hard-working and less good" as compared to whites (Johnson, 2003, 137). This societal sentiment can be traced back to the Constitutional Convention with the Three-Fifths Compromise in which one of the justifications for counting blacks as less than a full person was that blacks "produced less wealth" than their white counterparts (Berman and Murphy, 2007, 48). Therefore, even in today's society, there is support for the conclusion that "jurors are more likely to perceive the presence of aggravating factors in black defendant cases than in white defendant cases with equal evidence of aggravation, and are less likely to give weight to mitigating factors" (Johnson, 2003, 137).

Johnson also believes mitigating factors, specifically good character, are less likely to be given significant weight in the sentencing phase for black defendants because jurors "attribute fewer positive traits to people of color, see them as less intelligent, less hard-working and less good" than whites (Johnson, 2003, 137). Therefore, there is support for the conclusion that "jurors are more likely to perceive the presence of aggravating factors in black defendant cases than they do in white defendant cases with equal evidence of aggravation, and they are less likely to give weight to mitigating factors" (Johnson, 2003, 137).

Thomas W. Brewer studied the "interaction between race and the ability and/or willingness of capital jurors to consider mitigation evidence during the penalty phase in a death penalty trial" (2004, 533). Using Ordinary Least Squares regression, Brewer found one factor that increases the impact of mitigating factors during sentences, and two factors that decrease the impact of mitigating factors. Brewer found females are more likely to consider mitigating factors as compared to men (2004). On the other hand, the "more heinous the crime was perceived to be," the less likely a juror is to consider mitigating information (Brewer, 2004, 539). Additionally, jurors that decide to impose death at the conclusion of the guilt/innocence trial, but before the sentencing phase begins, are less likely to weigh mitigating information (Brewer, 2004). Interestingly enough, the location of the trial in a southern jurisdiction was not found to be statistically significant (Brewer, 2004). Furthermore, Brewer's analysis indicates "black jurors are significantly more receptive to mitigation" as compared to white jurors, and black jurors are "more receptive overall" to mitigating factors. (2004, 539). As a result, "white jurors are less receptive than black jurors" to mitigating factors during sentencing (Brewer, 2004, 539-40). Moreover, "black jurors appear to be more receptive to mitigation evidence when the

defendant is of the same race," but all jurors, regardless of race, were found to be more receptive to mitigation when the defendant is white and the victim is black (Brewer, 2004, 540).

A similar study of capital juries utilizing data from the Capital Jury Project found race as a significant factor in juror decision-making. Bowers, Steiner and Sandys (2001) found 67.0 percent of white jurors supported death, and 69.0 percent of black jurors supported life in prison overall. Furthermore, black jurors supported life in prison in cases where the defendant was black and the victim white. However, when both the defendant and victim were white, black jurors supported the death penalty. White jurors were less likely to support death in cases where both the defendant and victim were black as compared to when the defendant was black and the victim white (Bowers, Steiner and Sandys, 2001). In a similar study utilizing data from the Capital Jury Project, Bryan Edelman (2006) found analogous results. Edelman found "white jurors empathize more with white victims rather than black victims," and in turn, white jurors were more likely to impose death when victims were white (Edelman, 2006, 145).

Although the literature references the negative impact of race in the jury component of the criminal justice system, the inclusion of blacks and women on juries may have attributed a positive change over time. In the process of jury selection, known as voir dire, attorneys have two methods of excusing prospective jurors. Challenges for cause "require a showing that a particular prospective juror is biased" in some form (Anonymous, 1992, 1920). However, peremptory challenges require no such justification and consequently can result in a potential juror being excluded "based upon group affiliation such as race or gender" (Anonymous, 1992, 1920).

The controversy over peremptory challenges reached its peak over the complaint that "the prosecution used its peremptory challenges on a systematic basis to remove all prospective black

jurors resulting in [a] defendant [being] tried by an all-white jury" (Pizzi, 1987, 98). Although such a practice is not limited to situations where defendants are black, "the use of peremptory challenges to systematically remove prospective black jurors is most likely to occur when the defendant is black and the prosecution wants to remove jurors who may be sympathetic to the defendant" (Pizzi, 1987, 99). However, in *Batson v. Kentucky* (1986), the United States Supreme Court "struck down on equal protection grounds the use of peremptory challenges by prosecutors to remove blacks on the basis of race where the defendant is also black" (Pizzi, 1987, 100). Where a defendant claims a prosecutor is dismissing jurors based on race, it becomes the prosecution's burden to provide a "neutral explanation" for why it has challenged a black juror (Pizzi, 1987, 100).

In the wake of the Rodney King beating in 1992, an all-white jury acquitted four white law enforcement officers "charged with using excessive force to restrain" King, a black (King, 1993, 63). In the aftermath of the verdict, many argued "the defendants would have been convicted if blacks had been on the jury" (King, 1993, 63). On the other hand, many saw this assertion as "racist" because it "presumes that a verdict may depend on the race of the jurors;" however, "others argued that no one can possibly know what role juror race plays in jury decisions" (King, 1993, 63-64). In any regard, the inclusion of blacks on juries may in fact have a cumulative impact on whether juries decide to impose a death sentence.

### *Conclusion*

After examining the relevant literature on the discriminatory and arbitrary application of the death penalty, two clear sources of bias possibly filter into the bifurcated trial structure: prosecutors and juries. Prior research has tended to focus on one or the other of these loci, but it

is important to examine both. The prosecutor is vested with a tremendous amount of discretion; moreover, he or she is an elected official who must respond to political pressures in order to remain in office. If the politically active portions of the community demand a higher level of retribution for the taking of a white life, then it is possible that the prosecutor will operate with a bias toward seeking the death penalty in murder cases where the victim is white. Although prosecutors may seek the death penalty if they choose, given the legal requirements to do so are satisfied, it is only the jury that can impose a death sentence. Given the multitude of varying stereotypes possessed in contemporary society, it is possible various biases enter the jury's deliberations in death eligible cases.

Overall, the literature in this area has focused at the county or state level, but the literature reveals no such examination in Tennessee. This dissertation will examine whether race impacts the death penalty in the State of Tennessee. Specifically, this dissertation will examine whether there is statistical evidence of discrimination in the overall application of the Tennessee death penalty, in a Tennessee prosecutor's decision to seek the death penalty, and a Tennessee jury's decision to impose the death penalty. In other words, does race impact the overall application of the death penalty, a prosecutor's decision to seek the death penalty and/or a jury's decision to impose the death penalty in the State of Tennessee. Consequently, should race impact either phase of the bifurcated trail structure, it may be necessary for the United States Supreme Court to review the constitutionality of the death penalty once again. However, instead of challenging the constitutionality of the death penalty on Eighth Amendment grounds, the constitutional basis for an objection would be that a racially discriminatory application of the death penalty violates a defendant's Fifth and Fourteenth Amendments rights to due process and equal protection under the law.

## CHAPTER 3: THE KNOX COUNTY, TENNESSEE CRIMINAL JUSTICE SYSTEM: PROSECUTOR, PUBLIC DEFENDER AND JUDGE

While data analysis is essential to understanding the impact of race in the death penalty process, data are only one side of the coin. In order to obtain a well-balanced view of the application of death penalty, it is important to determine whether legal practitioners view race as an important factor in capital cases in general, and in those cases in which they participated personally. In an effort to reveal these views, I was able to interview the three most prominent figures in criminal prosecutions in Knox County, Tennessee: the prosecutor, Randall Nichols; the public defender, Mark Stephens; and criminal court judges, Mary Beth Leibowitz and Richard Baumgartner. This chapter examines each individual's thoughts and experiences as practicing attorneys and judges in the Knox County, Tennessee criminal justice system.

### *Interview of District Attorney General Randall Nichols*[15]

While interviewing past jurors of Tennessee capital juries is impossible due to lack of record keeping by the Tennessee Court system, it was possible to interview Knox County, Tennessee District Attorney General Randall Nichols of the Sixth Judicial District. This interview provided insights into the thought process of how prosecutors decide to seek the death penalty in some cases while choosing not to seek the death penalty in others. District Attorney General Nichols was sworn into office on August 18, 1992, and continues to serve the office today, but has chosen not to seek reelection once his current term has lapsed. Before becoming Knox County's District Attorney General, Nichols practiced law as a criminal defense attorney,

[15] Interview conducted of Knox County, Tennessee District Attorney General Randall Nichols on July 22, 2008 at approximately 1:45pm. All quotations and subsequent information contained in this section is a product of this interview unless otherwise noted.

went on to become a prosecutor and also served as Judge in Knox County Criminal Court. During Nichols' time as a criminal defense attorney, he represented two defendants in which the State of Tennessee sought the death penalty. As a Criminal Court Judge, Nichols sentenced two defendants to death, and as a prosecutor, Nichols personally tried and sought the death penalty against two defendants. As a result, Nichols states he has "been full circle" on the issue of the death penalty in the State of Tennessee being able to appreciate the perspectives of judge, prosecutor and defense counsel.

As District Attorney General, Nichols has only sought the death penalty seven times in which a capital case proceeded to trial, and he states this to "emphasize that [he] believes [the death penalty] is reserved for the worst of the worst." Today with changes in public opinion, simply "robbing and killing someone is not grounds for the death penalty in this state any more" as it would have been in the 1970s. Nichols states his position on the death penalty is due in part to him "maturing" over the years and "becoming more introspective." In addition, he believes his position is also due to the fact that the death penalty process is timely, costly and "consumes" the resources of any District Attorney Office.

Based on the Tennessee trial reports, from 1977 to 2007 there have been 63 first-degree murder convictions in Knox County, Tennessee. Of these 63 first-degree murder cases, the prosecution sought the death penalty 22 times. Since Nichols took office as Knox County District Attorney General in 1992, the Knox County District Attorney's Office has sought the death penalty 15 times; however only seven cases proceeded to a criminal bifurcated trial process. Of these seven cases where the death penalty was sought, Knox County juries imposed a death sentence four times as Table 1 illustrates.

**Table 1 Death Sentence Cases Under District Attorney General Randall Nichols, 1992 to 2007**

| Year | Defendant Name | Defendant Race | Victim Race | Type of Killing |
|---|---|---|---|---|
| 1996 | Christa Gail Pike | White | White | Victim beaten with chunk of asphalt and sustained slash marks including a pentagram |
| 1998 | Dennis W. Suttles | White | White | Victim, former fiancé, stabbed repeatedly in front of victim's teenage daughter |
| 1999 | William P. Torres | Black | Black | Victim, 15 month old son of the defendant, beaten to death |
| 1999 | James A. Mellon | White | White | Victim was shot during the perpetration of armed robbery |

The remaining 11 cases in which the prosecution sought the death penalty while Nichols has been District Attorney General resulted in a sentence other than death. Six defendants pled guilty and received a sentence of life imprisonment, and two defendants received a sentence of life without parole after pleading guilty. In the three remaining cases that proceeded to trial, the defendants received sentences of life imprisonment and life without parole, all of which is demonstrated in Table 2.

In all of the criminal cases resulting in a first-degree murder indictment, Nichols follows an informal process in deciding whether to seek the death penalty.[16] Nichols first looks at the case file to see "how many of the [statutory aggravating factors] we can prove beyond a reasonable doubt based on the police work and the reports we have," which have to be listed at the time Nichols files a notice of intent to seek the death penalty with the court. Then, in all of the cases in which the death penalty is a potential punishment, Nichols "staffs it," where he and

[16] District Attorney General Randall Nichols believes District Attorney General Victor S. Johnson, III for the 20th Judicial District in Davidson County has the only written, formal Death Penalty Guidelines in the State of Tennessee. District Attorney General Johnson forwarded a copy of said guidelines. A copy of said death penalty guidelines can be found in Appendix A to this dissertation.

the "top lawyers, experienced lawyers" within the District Attorneys Office debate on whether or not Nichols should seek the death penalty. Nichols encourages his staff to speak openly about their opinions on whether or not the death penalty in warranted in a particular case because he "respects their views and judgments." Nichols states he, "does not want people that just nod with everything [I] say," instead he wants people in his office to share their views and opinions openly so that Nichols can appreciate different perspectives before he makes a decision on whether to seek the death penalty. After much, and sometimes heated debate between his staff, some of which are pro-death penalty supporters and others that take an anti-death penalty position, Nichols makes an informed decision based on the facts of the case, the views of his staff, and what he believes he can prove beyond a reasonable doubt.

**Table 2 Disposition of Cases Not Resulting in a Death Sentence When District Attorney General Randall Nichols Sought the Death Penalty, 1992 to 2007**

| Year | Defendant Name | Defendant Race | Victim Race | Pled Guilty or Not Guilty | Sentence Outcome |
|---|---|---|---|---|---|
| 2003 | Richard A. Tate | Black | Black | Guilty | Life Imprisonment |
| 2003 | Michael L. Stanton | White | White | Not Guilty | Life Without Parole |
| 2003 | Howard Thomas | White | White | Not Guilty | Life Imprisonment |
| 2001 | Anthony T. Jones | Black | White | Guilty | Life Without Parole |
| 2000 | Kimberly Berrios | White | White | Guilty | Life Imprisonment |
| 2000 | William Berrios | Hispanic | White | Guilty | Life Imprisonment |
| 1999 | Thomas Edler | Black | Black | Guilty | Life Imprisonment |
| 1998 | David Scarbrough | White | White | Not Guilty | Life Imprisonment |
| 1998 | Thomas Gagne, Jr. | White | White | Guilty | Life Imprisonment |
| 1997 | Robert Manning | White | White | Guilty | Life Without Parole |
| 1997 | Daniel E. Hunley | White | White | Guilty | Life Imprisonment |

In the few cases that Nichols filed a notice to seek the death penalty, Nichols alleged at least four aggravating factors in each case. This is not to say there is an unwritten rule that there must be at least four aggravating factors present in the elements of a case in order for Nichols to seek the death penalty, but for Nichols "it has got to be a horrendous situation before even putting [the death penalty] on the table." I asked Nichols under which of the statutory aggravating factors was he more likely to seek the death penalty. He states, "the heinous, atrocious and cruelty aggravator . . . torture or some kind of depravity . . . would catch my attention first … and then you want to see if [the murder] was for hire because it takes a hard heart to hire to have somebody killed . . . you are an evil person; and therefore, deserve special consideration" for the death penalty. Lastly, "obviously if [the accused is] a serial killer," he or she deserves special consideration for the death penalty. "These are the first three [statutory aggravating factors] that would get a hook into a prosecutor for them to see if [the death penalty] is appropriate." In addition, Nichols personally feels a prosecutor should never put the death penalty on the table in order "to gain a bargaining position" against a defendant.

In addition to aggravating factors, Nichols believes if there is more than one perpetrator, the so-called "ring leader" should be "put into the equation" in deciding whether to seek the death penalty. Additionally, the "followers who might get caught up in the moment" should "speak to the other way," meaning followers would be less likely to have the death penalty sought against them. In terms of the types of evidence, Nichols states, "you want to make sure the types of evidence you have are almost certain to garner a conviction" before seeking the death penalty, especially DNA evidence. Nichols concedes DNA evidence is almost a necessity in obtaining a conviction in today's capital murder cases.

On a more political front, Nichols is an elected official voted into office by the people of Knox County, Tennessee. Since Nichols is an elected official and could possibly be held accountable for his decisions in possible death penalty cases during a future election should the public agree or disagree with his decisions, I asked Nichols if he weighs what Knox County citizens have to say about a particular case in which he must make a decision on whether to seek the death penalty. Nichols emphatically states, "it would be untruthful for any prosecutor to state 'I do not listen to the public' because you would be spinning that a little bit." Nichols states that people you know have an opinion about criminal cases. "People you work with, people you go to church with," and in general, people in the community have an opinion about what decision a District Attorney General should make regarding the death penalty. In his own experience, Nichols says a prosecutor is "bombarded with what people think you should do and I do listen to it . . . but we try to do it straight up and I think I have done that." Nichols says in some instances a few individuals in the Knoxville, Tennessee legal community thought Nichols was slightly too harsh in seeking the death penalty, but Nichols cannot remember anyone "that will take strong issue" with his decisions to seek the death penalty in his past cases, implying to Nichols that he and his office have "sorted through the worst of the worst" first-degree murder cases.

Another aspect of deciding whether to seek the death penalty that Nichols considers is the victim's family's input. Nichols states he always allows for family input as to whether they would like the District Attorney General to seek the death penalty, but Nichols also recognizes he "cannot let them dictate [the decision]" either. In most of the cases, the conversations Nichols has had with surviving family members has been to inform them he will not be seeking the death penalty. However, in two of Nichols' capital cases, once a conviction of first-degree murder was obtained, it was the victim's families that asked Nichols to withdraw the death penalty for

various reasons. Once Nichols has made a decision on whether to seek the death penalty, if the families disagree with his decision, Nichols simply has to accept their disappointment and proceed accordingly. He is ultimately the only person in Knox County, Tennessee that has the authority to seek the death penalty when all of the legal requirements to do so are satisfied.

District Attorney General Nichols and I discussed how race impacts his decisions to seek the death penalty. I asked Nichols in what capacity does race play a role in his decisions to seek the death penalty, and his response was a categorical "none." He went on to say that race does not enter his decision process "without any hesitation" . . . that race "has not, and will not play a role in any death penalty decision while I am in office." Nichols further states:

> [I] too keep up with the conversations going on in this country about the disproportionate numbers of black males, and I have had these types of discussions with people that I respect, but the case is what it is. We did not make up the facts. We are presented with the facts, and I have never seen [race] come into play in all the years I have been a round . . . race has never been on the table. It is always a conversation about the facts of the case and how does it apply to law. If it fits, it fits. If you're black, white, Asian, [or] whatever.

Nichols went on to comment on the disproportionate numbers of black males in the correctional system at the juvenile level. He acknowledges that while blacks constitute 11.0 percent of the Knox County population, the percentage of black juvenile inmates far exceeds 11.0 percent, but "if you look at the nature of the crime, you will see that they are out there for about the same crime whether they are black or white. It seems recently that some of our young black men seem to get into positions where there is a lot more devastation because there are usually firearms involved." Therefore, Nichols contends race does not impact a decision to seek the death penalty in his office. Nevertheless, Table 3 examines the statistics of the seven death

penalty cases that proceeded to a bifurcated trial process under Nichols, which indicates Nichols has sought the death penalty more frequently when both defendant and victim are white.

**Table 3 Death Penalty Cases Proceeding to Trial With Racial Composition of Defendants and Victims Under District Attorney General Randall Nichols, 1992 to 2007**

| Year | Defendant Name | Defendant Race | Victim Race | Proceeded to Trial | Sentence |
|---|---|---|---|---|---|
| 1996 | Christa Gail Pike | White | White | Yes | Death Sentence |
| 1998 | Dennis W. Suttles | White | White | Yes | Death Sentence |
| 1998 | David Scarbrough | White | White | Yes | Life Imprisonment |
| 1999 | William P. Torres | Black | Black | Yes | Death Sentence |
| 1999 | James A. Mellon | White | White | Yes | Death Sentence[17] |
| 2003 | Michael L. Stanton | White | White | Yes | Life Without Parole |
| 2003 | Howard Thomas | White | White | Yes | Life Imprisonment |

### *Interview of District Public Defender Mark Stephens*[18]

In order to obtain a broader view of the administration of the death penalty, I interviewed Knox County District Public Defender Mark Stephens. Prior to becoming public defender, Stephens worked as criminal defense counsel in private practice and later worked as an assistant district attorney under former Knox County District Attorney General Ed Dossett. Stephens was first elected to district public defender in 1990 and has since been reelected twice. During

[17] Defendant Mellon's death sentence in 1999 was overturned by the Tennessee Criminal Court of Appeals, and in 2006 was sentenced to life with the possibility of parole.

[18] Interview conducted of Knox County, Tennessee District Public Defender Mark Stephens on June 19, 2009 at approximately 9:00am. All information contained in this section is a product of this interview unless otherwise noted.

Stephens' tenure as a prosecutor, he "never handled, on any level, a case where the State contemplated the death penalty as a possible punishment." However, as a private defense attorney and district public defender, Stephens has "had involvement in a number of death eligible cases," which he estimates at over 100 cases. Stephens uses the term "death eligible" to refer to cases where a defendant has been "charged with premeditated or felony murder," and as a result are eligible for the death penalty should the district attorney general file a formal notice of intent to seek the death penalty "setting out the aggravating circumstances they believe are applicable." Therefore, Stephens has handled numerous "death eligible" cases that did not "technically" become formal death penalty cases where the prosecution sought the death penalty. "Over the course of [his] career, [he] has tried three cases where the state sought the death penalty." Two of the defendants "were acquitted of the capital murder charge." In the third case, "the defendant received a death sentence, but [Stephens] was later successful in getting that death sentence reversed," and the defendant is now serving a life sentence.

As a product of Stephens' experiences as district public defender and private defense counsel, he has formed his own general opinions regarding a prosecutor's decision to seek the death penalty. Stephens states, "the decision to seek death, in my view, is such a subjective thing that it would be hard for anyone to prove [that] the race of the defendant and victim were factors in seeking death." Stephens went on to comment that he, "believe[s] the criminal justice system is a racist system in general," and "I don't know why anyone should believe that cases involving capital punishment would be any different." Stephens also believes the political pressures of elected office may influence such decisions on whether to seek the death penalty. Stephens admits that any elected official, including a district attorney general, must keep his or her

constituency happy in order to stay in office, and in some instances when public outcry calls for the death penalty, a prosecutor may be more inclined to seek the death penalty.

In addition, "with respect to the arbitrariness of the application of Tennessee's death penalty, Stephens finds it troubling that a first-degree murder case might become a death penalty case in one district, while the same case with the same facts and evidence may not be a death penalty case in a different judicial district with a different district attorney general." For Stephens, this suggests the death penalty system is flawed and calls for either abolition or serious reform of the death penalty in Tennessee. According to Stephens, should Tennessee continue to utilize the death penalty, he believes there should be uniform, formal guidelines created for each Tennessee district attorney general to follow.[19] While this would take away considerable discretion currently vested in each district attorney general, these uniform guidelines would construct a death penalty system that would be less arbitrary and remove potential for racial discrimination with regard to how prosecutors decide to seek the death penalty.

In terms of juries, Stephens believes "that jurors bring to the deliberative process their preconceived racial stereotypes, influencing verdicts." I asked Stephens other than race, what factors he believes have the most impact on a juror's decision to impose the death penalty. His reply was, "the facts of the case." Stephens states the facts of the case impact the outcome of death penalty cases "not because facts ever justify the death penalty, but sometimes [he] believe[s], the facts have such an emotional tug on jurors that they return an 'emotional' verdict." However, Stephens is also concerned about the presumption of innocence requirement

[19] Stephens suggested modeling such guidelines after those created for the 20th Judicial District Attorney General located in Davidson County, Tennessee. A copy of which is attached in Appendix A to this dissertation.

afforded to all criminal defendants within the criminal justice system, not simply defendants in which prosecutors have sought the death penalty. Stephens states:

> I generally do not believe jurors afford any criminal defendant, including those facing the death penalty, with the presumption of innocence. 'Death qualified' jurors are more likely to convict according to numerous studies. Since death eligible cases all have bad [case] facts, and death qualified jurors are more likely to convict, and jurors generally, seem to be affording defendants less of a presumption of innocence, there is, in my view, a greater likelihood that defendants facing the death penalty are at a greater risk of being convicted and given death.

Based on over 29 years of experience as a practicing attorney, it is Stephens' general belief that "race plays a role in all aspects of the criminal justice system." Stephens went on to comment that he:

> Believes [race] plays a role in determining police practices, who gets arrested, who gets prosecuted, whose case gets worked out and whose doesn't, who goes to jail or prison, who gets probation, who gets released on parole and who doesn't, [and] who faces death and who doesn't. In my view, the system is racist and there isn't an aspect of it that race doesn't touch and influence . . . race influences the machinery of death just like it influences everything else.

### *Interview of Criminal Court Judge Mary Beth Leibowitz*[20]

In addition to interviewing the prosecutor and the public defender, I also interviewed Judge Mary Beth Leibowitz, the senior Knox County Criminal Court Judge. Judge Leibowitz has been on the bench since 1989, and has handled several death penalty cases both as an attorney and judge. As a defense attorney, Judge Leibowitz represented a white defendant charged with the brutal and violent first-degree murder of a white victim. The prosecution

[20] Interview conducted of Knox County Criminal Court Judge Mary Beth Leibowitz on July 17, 2009 at approximately 11:00am. All information contained in this section is a product of this interview unless otherwise noted.

sought the death penalty; however, the defendant was sentenced to life.[21] Since being appointed Knox County Criminal Court Judge, Judge Leibowitz has presided over many first-degree murder cases, and several of them have been death penalty cases. One of the first death penalty cases the Judge presided over was a post-conviction relief motion by defendant Terry Lynn King. Defendant King, white, was convicted and sentenced to death for the first-degree murder of a white victim.[22] Upon hearing the motion, Judge Leibowitz upheld the defendant's conviction and death sentence.[23]

The first death penalty trial Judge Leibowitz presided over was the first-degree murder case against Christa Gail Pike. Defendant Pike, white, was sentenced to death after being convicted of the brutal torture and violent murder of a white female victim. The prosecution sought the death penalty against Pike and the jury sentenced her to death after finding the presence of two aggravating factors: 1) the murder was heinous, atrocious or cruel in necessary to produce death because the victim was alive for many of the injuries sustained, including a pentagram that was carved into the victim's chest, and 2) the murder was committed to avoid arrest or prosecution based on the defendant's statements to the police that the injuries were inflicted to prevent the victim from reporting the assault to the police and to prevent the

[21] Judge Leibowitz added at this juncture in Tennessee's criminal justice system, there was only life imprisonment. There was not a sentencing option for juries to sentence a defendant to life without the possibility of parole. Therefore, at this time, the defendant would have been eligible for parole in the future.

[22] The race of the defendant and victim in this case is missing data in the Rule 12 database. Judge Leibowitz is almost certain the defendant and victim are white.

[23] According to the Summary of Death Penalty Opinions created by the Tennessee Courts, the defendant forced the victim into the trunk of his car, drove to a remote location, and shot the victim in the back of the head execution style. The jury cited four aggravating factors in their decision to impose death: 1) felony murder, 2) the murder was especially heinous, atrocious and cruel in that it involved torture and depravity of the mind, 3) the murder was for the purpose of avoiding, interfering with, or preventing the lawful arrest or prosecution, and 4) the defendant was previously convicted of one or more felonies involving violence.

defendant from going to prison.[24] Judge Leibowitz also presided over the first-degree murder trial of Dennis Wade Suttles, white, who murdered his ex-fiancé in front of the victim's fifteen year-old daughter, also white.[25] The prosecution sought the death penalty and the jury sentenced him to death. Furthermore, the Judge presided over the first-degree murder trial of Anthony T. Jones, who along with three co-conspirators murdered the victim over one dollar and his watch. Defendant Jones and one of his co-conspirators, James Allen Mellon were "noticed for the death penalty." Mellon "entered a guilty plea" and "received a sentence upon the condition of his truthful testimony" against defendant Jones, but later "withdrew his plea." As a result, the jury sentenced defendant Mellon to death.[26] This death sentence was upheld by the Tennessee Criminal Court of Appeals, but was later reversed by the Tennessee Supreme Court, and he ultimately received a sentence of life with the possibility of parole. Mellon and the victim were both white. Defendant Jones, black, pled guilty and received a sentence of life without the possibility of parole. Judge Leibowitz also presided over the first-degree murder trial of Michael Stanton in which the prosecution sought the death penalty, but the jury sentenced him to life without the possibility of parole. Defendant Stanton, white, was convicted of the brutal murder of his step-father-in-law, also white.

[24] Specific reasons for jury finding the aggravating factors were obtained from the Summary of Tennessee Death Penalty Opinions created by the Tennessee Court System.

[25] According to the Summary of Death Penalty Opinions created by the Tennessee Courts, when the victim attempted to runaway from the defendant, the defendant slashed the victim's throat and stabbed the victim repeatedly. The victim's daughter was only three feet away, and when the attack was over, the defendant cleaned his knife, smiled at the victim's daughter and fled the scene. The jury cited two aggravating factors in support of their death sentence: 1) the defendant was previously convicted of one or more felonies whose statutory elements involved the use of violence and 2) the murder was especially heinous, atrocious, and cruel and that it involved torture or serious physical abuse beyond that necessary to produce death.

[26] The jury's death sentenced was based on the aggravating factor that the defendant had been previously convicted of a violent felony according the Summary of Tennessee Death Penalty Opinions.

I asked the Judge, based on her own observations and experiences while on the bench, whether there appears to be any case characteristics that are most likely to trigger the prosecution to seek the death penalty. Upon reflection of the cases in which she has presided and where the prosecution sought the death penalty, the Judge feels domestic related murders are the most frequent types of murders in which the prosecution has sought the death penalty while she has been on the bench. Defendant Pike murdered her victim during the course of a "domestic argument" related to Pike's boyfriend. The murder of defendant Suttles' ex-fiancé was a domestic related killing motivated by obsession or control. Defendant Stanton's murder of his step-father-in-law was also motivated by obsession or control. The two remaining murder cases against Jones and Mellon in which the Judge presided were robbery related. Therefore, overall, there appears to be a "general theme" of domestic related murders in which the prosecution seeks the death penalty. The Judge also notes in these domestic related killings "the victim's families were extremely active and persistent" in supporting a decision to seek the death penalty.

I also asked Judge Leibowitz whether race has been raised in any of the death penalty cases in which she has presided. The judge states, "no, and in fact, I have been amazed at how little race has had to do with juries and their verdicts." In terms of deliberations, the Judge does not believe the race of the defendant, victim, or the racial interaction of the two plays a role in whether a jury returns a guilty verdict or a death sentence. In her experience, the Judge feels overall jurors "actually listen to what the court says, and they try it, and it is a tremendously traumatic thing regardless of race for the jury." However, she also recognizes, "within the jury box, there are people affected by race. But generally however, [she] has not found [jurors] to be too terribly concerned about that because frankly these cases have been white [defendants] and white [victims]." Furthermore, the Judge observes within Knox County jurors are relatively

educated, and as a result, they "reason things out based on the facts" of the case, rather than based on race.

In terms of aggravating factors, Judge Leibowitz observes heinousness of the crime tends to be the most influential in whether a prosecutor seeks the death penalty and whether a jury imposes a death sentence. The Judge remembers in the Suttles case, the victim's daughter testified in "graphic detail" of how the defendant approached her mother and slashed her throat, which leaves a lasting impact on both prosecutor and jury. Furthermore, Judge Leibowitz has not observed defendants of one race produce more devastation or heinous crimes as compared to others, but rather is "generally even across the races" in her opinion. The Judge observes that a defendant's prior criminal history influences both a prosecutor's decision to seek death and the jury's decision to impose the death penalty. In her experience, overall, death penalty defendants have prior felony convictions.

As it relates to jury behavior, Judge Leibowitz has observed during her tenure on the bench that socioeconomic classifications may have a more influential impact on the outcome of death penalty cases than race. To illustrate, the Judge states:

> A person of color who has [had] success in life, [and] comes in as a juror with a shirt and tie might be harder on a black defendant or a defendant of the same race. A defendant [that] is more presentable might have a [more favorable jury outcome], than one who has less education [and] less social grace.

Also, Judge Leibowitz believes mental health issues of the defendant influences the outcome of death penalty cases, which is tied together with socioeconomic classifications. The judge observes that "where an offense occurs," such as a [housing] project or an area where there is heavy use of drugs," impacts whether the death penalty is sought and imposed. Judge Leibowitz has observed murders in these areas are not generally prosecuted as death penalty cases

"primarily because [the judge] think[s] no one really cares and no one wants to make a big splash." However, some of these cases "call out" for the death penalty based on the facts of the case under Tennessee law, and the Judge believes these are now the kinds of cases being prosecuted as death penalty cases. However, the Judge observes overall "most citizens who come in as jurors, and that is really what it is all about because the jury makes the decision, are willing to serve the public, and will work with the evidence and the instructions given to them by the judge" to reach their decision. The Judge went on to qualify this statement by stating, "this is only because we are very careful to try cases fairly."

### *Interview of Criminal Court Judge Richard Baumgartner*[27]

Judge Richard Baumgartner has been a Knox County Criminal Court Judge since August 1992 and has been on the bench only while Randall Nichols has been Knox County District Attorney General. The Judge has presided over numerous first-degree murder cases in Knox County, Tennessee, and too numerous to recall in any systematic manner. However, Judge Baumgartner has presided over two first-degree murder cases in which notice of intent to seek the death penalty was filed by the prosecution, the defendant convicted, and the case proceeded to the sentencing phase of the bifurcated trial structure. The most notable for the Judge is defendant Howard "Wally" Thomas. A jury convicted defendant Thomas of first-degree murder and was sentenced to life without parole upon request from the victim's family to return a sentence of life imprisonment rather than the death penalty.

[27] Interview conducted of Knox County Criminal Court Judge Richard Baumgartner on July 17, 2009 at approximately 10:00am. All information contained in this section is a product of this interview unless otherwise noted.

I asked the Judge whether during his tenure on the bench he has observed any trends in the types of first-degree murder cases in which the prosecution seeks the death penalty. Based on the Judge's observations of prosecutorial behavior, the Judge states, "it is not based on race . . . or any particular method of homicide, but rather it is based on the nature of the crime itself . . . the horrific nature and details of the crime itself." One case that Judge Baumgartner remembers most prominently where the prosecution sought the death penalty is the first-degree murder case against defendant Thomas "Zoo Man" Huskey.[28] Defendant Huskey was accused of the brutal rape, torture and first-degree murder of four women. Another example includes the first-degree murder case against Howard "Wally" Thomas in 2003 where the prosecution sought the death penalty. In this case, the defendant simply walked up to a vehicle on the side of the interstate and shot the victim for no apparent reason. The victim's wife was also present for the murder. According to the facts, the victim died in his wife's arms while the defendant attempted to shoot the wife as well, but the firearm would not discharge. The wife requested the jury to impose a sentence of life, and the jury returned a sentence of life. Defendant Thomas, the victim and the victim's wife were all white. According to Judge Baumgartner there was testimony presented at trial that indicated Thomas simply wanted to "know what it was like to kill someone." The third first-degree murder case in which the prosecution sought the death penalty that Judge Baumgartner remembers is the consolidated case against William and Kimberly Berrios in 2000 for the robbery/burglary related killing where the victim was held hostage. William Berrios is Hispanic, and Kimberly Berrios white. The Berrois' victim was white and their neighbor.

[28] State of Tennessee v. Huskey is not contained in the Rule 12 database because the defendant was only convicted of multiple counts of rape. The jury could not come to a verdict on the murder charges. District Attorney General Nichols sought the death penalty in this case; however, the jury believed the defendant to be mentally ill, but could not decide if his mental illness was a defense. As a result, Huskey was never convicted of the murders.

Although the prosecution sought the death penalty, both defendants pled guilty and received a sentence of life with the possibility of parole. As a result, Judge Baumgartner observes whether a prosecutor seeks the death penalty is truly a reflection of the facts of the case and "at least anecdotally, there is not a racial [component to the] decision." Furthermore, Judge Baumgartner believes District Attorney General Nichols and his staff has been very responsible" in choosing the cases where the death penalty will be sought, and in doing so have reserved the death penalty for the cases that are the "worst of the worst."

In terms of juries, Judge Baumgartner believes based on his observations, that race does not play a role in death penalty cases. As with prosecutors, the Judge believes the cruelty and heinousness of the murder has the biggest impact on whether a jury imposes death. For the judge, the facts of the case are the driving force in the sentencing phase of the bifurcated trial structure. The judge states in his experience, "the only time race becomes an issue is when counsel protests the constitutionality of the death penalty in its general application," not that the facts of the case suggest racial undertones or racial bias. However, the Judge recognizes a disproportionate number of black defendants appear before his court. I asked the Judge whether his time on the bench has tended to indicate blacks appear generally to be engaged in more heinous killings as compared to white defendants in an attempt to explain the disproportionate numbers. The Judge states based solely on his own observations and experiences while on the bench, "the opposite is true . . . I think the more heinous crimes [that] I have seen are committed by Caucasians rather than African-Americans." The Judge went on to say that it is his perception that "defendants who commit crime for no reason other than because [they are] mean-spirited people and have no redeeming qualities are Caucasian."

***Current Death Penalty Cases Pending in Knox County, Tennessee***

Currently, there are four death penalty cases pending in Knox County, Tennessee in which District Attorney General Randall Nichols has sought the death penalty, and Judge Richard Baumgartner is the presiding Judge in each of the cases. Each of the four defendants are allegedly linked to the brutal carjacking, kidnapping, rape and murder of a young Knoxville couple in January 2007. According to reports from the Knox News Sentinel, Channon Christian, and her boyfriend, Christopher Newsom, were allegedly carjacked and taken to a "house … where Christian and Newsom were forced inside at gunpoint."[29] According to further reports, Newsom was shot at least three times, "bound and his body wrapped up in bedding and set afire."[30] Once his body was found, it would be two days before Christian's body would be discovered "stuffed in a trash can."[31] On February 1, 2007, Randall Nichols announced that his office had obtained a 46-count indictment in this case against Letalvis "Rome" Cobbins, Lemarcus "Slim" Davidson, George "Detroit" Thomas and Vanessa Coleman "with the kidnapping, rape and murder of Channon Christian and the kidnapping and slaying of her boyfriend Christopher Newsom."[32] According to the indictment, Christian and Newsom:

> Were confronted by gunmen, bound, forced at gunpoint into the Chipman Street house where Davidson had been living, then attacked, raped and killed . . . Davidson, Cobbins and Thomas all allegedly were involved in the carjacking itself … Coleman is not accused in the carjacking, but that she joined the violent crime

[29] Don Jacobs and Jamie Satterfield, Knox News Sentinel, January 13, 2007, "Details of Double Slaying Emerge," http://www.knoxnews.com/news/2007/jan/13/details-of-double-slaying-emerge/ accessed July 23, 2008.

[30] Don Jacobs and Jamie Satterfield, Knox News Sentinel, January 13, 2007, "Details of Double Slaying Emerge," http://www.knoxnews.com/news/2007/jan/13/details-of-double-slaying-emerge/ accessed July 23, 2008.

[31] Don Jacobs and Jamie Satterfield, Knox News Sentinel, January 13, 2007, "Details of Double Slaying Emerge," http://www.knoxnews.com/news/2007/jan/13/details-of-double-slaying-emerge/ accessed July 23, 2008.

[32] Jamie Satterfield, Knox News Sentinel, February 1, 2007, "Slaying-Carjacking Record Unsealed," http://www.knoxnews.com/news/2007/feb/01/slaying-carjacking-record-unsealed/ accessed July 23, 2008.

> spree once the couple was forced into the Chipman Street house. Search warrant affidavits . . . revealed that Coleman was in the house when Newsom and Christian were attacked.[33]

The indictment revealed, "Newsom was raped . . . and all four suspects - Cobbins, Davidson, Thomas and Coleman - are alleged to have participated in committing a particular sex act against Newsom. The same four are accused of committing three distinct acts of rape against Christian."[34] In addition, each of the four defendants are "accused of plotting Christian's death as well as killing her and Newsom in the commission of kidnapping, rape and theft;" however, "only Cobbins, Davidson and Thomas are accused in the premeditated murder[s] . . . in the commission of robbery."[35]

During our discussion, which is noted above, Nichols stated in each case where he has sought the death penalty as District Attorney General, he has never cited less than four aggravating factors. These four death penalty cases are no different where the notices of intent to seek the death penalty cite eight of the fifteen statutory aggravating factors against each defendant, including being a violent felon before this case, torture of both victims, and mutilation of the Newsom's body after his death.[36] Nichols also stated he reserves the death penalty for "the worst of the worst" and cases that involve torture and some kind of depravity are

[33] Jamie Satterfield, Knox News Sentinel, February 2, 2007, "Files in Couples Slaying Opened," http://www.knoxnews.com/news/2007/feb/02/files-in-couples-slayings-opened/ accessed July 23, 2008.

[34] Jamie Satterfield, Knox News Sentinel, February 2, 2007, "Files in Couples Slaying Opened," http://www.knoxnews.com/news/2007/feb/02/files-in-couples-slayings-opened/ accessed July 23, 2008.

[35] Jamie Satterfield, Knox News Sentinel, February 2, 2007, "Files in Couples Slaying Opened," http://www.knoxnews.com/news/2007/feb/02/files-in-couples-slayings-opened/ accessed July 23, 2008.

[36] Jamie Satterfield, Knox News Sentinel, December 8, 2007, "Prosecutor Cites 8 Reasons Against Cobbins in Christian-Newsom Case: Death Notice Filed in Slayings," http://www.knoxnews.com/news/2007/dec/08/death-notice-filed-in-slayings/ accessed July 23, 2008.

more likely to catch his attention and be considered for the death penalty. Again, these four cases are no different given the facts that have been released to the press and the public.

On the issue of race, both victims in this case are white, whereas all four defendants are black. Claims of racial prejudice specific to these four death penalty cases have not surfaced in Knox County; however, on May 19, 2009, defense counsel representing defendant Cobbins filed a motion[37] before Criminal Court Judge Richard Baumgartner requesting a dismissal of "the death penalty [as a possible sentence] because of racial disproportionality" in its application.[38] Judge Baumgartner denied the motion on May 29, 2009.[39] In addition to this motion in Tennessee state court, one individual, Eric Boyd, linked to the double murder was tried and convicted of being an accessory after the fact to the murders in the United States District Court for the Eastern District of Tennessee. Before the trial began, defense attorney Phil Lomonaco filed a motion to dismiss alleging racial bias on the part of federal prosecutors on the grounds that "prosecutors failed to charge Daphne Sutton, a white female Lomonaco alleged was inside the Chipman Street house while carjacking victim Channon Christian was still alive."[40] In response, Assistant United States Attorneys David Jennings and Tracy Stone acknowledged:

> Sutton visited the house sometime after Newsom was killed . . . Sutton, however, never saw Christian . . . because the evidence known to the United States at this time indicates that Vanessa

[37] A copy of defendant Cobbins' Motion to Dismiss Death Penalty Because of Racial Disproportionality can be found in Appendix C to this dissertation.

[38] Yvette Martinez, WBIR, May 21, 2009, "Defense Uses Race to Argue Against the Death Penalty," http://www.wbir.com/news/local/story.aspx?storyid=88287 accessed July 13, 2009.

[39] Yvette Martinez, WBIR, Mar 29, 2009, "Long Day in Court Ends with Encouragement for Victim's Families," http://www.wbir.com/video/default.aspx?maven_playerId=immersiveplayer&maven_referralPlaylistId=playlist&maven_referralObject=1136646804 accessed July 13, 2009.

[40] Jamie Satterfield, Knox News Sentinel, April 2, 2008, "Feds: Carjack Victim Hidden in Bathroom When Suspect's Girlfriend Visited," http://www.knoxnews.com/news/2008/apr/02/feds-carjack-victim-hidden-bathroom-when-suspects-/ accessed July 23, 2008.

> Coleman was guarding Channon Christian in the bathroom during the five minutes or so Ms. Sutton was there, and that Ms. Sutton had no idea Channon was in the house.[41]

Ultimately however, Lomonaco's motion was denied by United States District Court Judge Thomas Varlan who stated, "the defendant has not presented evidence the Government was motivated by racial animus."[42] The trial proceeded where Boyd was convicted of accessory after the fact and later sentenced to 18 years in prison, the maximum under the federal sentencing guidelines.[43]

I asked Randall Nichols whether he foresees any similar racially charged motions in the State prosecutions, and he states, "As F. Lee Bailey told me one time, in the big one everything is fair, and I am never surprised at the imagination of defense counsel . . . and I do not get angry at that because they are doing their job." Nichols knows the attorneys quite well who have taken on the job of defending these defendants, with the exception of the attorneys representing defendant Coleman, and he "respects them all" and would probably be disturbed if they did not represent their "clients to the best of their ability," including attempting to get a case thrown out on the grounds of racial prejudice. I also asked the same question of District Public Defender Mark Stephens. His reply was very similar in that it is possible to foresee race becoming an issue in the state prosecutions as it did in the federal case against Eric Boyd. However, Stephens does not believe it is a foregone conclusion that race will become an issue in these pending death

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[41] Jamie Satterfield, Knox News Sentinel, April 2, 2008, "Feds: Carjack Victim Hidden in Bathroom When Suspect's Girlfriend Visited," http://www.knoxnews.com/news/2008/apr/02/feds-carjack-victim-hidden-bathroom-when-suspects-/ accessed July 23, 2008.

[42] Jamie Satterfield, Knox County News Sentinel, April 4, 2008, "Judge Sees No Racial Bias; First Trial in Fatal Carjacking Starts Monday," http://www.knoxnews.com/news/2008/apr/04/first-carjacking-trial-still/ accessed July 23, 2008.

[43] Hana Kim, WATE Channel 6 News Station, October 14, 2008, "18 Years for Boyd in Newsom/Christian Murders," http://www.wate.com/Global/story.asp?s=9180894 accessed May 27, 2009.

penalty cases, but believes defense counsel are doing their jobs in providing zealous representation should race become an issue.

I also discussed these cases with Judge Baumgartner. While he is limited by judicial ethics in the statements he can make, he states he has never seen race become an issue in a first-degree murder case other than protests on the constitutionality of the death penalty itself. In the pending cases, defense counsel previously requested Judge Baumgartner to rule the Tennessee death penalty unconstitutional due to the disproportionate numbers of blacks being sentenced to death; however, the Judge denied the motion. In these current death penalty cases, the Judge says he has not seen "any evidence of any racial overtones in the facts of the case itself" and does not expect to see any motions raised by the defense to suggest otherwise.

Since my discussions with Knox County legal practitioners, three of the four death penalty cases have since concluded. In August 2009, a "diverse jury" was selected from Nashville, Tennessee in Davidson County for the trial of defendant Letalvis Cobbins.[44] While the jury was selected from Davidson County, the trial was held in Knox County, Tennessee. The jury was composed of one Asian man, one Hispanic man, two black men, one white man, five black women, and two white women.[45] The jury alternates included three white men and one black man.[46] After only one-and-a-half days of deliberations, the jury found Cobbins guilty of 33 counts, including first-degree murder of Christian and facilitation of first-degree felony

[44] Hana Kim, WATE Channel 6 News Station, August 14, 2009, "Diverse Jury Seated for Cobbins Murder Trial," http://www.wate.com/Global/story.asp?S=10930607 accessed December 14, 2009.

[45] Hana Kim, WATE Channel 6 News Station, August 14, 2009, "Diverse Jury Seated for Cobbins Murder Trial," http://www.wate.com/Global/story.asp?S=10930607 accessed December 14, 2009.

[46] Hana Kim, WATE Channel 6 News Station, August 14, 2009, "Diverse Jury Seated for Cobbins Murder Trial," http://www.wate.com/Global/story.asp?S=10930607 accessed December 14, 2009.

murder of Newsom.[47] Cobbins was also convicted of especially aggravated robbery, especially aggravated kidnapping with a weapon, aggravated rape with a weapon, aggravated rape with bodily injury, aggravated rape while aided by others and theft of property.[48] After hearing evidence on aggravating and mitigating factors during the sentencing phase, the jury sentenced Cobbins to life without the possibility of parole.[49]

The second defendant tried in Knox County, Tennessee was Lemarcus Davidson, whose trial began in October 2009. Davidson decided to be tried by a Knox County jury rather than an outside jury. Davidson, the "alleged ringleader," was tried by seven women and five men, which consisted of eleven whites and one black man.[50] Six jury alternates were chosen as well, which included three white men and three white women.[51] Davidson was convicted of "all the murder charges and several other crimes," including rape of Christian, facilitation of rape of Newsom, especially aggravated robbery, especially aggravated kidnapping, aggravated rape and theft.[52] After hearing evidence of aggravating and mitigating factors, the jury "unanimously" voted to give Davidson the death penalty on each of the "four murder charges," which included two first-degree felony murder charges and two premeditated first-degree murder" charges in the deaths of

[47] Hana Kim, WATE Channel 6 News Station, August 25, 2009, "Letalvis Cobbins Found Guilty in Christian-Newsom Murders," http://www.wate.com/Global/story.asp?S=10984873 accessed December 14, 2009.

[48] Hana Kim, WATE Channel 6 News Station, August 25, 2009, "Letalvis Cobbins Found Guilty in Christian-Newsom Murders," http://www.wate.com/Global/story.asp?S=10984873 accessed December 14, 2009.

[49] Hana Kim, WATE Channel 6 News Station, August 26, 2009, "Cobbins Gets Life Without the Possibility of Parole," http://www.wate.com/Global/story.asp?S=10991681 accessed December 14, 2009.

[50] Hana Kim, WATE Channel 6 News Station, October 2, 200, "Jury Seated in Davidson Trial," http://www.wate.com/Global/story.asp?S=11246184 accessed December 14, 2009.

[51] Hana Kim, WATE Channel 6 News Station, October 2, 200, "Jury Seated in Davidson Trial," http://www.wate.com/Global/story.asp?S=11246184 accessed December 14, 2009.

[52] Hana Kim, WATE Channel 6 News Station, October 28, 2009, "Davidson Guilty in Christian-Newsom Murders Case," http://www.wate.com/Global/story.asp?S=11400347 accessed December 14, 2009.

Christian and Newsom.[53] The aggravating factors found by the jury included "the torture of the victims and their ability to identify the defendant," and the jury also concluded these aggravating factors "outweighed all mitigating circumstances brought by the defense."[54]

The trial of defendant George Thomas began in December 2009. A jury selected from Hamilton County in the Chattanooga, Tennessee area tried Thomas in Knox County.[55] The jury was composed of seven women and five men; their race unknown, and only deliberated Thomas' guilt or innocence for five-and-a-half hours.[56] The jury convicted Thomas of all 38 counts listed in the indictment, including two counts of first-degree murder, two counts of felony murder, especially aggravated robbery, especially aggravated kidnapping, aggravated rape and theft of property.[57] Thomas was later sentenced to life without the possibility of parole on each of the first-degree murder and felony murder convictions.[58]

On December 9, 2009, Judge Richard Baumgartner scheduled the trial date for the last defendant in the Christian and Newsom murders, Vanessa Coleman.[59] Coleman's trial is

[53] Hana Kim, WATE Channel 6 News Station, October 30, 2009, "4 Death Sentences for Davidson in Christian-Newsom Murders," http://www.wate.com/Global/story.asp?S=11412794 accessed December 14, 2009.

[54] Hana Kim, WATE Channel 6 News Station, October 30, 2009, "4 Death Sentences for Davidson in Christian-Newsom Murders," http://www.wate.com/Global/story.asp?S=11412794 accessed December 14, 2009.

[55] Hana Kim, WATE Channel 6 News Station, December 1, 2009, "Third Trial Begins in Christian-Newsom Murders Case," http://www.wate.com/Global/story.asp?S=11596794 accessed December 14, 2009.

[56] Hana Kim, WATE Channel 6 News Station, December 8, 2009, "Thomas Found Guilty of Christian-Newsom Murders," http://www.wate.com/Global/story.asp?S=11639316 accessed December 14, 2009.

[57] Hana Kim, WATE Channel 6 News Station, December 8, 2009, "Thomas Found Guilty of Christian-Newsom Murders," http://www.wate.com/Global/story.asp?S=11639316 accessed December 14, 2009.

[58] Hana Kim, WATE Channel 6 News Station, December 9, 2009, "Thomas Gets Life Without Parole for Christian-Newsom Murders," http://www.wate.com/Global/story.asp?S=11646588 accessed December 14, 2009.

[59] Hana Kim, WATE Channel 6 News Station, December 9, 2009, "Trial Date Set for Coleman in Christian-Newsom Murders Case," http://www.wate.com/Global/story.asp?S=11647622 accessed December 14, 2009.

currently scheduled for May 10, 2010, and she is expected to request a jury from outside Knox County, Tennessee.[60]

### *Conclusion*

From my discussions with each of the legal practitioners in this chapter, I concluded that overall they believe race is not a factor in the administration of the Knox County, Tennessee death penalty, which is contrary to research in the area. Each has provided a unique inquiry into how race factors into the administration of the death penalty. Nichols is adamant that race is excluded from his office and that jurors tend to be more concerned with the evidence and the lured details of the case. Stephens agrees with Nichols that jurors tend to be concerned with the details, but that the facts result in such an emotional 'tug' on jurors that they return 'emotional' verdicts. During their tenure as Knox County Criminal Court Judges, Leibowitz and Baumgartner have not observed that the race the defendant, the race of the victim, or the racial interaction between the two have an impact on whether prosecutors seek or whether juries impose death. Simply by examining the cases in which each has participated, the majority of the cases resulting in a death penalty notice and/or a death sentence in Knox County have been committed by white defendants against white victims. Furthermore, based on the Judges' experiences and observations, the most heinous murders that have been prosecuted in Knox County have been committed by white defendants.

However, the cases in which each individual participated in Knox County are few in comparison to the number of first-degree murder cases across Tennessee over the 30-year period

[60] Hana Kim, WATE Channel 6 News Station, December 9, 2009, "Trial Date Set for Coleman in Christian-Newsom Murders Case," http://www.wate.com/Global/story.asp?S=11647622 accessed December 14, 2009.

encompassed by the data to be analyzed in Chapter Five. Therefore, in order to determine whether race plays any role in the administration of the death penalty in the State of Tennessee, it is imperative to analyze all of the first-degree murder convictions across the state, including death penalty and non-death penalty cases.

## CHAPTER 4: HYPOTHESES, DATA & METHODOLOGY

### *Hypotheses*

The body of literature focusing on whether racial classification impacts the outcome of capital cases is quite extensive as referenced in Chapter Two. Given the relevant literature, there are nine hypotheses that need to be examined in order to determine whether race is a statistically significant predictor in the administration of the Tennessee death penalty. The hypotheses to be tested in this dissertation are the following:

**$H_1$: In the overall application of the Tennessee death penalty, black defendants are more likely to be sentenced to death.**

**$H_2$: In the overall application of the Tennessee death penalty, defendants with white victims are more likely to be sentenced to death.**

**$H_3$: In the overall application of the Tennessee death penalty, black defendants with white victims are more likely to be sentenced to death.**

**$H_4$: Tennessee prosecutors are more likely to seek the death penalty in death eligible cases when a defendant is black.**

**$H_5$: Tennessee prosecutors are more likely to seek the death penalty in death eligible cases when a victim is white.**

**$H_6$: Tennessee prosecutors are more likely to seek the death penalty in death eligible cases when a defendant is black and the victim is white.**

**$H_7$: Tennessee juries are more likely to impose the death penalty in death eligible cases when a defendant is black.**

**$H_8$: Tennessee juries are more likely to impose the death penalty in death eligible cases when a victim is white.**

**$H_9$: Tennessee juries are more likely to impose the death penalty in death eligible cases when a defendant is black and the victim is white.**

In testing these nine hypotheses, it becomes possible to verify three important aspects of the Tennessee death penalty. First, I will be able to determine whether there is a statistically

significant relationship between the race of the victim and/or defendant and the sentencing outcomes of first-degree murder cases *overall* across the State of Tennessee. Second, I will be able to determine whether there is a statistically significant relationship between race of the victim and/or defendant and a *prosecutor's decision* to seek the death penalty. Third, I will be able to determine whether there is a statistically significant relationship between race of the victim and/or defendant and a *jury's decision* to impose the death penalty. In sum, testing these nine hypotheses should give a new understanding of how race impacts the administration of the death penalty in Tennessee.

### *Hypotheses: The Overall Application of the Death Penalty and Race*

Three of my hypotheses relate specifically to the impact of race on the overall application of the death penalty. In testing hypothesis one ($H_1$), I will be able to determine whether the race of a defendant alone, irrespective of the race of the victim(s), has a statistically significant impact on whether defendants are sentenced to death overall. In testing hypothesis two ($H_2$), I will be able to determine whether the race of the victim(s), irrespective of the race of the defendant, has a statistically significant impact on whether defendants are sentenced to death overall. Lastly, in testing hypothesis three ($H_3$), I will be able to determine whether the racial relationship between the defendant and the victim(s) has a statistically significant impact on whether defendants are sentenced to death overall. These three hypotheses should provide some insight into how race impacts the overall application of the death penalty in Tennessee.

### *Hypotheses: Prosecution and Race*

Three of my hypotheses relate specifically to the impact of race on a prosecutor's decision to seek the death penalty. In testing hypothesis four ($H_4$), I will be able to determine

whether the race of a defendant alone, irrespective of the race of the victim(s), has a statistically significant impact on a prosecutor's decision to seek the death penalty. In testing hypothesis five ($H_5$), I will be able to determine whether the race of the victim(s), irrespective of the race of the defendant, has a statistically significant impact on a prosecutor's decision to seek the death penalty. Lastly, in testing hypothesis six ($H_6$), I will be able to determine whether the racial relationship between the defendant and the victim(s) has a statistically significant impact on a prosecutor's decision to seek the death penalty. Overall, these three hypotheses should provide some insight into how race impacts a prosecutor's decision to seek the death penalty in Tennessee.

***Hypotheses: Juries and Race***

The last three hypotheses relate specifically to the impact of race on a jury's decision to impose the death penalty. In testing hypothesis seven ($H_7$), I will be able to determine whether the race of a defendant alone, irrespective of the race of the victim(s), has a statistically significant impact on a jury's decision to impose the death penalty. In testing hypothesis eight ($H_8$), I will be able to determine whether the race of the victim(s) alone, irrespective of the race of the defendant, has a statistically significant impact on a jury's decision to impose the death penalty. Lastly, in testing hypothesis nine ($H_9$), I will be able to determine whether the racial relationship between the defendant and the victim(s) has a statistically significant impact on a jury's decision to impose the death penalty. Overall, these three hypotheses should provide some insight into how race impacts a jury's decision to impose a death penalty in Tennessee.

***Data***

In order to determine whether race is a significant factor in either of the two phases of a death penalty case, this dissertation utilizes information contained in the Tennessee Supreme Court Rule 12 database maintained by the Administrative Office of the Courts in Nashville, Tennessee. The Tennessee Supreme Court adopted Rule 12 to address the "United States Supreme Court's concerns in the 1970s that juries were issuing arbitrary death sentences," and this database is intended to aid "appeals judges comply with state law requiring them to compare similar cases to make sure the sentences are evenhanded" (Shiffman, 2001, News, A1). As a result, the Tennessee Criminal Court of Appeals can set aside a death sentence as a matter of fairness where death sentences are not imposed in other cases with similar characteristics.

In all cases resulting in a first-degree murder conviction dating from 1976, irrespective of the sentence, Tennessee trial judges are required to complete the Rule 12 form.[61] In addition, prosecutors and defense attorneys are required to complete certain sections of the Rule 12 form. Once the form has been completed and certified by the trial judge as accurate, the Rule 12 form is then sent to the Clerk of the Supreme Court in Nashville, Tennessee, and is later forwarded to the Administrative Office of the Courts.[62]

The Rule 12 form contains various facts about the criminal case and background information on both the defendant and victim(s). Some, but not all, of the information included in the form is whether the prosecution sought the death penalty, whether a death sentence was imposed, the aggravating and/or mitigating factors presented, the county where the trial was

[61] A copy of the Tennessee Supreme Court Rule 12 form can be found in Appendix B to this dissertation.

[62] Administrative Office of the Courts, "Rule 12 First-Degree Murder Trial Reports." Accessed February 6, 2008 from http://www.tsc.state.tn.us/opinions/tsc/RULES/TNRulesOfCourt/06supct10_24.htm#12

held, the year of the trial, the weapon used during the murder, the location of the crime, the motive for the murder, the race and gender of both the defendant and victim(s), the intelligence level of the defendant and victim(s), the education level of both the defendant and victim(s), the criminal background of both defendant and victims(s), description of the injuries sustained by the victim(s), the employment history and marital status of both defendant and victim(s), the number of victims, information on the qualifications of the defense counsel, and the various types of evidence presented at trial. Each type of information entered into the Rule 12 form has been converted into statistical variables that will be used in the analysis of the Tennessee death penalty. Overall, there are approximately 300 variables contained in the data, which allows for imposing control variables to determine whether race impacts the overall application of the death penalty, a prosecutor's decision to seek death, and/or a jury's decision to impose the death penalty.

This dissertation includes all of Tennessee's first-degree murder convictions dating from 1976 to 2007 that have been entered into the Rule 12 database. However, in order to understand how a defendant is indicted for first-degree murder, it is important to understand the Tennessee statutes that guides who can and cannot be indicted on a first-degree murder charge, making a defendant eligible for the death penalty in Tennessee. Currently *Tennessee Code Annotated* § 39-13-202(a) defines first-degree murder as:

> (1) A premeditated and intentional killing of another; (2) A killing of another committed in the perpetration of or attempt to perpetrate any first-degree murder, arson, rape, robbery, burglary, theft, kidnapping, aggravated child abuse, aggravated child neglect or aircraft piracy; or (3) A killing of another committed as the result of the unlawful throwing, placing or discharging of a destructive device or bomb.

Additionally, *Tennessee Code Annotated* § 39-13-202(c) allows the State of Tennessee to "punish anyone convicted of first-degree murder by death, life imprisonment without parole, or life imprisonment with the possibility of parole," but "at least one of the statutory aggravating factors must be present in order to seek the death penalty." In other words, to be eligible for the death penalty, a defendant must be indicted and convicted of first-degree murder where at least one statutory aggravating factor is present in the facts of the case.

The statutory aggravating factors defined by Tennessee Code Annotated § 39-13-204(i) include: 1) Murder of a person less than 12 years of age when the defendant was at least 18 years of age; 2) Defendant was previously convicted of one or more felonies that involve the use of violence to persons; 3) Defendant knowingly created a great risk of death to two or more persons; other than the victim murdered; 4) Defendant committed the murder for remuneration or the promise of remuneration; 5) Murder was heinous, atrocious, or cruel in that it involved torture necessary to produce death; 6) Murder was committed to prevent an arrest or prosecution of the defendant or another; 7) Fleeing after first-degree murder, arson, rape, robbery, burglary, theft, kidnapping, aircraft piracy, or unlawful throwing, placing or discharging of a destructive device or bomb; 8) Murder was committed while the defendant was in lawful custody or in a place of lawful confinement; 9) Murder was committed against any law enforcement officer, corrections official, corrections employee, emergency medical or rescue worker, emergency medical technician, paramedic, or firefighter, who was engaged in the performance of official duties, and the defendant knew or reasonably should have known that such a victim was a person engaged in the performance of official duties; 10) Murder was committed against judge, district attorney general or state attorney general, assistant district attorney general or assistant state attorney general due to or because of the exercise of the victim's official duty or status and the

defendant knew that the victim occupies said office; 11) Murder was committed against an elected official, due to or because of the official's lawful duties or status, and the defendant knew that the victim was such an official; 12) Defendant committed mass murder (three or more persons within the State of Tennessee within a period of 48 months); 13) Defendant knowingly mutilated the body of the victim after death; 14) Victim was seventy (70) years of age or older; or victim of the murder was particularly vulnerable due to a significant handicap or significant disability (mental or physical), and at the time of the murder the defendant knew or reasonably should have known of such handicap or disability; and 15) the murder was committed during the course of an act of terrorism. Again, at least one of these aggravating factors must be present in the facts of the case in order for the prosecution to seek the death penalty and a jury must find that one aggravating factor exists in order to impose a death sentence.

Therefore, regardless of sentence outcome, all defendants indicted and convicted of first-degree murder from 1976 to 2007 that have a Rule 12 report are contained in the data and will be analyzed in this dissertation. There are 1,068 first-degree murder convictions in Tennessee during this 30-year time frame. Of these 1,068 cases, notice to seek the death penalty was served in 361 (33.8%) cases and the death penalty was imposed in 160 (44.3%) of the 361 cases. Of the 1,068 first-degree murder convictions, 994 are male defendants and 74 are female defendants. Additionally, 538 defendants are white and 480 defendants are black, with the race of 26 defendants unknown. Although this dissertation focuses solely on blacks and whites, there are 14 Hispanic defendants, 7 Asian defendants, 1 Native American defendant, and 2 defendants classified as "Other." In terms of victims, 642 are white and 337 are blacks, with the race of 65 victims unknown. Again, although this dissertation focuses solely on blacks and whites, there

are 8 Hispanic victims, 7 Asian victims, 2 Native American victims, and 7 victims classified as "Other." Additionally, 729 victims are male and 393 are female.

### *Criticism of Dataset*

Although the Tennessee Supreme Court Rule 12 dataset contains vast amounts of useful information that can be analyzed to gain insights into the administration of the Tennessee death penalty, there has been public criticism. In 2001, John Shiffman, a reporter formerly with *The Tennessean*, published a series of articles aimed at discrediting the Rule 12 dataset. Shiffman's main criticism was the database was "more than half empty" where "three of every five first-degree murder convictions" and "one of every five death penalty cases" were missing from the database (Shiffman, 2001, News, A1). In response to Shiffman's criticism, State Solicitor General Michael Moore stated the database, "is a helpful tool -- a beginning -- but it is not the be-all, end-all," and "the database's flaws are not legally significant because it was designed to identify cases that are aberrations, not to ensure that every single case can be compared with similar cases" (Shiffman, 2001, News, A1).

Furthermore, in *Tennessee v. Godsey*, 60 S.W.3d 759 (Tenn. 2001), the Tennessee Supreme Court found the imposed death sentence was disproportionate to the penalty imposed in similar cases, and commuted the sentence to life imprisonment without the possibility of parole.[63] Justice Adolpho Birch concurring with the Court's decision to overturn the death sentence also dissented in a separate opinion focusing on the Rule 12 database. In citing Shiffman's articles, Justice Birch seeks a reform in the utilization of the database in several ways in proportionality review, and claims:

[63] Bobby Gene Godsey is white. Godsey's victim was also white.

> First, in order to more reliably identify disproportionate sentences, [the Court should] ask whether the case under review was more consistent with 'life' or 'death' cases, rather than requiring that the case be 'plainly lacking in circumstances' comparable to death penalty cases. Second, [the Court should] expand the pool of comparison cases to include all first degree murder cases, not just those cases in which the State chose to seek the death penalty, and [should] revamp the Court's Rule 12 database to ensure that it is complete, reliable, and accurate. Finally, [the Court should] more heavily emphasize objectivity in selecting which cases are 'similar' to the case under review for the purposes of comparison.[64]

In an attempt to verify Shiffman's criticism that the Rule 12 database is lacking first-degree murder conviction cases, I attempted to contact the *Philadelphia Inquirer,* where Shiffman is currently employed, to discuss the missing cases from the database. Unfortunately, I received no response from Shiffman to discuss his findings of his examination of the Rule 12 database or the source of his information.

In lieu of discussing the Rule 12 database with Shiffman, I contacted the Administrative Office of the Courts to discuss the issue of missing first-degree murder trial reports from the Rule 12 database, as well as incomplete information within existing trial reports. I was fortunate enough to have the opportunity to speak with Aaron Conklin, Assistant General Counsel at the Administrative Office of the Courts.[65] Conklin has been Assistant General Counsel since 2004, and was not familiar with Shiffman's 2001 articles. After informing Conklin of the public criticism of the Rule 12 database, he was very forthcoming with the safeguards the Administrative Office of the Courts has instituted to rectify missing data concerns from the Rule 12 database. According to Conklin, the Administrative Office of the Courts conducted an internal audit of their Rule 12 database to ensure that all the information they store on their

[64] State of Tennessee v. Godsey, 60 S.W.3d 759 (Tenn. 2001), dissenting Justice Birch.

[65] My telephone interview of Mr. Aaron Conklin took place on July 16, 2008 at approximately 11:39am.

computer server pertaining to each first-degree murder conviction was being copied to the compact discs of the Rule 12 database that are available to the public. In essence, the Administrative Office of the Courts wanted to make sure all the information they have is contained within the Rule 12 database and is being made available to the public. After conducting the internal audit, they found that not all information was transferring over from their computer server to the compact discs made available to the public. This was due to different types of information being stored in different areas on their computer server. As a result, the computer program used to transfer information to compact discs for the public was not writing all the information maintained by the Administrative Office of the Courts for each murder conviction. Since this internal audit, the Administrative Office of the Courts has changed the process by which they copy information stored on their computer server to a compact disc. Currently, all Rule 12 database information is stored in one central location on their computer server, which has ensured that all information obtained from the trial courts is currently on the compact discs made available to the public. Therefore, any missing information from previous trial reports should have been rectified.

In terms of individual trial reports not being entered into the Rule 12 database maintained by the Administrative Office of the Courts, Conklin and his staff rely solely on the trial report itself, which once filed by the Clerk of the Supreme Court is sent to the Administrative Office of the Courts. Therefore, if a trial report is not submitted to the Clerk of the Supreme Court by the original trial court, then the Administrative Office of the Court does not obtain the conviction information, and is therefore not entered into the Rule 12 database. However, there is a "double check" to ensure that all trial reports are obtained by Conklin's office. Currently, when a first-degree murder conviction is obtained, a notification is sent to Conklin to ensure his office is

aware of a particular defendant's conviction and that a Rule 12 trial report should be forthcoming in the following months. Nevertheless, this "double check" has only been used for fairly recent first-degree murder convictions. Conklin stated this "double check" was in effect in 2004 when he took the position as Assistant General Counsel, but he is unsure how long this "double check" was in place before he took his current position. Currently, the Administrative Office of the Courts has no plans to conduct an audit to determine how many, if any, first-degree murder trial reports are missing from the Rule 12 database, and currently, there is no way to determine how many cases are missing all together from years prior to the "double check" safeguard. However, even with this active "double check" safeguard to ensure there is a trial report for each first-degree murder conviction in the Rule 12 database, should the trial court omit information requested within the trial report, then the Administrative Office of the Courts does not have that particular piece of information. Therefore, this occasional missing information is not entered into the Rule 12 database.

After speaking with Conklin, I attempted to determine whether the Rule 12 trial report forms contained in the dataset were fully completed by the trial courts. I randomly reviewed 100 of the original trial reports contained in the database to determine whether the trial courts made any omissions in the requested information relating to first-degree murder convictions. Of the 100 first-degree murder conviction reports reviewed, 67.5 percent of the reports were fully completed. Twenty percent of the cases reviewed were fully completed *and* had additional information attached to the form such as a psychological evaluation report, an order of guilty plea, and an order denying a request for a new trial. Of the Rule 12 reports, 0.25 percent were fully completed, but for some reason not signed by the trial judge. Therefore, approximately 90.0 of the cases randomly reviewed were fully completed by the trial court. Lastly, 10.0 percent

of the Rule 12 forms were incomplete for various reasons. Of the cases I randomly reviewed, missing information included the mitigating and aggravating factors presented in court and information regarding the physical harm to the victim(s), including whether the victim was tortured. Shiffman's criticism and minor flaws revealed by my random examination notwithstanding, today, the Rule 12 database is the most comprehensive dataset to assess whether the death penalty is applied consistently across racial classifications in the State of Tennessee.

***Methodology***

This dissertation utilizes two important statistical methods. First, this dissertation employs the use of frequency distributions and statistical crosstab analysis. The use of frequency distributions gives insight into several different aspects of the data. Using frequency distributions illustrates the proportion of cases contained in the data that relate to certain circumstances. For example, there are 95 counties in Tennessee. Using frequency distribution, I can illustrate the number of first-degree murder convictions in each county dating from 1977 to 2007. In addition, frequency distributions effortlessly illustrate the number of cases that fall under each first-degree murder conviction type. In order words, I will be able to show the number of cases that are premeditated, a killing during an arson, rape, robbery, kidnapping, an elderly killing, contract killing, spousal/domestic killing, escape killing, and so forth. The same type of information can also be easily obtained for the location of crime, method of killing and the motive for each murder. In essence, using frequency distributions allows for broadly describing the data, what types of murders have been committed, and in which region of the state first-degree murders occur most frequently.

In using statistical crosstab analysis the effects of both the race of the defendant and victim are isolated for the overall application of the death penalty, a prosecutor's decision to seek and the jury's decision to impose death in a descriptive manner. All variables are dichotomous variables in which the presence of a characteristic is given a "1" and a "0" in the absence of a characteristic. Therefore, where a jury imposed a death sentence, the value of "1" is entered into the dataset for the variable associated with whether a jury sentenced a defendant to death. In addition, where the motive for a murder is monetary gain, then the variable associated with said motive is given a value of "1", and all other variables associated with the various other motives such as retribution are given a value of "0". With the aid of statistical crosstabs, describing the data by category becomes a relatively easy task. For example, in performing crosstab analysis with the variables that relate to a prosecutor's decision to seek the death penalty and race of the defendant, I will be able to easily demonstrate the number of cases in which a prosecutor sought the death penalty against black defendants as well against white defendants. The same type of information can be obtained in terms of the race of the victim. Crosstab analysis makes it possible to illustrate the number of cases in which prosecutors sought the death penalty when victims are black as compared to when victims are white. Furthermore, crosstab analysis can also be used in the same manner for a jury's decision to impose a death sentence. Crosstab analysis makes it possible to demonstrate the frequency and percentage of cases in which juries hand down death sentences when defendants are black and white, as well as by the race of the victims. In essence, crosstab analysis will allow for further description of the composition of the data.

Lastly, this dissertation also utilizes logistic regression. The use of binary logistic regression models allow for creating the most parsimonious models for the overall application of

the death penalty, a prosecutor's decision to seek the death penalty, and a jury's decision to implement the death penalty. These binary logistic regressions are used to create models that have the most explanatory power for both stages of the death penalty process in order to determine whether race of the defendant, victim, or the racial interaction between the two parties is a significant factor in either phase of the bifurcated trial structure. Fortunately, because of the vast amounts of information contained in the data, approximately 300 variables, imposing control variables to determine whether race impacts the overall application of the death penalty, a prosecutor's decision to seek and a jury's decision to impose the death penalty becomes a relative easy task. For example, the data allow for controlling for heinousness of the crime by controlling for various aspects of the crime itself such as the type of killing, the method of killing, and whether or not victims were tortured. Controlling for heinousness of crime is critical in any analysis to determine the impact of race in the death penalty process; remembering previous research has been criticized for lack of control measures for heinousness of crime. The data also allow for controlling for the defendant's level of dangerousness. Therefore, the use of logistic regression allows for understanding which aspects of a first-degree murder case, both legal and extra-legal, impact the overall application of the death penalty, a decision to seek the death penalty, and a decision to impose death.

### *Conclusion*

The primary goal of this dissertation is to determine whether the racial classification of the defendant, the victim, or the interaction between them impacts either the overall application of the death penalty, a prosecutor's decision to seek the death penalty and/or a jury's decision to impose death in Tennessee. The nine hypotheses listed above allow for meeting the primary goal

of this dissertation. The Supreme Court Rule 12 dataset to be analyzed in the next chapter of this dissertation contains vast amounts of information pertaining to each first-degree murder conviction. It is this large dataset and the large amount of information contained within that make it possible to describe first-degree murders in Tennessee. The data allows for understanding where and when murders have occurred in Tennessee, the motives behind the murders, the types of killings, the background history of defendants and victims, the number of cases in which the prosecution sought the death penalty, and the number of cases in which juries impose a death sentence. Furthermore, beyond describing Tennessee's first-degree murders, the data make it possible to build logistic regression models that will attempt to explain the most significant characteristics that impact the overall application of the death penalty, a prosecutor's decision to seek the death penalty and a jury's decision to impose death. In essence, the statistical methods used to analyze the Tennessee Supreme Court Rule 12 reports will provide valuable insights into the inner-workings of the Tennessee capital murder case.

# CHAPTER 5: DATA ANALYSIS

## *Description of Data*

The data analysis begins with a broad examination of the 1,068 first-degree murder cases since 1977 in Tennessee.[66] Table 4 breaks down all first-degree murder cases by year. During the 30-year period of data, 1977 to 2007, Tennessee prosecutors sought the death penalty in 33.8 percent of the cases. Tennessee juries returned a death sentence in 44.3 percent of those cases in which the death penalty was sought, which accounts for 15.0 percent of cases resulting in a death sentence. In breaking this 30-year period into three separate periods, three distinct trends emerge. First, from 1977 to 1990 prosecutors sought the death penalty in 53.1 percent of the cases processed. However, this percentage decreases significantly over the next two time periods. From 1991 to 2000, prosecutors sought the death penalty at a rate of 29.3 percent; a 23.8 percent decrease in the rate in which Tennessee prosecutors sought the death penalty from the previous time period. This rate continues to decline from 2001 to 2007, where prosecutors sought the death penalty in 23.8 percent of the cases processed. Therefore, there is a clear decline in the number of cases in which Tennessee prosecutors seek the death penalty.

**Table 4 Death Penalty Outcomes in Tennessee, 1977 to 2007**

| | N of Cases | % of All First-Degree Murder Convictions in Database | % of Cases in which Prosecutor Sought Death Penalty | % of Death Penalty Cases in which Jury Returned Death Sentence | % of Cases Resulting in Death Sentence |
|---|---|---|---|---|---|
| 1977-2007 | 1068 | 100.0% | 33.8% | 44.3% | 15.0% |
| 1977-1990 | 294 | 27.5% | 53.1% | 54.5% | 28.9% |
| 1991-2000 | 379 | 35.5% | 29.3% | 42.3% | 12.4% |
| 2001-2007 | 395 | 37.0% | 23.8% | 29.8% | 7.1% |

[66] There are no first-degree murder convictions in 1976.

Table 4 also illustrates the percentage of cases in which juries sentenced the defendant to death. From 1977 to 2007, of the cases in which the prosecution sought the death penalty, juries sentenced 44.3 percent of the defendants to death. This constitutes 15.0 percent of the cases resulting in a death sentence overall. However, a similar trend emerges in jury behavior after breaking these cases down into three distinct time periods. From 1977 to 1990, of cases in which a notice of intent to seek the death penalty was filed, juries sentenced 54.5 percent of the defendants to death. Interestingly, this percentage declines to 42.3 percent from 1991 to 2000, which constitutes a decline of 12.2 percent. Furthermore, jury death sentences declined to 29.8 percent from 2001 to 2007. Therefore, there is a definitive decrease in the rate in which juries sentence defendants to death from 1977 to 2007. Lastly, Table 4 demonstrates the overall decline in death sentences in Tennessee from 1977 to 2007. The most death sentences were given between 1977 and 1990 at 28.9 percent. However, this rate declines sharply from 1991 to 2007. From 1991 to 2000, the percentage of death sentences fell to 12.4 percent, a 16.5 percent decline. Additionally, overall death sentences fell to 7.1 percent between 2001 and 2007. As a result, there has been a clear and distinct decline in the total number of death sentences in Tennessee during the 30-year period.

Table 5 examines both race of defendants and victims independently, and the racial interaction between defendants and victims. The data is composed of first-degree murders that involved 50.4 percent white defendants and 44.9 percent black defendants. Tennessee prosecutors sought the death penalty at a rate of 38.5 percent against white defendants and 28.1 percent against black defendants. Overall, this seems to suggest prosecutors seek the death penalty more frequently against white defendants, which is contrary to the literature in the area, and this trend continues with jury sentencing outcomes. However, based on my conversations

with members of the Knox County criminal justice system, these figures are supported by their observations and experiences. Of the cases in which the prosecutor sought the death penalty against white defendants, juries imposed death at a rate of 48.8 percent, as compared to only 37.8 percent for black defendants. Furthermore, white defendants constitute 18.8 percent of cases resulting in a death sentence overall, whereas black defendants constitute only 10.6 percent. On its face, Tennessee prosecutors seek and juries impose death more frequently against white defendants rather than black defendants, which is contrary to prior research.

Table 5 also illustrates the same figures for the victims. White victims by far constitute the largest portion of the data at 64.0 percent as compared to only 33.0 percent black victims, a 31.0 percent difference. As a result, it would be foreseeable that the number of death penalty cases involving white victims would be higher. Prosecutors sought the death penalty at a rate of 39.4 percent in cases involving white victims in comparison to 23.1 percent involving black victims. This is a difference of 16.3 percent that shows prosecutors are more likely to seek death against defendants whose victims are white. However, this disparity virtually disappears when juries are examined. Of the cases in which prosecutors sought the death penalty, juries imposed death at a rate of 44.7 percent when the victim was white, and 41.0 percent when the victim was black. However, overall, 17.6 percent of the cases resulting in a death sentence involved white victims and 9.5 percent black victims. As a result, there is a disparity in sentence as it relates to the race of the victim, but again, this could be explained by the volume of white victims compared to black victims in the data, which is addressed in the regression models below.

Lastly, Table 5 examines the racial interaction of the defendant and victim with death penalty outcomes. The data show that first-degree murders involving white defendants and white victims constitute 52.4 percent of the entire dataset. Murders involving white defendants

and black defendants constitute considerably less at only 2.0 percent. However, murders involving black defendants and black victims comprise 32.7 percent of the data, and murders involving black defendants and white victims comprise 12.9 percent of the data. The data also show prosecutors sought the death penalty more frequently when both the defendant and victim are white at a rate of 39.4 percent. This finding is also supported by the observations of Knox County Criminal Court Judges Leibowitz and Baumgartner. At a relatively similar rate, prosecutors sought the death penalty at a rate of 37.9 percent when the defendant is black and the victim is white. However, when the race of the victim is black, the rate at which prosecutors sought the death penalty declines. When both the defendant and victim are black, prosecutors sought the death penalty at a rate of 23.2 percent, and when the defendant is white and the victim black, prosecutors sought the death penalty at a rate of 21.1 percent. This shows prosecutors are more likely to seek the death penalty when victims are white regardless of the race of the defendant, since the percentages are similar between each of the respective racial relationships. However, this could be explained by a majority of white victims in the data.

**Table 5 Racial Classifications of Defendants & Victims, 1977-2007**

| | % of All First-Degree Murder Convictions in Database | % of Cases in which Prosecutor Sought Death Penalty | % of Death Penalty Cases in which Jury Returned Death Sentence | % of Cases Resulting in Death Sentence |
|---|---|---|---|---|
| | | | | |
| White defendant | 50.4% | 38.5% | 48.8% | 18.8% |
| Black defendant | 44.9% | 28.1% | 37.8% | 10.6% |
| White victim | 64.0% | 39.4% | 44.7% | 17.6% |
| Black victim | 33.0% | 23.1% | 41.0% | 9.5% |
| | | | | |
| White defendant/white victim | 52.4% | 39.4% | 51.8% | 19.0% |
| White defendant/black victim | 2.0% | 21.1% | 50.0% | 10.5% |
| Black defendant/black victim | 32.7% | 23.2% | 41.1% | 9.5% |
| Black defendant/white victim | 12.9% | 37.9% | 29.8% | 11.3% |

Table 5 produces interesting results for the rate in which juries impose death. At almost identical rates of the cases in which the prosecution sought the death penalty, juries imposed death at a rate of 51.8 percent when both the defendant and victim are white and a rate of 50.0 percent when the defendant is white and victim is black. However, the rates at which juries impose death for black defendants show significant differences. Of the cases in which Tennessee prosecutors sought the death penalty, juries imposed death for black defendants with black victims at a rate of 41.1 percent, as compared to 29.8 percent when black defendants murder white victims. As a result, the data show that juries are more likely to sentence white defendants to death regardless of the race of their victims, but less likely to sentence black defendants to death. Overall, white defendant, white victim murders constitute 19.0 percent of the cases resulting in death, as compared to 10.5 percent where white defendants murder black victims. However, overall, black defendant, black victim murders represent 9.5 percent, as compared to 11.3 percent when black defendants murder white victims.

To further illustrate the trends in each aspect of the death penalty, the following line graphs, which calculate three-year moving averages in order to make the data stable, reveal interesting results over the 30-year time period. Figure 1 illustrates the general trends for all first-degree murder cases resulting in a death sentence in the overall application of the death penalty throughout the 30-year period. As the line graph reveals, overall, there has been a steady decline in the percentage of cases where defendants are sentenced to death in Tennessee. In 1978, 23.3 percent of all first-degree murder cases resulted in a death sentence; however, by 2007, this figure falls to 8.9 percent. When separating black defendants and white victims from these cases, the trend is identical. The graph shows that over time the rate in which death is imposed in cases involving black defendants and those involving white victims have steadily

declined. In 1978, 20.0 percent of all first-degree murder convictions involving black defendants resulted in a death sentence, but in 2007 the rate fell to 4.9 percent. The same can be seen for cases involving white victims, where the rate in 1978 was 38.6 percent, but fell to 11.7 percent by 2007. While this is the overall trend, the graph also illustrates short time periods in which death sentences increased for black defendants and white victims. In 1981, of cases in which first-degree murder convictions involved black defendants, 59.1 percent are sentenced to death, but by 1984 this figure fell to 32.0 percent. For white victims, in 1981, the rate was 43.2 percent, but dropped to 28.7 percent by 1984.

Furthermore, there appears to be a sudden increase in the number of convictions resulting in a death sentence in all cases, involving both white victims and black defendants. This sharp increase begins in 1981 and continues until 1984, which is then followed by a sharp decline in the number of first-degree murder cases resulting in a death sentence. By 1996, the rate for black defendants was 6.5 percent and 9.5 percent for white victims. As a result of this sharp decline, the rates in which cases involving white victims and black defendants are sentenced to death in the overall application of the death penalty are virtually identical in 1996. However by 1998, the rates increase to 12.1 for black defendants and 19.6 percent for white victims. Here again, the rate in which a death sentence resulted in cases involving white victims is approximately 7.0 percent higher than cases involving black defendants. However, since 2001, the rates in which death sentences resulted for white victims and black defendants have been relatively stable and comparable. In 2007, of all the cases resulting in a first-degree murder conviction, 8.9 percent received the death penalty. In comparison, 4.9 percent involved black defendants and 11.7 percent involved white victims, which continues to show a disparity of 6.8 percent. Lastly, the data reveal there may be a new trend developing in the administration of the

Tennessee death penalty. The graph shows that since 2005, the frequency of death sentences in the overall application of the death penalty is beginning to increase again. It will be interesting to monitor these figures in the coming years to determine whether the number of death sentences continue to rise.

Figure 2 illustrates the trends in which prosecutors sought the death penalty over the 30-year period. As in Figure 1, the overall trend of all first-degree murder cases in which the prosecution sought the death penalty has steadily declined over the 30-year time period. In 1978, the percentage of all first-degree murder cases in which the prosecution sought the death penalty was 78.9; however, in 2007 the percentage of all first-degree murder cases in which the prosecution sought the death penalty fell to 23.2 percent. This constitutes a 55.7 percent decrease in the rate in which prosecutors sought the death penalty. Although prosecutors have sought the death penalty with a lower frequency over time, there is a sharp increase in the rate in which prosecutors sought the death penalty from 1980 to 1983. In 1980, prosecutors sought the death penalty in 46.6 percent of all first-degree murder cases, and by 1983 this figure increased to 60.4 percent. This pattern demonstrates there is something occurring during the early 1980s that caused prosecutors to seek the death penalty more frequently as illustrated by Figure 2.

This same trend is found in the rates in which prosecutors sought the death penalty in cases involving white victims and black defendants. However, the rate in which the death penalty was sought in cases involving white victims is considerably higher than those cases involving black defendants. In 1980, prosecutors sought the death penalty in cases involving black defendants at a rate of 50.0 percent; by 1983, prosecutors sought the death penalty at rate of 69.0 percent, a 19.0 percent increase. For white victims, prosecutors sought the death penalty in 60.2 percent of the cases, and by 1983 this rate increased to 80.1 percent, a 20.1 percent

increase. As a result, prosecutors sought the death penalty against defendants with white victims at a considerably higher rate as compared to cases involving black defendants. This may indicate Tennessee prosecutors value the lives of white victims more, but again, the volume of white victims in the data could explain these figures.

Figure 2 shows that after 1985, the rate at which prosecutors sought the death penalty began to noticeably decline. Interestingly, there appears to be a disparity in the rate of decline where prosecutors sought the death penalty against black defendants and defendant's with white victims. While both rates decline, there is a very sharp decline for the rates in which prosecutors sought the death penalty against black defendants. In 1985, prosecutors sought the death penalty against black defendants at a rate of 61.3 percent. By 1995, prosecutors sought the death penalty against black defendants at a rate of 9.5 percent, a decline of 51.8 percent. In 1985, prosecutors sought the death penalty at a rate of 68.1 percent in cases involving white victims; however, this falls to 30.8 percent by 1995, a decline of 37.3 percent. Although these numbers reflect a sharp decrease in prosecutors seeking the death penalty, there is still great disparity between black defendant and white victim cases. It appears prosecutors sought the death penalty more frequently in cases involving white victims by 2007. By 2007, prosecutors sought the death penalty at a rate of 13.3 percent in cases involving black defendants and 31.8 percent of cases involving white victims, which still reveals a disparity of 18.5 percent. Lastly, the data also demonstrate a possible new trend in that prosecutors appear to be seeking the death penalty more frequently since 2005, and the same trend is illustrated in Figure 1. It will be interesting to follow these rates in the coming years to determine whether the rates in which prosecutors seek the death penalty continue to rise over time, or if this trend will be short lived.

Figure 3 shows the trends in which juries returned a death sentence over the 30-year period covered by the data. In examining all cases resulting in a first-degree murder conviction, juries have over time been unpredictable. Figure 3 demonstrates periods of increased rates in which juries returned death sentences, followed by periods of decline. In 1978, juries returned death sentences in 33.0 percent of all first-degree murder cases. By 1982, that rate increased to 70.7 percent. The next few years show a decline in the rates in which juries returned a death sentence and bottoms out in 1989 at 42.3 percent. In 1992, this rate reaches a peak of 62.9 percent and begins to steadily decline over the remainder of this time period, but is mingled with a couple of short periods with increased rates.

The trends for both black defendants and white victims are relatively identical to the rates demonstrated in all cases; however, there are a couple of periods with distinct disparities between black defendants and white victims. In 1978, the rates at which juries returned a death sentence for black defendants and white victims were relatively identical at 40.0 and 46.0 respectively. However, in the following year, the rates for which juries returned a death sentence in cases involving black defendants increased considerably to 56.7 percent, while those cases involving white victims decreased to 36.7 percent. This is a disparity of 20.0 percent. This disparity continues, and by 1982, the rates at which juries returned a death sentence reached 80.6 percent for black defendants and 66.7 percent for cases involving white victims. The period from 1989 to 1991 demonstrates another sharp increase in the rates at which juries impose death, which peak at 80.0 percent for black defendants and 75.8 percent for white victims.

The time period from 1991 to 1997 reveals interesting trends in the rates at which juries impose death. For white victims, the rates at which juries imposed death follows the same rates for all cases resulting in first-degree murder convictions, which shows a steady decline over

these years. However, this is not the case for black defendants. While 1991 begins with a decline in the rates, 1995 shows a marked increase in the rates in which juries imposed death for black defendants. At this time, juries imposed death in cases involving black defendants at a rate of 75.0 percent as compared to 34.4 percent for white victim cases. This is a disparity of 40.6 percent, the most notable difference of the three figures. This may be suggestive of racial discrimination, but it is possible this may be a reflection of the types of murders in which black defendants were involved at this time. In essence, it may be possible that black defendants were involved in much more heinous murders as compared to the murders involving white victims. However, Judge Baumgartner's observations suggest white defendants, rather than black defendants, commit the most heinous first-degree murders.

Figure 3 also illustrates 2001 is the year in which juries imposed death at the lowest rates for both black defendants and white victims. At this time, juries returned a death sentence in 11.4 percent of the cases where the prosecution sought the death penalty against black defendants. However, the rate at which death is returned for cases involving white victims is 19.7 percent. Since 2001, the data show an incline in the rates at which juries impose death against black defendants and cases involving white victims. As of 2007, juries imposed death against black defendants at a rate of 45.9 percent, and against defendants with white victims at a rate of 33.7 percent. It will be interesting to see whether this trend continues in the future.

**Figure 1 First-Degree Murder Convictions Resulting in Death Penalty, 1978-2007**

**(3-year Moving Average)**

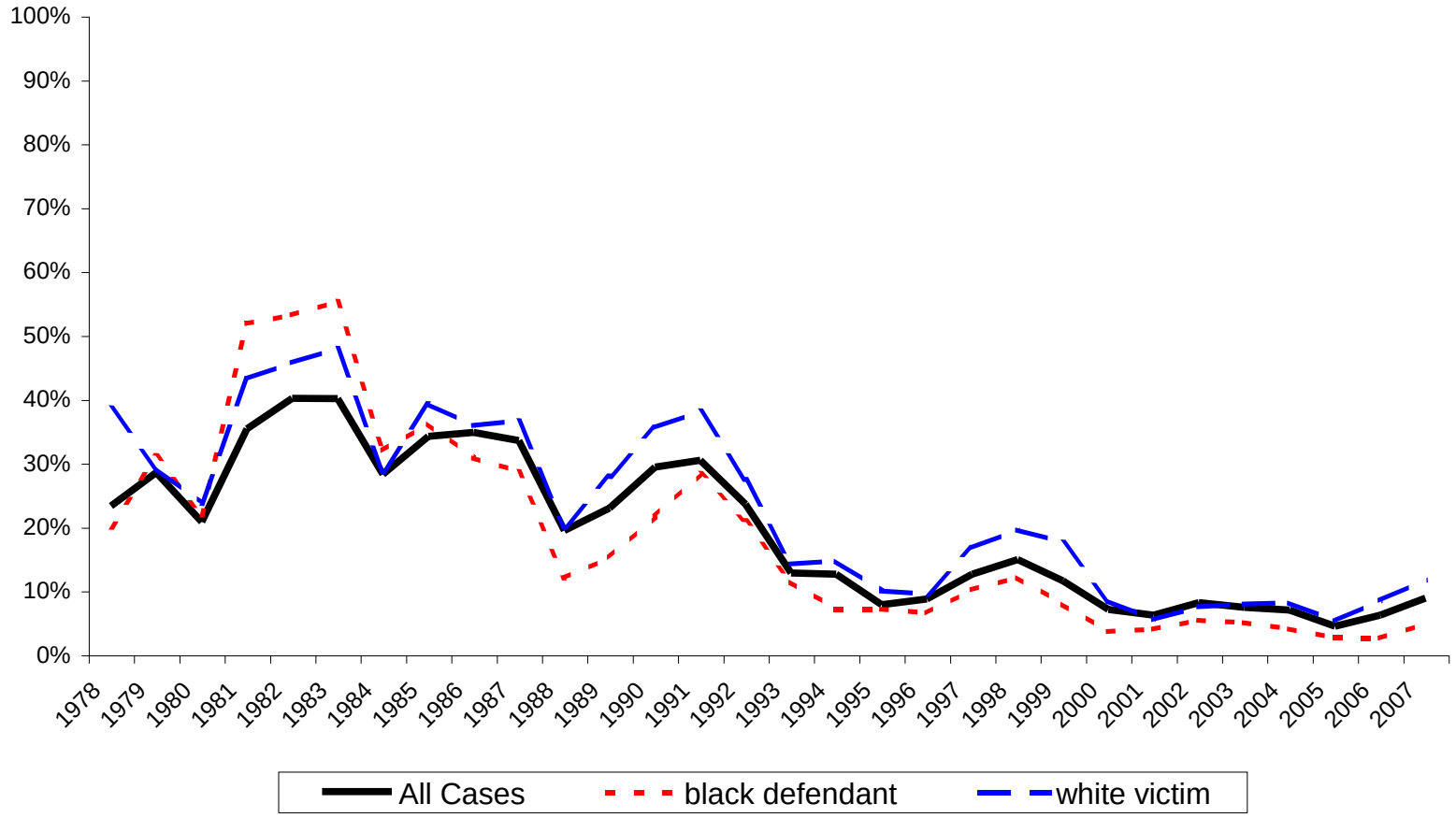


**Figure 2 First-Degree Murder Cases in Which Prosecutors Sought the Death Penalty, 1978-2007**

**(3-year Moving Average)**

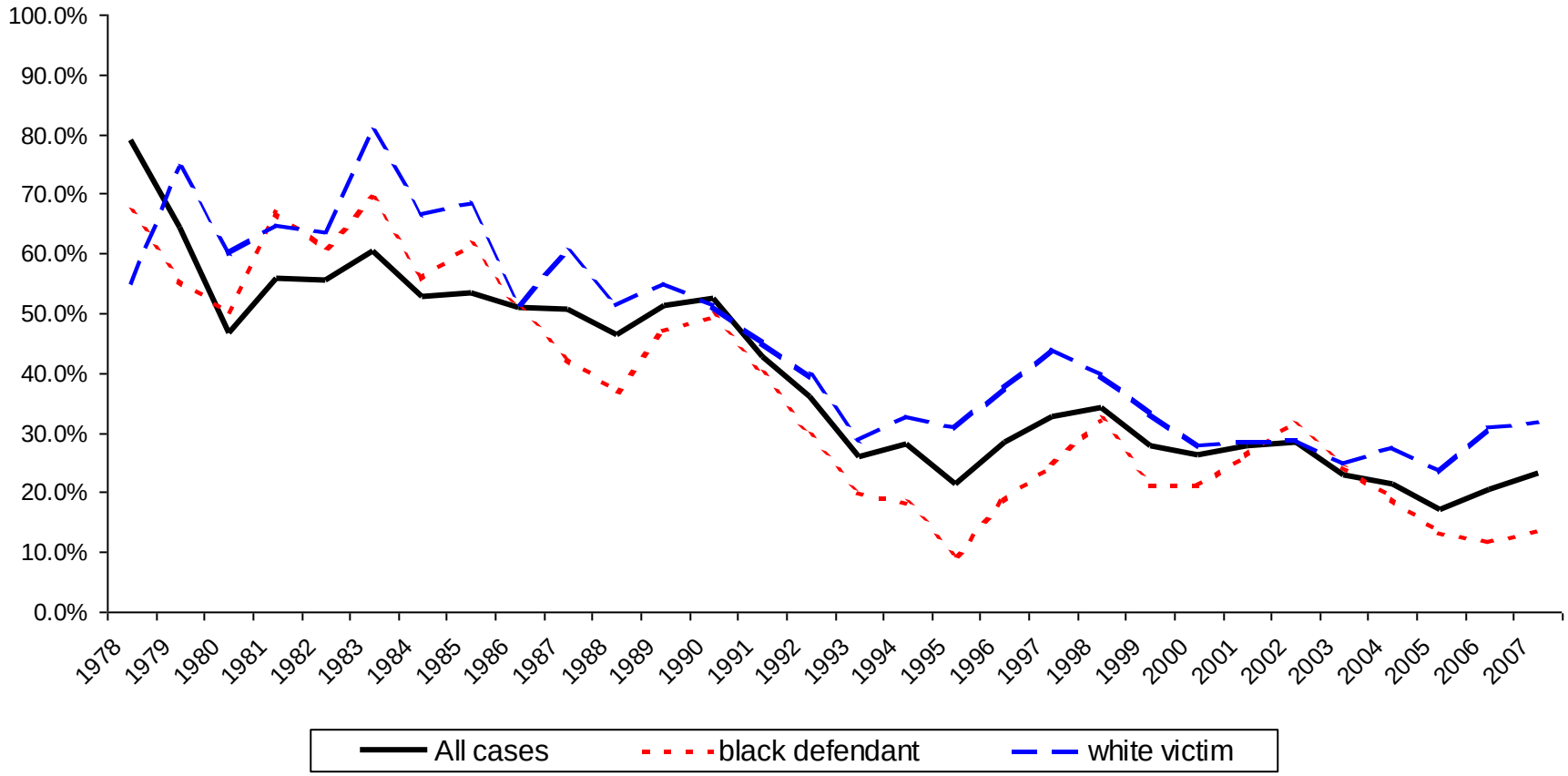
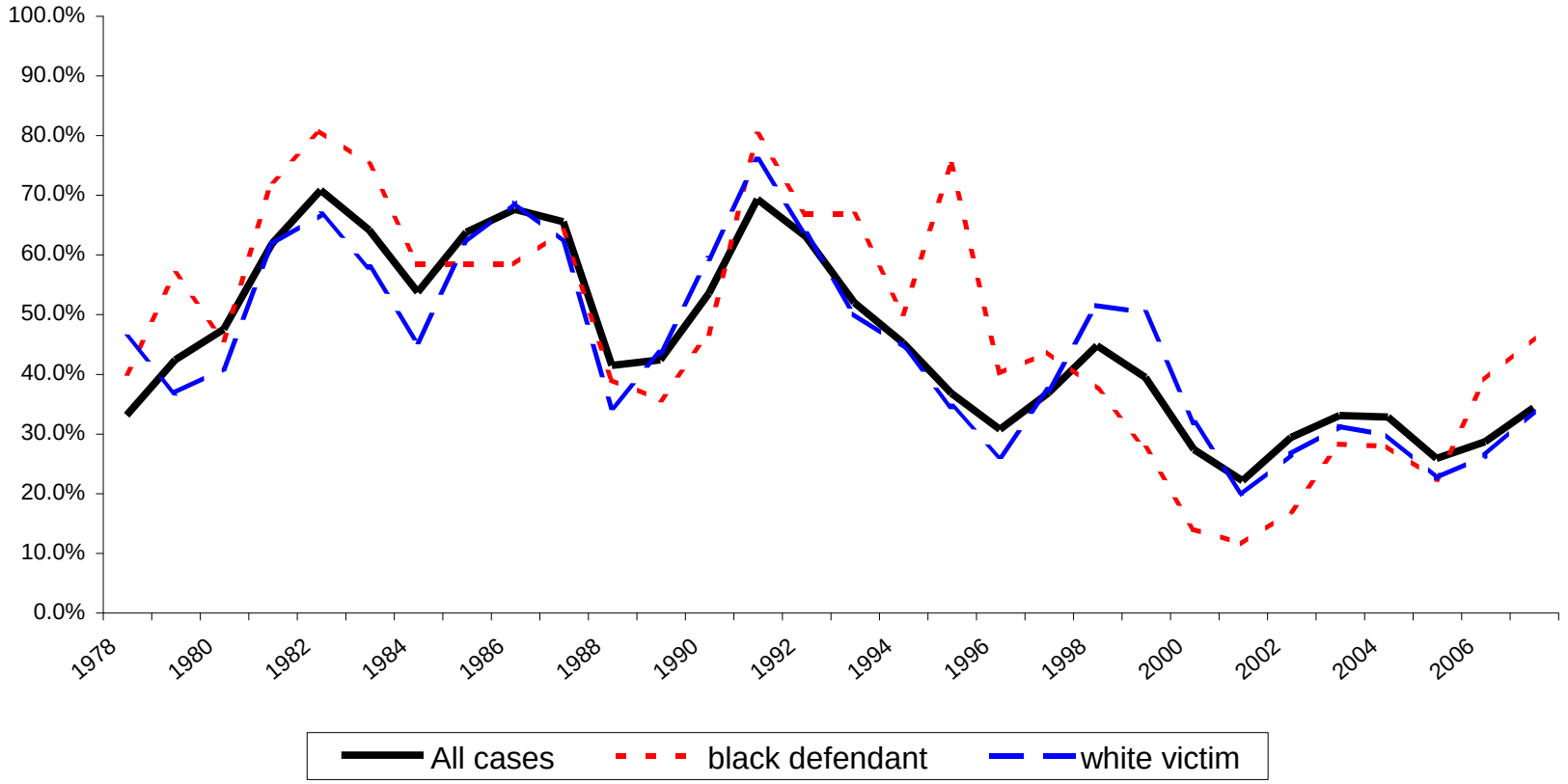


**Figure 3 First-Degree Murder Cases in Which Jury Returned Death Sentence, 1978-2007**

**(3-year Moving Average; % of cases in which prosecutors sought death penalty)**



The data also describe the nature of the homicides committed in Tennessee. Table 6 shows while burglary/robbery killings and spousal/domestic killings constitute the largest portion of first-degree murder convictions in Tennessee, 37.6 percent and 16.2 percent respectively, prosecutors seek the death penalty at much lower rates as compared to other types of murders. Prosecutors sought the death penalty in burglary killings at a rate of 41.5 percent and 26.0 percent for spousal/domestic killings. Based on my conversation with Randall Nichols, these robbery trends are not surprising, but the findings for domestic killings are surprising given my conversation with Judge Leibowitz. However, prosecutors sought the death penalty most frequently in cases involving the killing by a prison escapee (76.9%), rape killing (65%), and child sexual assault (64.3%), but it must be noted these types of killings combined only constitute 6.2 percent of Tennessee first-degree murder convictions in the Rule 12 database. On the other hand, of the cases in which the death penalty was sought, juries are most likely to return a death sentence for prison killings and torture/depraved killings. While prison killings and torture/depraved killings comprise only a small portion of the first-degree murders in Tennessee, 0.4 percent and 2.2 percent respectively, juries returned death sentences at rate of 100 percent.

Table 6 indicates the level of atrociousness or violence involved in a murder increases the likelihood of a prosecutor seeking the death penalty and the likelihood of a jury imposing death. Prosecutors sought the death penalty in 64.3 percent of the cases involving a child sexual assault killing and juries sentenced defendants to death in 66.7 percent of those cases. Overall, child sexual assault killings constitute 42.0 percent of the cases resulting in a death sentence. Furthermore, prosecutors sought the death penalty in 60.0 percent of the cases involving elderly sexual assault killings and juries sentenced 66.7 percent of these defendants to death. Overall, elderly sexual assault killings comprise 40.0 percent of cases resulting in death. In comparison

to these violent sexual killings, the death penalty rates for other killings are strikingly lower. For example, prosecutors sought the death penalty in only 28.8 percent of drug related killings and juries handed down death sentences in only 34.8 percent of these cases. In general, drug related killings represent only 10.0 percent of cases resulting in a death sentence. Furthermore, the rates for gang-related killings are even lower. Prosecutors sought the death penalty in 20.0 percent of the cases involving gangs, and juries imposed death in only 20.0 percent of these cases. Overall, gang-related killings comprise only 4.0 percent of the cases resulting in death sentences. The data show that a defendant convicted of a child or elderly sexual assault killing is approximately four times more likely to receive the death penalty than is a defendant involved in a drug and/or gang related murder. Thus, the data reflect the notion that such murders are viewed as less atrocious and victims less sympathetic compared to victims subjected to a violent sexual assault.

**Table 6 Nature of Homicide**

| | % of All First-Degree Murder Convictions in Database | % of Cases in which Prosecutor Sought Death Penalty | % of Death Penalty Cases in which Jury Returned Death Sentence | % of Cases Resulting in Death Sentence |
|---|---|---|---|---|
| Killing by an escapee | 1.2% | 76.9% | 90.0% | 69.2% |
| Prison killing | 0.4% | 50.0% | 100.0% | 50.0% |
| Child sexual assault | 1.3% | 64.3% | 66.7% | 42.9% |
| Witness killing | 2.0% | 57.1% | 75.0% | 42.9% |
| Killing law officer/other official | 2.1% | 54.5% | 75.0% | 40.9% |
| Convenience store killing | 1.9% | 60.0% | 66.7% | 40.0% |
| Elderly sexual assault | 0.5% | 60.0% | 66.7% | 40.0% |
| Rape killing | 3.7% | 65.0% | 57.7% | 37.5% |
| Contract killing | 2.2% | 41.7% | 90.0% | 37.5% |
| Kidnapping killing | 4.1% | 61.4% | 51.9% | 31.8% |
| Elderly killing | 9.8% | 57.1% | 45.0% | 25.7% |
| Torture/depraved killing | 2.2% | 25.0% | 100.0% | 25.0% |
| Burglary/robbery killing | 37.6% | 41.5% | 46.1% | 19.2% |
| Spousal/domestic killing | 16.2% | 26.0% | 46.7% | 12.1% |
| Drug related killing | 7.5% | 28.8% | 34.8% | 10.0% |
| Child abuse killing | 2.2% | 13.0% | 66.7% | 8.7% |
| Gang-related killing | 2.3% | 20.0% | 20.0% | 4.0% |

Table 7 explores the methods used in the commission of first-degree murders in Tennessee. Overwhelmingly, the majority of first-degree murders involved the use of a firearm at a rate of 63.4 percent. However, prosecutors only sought the death penalty in 31.4 percent of cases involving a shooting, the lowest rate of all methods employed by defendants. Furthermore, juries returned a death sentence in only 39.7 percent of these cases. Overall, shootings comprise only 12.5 percent of cases resulting in death. The second most utilized method of killing involves beating the victim to death, which constitutes 16.5 percent of the first-degree murder cases. Prosecutors sought the death penalty at a slightly higher rate as compared to shootings at 34.7, and of these cases, juries imposed death at rate of 49.2 percent, approximately a 10.0 percent difference. The least frequent methods of killing include burning the victim (2.0%), slashing the victim's throat (1.9%), and drowning the victim (1.3%). While these methods of killing comprise the least percentage of first-degree murder cases in the data, prosecutors seek and juries impose death at significantly higher rates than the more common methods of killing as demonstrated by Table 7.

**Table 7 Method of Killing**

| | % of All First-Degree Murder Convictions in Database | % of Cases in which Prosecutor Sought Death Penalty | % of Death Penalty Cases in which Jury Returned Death Sentence | % of Cases Resulting in Death Sentence |
|---|---|---|---|---|
| Drowning | 1.3% | 78.6% | 54.5% | 42.9% |
| Throat slashing | 1.9% | 60.0% | 66.7% | 40.0% |
| Other | 1.1% | 50.0% | 66.7% | 33.3% |
| Strangling/Suffocating | 8.5% | 46.2% | 45.2% | 20.9% |
| Stabbing | 12.3% | 38.2% | 50.0% | 19.1% |
| Beating/Blunt trauma | 16.5% | 34.7% | 49.2% | 17.0% |
| Shooting | 63.8% | 31.4% | 39.7% | 12.5% |
| Burning | 2.0% | 47.6% | 10.0% | 4.8% |

Table 7 illustrates drowning and throat slashing as the method of killing represent 42.9 percent and 40.0 percent respectively of the cases resulting in a death sentence. Prosecutors sought the death penalty in 78.6 percent of the cases that involve drowning the victim and in 60.0 percent of the cases that involve throat slashing as the method of killing. Of the cases in which death was sought, juries returned death sentences in 54.5 percent of the cases where the victim was drowned and 66.7 percent of the cases where the victim's throat was slashed. Overall, drowning the victim represents 42.9 percent of the cases resulting in a death sentence and throat slashing comprises 40.0 percent. Again, the data show the level of violence or atrociousness employed by the defendant influences the likelihood that prosecutors will seek and juries will impose the death penalty. Defendants in Tennessee that drown or slash their victims' throats are two times more likely to receive death as compared to defendants that fatally shoot their victims. This may reflect the general view that while guns create violence, they are much more common across Tennessee; thus, less shocking and viewed as less violent as compared to other methods of killing, such as drowning and throat slashing.

Table 8 illustrates the connection between the number of victims and the likelihood of receiving the death penalty. As the literature suggests, as well as conventional wisdom, as the number of victims increase, the likelihood of a death sentence increases. District Attorney General Nichols also stated one of the top three factors that catch his eye in deciding whether to seek the death penalty is whether the defendant is a serial killer. In Tennessee, a serial killer has three or more victims within a 48-month period. However, the number of victims appears to have more impact on prosecutors than juries. The rate at which prosecutors sought the death penalty is relatively similar for defendants with one and two victims, 32.1 percent and 38.2 percent respectively.

**Table 8 Number of Victims**

| | % of All First-Degree Murder Convictions in Database | % of Cases in which Prosecutor Sought Death Penalty | % of Death Penalty Cases in which Jury Returned Death Sentence | % of Cases Resulting in Death Sentence |
|---|---|---|---|---|
| One victim | 86.9% | 32.1% | 44.1% | 14.1% |
| Two victims | 10.3% | 38.2% | 47.6% | 18.2% |
| Three or more victims | 2.8% | 73.3% | 40.9% | 30.0% |

However, this rate more than doubles when defendants murder three or more individuals. Prosecutors sought the death penalty at a rate of 73.3 percent against defendants with three or more victims. Furthermore, this large disparity with regard to the number of victims virtually disappears when juries are examined. Juries returned death sentences in 44.1 percent of the cases in which the prosecution sought the death penalty in cases involving one victim. Juries imposed death at a similar rate for cases involving two victims at a rate of 47.6 percent. However, it is interesting that while the rate is very similar between one and two victim murders, the rate at which juries return a death sentence in cases that involve three victims drops to 40.9 percent. However, overall, defendants with three or more victims are twice as likely to receive a death sentence in Tennessee as compared to defendants with one or two victims.

Table 9 shows the impact of a defendant's criminal history on the likelihood of receiving the death penalty. The majority of defendants convicted of first-degree murder either had no criminal record or one or two prior felonies. Defendants with no criminal record comprise 24.6 percent of the cases and defendants with one or two prior felonies comprise 24.5 percent of the cases. Overall, defendants with three or more prior felony convictions are more likely to receive a death sentence. While defendants with three or more prior felony convictions only makeup 18.1 percent of the cases in the data, prosecutors sought the death penalty at a rate of 44.0 percent, and juries imposed death in 50.0 percent of those cases. This is most likely a reflection

of the level of dangerousness a defendant poses to society at-large. Interestingly, while defendants with no criminal record represent almost one-quarter of all defendants, juries are least likely to impose death. The data show juries returned a death sentence at a rate of 30.0 percent. Overwhelmingly, the presence of any level of prior criminal activity increases the likelihood of a jury returning a death sentence when prosecutors seek death. This may suggest jurors do in fact weigh the level of dangerousness a defendant poses to society-at-large in their sentence determinations. While this relationship presents itself with regard to juries, it does not appear to impact a prosecutor's decision to seek the death penalty. Prosecutors sought the death penalty at a rate of 26.6 percent against defendants with no prior criminal record, but sought death at a rate of 23.5 percent against defendants with a juvenile record, and 28.2 percent against defendants with previous misdemeanor convictions. This shows factors other than the level of dangerousness a defendant poses impacts a prosecutor's decision to seek the death penalty. Overall, defendants with three or more previous felony convictions represent approximately one-third of the cases resulting in death. Therefore, defendants with such criminal histories are approximately four times more likely to receive death than defendants with no prior criminal history. This supports the finding in the prior literature that when a defendant has a higher propensity for violence, the more likely it is the defendant will receive a death sentence.

**Table 9 Defendant's Criminal History**

| | % of All First-Degree Murder Convictions in Database | % of Cases in which Prosecutor Sought Death Penalty | % of Death Penalty Cases in which Jury Returned Death Sentence | % of Cases Resulting in Death Sentence |
|---|---|---|---|---|
| No criminal record | 24.6% | 26.6% | 30.0% | 8.0% |
| Juvenile record | 10.8% | 23.5% | 51.9% | 12.2% |
| Record of misdemeanors | 33.5% | 28.2% | 44.6% | 12.6% |
| One or two prior felonies | 24.5% | 38.9% | 50.0% | 19.5% |
| Three or more prior felonies | 18.1% | 44.0% | 69.4% | 30.6% |

Table 10 demonstrates the connection between the location of the murder and the likelihood of receiving the death penalty. The majority of first-degree murders occurred at the victim's residence; approximately one-third of all cases. However, murders at the victim's residence only constitute 14.1 percent of all cases resulting in a death sentence. Here, prosecutors sought the death penalty in 31.4 percent of the cases in which the victim was murdered at his or her residence, and of these cases, juries imposed death at a rate of 44.9 percent. However, 40.0 percent of cases that resulted in a death sentence were murders that took place in a field, wooded or rural area. While murders in a field, wooded or rural area only represent 7.0 percent of all Tennessee first-degree murders, prosecutors sought the death penalty in 56.0 percent of these cases, and juries imposed death at a rate of 71.4 percent. Murders that occurred at the victim's place of employment constitute 37.7 percent of the cases resulting in death sentences. While murders at the victim's workplace only comprise 5.0 percent of all first-degree murder convictions, prosecutors sought the death penalty at a rate of 52.8 percent, and juries imposed death at a rate of 71.4, the same rate as murders in fields, wooded or rural areas.

In comparison, murders that take place in parks or school grounds, streets or parking lots, and public or private vehicles are least likely to result in death. Murders that took place in parks or school grounds constitute 9.7 percent of cases that result in a death sentence. Murders that occurred on streets or parking lots represent 7.5 percent of the cases resulting in death, and murders that occurred in automobiles only constitute 3.7 percent of the cases resulting in the death penalty. Not surprisingly, prosecutors seek the death penalty at the lowest rates in these three types of cases, and the same trend is revealed for jury decisions.

**Table 10 Location of Crime**

| | % of All First-Degree Murder Convictions in Database | % of Cases in which Prosecutor Sought Death Penalty | % of Death Penalty Cases in which Jury Returned Death Sentence | % of Cases Resulting in Death Sentence |
|---|---|---|---|---|
| Field, woods or rural area | 7.0% | 56.0% | 71.4% | 40.0% |
| Victim's workplace | 5.0% | 52.8% | 71.4% | 37.7% |
| Jail or prison | 1.1% | 41.7% | 80.0% | 33.3% |
| Commercial establishment | 7.5% | 50.0% | 52.5% | 26.3% |
| Hotel or motel | 1.6% | 35.3% | 66.7% | 23.5% |
| Victim's residence | 31.9% | 31.4% | 44.9% | 14.1% |
| Defendant's residence or workplace | 5.4% | 25.9% | 40.0% | 10.3% |
| Park or school grounds | 2.9% | 19.4% | 50.0% | 9.7% |
| Street, sidewalk or parking lot | 10.0% | 21.5% | 34.8% | 7.5% |
| Public or private vehicle | 2.5% | 22.2% | 16.7% | 3.7% |

Table 11 provides insights into how motive impacts sentencing outcomes in first-degree murder cases. The majority of Tennessee first-degree murders, 40.0 percent, were motivated by monetary or some other type of personal gain, and represent 21.8 percent of the cases resulting in death. However, prosecutors and juries sought and imposed death at higher rates for three other types of motives. Prosecutors sought the death penalty when the motive is to escape apprehension or punishment at a rate of 66.7 percent and juries imposed death in 75.0 percent of these cases, which ultimately represents 50.0 percent of the cases resulting in death. Prosecutors sought the death penalty at a rate 68.6 percent when the motive behind the murder is sexual or other pleasure, and juries imposed death in 57.1 percent of these cases, which ultimately represents 39.2 percent of the cases resulting in the death penalty. This may correlate with the view that the more heinous murders, like those involving sexual assaults, deserve harsher punishment as seen earlier in Table 6. At a similar rate, murders motivated to silence a witness comprise 34.4 percent of the cases resulting in death. Here, prosecutors sought the death penalty at a rate of 56.3, and juries imposed death in 61.1 percent of these cases. As a result, first-degree

murders in Tennessee motivated to escape apprehension, for sexual pleasure, to silence witnesses, and those for pecuniary gain are most likely to result in a death sentence.

In contrast, murders that involve possible drug influence represent only 12.5 percent of cases resulting in a death sentence. Of the cases in which prosecutors sought death, juries only imposed death in 27.3 percent of these cases. Again, this could reflect a decreased amount of sympathy for those victims involved in illegal activity and are viewed as less heinous; thus, the death penalty rates for drug related motives would likewise be lower than murders motivated by sexual pleasure. The data also illustrate, that while murders motivated by some kind of prejudice, such as racial or religious bias, which constitutes the second most frequent motive of all first-degree murder cases in Tennessee at 7.0 percent, prosecutors only sought death at a rate of 28.0 percent, and juries only imposed death in 38.1 percent of these cases. Overall, murders involving racial or some other form of bias only represent 10.7 percent of the cases resulting in death. Furthermore, the motive least likely to result in death is long-term hatred of the victim. While murder motivated by long-term hatred of the victim only makeup 1.0 percent of the motives behind all first-degree murder convictions, long-term hatred of the victim represent 9.1 percent of cases resulting in the death penalty. Therefore, while motives that tend to be more heinous such as sexual pleasure, escape apprehension and the silence of a witness are more likely to result in death, motives that involve drugs, racial or religious bias, and long-term hatred of the victim are least likely to result in a death sentence in Tennessee.

**Table 11 Motive**

| | % of All First-Degree Murder Convictions in Database | % of Cases in which Prosecutor Sought Death Penalty | % of Death Penalty Cases in which Jury Returned Death Sentence | % of Cases Resulting in Death Sentence |
|---|---|---|---|---|
| Escape apprehension or punishment | 3.4% | 66.7% | 75.0% | 50.0% |
| Sexual or other pleasure | 4.8% | 68.6% | 57.1% | 39.2% |
| Silence a witness | 3.0% | 56.3% | 61.1% | 34.4% |
| Pecuniary or other gain | 40.0% | 41.7% | 52.2% | 21.8% |
| Revenge or retaliation | 6.5% | 36.2% | 52.0% | 18.8% |
| Obsession, control | 4.6% | 34.7% | 41.2% | 14.3% |
| Senseless killing | 3.4% | 19.4% | 71.4% | 13.9% |
| Possible drug influence | 2.2% | 45.8% | 27.3% | 12.5% |
| Racial, religious or other bias | 7.0% | 28.0% | 38.1% | 10.7% |
| Jealousy | 2.8% | 23.3% | 42.9% | 10.0% |
| Long-term hatred of victim | 1.0% | 18.2% | 50.0% | 9.1% |

Table 12 illustrates which statutory aggravating factors impact the death penalty process. The data show the majority of all first-degree murder convictions in Tennessee cite the statutory aggravating factor that the murder was committed while fleeing another felony, which constitutes 17.1 percent of all convictions. The second most cited aggravating factor of all first-degree murder convictions is the defendant has previous violent felony convictions, which constitutes 12.5 percent of all cases. The third most cited aggravating factor is when the murder involves torture or some kind of heinous treatment of the victim, which constitutes 12.3 percent. Other notable aggravating factors include murder committed to avoid arrest, which is cited in 6.9 percent of all first-degree murder convictions, and that the defendant created a risk to others, which is cited in 4.0 percent of all convictions.

Table 12 shows prosecutors are more likely to seek the death penalty when the murder victim is a law enforcement officer or other kind of public official, when the defendant is a serial killer, and when the defendant mutilates the victim's body. For each of these aggravating

factors, prosecutors seek the death penalty 100 percent of the time. Furthermore, prosecutors seek the death penalty at a rate of 90.0 percent when murders occur while in police custody. Also, prosecutors seek the death penalty in 79.7 percent of the cases that involve murder to avoid arrest, 79.1 percent of the cases where the defendant has a previous violent felony conviction, and 76.3 percent of the cases involving torture or heinous treatment of the victim.

In contrast, juries return death sentences in cases where the prosecutor has sought the death penalty the most when the victim is handicapped or vulnerable for some reason. Here, juries returned death sentences at a rate of 100 percent. In comparison, prosecutors only sought the death penalty in 26.6 percent of the cases involving a vulnerable or handicapped victim. Also, juries impose death at a rate of 90.0 percent when the murder is committed while in police custody. Here, juries and prosecutors both appear to view these kinds of murders as more deserving of the death penalty. Furthermore, juries and prosecutors believe the death penalty is more warranted in cases involving the murder of law enforcement officials and serial killers, as juries impose death in each at a rate of 87.5 percent.

**Table 12 Statutory Aggravating Factors**

| | % of All First-Degree Murder Convictions in Database | % of Cases in which Prosecutor Sought Death Penalty | % of Death Penalty Cases in which Jury Returned Death Sentence | % of Cases Resulting in Death Sentence |
|---|---|---|---|---|
| Victim under age of 12 | 2.2% | 56.5% | 61.5% | 34.8% |
| Previous violent felony conviction | 12.5% | 79.1% | 80.2% | 63.4% |
| Def created risk to others | 4.0% | 72.1% | 54.8% | 39.5% |
| Murder for money | 2.2% | 75% | 77.8% | 58.3% |
| Torture/heinous | 12.3% | 76.3% | 75.0% | 57.3% |
| Murder to avoid arrest | 6.9% | 79.7% | 71.2% | 56.8% |
| While fleeing another felony | 17.1% | 73.8% | 67.4% | 49.7% |
| Murder while in custody | 1.0% | 90.9% | 90.0% | 81.8% |
| Murder of law official/ other | 0.7% | 100% | 87.5% | 87.5% |
| Murder of elected official | 0.1% | 0.0% | | |
| Serial killer | 0.7% | 100% | 87.5% | 87.5% |
| Mutilation of body | 0.6% | 100% | 33.3% | 33.3% |
| Victim vulnerable/handicapped | 1.3% | 26.6% | 100% | 28.6% |

However, it is interesting that juries are least likely to impose death when the defendant mutilates the victim's body, only imposing death in 33.0 percent of these cases. This finding seems counterintuitive because the literature, as well as logic, tells us the more violent and heinous the murder, the more likely the defendant will receive death. As a result of the prosecutor's and jury's views on which aggravating factors are more likely to result in a death sentence, serial killer defendants and murders of law enforcement officers constitute 87.5 percent of the cases resulting in a death sentence overall. The aggravating factor resulting in the lowest percentage of cases resulting in a death sentence overall is the murder of a handicapped or vulnerable victim at a percent of 28.6, which while juries impose death at a rate of 100 percent in these kinds of murders, this low percentage is most likely due the low frequency in which prosecutors seek death in these cases.

Lastly, the data provide insights into the intelligence level of the defendants and the likelihood of receiving a death sentence. Table 13 reveals defendants with an intelligence quotient of below 70 accounts for 41.1 percent of all first-degree murder convictions. However, the smallest percentage of all first-degree murder convictions is composedof defendants with an intelligence quotient of above 100, which accounts for 9.1 percent of all cases.

**Table 13 Defendant's IQ**

| | % of All First-Degree Murder Convictions in Database | % of Cases in which Prosecutor Sought Death Penalty | % of Death Penalty Cases in which Jury Returned Death Sentence | % of Cases Resulting in Death Sentence |
|---|---|---|---|---|
| IQ Below 70 | 41.1% | 47.7% | 33.3% | 15.9% |
| IQ 71-100 | 34.3% | 41.8% | 41.8% | 17.5% |
| IQ Above 100 | 9.1% | 37.1% | 69.4% | 25.8% |

In terms of whether the prosecutor will seek the death penalty, it appears prosecutors are more likely to seek death when defendants have an intelligence quotient of below 70, which constitutes 47.7 percent. Defendants whose intelligence quotient ranges from 71 to 100 account for 41.8 percent of the cases in which the prosecution sought the death penalty, and defendants with an intelligence quotient above 100 account for 37.1 percent. While prosecutors are more likely to seek the death penalty against defendants with a lower intelligence quotient, juries are more likely to return a death sentence against defendants with an intelligence quotient above 100. Of the cases where the prosecutor sought the death penalty, juries imposed death in 69.4 percent of the cases with defendants that have an intelligence quotient over 100. This may be tied to an increased level of sympathy for defendants that lack average intelligence and a decreased level of sympathy for defendants that are relatively smart. Table 13 also illustrates that while prosecutors seek death the least when the defendant has the highest intelligence level, these defendants actually constitute 25.8 percent of the cases resulting in a death sentence overall. This is in comparison to defendants below 70, which accounts for only 15.9 percent, and to defendants that range from 71 to 100, which accounts for only 17.5 percent of the cases resulting in a death sentence overall. Therefore, overall, the more intelligent a defendant, the more likely he or she will be sentenced to death.

### *Logistic Regression Models*

#### *The Overall Application of the Death Penalty*

##### *Regression Model 1*

Regression Model 1 examines the overall factors that impact whether defendants are sentenced to death, and includes 1,007 first-degree murder convictions.[67] The primary independent variables included in the model are "black defendant" and "white victim." The theoretical reasoning for including "black defendants" (1=black, 0=non-black) is the literature overwhelmingly suggests black defendants in the overall application of the death penalty, irrespective of the race of the victim, are much more likely to be charged, indicated, prosecuted and sentenced to death as compared to white defendants. Including "black defendants" will test hypothesis one ($H_1$). Similarly, the theoretical reasoning for including "white victims" (1=white, 0=non-white) is the literature consistently suggests when a defendant's victim is white, he or she is much more likely to receive the death penalty overall. Including "white victims" will test hypothesis two ($H_2$).

In order to isolate the impact of race on the administration of the death penalty, the literature dictates control variables for heinousness of crime (Katz, 1987), and the defendant's level of dangerousness (Heilbrun, Foster and Golden, 1989). The control variables included for measuring heinousness of crime rooted in the literature include murder for sexual or other pleasure, murder for pecuniary gain, murder motivated by revenge or retaliation, murder possibly motivated by drugs, murder occurring in a field, wooded or rural area, murder occurring at a commercial establishment, murder occurring at the victim's workplace, throat slashing as

[67] The number of observations is reduced by 61 due to missing data within the Rule 12 database. Although the observations are reduced, the missing data only constitutes 6%. As a result, the missing data should not significantly impact the outcome of the models given no systematic differences in the missing data.

method of killing, drowning as method of killing, elderly killing, burglary/robbery killing, and killing of a law enforcement officer. The last three control variables in the regression models that control for heinousness of crime are a product of my interviews with District Attorney General Randall Nichols and Knox County Criminal Court Judges Mary Beth Leibowitz and Richard Baumgartner. These control variables include contract killing, killing motivated by obsession or control, and killing with no apparent motive. The control variables for heinousness of crime do not change throughout the analyses in this dissertation. Regression Models 1 through 6 contain identical control variables for heinousness of crime.

In addition to controlling for heinousness of crime, the regression models that follow also control for the level of dangerousness the defendant poses to society, which the literature suggests is necessary to isolate the impact of race on the administration of the death penalty (Johnson, 2003). The control variables included for purposes of controlling for the level of dangerousness rooted in the literature include defendants with three or more previous felony convictions, defendants that murder three or more persons, and where the murder is to escape apprehension (Weiss, Berk and Lee, 1996). The control variables for the level of dangerousness do not change throughout the analyses in this dissertation. Regression Models 1 through 6 contain identical control variables for level of dangerousness.

***Regression Model 1 – Results***

Table 14 yields a regression coefficient of -0.499 for the first primary independent variable "black defendant," as measured for whether defendants are sentenced to death in the overall application of the death penalty. This value is statistically significant at the 0.080 level. Given previous research has utilized a probability level of 0.05, this finding is not statistically

significant. Therefore, at a probability level of 0.05, one must fail to reject the null hypothesis and conclude in the overall application of the Tennessee death penalty, black defendants are *not* more likely to be sentenced to death. However, when utilizing a weaker probability level of 0.10, this finding is statistically significant. Furthermore, the coefficient is negative for "black defendants." Therefore, on average, black defendants are less likely to receive the death penalty overall after controlling for heinousness of crime and dangerousness of the defendant, which is contrary to the vast amount of prior research. While this finding is contrary to prior research, this finding seems to coincide with the observations of legal practitioners interviewed in Chapter Three. However, regardless of utilizing a probability level of 0.05 or 0.10, "white victim," the second primary independent variable, is not statistically significant in determining overall whether defendants are sentenced to death. "White victim" produces a regression coefficient of -0.056, and is statistically significant at the 0.852 level. As a result of its insignificance, one must fail to reject the null hypothesis and conclude in the overall application of the Tennessee death penalty, defendants with white victims are *not* more likely to be sentenced to death, even after controlling for heinousness of crime and future dangerousness of the defendant, which runs contrary to the literature in the field. Furthermore, the constant value is -3.626, and is highly significant at 0.00. Additionally, the model correctly predicts 88.0 percent of the outcomes in the data, indicating a relatively strong model. In predicting whether defendants are sentenced to death before running the model, *a priori*, the percentage of outcomes correctly predicted is 85.0. Therefore, the use of the model increases the percentage correctly predicted by 3.0 percent.

Of the control variables placed into the model, murders for sexual pleasure or gratification have the strongest relationship to whether defendants are sentenced to death overall. Murders for sexual pleasure or gratification yield a coefficient of 2.016, and is significant at the

0.000 level. The second control variable with the strongest relationship to whether defendants are sentenced to death overall is when the victim is drowned. This variable yields a coefficient of 1.989, and is statistically significant at the 0.002 level. The third control variable with the strongest relationship to the dependent variable is contract killing with a coefficient of 1.832, which is statistically significant at the 0.000 level. Based on the theory reflected in the literature that heinousness of crime is a significant factor that needs to be controlled in order to isolate the impact of race on the administration of the death penalty, it is not surprising that killings involving sexual gratification, drowning and contract killing would be the most statistically significant control variables. Based on the level of violence and cruelty involved in killing for the purposes of sexual gratification and the amount of physical force necessary to drown an individual, these two variables clearly reflect a level of heinousness. Furthermore, it is not surprising that contract killing has one of the strongest relationships with whether defendants are sentenced to death overall because of my conversation with District Attorney General Randall Nichols. During our conversation he specifically noted it takes a "cold-hearted" person to hire another person to commit murder, and as a result, this should be given weight when deciding whether to seek the death penalty. The control variable that has the weakest relationship is elderly killing with a coefficient of 0.807, which is statistically significant at the 0.008 level. This may be a reflection of the low rates at which prosecutors seek the death penalty in cases where the victim is handicapped or vulnerable as demonstrated in Table 12. Therefore, defendants whose murders involve killing for sexual gratification are much more likely to receive the death penalty than defendants whose murders involve the elderly.

Of the control variables placed into the model, murders having no apparent motive, possible drug influence, involving three or more victims and burglary/robbery killings are not

statistically significant. Given the literature, this is not an unforeseeable result. If the death penalty is reserved for those murders that are of such a heinous nature that the defendant's actions shock the average person's conscience, it would be expected that murders involving drugs and robbery would not meet that standard, since there is a public perception that drugs are such a common occurrence in American society that victims murdered as a product of such activity may deserve less sympathy. Moreover, in terms of robbery related killings, it may be that robbery, as District Attorney General Randall Nichols suggests, is no longer a death penalty eligible offense because the act of robbery or burglary simply does not meet the "worst of the worst" type case. Likewise, a senseless killing with no apparent motive does not impact whether defendants are sentenced to death overall. This is an interesting finding given my conversation with Judge Richard Baumgartner in which he stated he has observed murders for no apparent motive seem to result in a death sentence more frequently. This result may change when examining the factors that impact prosecutors and juries independently, which are examined in later regression models. Furthermore, defendants with three or more victims does not appear to impact whether defendants are sentenced to death overall, which is an interesting finding, since in theory the more victims a defendant murders, the more atrocious and heinous the crime is viewed. Also, in theory, the more victims a defendant has, the more dangerous he or she would be viewed, which intuitively would be more likely to result in a death sentence overall. Even though overall three or more victims is not statistically significant, this could also change when prosecutors and juries are examined independently.

**Table 14 Logistic Regression Model 1 - Whether Defendants are Sentenced to Death Overall**

| ***A priori*** | **Predicted** | | |
|---|---|---|---|
| **Observed** | Not Sentenced to Death | Sentenced to Death | Percent Correct |
| Not sentenced to death | 858 | 0 | 100.0 |
| Sentenced to death | 149 | 0 | .0 |
| Overall | 1007 | 0 | 85.2 |
| | | | |
| ***Model*** | **Predicted** | | |
| **Observed** | Not Sentenced to Death | Sentenced to Death | Percent Correct |
| Not sentenced to death | 840 | 18 | 97.9 |
| Sentenced to death | 107 | 42 | 28.2 |
| Overall | 947 | 60 | 87.6 |

| **Variable** | **B** | **S.E.** | **Wald** | **df** | **Sig.** | **Exp(B)** |
|---|---|---|---|---|---|---|
| sexual or other pleasure or gratification*** | 2.016 | 0.396 | 25.896 | 1 | 0.000 | 7.506 |
| method of killing-drowning*** | 1.989 | 0.647 | 9.441 | 1 | 0.002 | 7.310 |
| contract killing*** | 1.832 | 0.522 | 12.308 | 1 | 0.000 | 6.248 |
| escape apprehension or punishment*** | 1.819 | 0.457 | 15.864 | 1 | 0.000 | 6.168 |
| location of murder -field, woods or rural area*** | 1.527 | 0.330 | 21.374 | 1 | 0.000 | 4.606 |
| pecuniary or other gain*** | 1.521 | 0.354 | 18.425 | 1 | 0.000 | 4.577 |
| law enforcement public official killing** | 1.384 | 0.590 | 5.494 | 1 | 0.019 | 3.989 |
| defendant had three or more prior felonies*** | 1.429 | 0.229 | 39.214 | 1 | 0.000 | 4.176 |
| location of murder-victim's workplace*** | 1.290 | 0.352 | 13.406 | 1 | 0.000 | 3.632 |
| revenge or retaliation*** | 1.349 | 0.418 | 10.405 | 1 | 0.001 | 3.855 |
| method of killing-throat slashing** | 1.243 | 0.525 | 5.598 | 1 | 0.018 | 3.467 |
| no apparent motive* | 1.077 | 0.572 | 3.541 | 1 | 0.060 | 2.936 |
| obsession, control** | 1.085 | 0.500 | 4.716 | 1 | 0.030 | 2.960 |
| location of murder-commercial establishment** | 0.879 | 0.341 | 6.654 | 1 | 0.010 | 2.408 |
| possible drug influence | 0.919 | 0.713 | 1.664 | 1 | 0.197 | 2.507 |
| three or more victims | 0.796 | 0.499 | 2.549 | 1 | 0.110 | 2.217 |
| elderly killing*** | 0.807 | 0.304 | 7.030 | 1 | 0.008 | 2.240 |
| burglary robbery killing | -0.310 | 0.330 | 0.881 | 1 | 0.348 | 0.734 |
| black defendant * | -0.499 | 0.285 | 3.061 | 1 | 0.080 | 0.607 |
| white victim | -0.056 | 0.299 | 0.035 | 1 | 0.852 | 0.946 |
| Constant | -3.626 | 0.378 | 91.810 | 1 | 0.000 | 0.027 |

| | |
|---|---|
| % correctly predicted | 88% |
| Nagelkerke R-squared | .33 |
| Model Chi-Square | 205.11 |
| Significance | .000 |

*** p<0.01; ** p<0.05; * p<0.1

***Regression Model 2***

The prior research in the area of race and the death penalty suggests the racial relationship between the defendant and victim impact the outcome of death penalty cases. Specifically, the literature reports where defendants are black and their victims white, the death penalty is sought and imposed at considerably higher rates. While Regression Model 1 tests the impact of the race of the defendant and the race of the victim on whether defendants are sentenced to death overall, it does not take into account the impact of the racial interaction between defendant and victim. Regression Model 2 specifically tests for the impact of the racial interaction between the defendant and victim, and includes 1002 observations.[68]

Regression Model 2 does not contain "black defendant" or "white victim" as Model 1 because in testing for the racial interaction impact, having these two variables in the model would be redundant; thus, they have been excluded from Model 2. However, Model 2 contains three different primary independent variables to determine whether the racial relationship between the defendant and victim impact a death sentence in the overall application of the death penalty. The first primary variable is "black defendant/white victim" (1=black defendant, 0=non-black defendant / 1=white victim, 0=non-white victim). The theoretical reasoning for including this variable is the majority of the literature suggests when defendants are black and their victims white, the rate in which the death penalty is imposed is increased considerably. The second primary independent variable is "black defendant/black victim" (1=black defendant, 0=non-black defendant / 1=black victim, 0=non-black victim). Lastly, the third primary independent variable is "white defendant/white victim" (1=white defendant, 0=non-white

[68] The number of observations is reduced by 66 due to missing data within the Rule 12 database. Although the observations are reduced, the missing data only constitutes 6.6%. As a result, the missing data should not significantly impact the outcome of the models given no systematic differences in the missing data.

defendant / 1= white victim, 0=non-white victim). The theoretical reasoning for the second and third primary independent variables is to establish that if in fact "black defendant, white victim" has an impact on the general application of the death penalty, it is then necessary to establish whether the other racial relationships have an impact as well.[69] Including all three of these variables will test hypothesis three ($H_3$) to determine whether black defendants with white victims are more likely to be sentenced to death in comparison to other racial interactions. Furthermore, even though the primary independent variables are different in Model 2, the control variables are identical. There are no changes in the variables to ensure heinousness of crime and dangerousness of the defendant are controlled.

***Regression Model 2 – Results***

Table 15 yields a regression coefficient of -0.265 for the first primary independent variable "black defendant/white victim," as measured for whether defendants are sentenced to death in the overall application of the death penalty. This value is statistically significant at the 0.649. Given previous research has utilized a probability level of 0.05, this finding is not statistically significant, and is contrary to the literature in this area. However, this is consistent with the observations of Judges Leibowitz and Baumgartner. Furthermore, the second primary independent variable "black defendant/black victim" provides a regression coefficient of 0.345, as measured for whether defendants are sentenced to death in the overall application of the death penalty. This value is statistically significant at the 0.501 level. Again, using a probability level of 0.05, this finding is also not statistically significant. Lastly, the third primary independent

[69] The variable "white defendant, black victim" was intentionally excluded from Model 2 for two reasons. First, it would be redundant to include the variable. Second, the variable only constitutes nineteen observations in the dataset.

variable “white defendant, white victim” yields a regression coefficient of 0.741, and is statistically significant at the 0.137 level. With a probability level of 0.05, this finding is also not statistically significant. As a result, none of the racial interaction terms are statistically significant in whether defendants are sentenced to death in the overall application of the death penalty. Therefore, at a probability level of 0.05 one must fail to reject the null hypothesis and conclude in the overall application of the Tennessee death penalty, black defendants with white victims are *not* more likely to be sentenced to death, which is contrary to the literature in the field. Therefore, Model 2 reveals there is no racial interaction impact on whether defendants are sentenced to death in the overall application of the death penalty. It should also be recognized the constant value is -4.380, and is highly significant at 0.000. In addition, the model correctly predicts 88.0 percent of the outcomes in the data. In predicting whether defendants are sentenced to death before running the model, *a priori*, the percentage of outcomes correctly predicted in 85.0. Therefore, use of the model increases the percentage correctly predicted by 3.0 percent, identical to Model 1.

Of the control variables placed in Regression Model 2, the same two control variables have the strongest relationship to whether defendants are sentenced to death in the overall application of the death penalty. With the strongest relationship, murders that are committed for sexual pleasure or gratification yields a coefficient of 1.976, and is statistically significant at the 0.000 level. The variable with the second strongest relationship is drowning the victim, which has a coefficient of 1.973, and is statistically significant at the 0.002 levels. However, in Regression Model 1, contract killing had the third strongest relationship to whether defendants are sentenced to death in the overall application of the death penalty. In Model 2 contract killing falls below murders that are committed to escape apprehension or punishment. This variable has

a coefficient of 1.900, and is statistically significant at the 0.000 level. Also, when defendants have three or more prior felony convictions, defendants are more likely to be sentenced to death overall. Three or more felony convictions presents a coefficient of 1.429, and is statistically significant at the 0.000 level. Based on the theory reflected in the literature that heinousness of crime is a factor that needs to be controlled in order to isolate the impact of race on the administration of the death penalty, it is not surprising that killings for sexual pleasure and murders committed by drowning the victim would be the most statistically significant control variables. Given the violence and grotesque nature of achieving some form of sexual gratification in murder and the amount of physical force necessary to drown an individual, these two variables reflect the level of heinousness and violence associated with the kinds of murders committed in Tennessee. Furthermore, it is foreseeable that murders committed to escape apprehension or punishment would have a strong relationship with whether defendants are sentenced to death in the overall application of the death penalty. As a measure of the level of dangerousness a defendant poses to society, in theory it is understandable that when a defendant commits murder to prevent being prosecuted or to escape, the defendant poses a severe threat to society at-large. It is also foreseeable that defendants with lengthy criminal histories are more likely to receive the death penalty overall due to a pattern of past violence, which would lead one to think the defendant poses a threat to society in the future. The control variable that has the weakest relationship to whether defendants are sentenced to death is once again elderly killing with a coefficient of 0.832 that is statistically significant at the 0.007 level. Therefore, defendants whose murders involve killing for sexual gratification are more likely to receive the death penalty than defendants whose murders involve the elderly.

Of the control variables placed in the model, the variables that are not statistically significant at a probability level of 0.05 include murders having a possible drug influence, involving three or more victims and killings that are the product of a burglary or robbery. Murders that involve a possible drug influence yield a coefficient of 0.960, and is statistically significant at the 0.174 level. Murders that are a product of burglary or robbery yield a coefficient of -0.257, and is statistically significant at the 0.450 level. Murders that involve three or more victims yield a coefficient of 0.865, and is statistically significant at the 0.081 level. It should be noted murders involving three or more victims is statistically significant at the 0.10 level; however, prior research usually does not use this lower probability level to determine statistical significance. These three variables were also insignificant when testing for the impact of the race of the defendant and victim in Regression Model 1, and remain insignificant when testing for the impact of the racial interaction between the defendant and victim. However, one small difference in Regression Model 2 is the impact of murders involving no apparent motive. When testing for the impact of the race of the defendant and victim, irrespective of the racial interaction, having no apparent motive is clearly not significant. However, when testing the racial interaction between defendant and victim, this variable becomes slightly significant with a coefficient of 1.102, and is significant at the 0.055 level. While murders for no apparent reason become slightly significant here, based on Judge Baumgartner's observations, it is expected to see no apparent motive to become more significant in the models to follow below.

In relation to the literature, the findings for drug influence and robbery killings are not unforeseeable. If the death penalty is reserved for those murders that are of such a heinous nature that the defendant's actions shock the average person's conscience, it would be expected that murders involving drugs and robbery would not meet that criterion since there is a public

perception that drugs are such a common occurrence in American society that victims murdered as a product of such activity deserve less sympathy. Moreover, in terms of robbery related killings, it may be that robbery, as District Attorney General Randall Nichols suggests, is no longer a death penalty eligible offense because the act of robbery or burglary simply does not meet the "worst of the worst" type case. On the other hand, defendants with three or more victims does not appear to impact whether defendants are sentenced to death overall, which is an interesting finding since in theory the more victims a defendant murders, the more atrocious and heinous the crime would be viewed. Although a murder with three or more victims is not statistically significant overall, this is expected to change when prosecutors and juries are examined independently.

**Table 15 Logistic Regression Model 2 - Whether Defendants are Sentenced to Death Overall**

| ***A priori*** | **Predicted** | | |
|---|---|---|---|
| **Observed** | Not Sentenced to Death | Sentenced to Death | Percent Correct |
| Not sentenced to death | 855 | 0 | 100.0 |
| Sentenced to death | 147 | 0 | .0 |
| Overall | 1002 | 0 | 85.3 |

| ***Model*** | **Predicted** | | |
|---|---|---|---|
| **Observed** | Not Sentenced to Death | Sentenced to Death | Percent Correct |
| Not sentenced to death | 838 | 17 | 98.0 |
| Sentenced to death | 105 | 42 | 28.6 |
| Overall | 943 | 59 | 87.8 |

| **Variable** | **B** | **S.E.** | **Wald** | **df** | **Sig.** | **Exp(B)** |
|---|---|---|---|---|---|---|
| sexual or other pleasure or gratification*** | 1.976 | 0.403 | 24.040 | 1 | 0.000 | 7.213 |
| method of killing-drowning*** | 1.973 | 0.649 | 9.257 | 1 | 0.002 | 7.194 |
| contract killing*** | 1.819 | 0.528 | 11.879 | 1 | 0.001 | 6.167 |
| escape apprehension or punishment*** | 1.900 | 0.467 | 16.539 | 1 | 0.000 | 6.688 |
| location of murder -field, woods or rural area*** | 1.463 | 0.335 | 19.096 | 1 | 0.000 | 4.318 |
| pecuniary or other gain*** | 1.516 | 0.361 | 17.650 | 1 | 0.000 | 4.555 |
| law enforcement public official killing** | 1.451 | 0.621 | 5.465 | 1 | 0.019 | *4.268* |
| defendant had three or more prior felonies*** | 1.429 | 0.230 | 38.516 | 1 | 0.000 | 4.176 |
| location of murder-victim's workplace*** | 1.368 | 0.359 | 14.546 | 1 | 0.000 | 3.928 |
| revenge or retaliation*** | 1.323 | 0.419 | 9.959 | 1 | 0.002 | 3.756 |
| method of killing-throat slashing** | 1.260 | 0.522 | 5.829 | 1 | 0.016 | 3.525 |
| no apparent motive** | 1.102 | 0.574 | 3.687 | 1 | 0.055 | 3.009 |
| obsession, control** | 1.016 | 0.501 | 4.106 | 1 | 0.043 | 2.762 |
| location of murder-commercial establishment*** | 0.962 | 0.344 | 7.819 | 1 | 0.005 | 2.616 |
| possible drug influence | 0.960 | 0.706 | 1.848 | 1 | 0.174 | 2.613 |
| three or more victims* | 0.865 | 0.496 | 3.044 | 1 | 0.081 | 2.375 |
| elderly killing*** | 0.832 | 0.306 | 7.400 | 1 | 0.007 | 2.299 |
| burglary robbery killing | -0.257 | 0.341 | 0.571 | 1 | 0.450 | 0.773 |
| black defendant black victim | 0.354 | 0.527 | 0.453 | 1 | 0.501 | 1.425 |
| black defendant white victim | -0.265 | 0.582 | 0.207 | 1 | 0.649 | 0.767 |
| white defendant white victim | 0.741 | 0.498 | 2.210 | 1 | 0.137 | 2.098 |
| Constant | -4.380 | 0.551 | 63.209 | 1 | 0.000 | 0.013 |

| | |
|---|---|
| % correctly predicted | 88% |
| Nagelkerke R-squared | .33 |
| Model Chi-Square | 205.56 |
| Significance | .000 |

*** p<0.01; ** p<0.05; * p<0.1

### *Prosecutors*

#### *Regression Model 3*

Regression Models 1 and 2 examine the application of the death penalty overall; however, in order to understand the impact of race in each stage of the bifurcated trial process, it is essential to analyze the factors that impact both a prosecutor's decision to seek and a jury's decision to impose death independently. Regression Models 3 and 4 examine the first stage of the bifurcated trial process: the factors that impact a prosecutor's decision to seek the death penalty, which includes 1,007 first-degree murder convictions.[70]

The primary independent variables included in the model are "black defendant" and "white victim." Regression Model 3 does not test the impact of the racial interaction between the defendant and victim. The theoretical reasoning for including "black defendants" (1=black, 0=non-black) is the literature overwhelmingly suggests prosecutors are much more likely to seek the death penalty against black defendants, irrespective of the race of the victim. Including "black defendants" will test hypothesis four ($H_4$). Similarly, the theoretical reasoning for including "white victims" (1=white, 0=non-white) is the literature consistently suggests when a defendant's victim is white, prosecutors are much more likely to seek the death penalty. Including "white victims" will test hypothesis five ($H_5$). As in Models 1 and 2, the control variables placed in Model 3 are identical in an effort to control for heinousness of crime and the level of dangerousness the defendant poses to society.

[70] The number of observations is reduced by 61 due to missing data within the Rule 12 database. Although the observations are reduced, the missing data only constitutes 6%. As a result, the missing data should not significantly impact the outcome of the models given no systematic differences in the missing data.

***Regression Model 3 – Results***

Table 16 yields a regression coefficient of -0.018 for the first primary independent variable "black defendant," as measured for whether prosecutors seek the death penalty. This value is statistically significant at the 0.928. Given previous research has utilized a probability level of 0.05, this finding is not statistically significant. Therefore, at a probability level of 0.05, one must fail to reject the null hypothesis and conclude Tennessee prosecutors are *not* more likely to seek the death penalty in death eligible cases when a defendant is black, which is contrary to the literature in the field. Furthermore, the coefficient for "black defendants" is negative. Therefore, on average, prosecutors are less likely to seek the death penalty against black defendants after controlling for heinousness of crime and defendant's level of dangerousness, which is contrary to the vast amount of literature in the field. However, this finding is consistent with the observations of Judges Leibowitz and Baumgartner in that white defendants, not black defendants, commit the most heinous murders in their experiences as Knox County Criminal Court Judges. However, "white victim" produces a coefficient of 0.585, and is statistically significant at the 0.006 level. Therefore, in using a probability level of 0.05, one must reject the null hypothesis and conclude Tennessee prosecutors are more likely to seek the death penalty in death eligible cases when a victim is white. As a result, on average, Tennessee prosecutors are more likely to seek the death penalty against defendants whose victims are white, irrespective of the race of the defendant, after controlling for heinousness of crime and future dangerousness of the defendant. This finding is consistent with the prior research in the field; however, it should be noted "white victim," while statistically significant, is the least statistically significant variable in the model with a coefficient of 0.585; thus, "white victim" has one of the least predictive powers of the variables in the model. It should also be noted that white victims

constitute the largest percentage of victims in the data (63%), which could explain this finding, rather than simply a reflection of discriminatory application of the death penalty on the part of Tennessee prosecutors. Furthermore, the model yields a constant value of -2.020, and is highly significant at 0.000. Model 3 also correctly predicts 73.0 percent of the outcomes in which prosecutors seek the death penalty, indicating a relatively strong model. In predicting whether prosecutors seek the death penalty, *a priori*, the percentage of outcomes correctly predicted is 66.0 percent. Therefore, as a result of the utilizing Model 3, we are able to increase the percentage of cases correctly predicted by 7.0 percent.

Of the control variables placed in Model 3, the variable with the strongest relationship to whether prosecutors seek the death penalty is drowning as the method of killing. This variable produces a coefficient of 1.792, and is statistically significant at the 0.011 level. This is not a surprising finding, since this variable was also one of the strongest variables in Models 1 and 2 and correlates to heinousness. As noted in Models 1 and 2, the number of victims had no statistical significance on whether defendants are sentenced to death in the overall application of the death penalty. However, as predicted, when defendants murder three or more victims, prosecutors are more likely to seek the death penalty. Three or more victims has the second strongest relationship with whether prosecutors seek the death penalty, which has a coefficient of 1.790, and is statistically significant at the 0.000 level. As a measure of dangerousness the defendant poses to society, this finding is not surprising. Although murders for sexual gratification do not have the strongest relationship with a prosecutor's decision to seek the death penalty, it remains among the three strongest variables with a coefficient of 1.667, and is statistically significant at the 0.000 level.

Based on the theory reflected in the literature that heinousness of crime is a factor that needs to be controlled in order to isolate the impact of race on the administration of the death penalty, it is not surprising that murders committed by drowning the victim, those that have three or more victims and those committed for sexual gratification would be the most significant control variables, and have the strongest relationship with whether prosecutors seek the death penalty. Given the level of violence and the amount of physical force necessary to drown an individual and the grotesque nature of achieving some form of sexual gratification in murder, these two variables reflect the level of heinousness associated with the kinds of murders committed in Tennessee. Furthermore, it is foreseeable the more victims a defendant has murdered, the more likely a prosecutor will seek the death penalty. As a measure of the level of dangerousness a defendant poses to society, it is understandable when a defendant murders multiple persons, he or she poses a high risk to society at-large. Interestingly, an elderly killing is still statistically significant. Here, an elderly killing has a coefficient of 1.118, and is statistically significant at the 0.000 level. This may be related to the idea that murders of the elderly are more atrocious and shocking to society, and as a result, elderly murders are viewed as more heinous to Tennessee prosecutors. Other control variables found to be statistically significant include murder committed to escape apprehension or punishment, murder committed for revenge, murder committed in a field, wooded or rural area, murder committed at the victim's place of employment, murder committed at a commercial establishment, murder committed by slashing the victim's throat, murders that involve possible drug influence, and when a defendant has three or more prior felony convictions.

However, the regression model reveals contract killing as statistically insignificant at a probability level of 0.05 in its influence on a prosecutor's decision to seek the death penalty, with

a coefficient of 0.654. This is a surprising finding given its strong relationship with whether defendants are sentenced to death overall, and my conversation with District Attorney Randall Nichols who believes contract killing is a type of murder that deserves special consideration for the death penalty. In addition, murders committed for pecuniary gain are not statistically significant for prosecutors with a coefficient of 0.169 that is statistically significant at a 0.514 level. A similar pattern emerges with pecuniary gain as does with contract killing. While murders for pecuniary gain are statistically significant in whether a defendant is sentenced to death overall, it is no longer statistically significant for a prosecutor's decision to seek the death penalty. Furthermore, murders committed for the purposes of obsession or control are no longer statistically significant as in the overall application of the death penalty. This is also an interesting finding given the majority of death penalty cases before Knox County Criminal Court Judge Leibowitz that involved domestic related killings and murders related to obsession and control. Lastly, it is not surprising that murders committed in the commission of a robbery or burglary are still not statistically significant, presumably because social norms have dictated the death penalty is for the "worst of the worst". In today's society, robbery and burglary related murders simply do not qualify for the death penalty without the presence of some extreme special circumstance.

**Table 16 Logistic Regression Model 3 - Whether Prosecutors Seek the Death Penalty**

| ***A priori*** | **Predicted** | | |
|---|---|---|---|
| **Observed** | Does Not Seek Death | Seeks Death | Percent Correct |
| Not sentenced to death | 669 | 0 | 100.0 |
| Sentenced to death | 338 | 0 | .0 |
| Overall | 1007 | 0 | 66.4 |

| ***Model*** | **Predicted** | | |
|---|---|---|---|
| **Observed** | Does Not Seek Death | Seeks Death | Percent Correct |
| Not sentenced to death | 600 | 69 | 89.7 |
| Sentenced to death | 207 | 131 | 38.8 |
| Overall | 807 | 200 | 72.6 |

| **Variable** | **B** | **S.E.** | **Wald** | **df** | **Sig.** | **Exp(B)** |
|---|---|---|---|---|---|---|
| sexual or other pleasure or gratification*** | 1.667 | 0.346 | 23.254 | 1 | 0.000 | 5.296 |
| method of killing-drowning** | 1.792 | 0.702 | 6.525 | 1 | 0.011 | 6.002 |
| contract killing | 0.654 | 0.457 | 2.050 | 1 | 0.152 | 1.923 |
| escape apprehension or punishment*** | 1.271 | 0.439 | 8.396 | 1 | 0.004 | 3.563 |
| location of murder -field, woods or rural area*** | 0.785 | 0.282 | 7.725 | 1 | 0.005 | 2.192 |
| pecuniary or other gain | 0.169 | 0.259 | 0.425 | 1 | 0.514 | 1.184 |
| law enforcement public official killing | 0.595 | 0.529 | 1.263 | 1 | 0.261 | 1.813 |
| defendant had three or more prior felonies*** | 0.492 | 0.183 | 7.223 | 1 | 0.007 | 1.636 |
| location of murder-victim's workplace | 0.604 | 0.313 | 3.739 | 1 | 0.053 | 1.830 |
| revenge or retaliation** | 0.681 | 0.297 | 5.280 | 1 | 0.022 | 1.977 |
| method of killing-throat slashing** | 1.046 | 0.523 | 4.007 | 1 | 0.045 | 2.846 |
| no apparent motive | -0.316 | 0.470 | 0.453 | 1 | 0.501 | 0.729 |
| obsession, control | 0.515 | 0.351 | 2.151 | 1 | 0.143 | 1.674 |
| location of murder-commercial establishment*** | 0.757 | 0.273 | 7.663 | 1 | 0.006 | 2.131 |
| possible drug influence** | 0.942 | 0.471 | 4.008 | 1 | 0.045 | 2.566 |
| three or more victims*** | 1.790 | 0.450 | 15.830 | 1 | 0.000 | 5.987 |
| elderly killing*** | 1.118 | 0.246 | 20.576 | 1 | 0.000 | 3.058 |
| burglary robbery killing | 0.405 | 0.253 | 2.560 | 1 | 0.110 | 1.499 |
| black defendant | -0.018 | 0.204 | 0.008 | 1 | 0.928 | 0.982 |
| white victim*** | 0.585 | 0.214 | 7.486 | 1 | 0.006 | 1.795 |
| Constant | -2.020 | 0.246 | 67.388 | 1 | 0.000 | 0.133 |
| | | | | | | |

| | |
|---|---|
| % correctly predicted | 73% |
| Nagelkerke R-squared | 0.22 |
| Model Chi-Square | 173.228 |
| Significance | 0.000 |

*** p<0.01; ** p<0.05; * p<0.1

***Regression Model 4***

While Regression Model 3 tests the impact the defendant's race and the race of the victim on whether a prosecutor will seek the death penalty, it does not take into account the impact of the racial interaction between the defendant and victim. Regression Model 4 specifically tests for the impact of the racial interaction between the defendant and victim and whether a prosecutor seeks the death penalty, which includes 1002 observations.[71]

Regression Model 4 does not contain "black defendant" or "white victim" as in Model 3 because in testing for the impact of the racial interaction, having these two variables in the model would be redundant; thus, they have been excluded from Model 4. Instead, Model 4 contains three different primary independent variables to determine whether the racial relationship between the defendant and victim impact a prosecutor's decision to seek the death penalty in Tennessee. The first primary variable is "black defendant/white victim" (1=black defendant, 0=non-black defendant / 1=white victim, 0=non-white victim). The theoretical reasoning for including this variable is the majority of the literature suggests when defendants are black and their victims white, the rate in which prosecutors seek the death penalty increases considerably. The second primary independent variable is "black defendant/black victim" (1=black defendant, 0=non-black defendant / 1=black victim, 0=non-black victim). Lastly, the third primary independent variable is "white defendant/white victim" (1=white defendant, 0=non-white defendant / 1= white victim, 0=non-white victim). The theoretical reasoning for the second and third primary independent variables is to establish that if in fact "black defendant, white victim" has an impact on whether prosecutors seek the death penalty, it is then necessary to establish

[71] The number of observations is reduced by 66 due to missing data within the Rule 12 database. Although the observations are reduced, the missing data only constitutes 6.6%. As a result, the missing data should not significantly impact the outcome of the models given no systematic differences in the missing data.

whether the other racial relationships have an impact as well.[72] Including all three of these variables will test hypothesis six ($H_6$) to determine whether prosecutors are more likely to seek the death penalty when black defendants murder white victims in comparison to other racial interactions. Furthermore, even though the primary independent variables are different in Model 4, the control variables are identical as in the three prior regression models. There are no changes in the variables to ensure heinousness of crime and dangerousness of the defendant are controlled.

***Regression Model 4 – Results***

Table 17 yields a regression coefficient of 0.502 for the first primary independent variable "black defendant/white victim," as measured for whether a prosecutor seeks the death penalty. This value is statistically significant at the 0.202 level. Given previous research has utilized a probability level of 0.05, this finding is not statistically significant. Furthermore, the second primary independent variable "black defendant/black victim" provides a regression coefficient of 0.144, as measured for whether prosecutors seek the death penalty. This value is statistically significant at the 0.695 level. Again, using a probability level of 0.05, this finding is also not statistically significant. Lastly, the third primary independent variable "white defendant, white victim" yields a regression coefficient of 0.704, and is statistically significant at the 0.046 level. With a probability level of 0.05, this finding is slightly statistically significant. As a result, the racial interaction term that is most frequently viewed in the literature as a factor that increases the likelihood that a prosecutor will seek the death penalty, black defendants with

[72] The variable "white defendant, black victim" was intentionally excluded from Model 2 for two reasons. First, it would be redundant to include the variable. Second, the variable only constitutes nineteen observations in the dataset.

white victims, is not statistically significant. Therefore, a black defendant murder of a white victim is not a significant predictor of whether prosecutors seek the death penalty. Therefore, at a probability level of 0.05, one must fail to reject the null hypothesis and conclude Tennessee prosecutors are *not* more likely to seek the death penalty in death eligible cases when a defendant is black and their victim is white. However, it is interesting that a white defendant with a white victim is a statistically significant predictor that increases the likelihood a prosecutor will seek the death penalty. This finding is also contrary to the literature in the field. It is very possible that first-degree murders involving white defendants and white victims are more heinousness in nature as compared to murders committed by black defendants against black and white victims. However, another plausible explanation is the majority of murders in Tennessee involve white defendants and white victims (52.4%) as compared to the number involving black defendants and white victims (12.9%). The constant value is -2.136, and is highly significant at 0.000. Also, the model correctly predicts 72.0 percent of the outcomes in the data, which indicates a relatively strong model. In predicting whether prosecutors seek the death penalty before running the model, *a priori*, the percentage of outcomes correctly predicted is 67.0. Therefore, use of the model increases the percentage correctly predicted by 5.0 percent when analyzing prosecutorial decisions independently, which is more than when analyzing the overall application of the death penalty.

Of the control variables placed in Model 4, two have an equally strong relationship to whether prosecutors seek the death penalty. Drowning as the method of killing and defendants that murder three or more victims both yield a regression coefficient of 1.768. Drowning the victim is statistically significant at the 0.012 level. This is not surprising, since this variable was also one of the strongest variables in all of the previous models. Defendants that murder three or

more victims is highly statistically significant at the 0.000 level. Murders for sexual gratification remains among the three strongest variables in determining whether prosecutors will seek the death penalty with a coefficient of 1.629, and is statistically significant at the 0.000 level. Based on the theory reflected in the literature that heinousness of crime is a factor that needs to be controlled in order to isolate the impact of race on the administration of the death penalty, it is not surprising that murders committed by drowning the victim, murders that have three or more victims, and those committed for sexual gratification would be the strongest predictors of whether prosecutors seek the death penalty. Given the violence, the amount of physical force necessary to drown an individual, and the grotesque nature of achieving some form of sexual gratification in murder, these two variables reflect the level of heinousness associated with the kinds of murders committed in Tennessee, and allows for an accurate measure of how each impacts a prosecutor's decision to seek the death penalty. Furthermore, it is not surprising murders that have three or more victims is statistically significant in determining whether prosecutors seek the death penalty. As expected, while this variable is not a significant predictor of whether a defendant is sentenced to death in the overall application of the death penalty as demonstrated by Models 1 and 2, three or more victims becomes a highly significant predictor for whether prosecutors seek the death penalty.

There are several other control variables found to have a statistically significant impact on a prosecutor's decision to seek the death penalty. A defendant that murders to escape apprehension or punishment produces a coefficient of 1.427, and is statistically significant at the 0.002 level. This is not surprising, since it has been statistically significant in all of the previous models, which reflects the level of dangerousness the defendant poses to society. If one will murder to prevent capture or prosecution, then the logical conclusion is the defendant poses a

threat to all of society, since the murder was not one that targeted a specific individual, but rather a random individual. Elderly killings also increase the likelihood that a prosecutor will seek the death penalty with a coefficient of 1.115 that is statistically significant at the 0.000 level. Again, this could be related to the idea that the murder of an elderly person is more atrocious and shocking, and as a result, is viewed as more heinous to Tennessee prosecutors. Other control variables found to be statistically significant predictors of whether a prosecutor will seek the death penalty include murders committed in a field, wooded or rural area, murders committed at the victim's place of employment, murders committed at a commercial establishment, murders committed by a defendant with three or more prior felony convictions, murders committed by slashing the victim's throat, murders that involve possible drug influence, and murders committed for revenge or retaliation.

However, the regression model reveals once again contract killing as statistically insignificant at a probability level of 0.05 in its influence on a prosecutor's decision to seek the death penalty, with a coefficient of 0.685, and is statistically significant at the 0.134 level. This remains a surprising finding given its strong relationship with whether defendants are sentenced to death overall. It is also an unexpected finding due to my conversation with District Attorney Randall Nichols. In addition, murders committed for pecuniary gain remain statistically insignificant for prosecutors with a coefficient of 0.159, and is statistically significant at the 0.544 level. A similar pattern arises with pecuniary gain as does with contract killing. While murders for pecuniary gain are statistically significant predictors of whether a defendant is sentenced to death in the overall application of the death penalty in Models 1 and 2, it is no longer statistically significant for a prosecutor's decision to seek the death penalty. Furthermore, murders committed for the purposes of obsession or control continue to be statistically

insignificant in terms of whether a prosecutor seeks the death penalty, whereas obsession and control is statistically significant in whether a defendant is sentenced to death in the overall application of the death penalty. Murders with no apparent motive have no statistical significance on whether prosecutors seek the death penalty. On one hand, this is not surprising, since without some horrific reasoning behind a murder, it would be logical that such a case would not elevate to a death penalty case, since the death penalty is reserved for the "worst of the worst." However, on the other hand, based on my conversation with Judge Baumgartner, first-degree murders committed for no apparent reason have been observed to result in a death sentence, which implies the prosecutor has sought the death penalty. Lastly, it is not surprising that murders committed in the commission of a robbery or burglary are still not statistically significant, presumably because social norms have dictated the death penalty is for the "worst of the worst" type cases. In today's society, robbery and burglary related murders simply do not qualify for the death penalty without the presence of some extreme special circumstance.

**Table 17 Logistic Regression Model 4 - Whether Prosecutors Seek the Death Penalty**

| ***A priori*** | **Predicted** | | |
|---|---|---|---|
| **Observed** | Does Not Seek Death | Seeks Death | Percent Correct |
| Not sentenced to death | 667 | 0 | 100.0 |
| Sentenced to death | 335 | 0 | .0 |
| Overall | 1002 | 0 | 66.6 |

| ***Model*** | **Predicted** | | |
|---|---|---|---|
| **Observed** | Does Not Seek Death | Seeks Death | Percent Correct |
| Not sentenced to death | 600 | 67 | 90.2 |
| Sentenced to death | 207 | 128 | 38.2 |
| Overall | 807 | 195 | 72.7 |

| **Variable** | **B** | **S.E.** | **Wald** | **df** | **Sig.** | **Exp(B)** |
|---|---|---|---|---|---|---|
| sexual or other pleasure or gratification*** | 1.629 | 0.348 | 21.935 | 1 | 0.000 | 5.096 |
| method of killing-drowning** | 1.768 | 0.701 | 6.361 | 1 | 0.012 | 5.860 |
| contract killing | 0.685 | 0.457 | 2.245 | 1 | 0.134 | 1.984 |
| escape apprehension or punishment*** | 1.427 | 0.452 | 9.947 | 1 | 0.002 | 4.164 |
| location of murder -field, woods or rural area*** | 0.752 | 0.284 | 7.009 | 1 | 0.008 | 2.122 |
| pecuniary or other gain | 0.159 | 0.262 | 0.369 | 1 | 0.544 | 1.172 |
| law enforcement public official killing | 0.403 | 0.562 | 0.514 | 1 | 0.473 | 1.497 |
| defendant had three or more prior felonies*** | 0.486 | 0.183 | 7.025 | 1 | 0.008 | 1.626 |
| location of murder-victim's workplace** | 0.634 | 0.314 | 4.087 | 1 | 0.043 | 1.885 |
| revenge or retaliation** | 0.689 | 0.296 | 5.406 | 1 | 0.020 | 1.992 |
| method of killing-throat slashing** | 1.044 | 0.519 | 4.055 | 1 | 0.044 | 2.841 |
| no apparent motive | -0.267 | 0.471 | 0.322 | 1 | 0.571 | 0.766 |
| obsession, control | 0.508 | 0.351 | 2.092 | 1 | 0.148 | 1.662 |
| location of murder-commercial establishment*** | 0.779 | 0.273 | 8.173 | 1 | 0.004 | 2.180 |
| possible drug influence** | 0.965 | 0.469 | 4.223 | 1 | 0.040 | 2.624 |
| three or more victims*** | 1.768 | 0.449 | 15.492 | 1 | 0.000 | 5.857 |
| elderly killing*** | 1.115 | 0.247 | 20.401 | 1 | 0.000 | 3.050 |
| burglary robbery killing* | 0.460 | 0.258 | 3.181 | 1 | 0.075 | 1.584 |
| black defendant black victim | 0.144 | 0.367 | 0.153 | 1 | 0.695 | 1.155 |
| black defendant white victim | 0.502 | 0.394 | 1.629 | 1 | 0.202 | 1.653 |
| white defendant white victim** | 0.704 | 0.353 | 3.983 | 1 | 0.046 | 2.022 |
| Constant | -2.136 | 0.362 | 34.770 | 1 | 0.000 | 0.118 |

| | |
|---|---|
| % correctly predicted | 73% |
| Nagelkerke R-squared | .22 |
| Model Chi-Square | 170.408 |
| Significance | .000 |

*** p<0.01; ** p<0.05; * p<0.1

### *Juries*

#### *Regression Model 5*

While Models 3 and 4 examine the first stage of the bifurcated trial process, the last two regression models examine the factors that impact a jury's decision to impose the death penalty. Regression Model 5 examines the impact of the race of the defendant and victim, irrespective of the racial interaction between them, and the model includes 338 first-degree murder convictions.[73]

The primary independent variables included in the model are "black defendant" and "white victim." Model 5 does not test the impact of the racial interaction between the defendant and victim. The theoretical reasoning for including "black defendants" (1=black, 0=non-black) is the literature overwhelmingly suggests juries are much more likely to impose the death penalty against black defendants, irrespective of the race of the victim. Including "black defendants" will test hypothesis seven ($H_7$). Similarly, the theoretical reasoning for including "white victims" (1=white, 0=non-white) is the literature consistently suggests when a defendant's victim is white, juries are much more likely to impose the death penalty. Including "white victims" will test hypothesis eight ($H_8$). As in the previous four models, the control variables placed in Model 5 are identical in an effort to control for heinousness of crime and the level of dangerousness the defendant poses to society so that the impact of race can be isolated and properly measured.

[73] Tennessee prosecutors sought the death penalty in 361 cases; however, the number of observations utilized in the analysis is lowered by 23 due to missing data. This missing data only constitutes 6.37 percent, an as a result, the missing data should not significantly impact the outcome of the models given no systematic differences in the missing data.

***Regression Model 5 – Results***

Table 18 yields a regression coefficient of -0.802 for the first primary independent variable "black defendant," as measured for whether juries impose the death penalty. This value is statistically significant at the 0.039. Given previous research has utilized a probability level of 0.05, this finding is statistically significant. However, the coefficient is negative; thus, when the defendant is black, irrespective of the race of the victim, the likelihood of a jury imposing the death penalty actually decreases by 0.802 points. Therefore, at a probability level of 0.05 one can conclude Tennessee juries are *not* more likely, but rather less likely, to impose the death penalty when a defendant is black after controlling for heinousness of crime and defendant's level of dangerousness. This finding is contrary to the vast amount of literature in the field, but is consistent with the observations of Judges Leibowitz and Baumgartner. The second primary independent variable "white victim" produces a coefficient of -0.810, and is statistically significant at the 0.052 level. Notably the coefficient is also negative, which indicates that when victims are white, juries are actually less likely to impose death by 0.810 points. In using a probability level of 0.05, "white victim" is borderline statistically significant. Considering "white victim" statistically significant, one can conclude Tennessee juries are *not* more likely, but rather less likely, to impose the death penalty when victims are white, irrespective of the race of the defendant, after controlling for heinousness of crime and defendant's level of dangerousness. Furthermore, the model yields a constant value of -1.411, and is significant at 0.005. Model 5 also correctly predicts 74.0 percent of the outcomes in which juries impose the death penalty, indicating a moderately strong model. In predicting whether juries impose the death penalty, *a priori*, the percentage of outcomes correctly predicted is 56.0 percent. Therefore, as a result of utilizing Model 5, we are able to increase the percentage of cases

correctly predicted by 18.0 percent. By far, Model 5 has the most predictive power than the regression models created for the overall application of the death penalty and whether prosecutors seek the death penalty.

Of the control variables placed in Model 5, the variable with the strongest relationship to whether juries impose the death penalty is contract killing. This variable produces a coefficient of 2.951, and produces the highest coefficient contained in any of the models created. This value is statistically significant at the 0.017 level. Interestingly, contract killing is highly significant in whether defendants are sentenced to death overall in the application of the Tennessee death penalty, but is not significant in whether prosecutors seek the death penalty. Although it appears Tennessee prosecutors take a different approach to contract killing than Knox County District Attorney General Randall Nichols, the data show Tennessee juries are more likely to impose death when the murder is for hire. Presumably, this is a reflection of the belief that hiring an individual to murder another is a more depraved killing that deserves the death penalty; thus, measuring heinousness of crime. The variable with the second strongest relationship with whether juries return a death sentence is a murder that has no apparent motive with a coefficient of 2.531, and is statistically significant at the 0.011 level. This is not a surprising result based on my conversation with Judge Baumgartner, which in his experience, murders for no apparent reason reflect the idea the defendant is simply a mean-spirited individual, and as such are viewed as more heinous and depraved than murders that are motivated for control or obsession or the product of a robbery or burglary. In essence, a senseless murder appears to shock the conscience much more than a murder that can be explained in some manner. Furthermore, murders that are committed for pecuniary gain increase the likelihood of a jury imposing death. This control variable produces a coefficient of 2.269, and is statistically significant at the 0.000 level. As

with contract killing, murders for pecuniary gain are statistically significant in whether defendants are sentenced to death in the overall application of the death penalty, but not statistically significant for prosecutors. This may also reflect the notion that murders committed in an effort solely to make financial gain are more detested by Tennessee juries. As a result of the variables that have the strongest relationship with whether juries impose death, it appears juries and prosecutors are very different in their respective approaches to applying the Tennessee death penalty.

In addition, one variable that has been a consistent predictor of death penalty cases is murder for gratification. Based on the theory reflected in the literature that heinousness of crime is a factor that needs to be controlled in order to isolate the impact of race on the administration of the death penalty, it is not surprising that murders committed for sexual gratification would impact whether juries impose death given the shocking nature of achieving some form of sexual gratification in murder. Another variable that has been a consistent predictor of the outcome in death penalty cases is when the defendant has three or more prior felony convictions. As a measure of the level of dangerousness, it is not surprising this variable would be highly significant at a probability level of 0.000. However, while murder by drowning is a significant predictor of whether defendants receive death in the overall application of the death penalty and whether prosecutors seek the death penalty, it is not significant in whether juries impose death. As a measure of heinousness, logic would suggest drowning to be a significant factor; however, it appears juries are more concerned with why a defendant commits murder, rather than how. For example, murder committed to escape apprehension or punishment, murder for sexual gratification, murder for pecuniary gain, murder for revenge or retaliation, and murder with no apparent motive are all statistically significant predictors of whether juries impose the death

penalty.[74] Furthermore, the results of the methods of killing also show juries are more concerned with why a murder is committed rather than how. For example, murder by throat slashing, as a measure of heinousness, is not a significant factor of whether juries impose the death penalty. While throat slashing is a significant predictor of whether defendants are sentenced to death overall and whether prosecutors seek the death penalty, it is surprising that the level of cruelty imposed upon a victim by slashing their throat is not a predictor of whether juries impose death. This reinforces the idea that juries are more concerned about why a defendant commits a murder rather than how a defendant commits a murder.

Another interesting finding is while defendants that murder three or more victims are more likely to have the death penalty sought against them by prosecutors, this variable is not a significant predictor of whether juries impose death. As a measure of the level of dangerousness, the literature, as well as logic, suggests having three or more victims increases the likelihood of a jury imposing death. However, it appears the number of victims is still not as important to Tennessee juries as why a murder is committed. Third, while elderly killing is a significant predictor of the overall application of the death penalty and whether prosecutors seek death, it is no longer statistically significant for juries. As the analysis has moved from the general application of the death penalty, to prosecutors and then to juries, the significance has steadily decreased and for juries becomes nonexistent. Again, it appears that juries do not place importance on who is murdered, which can be seen by the fact elderly killings are not significant predictors of jury behavior even though the elderly are thought to be more vulnerable and less likely to defend themselves. Also, while burglary/robbery murders are not significant predictors

[74] However, the one motive not significant is a murder for possible drug related reasons. This may reflect the growing societal problem of widespread drug use and that victims associated with drugs deserve less sympathy; thus, defendants are less likely to be sentenced to death by juries.

of the overall application of the death penalty or whether prosecutors seek the death penalty, such murders are a significant factor for whether juries impose death. However, the direction of the relationship reflects the same sentiment as in the other models. For juries, burglary/robbery related murders are significant at the 0.003 level, but the coefficient is negative. Therefore, murders committed during the perpetration of a burglary or robbery decrease the likelihood that juries will impose death. As seen with the insignificance of this control variable in the other models, this seems to suggest that while the death penalty is reserved for the worst of the worst murders that shock the average citizen's conscience, burglary and robbery related murders simply no longer rise to the level of heinousness that warrants the death penalty.

One finding that has been consistent across the other models is murders related to drug activity are not statistically significant. While the majority of variables associated with why a murder is committed are significant predictors, murders with possible drug influence do not impact a jury's decision to impose death. This may reflect the growing widespread drug problem in this country, and that victims involved in such illegal and destructive activity deserve less sympathy. Furthermore, other control variables found to be statistically significant for whether juries impose the death penalty include murders committed in a field, wooded or rural area and those committed at the victim's place of employment. Control variables found not to be statistically significant predictors of jury behavior include murders of law enforcement or public officials, murders committed for obsession or control, and murders committed at a commercial establishment.

**Table 18 Logistic Regression Model 5 - Whether Jury Returns Death Sentence**

| ***A priori*** | **Predicted** | | |
|---|---|---|---|
| **Observed** | Not Sentenced to Death | Sentenced to Death | Percent Correct |
| Not sentenced to death | 189 | 0 | 100.0 |
| Sentenced to death | 149 | 0 | .0 |
| Overall | 338 | 0 | 55.9 |

| ***Model*** | **Predicted** | | |
|---|---|---|---|
| **Observed** | Not Sentenced to Death | Sentenced to Death | Percent Correct |
| Not sentenced to death | 149 | 40 | 78.8 |
| Sentenced to death | 48 | 101 | 67.8 |
| Overall | 197 | 141 | 74.0 |

| **Variable** | **B** | **S.E.** | **Wald** | **df** | **Sig.** | **Exp(B)** |
|---|---|---|---|---|---|---|
| sexual or other pleasure or gratification*** | 1.299 | 0.493 | 6.953 | 1 | 0.008 | 3.665 |
| method of killing-drowning | 1.211 | 0.757 | 2.558 | 1 | 0.110 | 3.358 |
| contract killing** | 2.951 | 1.240 | 5.667 | 1 | 0.017 | 19.134 |
| escape apprehension or punishment*** | 1.777 | 0.589 | 9.101 | 1 | 0.003 | 5.914 |
| location of murder -field, woods or rural area*** | 1.397 | 0.462 | 9.136 | 1 | 0.003 | 4.045 |
| pecuniary or other gain*** | 2.269 | 0.507 | 20.058 | 1 | 0.000 | 9.671 |
| law enforcement public official killing* | 1.521 | 0.858 | 3.145 | 1 | 0.076 | 4.576 |
| defendant had three or more prior felonies*** | 1.719 | 0.329 | 27.301 | 1 | 0.000 | 5.582 |
| location of murder-victim's workplace*** | 1.557 | 0.509 | 9.374 | 1 | 0.002 | 4.746 |
| revenge or retaliation** | 1.315 | 0.545 | 5.816 | 1 | 0.016 | 3.726 |
| method of killing-throat slashing | 0.936 | 0.688 | 1.852 | 1 | 0.173 | 2.551 |
| no apparent motive** | 2.531 | 0.991 | 6.523 | 1 | 0.011 | 12.570 |
| obsession, control | 0.912 | 0.636 | 2.055 | 1 | 0.152 | 2.489 |
| location of murder-commercial establishment | 0.258 | 0.464 | 0.310 | 1 | 0.578 | 1.295 |
| possible drug influence | 0.924 | 0.793 | 1.358 | 1 | 0.244 | 2.520 |
| three or more victims | -0.248 | 0.599 | 0.171 | 1 | 0.679 | 0.780 |
| elderly killing | 0.248 | 0.370 | 0.451 | 1 | 0.502 | 1.282 |
| burglary robbery killing** | -1.010 | 0.464 | 4.736 | 1 | 0.030 | 0.364 |
| black defendant ** | -0.802 | 0.388 | 4.270 | 1 | 0.039 | 0.448 |
| white victim** | -0.810 | 0.417 | 3.785 | 1 | 0.052 | 0.445 |
| Constant | -1.411 | 0.506 | 7.780 | 1 | 0.005 | 0.244 |

| | |
|---|---|
| % correctly predicted | 74% |
| Nagelkerke R-squared | 0.39 |
| Model Chi-Square | 117.07 |
| Significance | 0.000 |

*** p<0.01; ** p<0.05; * p<0.1

***Regression Model 6***

While Model 5 tests the impact of the race of the defendant and the race of the victim on whether a jury hands down a death sentence, it does not take into account the impact of the racial interaction between the defendant and the victim. Regression Model 6 specifically tests for the impact of the racial interaction between the defendant and victim on whether a jury imposes the death penalty, which includes 335 observations.[75]

Regression Model 6 does not contain "black defendant" or "white victim" as Model 5 because in testing for the racial interaction impact, having these two variables in the model would be redundant; thus, they have been excluded from the regression analysis. However, Model 6 contains three different primary independent variables to determine whether the racial relationship between the defendant and victim impact a jury's decision to return a death sentence. The first primary variable is "black defendant/white victim" (1=black defendant, 0=non-black defendant / 1=white victim, 0=non-white victim). The theoretical reasoning for including this variable is the majority of the literature suggests when defendants are black and their victims white, the rate in which juries return a death sentence increases considerably. The second primary independent variable is "black defendant/black victim" (1=black defendant, 0=non-black defendant / 1=black victim, 0=non-black victim). Lastly, the third primary independent variable is "white defendant/white victim" (1=white defendant, 0=non-white defendant / 1= white victim, 0=non-white victim). The theoretical reasoning for the second and third primary independent variables is to establish that if in fact "black defendant, white victim" has an impact on whether a jury returns a death sentence, it is then necessary to establish whether

[75] Tennessee Prosecutors sought the death penalty in 361 cases. However, due to missing data, the regression analysis contains 335 cases. The missing data constitutes 7.2%. As a result, the missing data should not significantly impact the outcome of the models given no systematic differences in the missing data.

the other racial relationships have an impact as well.[76] Including all three of these variables will test hypothesis nine ($H_9$) to determine whether juries are more likely to return a death sentence when black defendants murder white victims in comparison to other racial interactions. Furthermore, even though the primary independent variables are different in Model 6, the control variables are identical as in the five prior regression models. There are no changes in the variables to ensure control measures for heinousness of crime and dangerousness of the defendant.

***Regression Model 6 – Results***

Table 19 yields a regression coefficient of -0.680 for the first primary independent variable "black defendant/white victim," as measured for whether a jury returns a death sentence. This value is statistically significant at the 0.341 level. Given previous research has utilized a probability level of 0.05, this finding is not statistically significant. Furthermore, the second primary independent variable "black defendant/black victim" provides a regression coefficient of 0.494, as measured for whether juries return a death sentence. This value is statistically significant at the 0.466 level. Again, using a probability level of 0.05, this finding is also statistically insignificant. Lastly, the third primary independent variable "white defendant, white victim" yields a regression coefficient of 0.484, and is statistically significant at the 0.453 level. With a probability level of 0.05, this finding is statistically insignificant. As a result, the racial interaction term that the literature suggests increases the likelihood of a jury returning a death sentence, black defendants with white victims, is not a statistically significant predictor of a jury

[76] The variable "white defendant, black victim" was intentionally excluded from Model 2 for two reasons. First, it would be redundant to include the variable. Second, the variable only constitutes nineteen observations in the dataset.

returning a death sentence. Therefore, at a probability level of 0.05, one must fail to reject the null hypothesis and conclude Tennessee juries are *not* more likely to impose the death penalty when a defendant is black and their victim white. Furthermore, none of the interaction terms are statistically significant predictors of whether a jury returns a death sentence, which is consistent with the observations of Judges Leibowitz and Baumgartner. Therefore, the data show there is no apparent relationship between the racial interaction between defendants and victims and whether a jury returns a death sentence. This is in contrast to prosecutors where white defendants whose victims are white are a statistically significant predictor of whether prosecutors seek the death penalty. However, it should still be noted the prevailing trend the literature is that prosecutors are more likely to seek the death penalty when the defendant is black and the victim white, but the data simply do not show this is an accurate depiction of Tennessee prosecutors. Furthermore, the finding that the racial interaction between the defendant and victim is not a statistically significant predictor of whether a jury will return a death sentence is contrary to the large body of literature in the field. It may be that jurors simply do not take race into account when considering punishment. This contention corresponds to the findings of Model 5 that show juries are more concerned with the reason behind a murder rather than how the murder is committed or by whom. The constant value in Model 6 is -2.634, and is highly significant at 0.000. The model correctly predicts 75.0 percent of the outcomes in the data, also indicating a relatively strong model. In predicting whether a jury returns a death sentence before running the model, *a priori*, the percentage of outcomes correctly predicted is 56.0. Therefore, use of the model increases the percentage correctly predicted by 19.0 percent, the highest increased prediction rate of all the models in the dissertation.

Of the control variables placed in Model 6, the variable with the strongest relationship to whether juries impose the death penalty is contract killing. This variable produces a coefficient of 2.985, and is the highest coefficient contained in any of the models. This value is statistically significant at the 0.021 level. Interestingly, contract killing is also highly significant in whether defendants are sentenced to death overall in the application of the Tennessee death penalty, but is not significant in whether prosecutors seek the death penalty. Although it appears Tennessee prosecutors take a different approach to contract killing as compared to Knox County District Attorney General Randy, the data show Tennessee juries more likely to impose death when murders involve contract killings. Presumably, this is a reflection of the belief that hiring an individual to murder another is a more depraved or reprehensible killing that deserves the death penalty; thus measuring heinousness of crime. The variable with the second strongest relationship with whether juries return a death sentence is a murder that has no apparent motive, which produces a coefficient of 2.334, and is statistically significant at the 0.021. This is an interesting finding because murders with no apparent motive are not statistically significant in whether defendants are sentenced to death in the overall application of the death penalty, even though the coefficients are borderline statistically significant at the 0.05 probability level. Also, murders with no apparent motive are not statistically significant in whether prosecutors seek the death penalty. However, based on the observations of Judge Baumgartner, this is not a surprising finding, but rather confirms his experiences while serving as a criminal court judge. The fact murders for no apparent reason are significant predictors of jury behavior may be a result of the idea that murder for absolutely no explained reason is more reprehensible than murders that can be explained for one reason or another such as murders that are the product of a robbery or burglary. In essence, a senseless murder shocks the conscience much more than one

that can be explained in some manner. Furthermore, murders that are committed for pecuniary gain increase the likelihood of a jury imposing death. This control variable produces a coefficient of 2.256, and is statistically significant at the 0.000 level. As with contract killing, murders for pecuniary gain are statistically significant in whether defendants are sentenced to death in the overall application of the death penalty, but not statistically significant for prosecutors. This may also reflect the notion that murders committed in an effort solely to make financial gain are more detested by Tennessee juries. As a result of these variables, it appears juries and prosecutors are very different in their respective approaches to applying the Tennessee death penalty.

In addition, one variable that has been a consistent predictor throughout this analysis of the Tennessee death penalty is when the defendant has three or more prior felony convictions. As a measure of the level of dangerousness, it is not surprising this variable would be highly significant at a probability level of 0.000 in terms of whether a jury returns a death sentence. Another variable that has been a consistent predictor in the outcome of death penalty cases is murder for gratification, and continues to be significant in whether juries impose the death penalty. Since heinousness of crime is a factor that should be controlled in order to isolate the impact of race in the administration of the death penalty, it is not surprising that murders committed for sexual gratification would impact whether juries impose death given the shocking nature of achieving some form of sexual gratification in murder. Also, it should not astonish the reader that murders committed to escape apprehension or punishment are predictors of whether juries return a death sentence, as this control variable has been consistently statistically significant throughout all previous regression models. Presumably, this is the case because juries view this type of murder as more heinous than other murders. Other control variables found

statistically significant in whether juries return a death sentence is location of a murder in a field, wooded or rural areas, murders committed at the victim's place of employment, and murders committed for revenge or retaliation. Each of these variables were also found to influence a jury's decision to return a death sentence in Model 5; however, the strength of each variable's relation to whether a jury returns a death sentence is slightly weaker, which is ultimately due to including the insignificant racial interaction terms in the model.

Murders by drowning and throat slashing continue to be insignificant in whether a jury returns a death sentence. As a measure of heinousness, logic would suggest drowning and throat slashing to be significant factors; however, the data continue to show juries are more concerned with why a defendant commits murder rather than how. For example, murder committed to escape apprehension or punishment, murder for sexual gratification, murder for pecuniary gain, murder for revenge or retaliation, and murder with no apparent motive are all statistically significant predictors in whether juries impose the death penalty. However, the one motive that continues to be insignificant is murder for possible drug related reasons. Furthermore, while defendants that murder three or more victims are more likely to see prosecutors seek the death penalty against them, this variable continues to be an insignificant predictor of whether juries impose death. As a measure of the level of dangerousness a defendant poses, logic would suggest a defendant that killed three or more people would increase the likelihood of a jury imposing death. However, the number of victims is still not as important to Tennessee juries as why a murder is committed. In addition, while elderly killing is a significant predictor of the overall application of the death penalty and whether prosecutors seek death, it is no longer statistically significant for whether juries return a death sentence. As the analysis has moved from the general application of the death penalty, to prosecutors and then to juries, the

significance has steadily decreased and for juries becomes nonexistent. Again, it appears that Tennessee juries do not place importance on who is murdered, even the elderly who are thought to be more vulnerable and less likely to defend themselves, but rather place importance on the motivation behind such killings. Lastly, while burglary/robbery murders are not significant predictors of the overall application of the death penalty or whether prosecutors seek the death penalty, such murders are a significant factor for whether juries impose death. However, the direction of the relationship reflects the same sentiment as in the previous models. For juries, burglary/robbery murders are significant at the 0.003 level, but the coefficient is negative. Therefore, murders committed during the perpetration of a burglary or robbery decrease the likelihood juries will impose the death penalty. As seen with the insignificance of this control variable in the other models, this seems to suggest that while the death penalty is reserved for the worst of the worst murders that shock the average citizen's conscience, burglary and robbery related murders simply no longer rise to the level of heinousness that warrants the death penalty as far as Tennessee juries are concerned.

**Table 19 Logistic Regression Model 6 - Whether Jury Returns Death Sentence**

| ***A priori*** | **Predicted** | | |
|---|---|---|---|
| **Observed** | Not Sentenced to Death | Sentenced to Death | Percent Correct |
| Not sentenced to death | 188 | 0 | 100.0 |
| Sentenced to death | 147 | 0 | .0 |
| Overall | 335 | 0 | 56.1 |

| ***Model*** | **Predicted** | | |
|---|---|---|---|
| **Observed** | Not Sentenced to Death | Sentenced to Death | Percent Correct |
| Not sentenced to death | 154 | 34 | 81.9 |
| Sentenced to death | 49 | 98 | 66.7 |
| Overall | 203 | 132 | 75.2 |

| **Variable** | **B** | **S.E.** | **Wald** | **df** | **Sig.** | **Exp(B)** |
|---|---|---|---|---|---|---|
| sexual or other pleasure or gratification*** | 1.321 | 0.501 | 6.969 | 1 | 0.008 | 3.749 |
| method of killing-drowning | 1.209 | 0.761 | 2.519 | 1 | 0.112 | 3.349 |
| contract killing** | 2.985 | 1.297 | 5.300 | 1 | 0.021 | 19.787 |
| escape apprehension or punishment*** | 1.730 | 0.594 | 8.479 | 1 | 0.004 | 5.643 |
| location of murder -field, woods or rural area*** | 1.301 | 0.464 | 7.858 | 1 | 0.005 | 3.672 |
| pecuniary or other gain*** | 2.256 | 0.509 | 19.627 | 1 | 0.000 | 9.547 |
| law enforcement public official killing* | 1.918 | 0.988 | 3.764 | 1 | 0.052 | 6.805 |
| defendant had three or more prior felonies*** | 1.718 | 0.331 | 26.984 | 1 | 0.000 | 5.573 |
| location of murder-victim's workplace*** | 1.587 | 0.518 | 9.388 | 1 | 0.002 | 4.888 |
| revenge or retaliation** | 1.240 | 0.547 | 5.143 | 1 | 0.023 | 3.455 |
| method of killing-throat slashing | 0.871 | 0.686 | 1.610 | 1 | 0.204 | 2.389 |
| no apparent motive** | 2.334 | 1.009 | 5.353 | 1 | 0.021 | 10.324 |
| obsession, control | 0.810 | 0.636 | 1.619 | 1 | 0.203 | 2.247 |
| location of murder-commercial establishment | 0.419 | 0.480 | 0.761 | 1 | 0.383 | 1.521 |
| possible drug influence | 0.872 | 0.790 | 1.218 | 1 | 0.270 | 2.392 |
| three or more victims | -0.113 | 0.597 | 0.036 | 1 | 0.850 | 0.893 |
| elderly killing | 0.236 | 0.371 | 0.403 | 1 | 0.525 | 1.266 |
| burglary robbery killing** | -0.963 | 0.473 | 4.144 | 1 | 0.042 | 0.382 |
| black defendant black victim | 0.494 | 0.678 | 0.532 | 1 | 0.466 | 1.639 |
| black defendant white victim | -0.680 | 0.715 | 0.905 | 1 | 0.341 | 0.506 |
| white defendant white victim | 0.484 | 0.644 | 0.564 | 1 | 0.453 | 1.622 |
| Constant | -2.634 | 0.703 | 14.037 | 1 | 0.000 | 0.072 |

| | |
|---|---|
| % correctly predicted | 75.2% |
| Nagelkerke R-squared | 0.40 |
| Model Chi-Square | 117.42 |
| Significance | 0.000 |

*** p<0.01; ** p<0.05; * p<0.1

### *Restatement of Hypotheses*

#### *Overall Application of the Death Penalty*

This dissertation tested nine hypotheses to determine whether race impacts the administration of the Tennessee death penalty. Hypotheses one, two and three tested whether race impacts the overall application of the death penalty in Tennessee. Hypothesis one ($H_1$) stated the following:

> **$H_1$: In the overall application of the Tennessee death penalty, black defendants are more likely to be sentenced to death.**

After conducting the regression analysis in Model 1, at a probability level of 0.05, one must fail to reject the null hypothesis and conclude in the overall application of the Tennessee death penalty, black defendants are *not* more likely to be sentenced to death. Furthermore, Model 1 tested hypothesis two ($H_2$), which stated the following:

> **$H_2$: In the overall application of the Tennessee death penalty, defendants with white victims are more likely to be sentenced to death.**

After conducting the regression analysis in Model 1, at a probability level of 0.05, one must fail to reject the null hypothesis and conclude in the overall application of the Tennessee death penalty, defendants with white victims are *not* more likely to be sentenced to death. Hypothesis three ($H_3$) tested the impact of the racial interaction between the defendant and victim, which stated the following:

> **$H_3$: In the overall application of the Tennessee death penalty, black defendants with white victims are more likely to be sentenced to death.**

After conducting the regression analysis in Model 2, none of the racial interaction terms were found to be statistically significant in whether defendants are sentenced to death in the overall application of the death penalty. Therefore, at a probability level of 0.05, one must fail to reject

the null hypothesis and conclude in the overall application of the Tennessee death penalty, black defendants with white victims are *not* more likely to be sentenced to death.

***Prosecutors***

Hypotheses four, five and six tested whether race impacts a prosecutor's decision to seek the death penalty in Tennessee. Hypothesis four ($H_4$) stated the following:

> **$H_4$: Tennessee prosecutors are more likely to seek the death penalty in death eligible cases when a defendant is black.**

After conducting the regression analysis in Model 3, at a probability level of 0.05, one must fail to reject the null hypothesis and conclude Tennessee prosecutors are *not* more likely to seek the death penalty in death eligible cases when a defendant is black. Furthermore, Model 3 tested hypothesis five ($H_5$), which stated the following:

> **$H_5$: Tennessee prosecutors are more likely to seek the death penalty in death eligible cases when a victim is white.**

After conducting the regression analysis in Model 3, at a probability level of 0.05, one must reject the null hypothesis and conclude Tennessee prosecutors *are* more likely to seek the death penalty in death eligible cases when a victim is white. Hypothesis six ($H_6$) tested the impact of the racial interaction between the defendant and victim, which stated the following:

> **$H_6$: Tennessee prosecutors are more likely to seek the death penalty in death eligible cases when a defendant is black and the victim is white.**

After conducting the regression analysis in Model 4, at a probability level of 0.05, one must fail to reject the null hypothesis and conclude Tennessee prosecutors are *not* more likely to seek the death penalty in death eligible cases when a defendant is black and their victim is white.

### *Juries*

Hypotheses seven, eight and nine tested whether race impacts a jury's decision to impose the death penalty in Tennessee. Hypothesis seven ($H_7$) stated the following:

> **$H_7$: Tennessee juries are more likely to impose the death penalty in death eligible cases when a defendant is black.**

After conducting the regression analysis in Model 5, at a probability level of 0.05, one must fail to reject the null hypothesis and conclude Tennessee juries are *not* more likely, but rather less likely, to impose the death penalty when a defendant is black. Furthermore, Model 5 tested hypothesis eight ($H_8$), which stated the following:

> **$H_8$: Tennessee juries are more likely to impose the death penalty in death eligible cases when a victim is white.**

After conducting the regression analysis in Model 5, at a probability level of 0.05, one must fail to reject the null hypothesis and conclude Tennessee juries are *not* more likely, but rather less likely, to impose the death penalty when victims are white. Hypothesis nine ($H_9$) tested the impact of the racial interaction between the defendant and victim, which stated the following:

> **$H_9$: Tennessee juries are more likely to impose the death penalty in death eligible cases when a defendant is black and the victim is white.**

After conducting the regression analysis in Model 6, at a probability level of 0.05, one must fail to reject the null hypothesis and conclude Tennessee juries are *not* more likely to impose the death penalty when a defendant is black and their victim white.

### *Conclusion*

The central research question this dissertation attempts to answer is whether the Tennessee death penalty is racially discriminatory either in its application in general, in a

prosecutor's decision to seek death, and/or a jury's decision to impose death. The empirical analyses through logistic regression models overwhelmingly demonstrate that race is not a significant predictor in the sentencing outcomes in first-degree murder cases in Tennessee.

Regression Models 1, 3 and 5 examine whether the race of the defendant and the race of the victim, irrespective of the racial interaction, impact the outcome of death penalty cases. Model 1 reveals there is relatively no predictive power in whether a defendant will be sentenced to death in the overall application of the death penalty when a victim is white when controlling for heinousness of crime and dangerousness of the defendant. Model 1 also reveals when using a probability level of 0.10, there is a low predictive capability in whether defendants are sentenced to death overall when the defendant is black. However, the coefficient is negative, indicating when defendants are black, the likelihood defendants will be sentenced to death in the overall application of the death decreases by 0.499 points. While the majority of the literature in this area concludes both the race of the defendant and the victim impact whether defendants are sentenced to death, in Tennessee the data show otherwise. While this finding may be contrary to the literature, the finding is consistent with the observations and experiences of Knox County Criminal Court Judges Mary Beth Leibowitz and Richard Baumgartner, who have over forty years combined years on the bench. As it relates to the prosecution's decision to seek and a jury's decision to impose death, when measuring the impact of the race of the defendant and victim, irrespective of the racial interaction, Model 3 illustrates a black defendant has no predictive power in the outcome. However, when the victim is white, the likelihood that a Tennessee prosecutor will seek the death penalty increases by 0.585 points. While there is predictive power in prosecutorial behavior when the victim is white, it has the one of the weakest relationships to whether a prosecutor seeks the death penalty. Model 5 shows when the

defendant is black and the victim is white, irrespective of the racial interaction, both variables have predictive power in determining whether juries return death sentences. However, both variables have the weakest relationship with whether a jury returns a death sentence. Furthermore, the relationships are negative, indicating when defendants are black and victims white, irrespective of the racial interaction, juries are less likely to return a death sentence. These findings contradict the large body of literature showing juries are more likely to sentence black defendants and defendants whose victims are white to death.

While race of the defendant and the race of the victim appear to be non-predictors of death penalty cases, several control variables have strong relationships in predicting whether defendants are sentenced to death overall, whether prosecutors seek the death penalty and whether juries impose death. The control variables measuring heinousness of crime that have significant predictive power in all three aspects of the Tennessee death penalty are murders for sexual gratification, location of the murder in a field, wooded or rural area, location of the murder at the victim's residence, and murder for revenge or retaliation. The control variables measuring the level of a defendant's dangerousness found to be significant predictors in all three aspects of the death penalty are murders committed to escape apprehension or punishment, and when the defendant has three or more prior felony convictions. Interestingly, murders that involve three or more victims only have predictive power in determining whether a prosecutor seeks the death penalty.

The remaining three regression models examine whether the racial interaction between the defendant and victim impact the outcome of death penalty cases. Model 2 examines the racial interaction on whether defendants are sentenced to death in the overall administration of the death penalty. The literature shows when the defendant is black and the victim white, the

likelihood that the defendant will receive death increases significantly. However, the empirical analysis of Tennessee reveals that none of the racial interactions are predictors in whether defendants are sentenced to death in the overall application of the death penalty. Model 4 reveals that black defendant/white victim murders have no predictive power in whether a prosecutor seeks the death penalty. However, white defendant/white victim murders are slightly significant. This finding also contradicts the majority of the research in the field, but is consistent with the observations of legal practitioners in Knox County, Tennessee. Lastly, Model 6 shows that none of the racial interaction terms have predictive power in whether juries return a death sentence.

While the racial interaction between defendants and victims appear to be non-predictors of death penalty cases, several control variables have strong relationships in predicting whether defendants are sentenced to death overall, whether prosecutors seek the death penalty and whether juries impose death. The control variables measuring heinousness of crime that have significant predictive power in all three aspects of the Tennessee death penalty are murders for sexual gratification, murders committed in a field, wooded or rural area, murders committed at the victim's residence, and murders for revenge or retaliation. The control variables measuring the defendant's dangerousness found to be significant predictors in all three aspects of the Tennessee death penalty are murders committed to escape apprehension or punishment and when the defendant has three or more prior felony convictions. Interestingly, murders that involve three or more victims only have predictive power in determining whether a prosecutor seeks the death penalty.

Therefore, based on the empirical analyses, the data show in Tennessee that race is not a strong predictor in whether defendants are sentenced to death in the overall application of the

death penalty, whether prosecutors seek the death penalty or whether juries impose death. Instead, the analyses demonstrate Tennessee prosecutors are more concerned with the level of heinousness involved in a murder and the level of dangerousness the defendant poses to the community. The data also show Tennessee jurors are more concerned with the motive behind a first-degree murder and the level of danger a defendant poses to the community at-large.

# CHAPTER 6: CONCLUSION

The goal of this dissertation has been to ascertain whether race is a factor in the administration of the Tennessee death penalty. As a result, this dissertation provides two unique contributions to the field of public law. First, this dissertation is unique because the majority of prior research usually focuses only on the prosecutor's decision to seek the death penalty *or* a jury's decision to impose a death sentence. Rarely does one research endeavor examine the overall application of the death penalty, the prosecutor's decision to seek death *and* a jury's decision to impose death. As a result, this dissertation provides insights into the inner-workings of the Tennessee death penalty process, not simply a single piece of the death penalty puzzle. Secondly, while this dissertation adds to the already lengthy body of literature on the death penalty, it also makes the unique contribution of providing evidence that racial discrimination in the administration of the death penalty is no longer a foregone conclusion, at least as it applies to the Tennessee death penalty. Therefore, this dissertation may be a critical turning point in finding the modifications to the death penalty statutes in the post-*Gregg* era have begun to accomplish their intended goal: to eliminate racial discrimination in the administration of the death penalty.

In analyzing data created by the Tennessee courts, this dissertation has examined whether race is a factor in the overall administration of the death penalty, in a prosecutor's decision to seek the death penalty, and in a jury's decision to impose death. As the data reveal, Tennessee stands in stark contrast to the overwhelming body of literature in the field. Tables 20 and 21 succinctly summarize the findings of the six regression models in Chapter 5. Table 20 illustrates the factors that influence each aspect of the death penalty examined in this dissertation when testing the race of the defendant and the race of the victim, irrespective of the racial relationship

between them. Table 21 shows the factors that influence each aspect of the death penalty examined in this dissertation when testing the racial interaction between the defendant and victim.

### *The Overall Application of the Death Penalty*

The most comprehensive study on the overall administration of the death penalty comes from the United States General Accounting Office (GAO)[77] issued to Congress in 1990 which analyzed "twenty-eight post-*Furman* studies based on twenty-three different data sets" (Johnson, 2003, 129). The GAO analysis "shows a pattern of evidence indicating racial disparities in charging, sentencing, and imposition of the death penalty" (Johnson, 2003, 129) and more specifically "supports a strong race of victim influence" and a varied race of offender influence across a number of dimensions (US General Accounting Office, 1990, 6). Eighty-two percent of the studies analyzed indicate when the victim is white, the defendant is more likely to receive a death sentence as compared to black victims "even after controlling for aggravating circumstances and other relevant legal factors" (Johnson, 2003, 129-30). In terms of the race of the defendant, over 50.0 percent of the studies show "the race of the defendant influenced the likelihood of their being charged with a capital crime; and in three-quarters of those, black defendants were more likely to receive the death penalty" (Johnson, 2003, 130).

However, the analyses of the overall administration of the death penalty in Tennessee reveal findings contrary to prior death penalty research. Table 20 shows "black defendant" and "white victim," irrespective of their racial relationship, are not statistically significant factors in

[77] U.S. General Accounting Office, "Death Penalty Sentencing: Research indicates Pattern of Racial Disparities" (1990).

whether defendants are sentenced to death in Tennessee in the overall application of the death penalty. In contrast, the data show the motivation behind a first-degree murder, the method of killing and the defendant's criminal history are the best predictors in determining whether a defendant is sentenced to death as measures of heinousness of crime and the dangerousness level of the defendant. Table 20 shows contract killings, murders committed for sexual gratification, to escape apprehension, for pecuniary gain, revenge or retaliation, and obsession/control are significant predictors in whether defendants are sentenced to death in the overall application of the Tennessee death penalty. Furthermore, murders committed by drowning and throat slashing, committed in a field, wooded or rural area, at the victim's workplace and at a commercial establishment are all significant predictors in determining whether defendants receive the death penalty in the State of Tennessee. Lastly, where defendants have three or more prior felony convictions, the likelihood a defendant will be sentenced to death increases, which is supported by observations of Criminal Court Judge Mary Beth Leibowitz. In the examination of the racial interaction between defendant and victim, Table 21 indicates in the overall application of the death penalty that none of the racial interaction terms are significant predictors in whether a defendant is sentenced to death in the overall application of the death penalty. Therefore, at least in Tennessee, first-degree murder cases that involve black defendants whose victims are white do not have an influence in whether a defendant is sentenced to death after controlling for heinousness of crime and the defendant's level of dangerousness.

***Prosecutors***

In terms of prosecutorial behavior, prior research overwhelmingly concludes prosecutorial discretion allows for sentencing disparities in first-degree murder cases. One such

study found "black defendants whose victims were white were advanced to a capital sentencing hearing . . . at a rate nearly five times that of black defendants whose victims were black and more than three times the rate of white defendants whose victims were black" (Bohm, 1994, 322). The examination of whether race of the defendant and/or race of the victim, irrespective of their relationship, impacts a Tennessee prosecutor's decision to seek the death penalty reveals that race has slight influence at the prosecutorial stage of the bifurcated trial structure. The regression analyses report a first-degree murder case with black defendant is not a significant predictor in whether a prosecutor will seek the death penalty. However, the analyses also show when the victim is white, Tennessee prosecutors are more likely to seek the death penalty as seen in Table 20. However, white victim has one of the weakest relationships in predicting whether a prosecutor seeks death. Therefore, while white victim is statistically significant, it also has one of the weakest predictive powers of prosecutorial behavior.

Furthermore, when testing the impact of the racial interaction between defendant and victim, the analyses indicate interesting findings. While the literature suggests first-degree murder cases with black defendants whose victims are white are more likely to result in death sentences, and therefore, more likely to cause a prosecutor to seek the death penalty, the Tennessee data suggests otherwise. Table 21 shows the only racial interaction that is a significant predictor in whether Tennessee prosecutors seek death is white defendant, white victim first-degree murder cases. While this finding is contrary to the literature in the field, this finding is supported by two main facts. First, District Attorney General Nichols of Knox County, Tennessee stated the death penalty is and should be reserved for the "worst of the worst murders." The majority of cases in which Nichols has sought the death penalty have involved white defendants whose victims were white, indicating in Knox County the most heinous

murders have been perpetrated by white defendants against white victims. Ten of the fifteen cases in which notice of intent to seek the death penalty was filed in Knox County under Attorney General Nichols involved white defendant/white victim murders, constituting 66.7 percent. Three of the fifteen cases involved murders where the defendant and victim were black, constituting 20.0 percent. Only one case involved a black defendant with a white victim, consisting only 6.7 percent. As a result, overall, Tennessee prosecutors reflect the patterns demonstrated by Attorney General Nichols. Secondly, based on his many years as Knox County Criminal Court Judge, Richard Baumgartner has observed white defendants, rather than black defendants have committed the majority of the heinous and violent murders. Therefore, after controlling for heinousness of the crime, race is not a significant predictor in whether prosecutors seek the death penalty, at least in Tennessee.

In addition, the factors that most likely increase the probability a prosecutor will seek the death penalty focus on the method of killing, motive for the murder, and the dangerousness of the defendant. When the murder is for sexual gratification, to escape apprehension, for revenge or retaliation, has a possible drug influence, the victim is drowned or their throat slashed, and when the murder is committed in a field, wooded or rural area, at the victim's workplace or at a commercial establishment, a prosecutor is more likely to seek death as seen in Tables 20 and 21. In addition, when the defendant has three or more prior felony convictions and when there are three or more victims, the prosecutor is more likely to seek the death penalty, which reflects the level of dangerousness a defendant poses to society.

***Juries***

The examination of whether the race of the defendant and the race of the victim, irrespective of their relationship, impact a jury's decision to impose death also reveal interesting results. The regression analyses reveal that "black defendants" and "white victims," irrespective of their relationship, are both significant predictors in whether a jury imposes a death sentence as seen in Table 20, which is consistent with prior research. However, how the race of the defendant and victim impact jury behavior is inconsistent with prior research. The examination of Tennessee juror behavior in first-degree murder cases shows that while these variables are useful predictors in whether a jury will impose death, they are predictive in the negative. When a defendant is black and a victim white, irrespective of the racial interaction, the likelihood that a jury imposes death decreases in Tennessee based on the negative coefficients. Therefore, Tennessee juries are less likely to sentence black defendants and defendants whose victims are white to death after controlling for heinousness of crime and the level of dangerousness a defendant poses to society as shown in Table 20. The finding that juries are less likely to sentence black defendants to death is further supported by the observation by Judge Baumgartner that the most heinous and depraved murders have been committed by white defendants, as opposed to black defendants. Furthermore, this finding and the finding that juries are less likely to sentence defendants with white victims to death is supported by the notion that Tennessee juries are more interested in the facts of the case rather than the race of the individuals involved. Table 20 reveals when testing to determine whether the race of the defendant and/or the victim impact a jury's decision to impose death, the variables that control for heinousness of crime reveal the motives behind the killing are the most predictive of jury behavior. When murders are committed for sexual gratification, to escape apprehension, for pecuniary gain, for revenge or

retaliation, and those with no apparent motive are more likely to result in a jury death sentence. Furthermore, when murders are committed in a field, wooded or rural area and committed at the victim's residence, juries are more likely to return a death sentence. Lastly, the level of danger a defendant poses is also a predictor of jury behavior in that defendants with three or more prior felony convictions are more likely to receive a death sentence by a jury, which is supported by the observations of Judge Leibowitz. Therefore, the impact of the race of the defendant and victim are negative predictors in whether Tennessee juries impose the death penalty, after controlling for heinousness of crime and the level of the defendant's dangerousness.

In addition, when testing the racial interaction between the defendant and victim, the impact of race disappears. None of the racial interaction terms have any predictive power in determining whether a jury will return a death sentence. The majority of the literature suggests when a defendant is black and their victim white, the probability that a jury will sentence the defendant to death increases significantly. This pattern is not revealed in the examination of Tennessee juries. This finding is supported by Knox County Criminal Court Judge Mary Beth Leibowitz's observation that jurors "are willing to serve the public, work with the evidence and the instructions given to them by the judge" to reach their decision. Therefore, after controlling for heinousness of crime and dangerousness of the defendant, Tennessee juries are not influenced by the race of the defendant or race of the victim as most of the literature suggests.

**Table 20 Statistically Significant Control Variables When Testing "Black Defendant" and "White Victim"**

| Control Variables | Overall Application | Prosecutors | Juries |
|---|---|---|---|
| sexual or other pleasure or gratification | X | X | X |
| method of killing-drowning | X | X | |
| contract killing | X | | X |
| escape apprehension or punishment | X | X | X |
| location of murder -field, woods or rural area | X | X | X |
| pecuniary or other gain | X | | X |
| Law enforcement public official killing | X | | |
| defendant had three or more prior felonies | X | X | X |
| location of murder-victim's workplace | X | X | X |
| revenge or retaliation | X | X | X |
| method of killing-throat slashing | X | X | |
| No apparent motive | | | X |
| obsession, control | X | | |
| location of murder-commercial establishment | X | X | |
| possible drug influence | | X | |
| three or more victims | | X | |
| elderly killing | X | X | |
| burglary robbery killing | | | X* |
| **Independent Variables** | | | |
| black defendant | | | X* |
| white victim | | X | X* |

"X" denotes statistical significance at 0.05 probability level; * denotes negative coefficient

**Table 21 Statistically Significant Control Variables When Testing Racial Interactions**

| Control Variables | Overall Application | Prosecutors | Juries |
|---|---|---|---|
| sexual or other pleasure or gratification | X | X | X |
| method of killing-drowning | X | X | |
| contract killing | X | | X |
| escape apprehension or punishment | X | X | X |
| location of murder -field, woods or rural area | X | X | X |
| pecuniary or other gain | X | | X |
| law enforcement public official killing | X | | |
| defendant had three or more prior felonies | X | X | X |
| location of murder-victim's workplace | X | X | X |
| revenge or retaliation | X | X | X |
| method of killing-throat slashing | X | X | |
| no apparent motive | | | X |
| obsession, control | X | | |
| location of murder-commercial establishment | X | X | |
| possible drug influence | | X | |
| three or more victims | | X | |
| elderly killing | X | X | |
| burglary robbery killing | | | X* |
| **Independent Variables** | | | |
| black defendant black victim | | | |
| black defendant white victim | | | |
| white defendant white victim | | X | |

"X" denotes statistical significance at 0.05 probability level; * denotes negative coefficient

### *Overall Conclusions*

At the outset of this dissertation I stated that if the new trial procedures deemed constitutional in *Gregg v. Georgia* (1976) achieved their intended goal, then race will not be statistically significant in the overall application of the death penalty, or in either of the two death penalty stages. The data show race is not a significant predictor in the overall application of the death penalty. Furthermore, as it relates to whether a jury will return a death sentence, when a first-degree murder involves a black defendant, the likelihood a jury will return a death sentence actually decreases. This same trend is revealed when a first-degree murder involves a white victim. However, the data also show when the murder victim is white, irrespective of the

defendant's race, and when the defendant and victim are both white, prosecutors are more likely to seek the death penalty. This could be the result of discriminatory application of the death penalty where murders of white victims are viewed as more heinous and depraved. District attorneys are elected officials held accountable by the voters, and as a result, district attorneys may feel pressure depending on public outcry to seek the death penalty in some cases as compared to others. Given the literature in the field, there is more likely to be more public outcry in cases where black defendants are accused of violent, heinous murders of white victims. Therefore, political pressure and fear of being removed from office at the next election may result in discriminatory application of the death penalty by prosecutors.

However, based on the data analyses and my conversations with legal practitioners in Knox County, the impact of race at the prosecutorial level can be explained by legal factors. First, the majority of defendants convicted of first-degree murder in the Tennessee post-*Gregg* era have been white defendants (50.4%) and the majority of the victims have been white (64%). Therefore, simply in terms of the volume of whites in the data, it would be expected that prosecutors seek the death penalty more frequently against white defendants. Second, Judge Leibowitz has observed that the heinousness and graphic details of a brutal murder are more likely to trigger the prosecution to seek the death penalty rather than race of the defendant, victim, or the racial interaction between them. Taking Judge Baumgartner's observations into consideration that the most heinous murders have been perpetrated by white defendants against white victims, it is not unreasonable to think prosecutors would seek the death penalty in such cases where the "worst of the worst" murders have occurred. Therefore, it would be expected that the black defendant murders and murders with black defendants whose victims are white would not have predictive capabilities. In terms of juries, the finding that murders with black

defendants and white victims, irrespective of their racial interaction, decrease the likelihood that a jury will return a death sentence is a new revelation, as the literature overwhelmingly shows the opposite.

### *Replication*

The final aspect of this dissertation is an attempt to replicate a previous death penalty study using the Tennessee data compiled in this dissertation. I chose to replicate a Kentucky study conducted by Vito and Keil (1988) entitled, "Capital Sentencing in Kentucky: An Analysis of the Factors Influencing Decision Making in the Post-*Gregg* Period," and is referenced in Chapter Two of this dissertation. This study examines whether race is a significant predictor in the application of the Kentucky death penalty, since the United States Supreme Court rendered its decision in *Gregg v. Georgia* (1976), ending the nationwide death penalty moratorium. Kentucky's death penalty statute is modeled after the constitutionally approved Georgia statue, as is the Tennessee death penalty statute. Vito and Keil examined both stages of the bifurcated trial structure to determine whether race influences a prosecutor's decision to seek death and/or a jury's decision to impose death. The sample analyzed in this study included all cases where the defendant was indicted and convicted of murder between December 1976, the effective date of the approved death penalty statute, and October 1986. The sample included all murder convictions in Kentucky for a ten-year period, regardless of sentence, which includes 864 cases. However, after excluding cases due to missing data, the sample was reduced to 432 first-degree murder cases. The prosecution sought the death penalty in 104 cases, which constitutes 24.1 percent. Of the 104 cases in which the prosecution sought the death penalty, juries returned a

death sentence in 35 cases, or 33.7 percent. Vito and Keil used the same method of analysis as this dissertation, logistic regression.

With the numerous studies published on the death penalty, I chose the Vito and Keil study to replicate for several reasons. First, this study examines the death penalty of a Southern state. I wanted to replicate a study in the same geographical region as the dissertation data in order to prevent any major ideological differences in the application of the death penalty depending upon the geographical region within the United States. Since the dissertation focuses on Tennessee, Kentucky is a logical choice. Second, Vito and Keil examine both stages of the bifurcated trial structure. Most of the studies that examine whether the application of the death penalty is discriminatory focus on either prosecutors or juries, rarely both. Since the dissertation examines the impact of race on whether prosecutors seek death and whether juries impose death, this study is a logical choice. Third, the variables utilized in Vito and Keil are also contained in the dissertation data. I had to perform some minor recoding, but the information was already contained the dissertation data. Lastly, the methodology is identical. Vito and Keil perform logistic regression with dichotomous dependent and independent variables, which is identical to the dissertation methodology.

### *Replication Results – Prosecutors*

Vito and Keil utilized the six independent variables listed in Table 22 to determine whether race influences a prosecutor's decision to seek the death penalty. Vito and Keil found all six independent variables to be statistically significant predictors of whether Kentucky prosecutors seek the death penalty. Felony murders, murders with more than one victim, murders to silence a witness, murders citing more than one aggravating factor, and murders with

female victims were all found to impact a Kentucky prosecutor's decision to seek death. In addition, Vito and Keil found when murders involve a black defendant with a white victim, the likelihood that a Kentucky prosecutor seeks the death penalty increases, as well.

In analyzing Tennessee murder convictions in a logistic regression of the same variables utilized by Vito and Keil, the results slightly vary. The dissertation data reveal felony murders, murders with more than one aggravating factor, and murders with female victims were statistically significant predictors of whether Tennessee prosecutors seek death, as in the Vito and Keil analysis of Kentucky murder cases. However, murders to silence a witness, murders with more than one victim, and murders that involve a black defendant with a white victim were not statistically significant predictors of whether a Tennessee prosecutor seeks death.

***Replication Results – Juries***

Vito and Keil utilized the same six independent variables in Table 23 to determine whether race influences a jury's decision to impose the death penalty. The only independent variable found to be a statistically significant predictor of whether Kentucky juries impose death was a murder to silence a witness. Felony murders, murders with more than one victim, murders with more than one aggravating factor, murders with female victims, and murders that involve a black defendant with a white victim were all insignificant predictors of Kentucky death penalty jury behavior.

In analyzing Tennessee murder convictions in a logistic regression of the same variables, the results once again vary. The dissertation data reveal murders with more than one aggravating factor, and murders that involve a black defendant with a white victim were statically significant predictors of whether Tennessee juries impose the death penalty. However, it is important to

note that the coefficient for murders that involve a black defendant with a white victim is negative, indicating Tennessee juries are less likely to impose death in these cases. Furthermore, felony murders, murders with more than one victim, murders to silence a witness, and murders with female victims were all statistically insignificant in determining whether Tennessee juries will impose death.

**Table 22 Model Replication - Whether Prosecutors Seek the Death Penalty**

| | Tennessee Study | | | Vito and Keil | | |
|---|---|---|---|---|---|---|
| **Variable** | **B** | **S.E.** | **Sig. at .05** | **B** | **S.E.** | **Sig. at .05** |
| Black defendant/white victim | -0.108 | 0.236 | No | 0.252 | 0.093 | Yes |
| Felony murder | 0.412 | 0.160 | Yes | 0.271 | 0.084 | Yes |
| More than one victim | 0.128 | 0.227 | No | 0.324 | 0.091 | Yes |
| Motive-silence a witness | 0.580 | 0.440 | No | 0.236 | 0.079 | Yes |
| More than one aggravating factor | 2.367 | 0.194 | Yes | 0.181 | 0.079 | Yes |
| Female victim | 0.802 | 0.162 | Yes | 0.119 | 0.068 | Yes |
| Constant | -1.618 | 0.128 | Yes | 0.032 | 0.126 | Yes |

**Table 23 Model Replication - Whether Jury Returns Death Sentence**

| | Tennessee Study | | | Vito and Keil | | |
|---|---|---|---|---|---|---|
| **Variable** | **B** | **S.E.** | **Sig. at .05** | **B** | **S.E.** | **Sig. at .05** |
| Black defendant/white victim | -1.091 | 0.408 | Yes | 0.010 | 0.127 | No |
| Felony murder | -0.017 | 0.271 | No | -0.168 | 0.175 | No |
| More than one victim | 0.004 | 0.364 | No | 0.167 | 0.167 | No |
| Motive-silence a witness | 0.243 | 0.613 | No | 0.353 | 0.131 | Yes |
| More than one aggravating factor | 2.414 | 0.269 | Yes | 0.197 | 0.140 | No |
| Female victim | 0.122 | 0.276 | No | 0.166 | 0.148 | No |
| Constant | -1.308 | 0.247 | Yes | 0.189 | 0.133 | Yes |

### *Replication Conclusion*

These two regression analyses reveal interesting findings between Tennessee and Kentucky first-degree murder cases. The Kentucky study reveals murders that involve a black defendant and a white victim is a statistically significant predictor of whether a prosecutor seeks the death penalty, while the Tennessee study reveals such murders are not predictors of prosecutorial behavior. However, the reverse is revealed when Kentucky and Tennessee juries are examined. The Kentucky study reveals that a murder that involves a black defendant with a white victim is not a statistically significant variable that influences a jury's decision to return a death sentence. However, when Tennessee juries are examined, a murder that involves a black defendant and a white victim is a statistically significant predictor of whether juries return a death sentence. Interestingly though, the coefficient for black defendant/white victim murders is negative, which decreases the likelihood a jury will return a death sentence. The question then becomes why such differences exist between states that have modeled their death penalty statutes after the constitutionally approved death penalty statute in *Gregg v. Georgia*. The answer to this question is beyond the scope of this dissertation and purely speculation at this juncture, but this replication lays the groundwork for such research in the future. It would be an interesting research endeavor to analyze the death penalty by geographical region, such as the Southern states, to determine any systematic differences in the application of the death penalty.

### *Limitations and Additional Future Research*

The question remains whether the findings of this dissertation reflect a nationwide trend of a non-discriminatory application of the death penalty, or whether Tennessee is simply an anomaly among a continual arbitrary and discriminatory criminal justice system. Answering this

question is outside the scope of this dissertation and further research needs to be conducted to determine whether this trend continues in Tennessee and whether the trend is evidenced in other states across the nation. Given the Tennessee courts continue to compile data under the Tennessee Supreme Court Rule 12 trial report, this data should continue to be empirically analyzed to determine whether the findings in this dissertation persist overtime, or whether the findings change to reflect a discriminatory application of the death penalty.

A future research endeavor involving the same data analyzed in this dissertation could involve dividing the data into three categories based on the three grand divisions of the State of Tennessee. Currently, Tennessee is divided into three divisions known as East Tennessee, Middle Tennessee, and West Tennessee. It would be interesting to analyze the first-degree murder convictions and sentencing outcomes based on these divisions to determine whether there are any regional differences in the overall application of the death penalty, prosecutorial behavior and jury behavior within Tennessee. This analysis would further determine in which regions of the state defendants are more or less likely to receive the death penalty overall, whether prosecutors in certain areas are more or less likely to seek the death penalty, and whether jurors in certain regions of the state are more or less likely to impose death. It may be that such an analysis would further explain any disparities in the application of the death penalty. I also think an analysis of Tennessee that compares and contrasts the major metropolitan cities could shed light on any differences and/or similarities in the application of the death penalty, such as Knoxville, Nashville-Davidson, Chattanooga, and Memphis. It may be prosecutors and jurors approach the death penalty in fundamentally different ways. Furthermore, it could be beneficial to examine any differences and/or similarities between these major metropolitan regions and the more rural areas of Tennessee. It may be that prosecutors and juries vary in their approach to the

death penalty depending upon whether they are in an urban or rural area of the State of Tennessee.

Furthermore, additional research is required to fully understand the impact jurors play in the administration of the death penalty in Tennessee. In the early years of the death penalty, juries were mostly composed of white males. Overtime, since *Batson v. Kentucky* (1986), the inclusion of blacks and females on juries may have changed the forgone guilty and death verdicts once assumed in the Southern states when defendants are black and when black defendant's victims are white. Prior research indicates overall "black jurors are significantly more receptive to mitigation" as compared to white jurors and black jurors are "more receptive overall" to mitigating factors. (Brewer, 2004, 539). Furthermore, research suggests "white jurors are less receptive than black jurors" to mitigating factors during sentencing, and "black jurors appear to be more receptive to mitigation evidence when the defendant is of the same race," but all jurors, regardless of race, tend to be more receptive to mitigation when the defendant is white and the victim black (Brewer, 2004, 540). In addition to research, Judge Mary Beth Leibowitz has observed, "a person of color who has made a success of themselves in life that comes in as a juror might be harder on a black defendant or a defendant of the same race." However, due to lack of detailed record keeping on the racial composition of juries within the Rule 12 trial report itself, the impact of *Batson* is outside the scope of this dissertation.

As a result, there is a need for further research in the area of death penalty juries across the United States and specifically in Tennessee. A future research project should analyze how the racial composition of the jury impacts the outcome of death penalty cases. It would be interesting to utilize these same data analyzed in this dissertation to determine whether there are differences in jury sentencing before and after 1986, the year in which the United States Supreme

Court decided *Batson v. Kentucky*. Understanding the factors that influence the outcome of death penalty cases is critical in assessing any discriminatory application; thus, I take this opportunity to recommend a critical modification of the Rule 12 trial report in order to perform future research in this area.

Currently, the Rule 12 trial report requires trial judges to note the percentage of the jury that is the same race as the defendant. However, the report does not require the judges to note the exact racial composition of juries. When speaking with Judge Leibowitz about this section of the trial report, she stated while the trial report itself does not have a place to indicate the exact racial composition of the entire jury, she notes the exact racial composition to the best of her ability in her own court file simply for record keeping. Currently, there is no systematic method of obtaining racial compositions for death penalty juries in Tennessee that I have been able to identify at this time. As a result, I recommend the trial reports begin to record such information so that social scientists, as well as legal practitioners, can conduct empirical analyses to determine whether the racial composition of juries impacts sentencing outcomes. Professor of Law Dwight Aarons suggests giving death penalty jurors a questionnaire that asks jurors to self-report their racial classification as one possible method to gather and compile data on juror race. At a minimum, judges should attempt to indicate juror race on the trial report. In any respect, the racial composition of juries is a critical component to understanding the death penalty process, and the Tennessee court system should begin to systematically document this information in order to gain further insights into jury behavior. Because the passionate debate on the death penalty is far from concluded in this country, it is critical that court systems begin documenting this information to further determine whether the death penalty process is impacted by extra-legal factors across the nation.

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# APPENDICES

**APPENDIX A**: Davidson-Nashville Death Penalty Guidelines

# OFFICE OF THE DISTRICT ATTORNEY GENERAL
## 20th Judicial District

## DEATH PENALTY GUIDELINES

**INTRODUCTION:**

> He is to judge between the people and the government; he is to be the safeguard of the one and the advocate for the rights of the other; he ought not to suffer the innocent to be oppressed or vexatiously harassed, anymore than those who deserve prosecution to escape; he is to pursue guilt; he is to protect innocence ... *Fout v. State*, 4 Tenn. 98, 99 (1816)

Under Tennessee law, the District Attorney General is solely responsible for determining which first degree murder cases are appropriate to seek the death penalty and which are not. The decision to seek the death penalty is the most serious one a prosecutor must make. Once such a decision has been made, it represents an enormous commitment of state resources and a recognition that the case will be reviewed and scrutinized exhaustively. Because of the issues at stake, it is imperative that the decision to seek the death penalty be made impartially based upon the applicable state statutes and case law and without regard to the defendant's or victim's sex, race, religion, ethnic background, national origin, sexual orientation or similar consideration. In order to ensure that the decision to seek the death penalty is made properly and the prosecution conducted fairly, this office has decided to implement written guidelines. These guidelines shall apply to all cases that have yet to be tried in the 20th Judicial District.

**DEATH PENALTY DECISION PROCESS:**

1. Every case that is indicted for first degree murder shall be reviewed by the assistant district attorney to whom it is assigned to determine whether any statutory aggravating factors exist that would justify legally seeking the death penalty or life without parole. In those first degree murder cases where no such aggravating factors exist, the assistant district attorney shall fill out a *First Degree Murder Evaluation Form;* indicate that neither the death penalty nor life without parole is legally possible; obtain the signature of their team leader; and forward it to the District Attorney General for his signature.

2. In those first degree murder cases where one or more aggravating factors are arguably present, the assistant district attorney assigned to the case shall fill out a *First Degree Murder Evaluation Form;* discuss the appropriate punishment with his or her team leader; consult with the family of the victim; and meet with the District Attorney General to discuss the case in detail.

3. If, after an initial review, the death penalty remains a possible sanction, the District Attorney General shall contact counsel for the defendant in writing and notify him/her of the intention to consider the case for possible death penalty application and give the attorney an opportunity to supply in writing or provide in person any mitigating information that might be relevant to the decision.

4. A final review of the case will not occur until counsel for the defendant has had an opportunity to provide any mitigating information or to explore bona fide plea negotiations.

5. The District Attorney General shall personally review the case and consider any mitigating information known to the office or provided by defense counsel. The District Attorney General will discuss the case with the assistant district attorney assigned and the team leader and make the ultimate decision.

6. Only after the District Attorney General has determined that the death penalty shall be sought, may notice of such determination be provided to the court and to defense counsel.

7. The decision to seek the death penalty shall be made as promptly as possible in order to provide ample notice to the court and defense counsel to ensure adequate preparation time for the defense, the appointment of additional counsel where appropriate, and the selection of a trial date.

8. Once notice has been provided of the state's intention to seek the death penalty, the case may not be settled upon a plea of guilty to a lesser crime or punishment without the approval of the District Attorney General.

9. The Office of the District Attorney General will seek the death penalty only in those cases where the evidence of guilt is substantial. The death penalty will not be sought in cases where the

evidence consists of the uncorroborated testimony of a single eyewitness or of a cooperating codefendant or accomplice. Jail house informants may be used as corroborative witnesses but in no event shall a death penalty case be based principally upon their testimony.

10. Only those defendants who actually committed the murder or who planned and/or hired the murderer shall be eligible for death penalty consideration. Codefendants who were present and aided or abetted in the murder shall only be subject to the death penalty in those circumstances where the facts establish that they knowingly engaged in actions that carried a grave risk of death and their conduct exhibited a reckless indifference to the value of human life.

11. Until the review process has been completed, no office member shall make any public comment about whether a particular case is appropriate for the death penalty. An assistant may comment that a particular case is legally eligible for death penalty consideration in the future and may argue in open court that the defendant be held without bond because he/she is eligible for death penalty consideration.

12. The office shall keep statistical data on the age, sex and race of the defendants and victims in all cases where notice for the death penalty was given.

**THE DISCOVERY PROCESS:**

1. In all cases where notice for the death penalty has been given, the office shall provide counsel for the defendant an opportunity for open-file discovery. Counsel for the defendant shall be required to initial every document in the file to indicate it has been reviewed. Counsel for the defendant will be provided with copies of all written materials, and copies of audio tapes and video tapes will continue to be provided under existing office policy. Pretrial statements of witnesses subject to disclosure during trial *(Jencks* material) may be reviewed during the open-file discovery process at any time in the discretion of the assistant district attorney. Copies of these statements shall be given to defense counsel at the time the statements are reviewed or at such time as the court directs but no later than at the conclusion

of jury selection. In addition, copies of all statements in possession of the state will be provided to defense counsel and filed with the court at the conclusion of jury selection. The District Attorney's Office reserves the right to make other arrangements for the disclosure of information in the file when warranted for the safety of a witness or the public.

2. The office shall make written demand for all relevant information to be provided by all law enforcement agencies, laboratories and other offices engaged in the investigative process.

3. The Office of the District Attorney General will arrange for counsel for the defendant to review all physical evidence in the possession of any state or local agency.

4. The Office of the District Attorney General will request DNA testing for all items of physical evidence where relevant to determining the defendant's guilt or innocence.

5. The Office of the District Attorney General will not oppose the review and/or retesting of any physical evidence by experts retained by the defense provided adequate safeguards are implemented to ensure the integrity of the process.

**POST CONVICTION PROCEDURES:**

1. A defendant who has been convicted and sentenced to death may review any and all files in possession of the Office of the District Attorney General upon written request notwithstanding provisions to the contrary in Tennessee Code Annotated §40-30-209. Such files will be made available to the defendant's attorney or the defendant's representative under the terms and conditions applicable to all public records requests.

2. The defendant may choose to use the process outlined III this office's Post Conviction DNA Testing Procedure, issued this same date.

**CONCLUSION:**

The death penalty is a rarely employed sanction reserved for defendants who commit the most egregious homicides. While this office is determined to seek the death penalty in appropriate cases, it is

equally resolute in its commitment to protect the rights of the accused. These guidelines are intended to establish a professional benchmark and to assist in the exercise of prosecutorial discretion.

**APPENDIX B:** Trial Judge Report in First-Degree Murder Cases

REPORT OF TRIAL JUDGE IN FIRST DEGREE MURDER CASES[78]

IN THE _____ COURT OF _____ COUNTY

STATE OF TENNESSEE

Case No. _____

v.

Sentence of Death ( )
or
Life Without Parole ( )
or
Life Imprisonment ( )

_____
(Defendant)

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

1. a. Status of Case: Original Trial ( ) Retrial/Resentencing ( )
   b. Brief summary of the facts of the homicide, including the means used to cause death and scene of crime:_____
   _____
   _____
   _____
   _____

2. How did the defendant plead? Guilty ( ) Not Guilty ( )
3. Was guilt determined with or without a jury? With ( ) Without ( )
4. Separate Offenses:
   a. Were other offenses tried in the same trial? Yes ( ) No ( )
   b. If yes, list those offenses, disposition, and punishment:
   _____

5. Did you as "thirteenth juror" find the defendant was guilty beyond a reasonable doubt? Yes ( ) No ( )
6. Did the defendant waive jury determination of punishment? Yes ( ) No ( )
7. a. Did the State file a notice of intent to seek the death penalty? Yes ( ) No ( )
   b. Did the State file a notice of intent to seek life imprisonment without parole? Yes ( ) No ( )
   c. Did the State withdraw its notice of intent to seek the death penalty either formally or informally? Yes ( ) No ( )
   d. Who sentenced defendant? Judge ( ) Jury ( )
   e. What sentence was imposed? Death ( ) Life Without Parole ( )

[78] Separate report must be submitted for each defendant convicted under T.C.A. § 39-13202 irrespective of the sentence received. This includes defendants who have pleaded guilty to first-degree murder.

f.. If life imprisonment, was it imposed as a result of a hung jury? Yes ( ) No ( )

8. Was victim impact evidence introduced at trial? Yes ( ) No ( )

9. Aggravating Circumstances, T.C.A. § 39-13-204(i):

a. Were statutory aggravating circumstances found? Yes ( ) No ( )

b. Which of the following statutory aggravating circumstances were instructed and which were found? (Please note the version of the statutory aggravating circumstance instructed in the blanks provided when applicable, i.e., the 1989 version or the 1995 version.)

| | Instructed | Found |
|---|---|---|
| (1) Youth of the victim_____ | ( ) | ( ) |
| (2) Prior convictions_____ | ( ) | ( ) |
| (3) Risk of death to others_____ | ( ) | ( ) |
| (4) Murder for remuneration_____ | ( ) | ( ) |
| (5) Heinous, atrocious, or cruel_____ | ( ) | ( ) |
| (6) To avoid arrest or prosecution_____ | ( ) | ( ) |
| (7) Committed in conjunction with another felony_____ | ( ) | ( ) |
| (8) Committed while in custody_____ | ( ) | ( ) |
| (9) Victim was a member of law enforcement, etc._____ | ( ) | ( ) |
| (10) Victim was a judge, district attorney, etc._____ | ( ) | ( ) |
| (11) Victim was elected official, etc.____ | ( ) | ( ) |
| (12) Mass murder_____ | ( ) | ( ) |
| (13) Mutilation of the body_____ | ( ) | ( ) |
| (14) Elderly or particularly vulnerable victim _____ | ( ) | ( ) |

(15) Other[79]_____
_____
_____

Relate any significant aspects of the aggravating circumstance(s) that influence the punishment._____
_____
_____

c. Were the aggravating circumstances found supported by the evidence? Yes ( ) No ( )

10. Mitigating Circumstances, T.C.A. § 39-13-204(j):

a. Were the mitigating circumstances raised by the evidence?
Yes ( ) No ( )

b. If so, what mitigating circumstances were raised by the evidence?

| | Yes | No |
|---|---|---|
| (1) No significant prior criminal history | ( ) | ( ) |
| (2) Extreme mental or emotional disturbance | ( ) | ( ) |
| (3) Participation or consent by victim | ( ) | ( ) |

[79] In this space, the trial court should list by statutory designation any statutory aggravating factor that was instructed, but is not in the prior list.

| | | |
|---|---|---|
| (4) Belief that conduct justified | ( ) | ( ) |
| (5) Minor accomplice | ( ) | ( ) |
| (6) Extreme duress or substantial domination | ( ) | ( ) |
| (7) Youth/advanced age of defendant | ( ) | ( ) |
| (8) Mental disease or defect or intoxication | ( ) | ( ) |
| (9) Other (explain):[80] _____ | ( ) | ( ) |

_____
_____
_____
_____
_____
_____

(c) Relate any significant facts about the mitigating circumstances that influence the punishment.

_____
_____
_____

(d) If tried with a jury, was the jury instructed regarding all the circumstances indicated in 10(b) as mitigating circumstances? Yes ( ) No ( )
If no, list which circumstances were not included as mitigating circumstances and explain why such circumstances were omitted:

_____
_____
_____

11. If the sentence was death, does the evidence show that the defendant killed, attempted to kill, or intended that a killing take place or that lethal force be employed? Yes ( ) No ( )
12. Was there any evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs or alcohol which actually contributed to the offense? Yes ( ) No ( )
If yes, explain:_____
_____
_____
13. General comments of the trial judge concerning the sentence imposed in this case (e.g., whether this sentence is consistent with those imposed in similar cases the judge has tried, etc.):_____
_____
_____
_____
14. Brief impression of the trial judge as to conduct and/or affect of defendant at trial and sentencing:_____
_____
_____

[80] In the space provided, please list all nonstatutory mitigating factors raised by the evidence.

B. DATA CONCERNING THE DEFENDANT[81]

1. Name_____ 2. Birth Date_____
Last, First Middle mo./day/year

3. Sex_____ 4. Marital status: _____

Never Married ( )
Married ( )
Divorced ( )
Spouse Dec'd ( )

5. Race _____
6. Children: Number _____
Ages: _____
Other dependents: _____

7. Parents: Father - Living? Yes ( ) No ( )
Mother - Living? Yes ( ) No ( )
8. Education: Highest Grade or Level Completed:_____
9. Intelligence level: Low (IQ below 70) _____
Med.(IQ 70 to 100) _____
High (IQ above 100) _____
Not known _____
10. a. Was the issue of defendant's mental retardation under T.C.A. § 39-13-203 raised? Yes ( ) No ( )
b. If so, did the court find that the defendant was mentally retarded as defined in T.C.A. §39-13-203(a)? Yes ( ) No ( )
11. a. Was a psychiatric or psychological evaluation performed? Yes ( ) No ( )
b. If yes, summarize pertinent psychiatric or psychological information and/or diagnoses revealed by such evaluation:_____
_____
_____
_____
_____

12. Employment record of defendant at or near time of offense, including if known, type of job, pay, dates job held and reason for termination:
_____
_____
_____

13. Defendant's Military History, including type of discharge:
_____
_____
_____

14. a. Does the defendant have a record of prior convictions? Yes ( ) No ( )
b. If yes, list the offenses, the dates of the offenses and the sentences

[81] Defense counsel may omit any information that may, if disclosed, impair the interests of the client.

imposed:

| | Offense | Date | Sentence |
|---|---|---|---|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |
| 6. | | | |

15. Was the defendant a resident of the community where the homicide occurred? Yes ( ) No ( )
16. Noteworthy physical or mental characteristics or disabilities of defendant:
_____
_____
_____
17. Other significant data about the defendant:
_____
_____
_____

C. DATA CONCERNING VICTIM, CO-DEFENDANTS, AND ACCOMPLICES

1. Age of victim_____ 2. Sex _____
3. Race of victim_____ 4. Marital Status: Never Married ( )
5. Children: Number _____ Married ( )
Ages _____ Divorced ( )
Other dependents _____ Spouse Dec'd ( )

6. Parents: Father - Living? Yes ( ) No ( )
Mother - Living? Yes ( ) No ( )
7. Education: Highest Grade or Level Completed _____
8. Employment at time of offense _____
9. Criminal record _____
10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.):_____
_____

11. Was the victim a resident of the community where the homicide occurred?
Yes( ) No ( )
12. Was the victim held hostage during the crime?
_____ Yes - Less then one (1) hour
_____ Yes - More than one (1) hour
_____ No
If yes, give details:_____
_____
_____
13. a. Describe the physical harm and/or injuries inflicted on the victim:
_____
_____
_____

b. Was the victim tortured, state the nature of the torture:_____
_____
_____
_____

14. Co-defendants:
a. Were there any co-defendants in the trial? Yes ( ) No ( )
b. If yes, what conviction and sentence were imposed on them?
c. Nature of co-defendant's role in offense:
_____
_____
_____
_____
d. Any further comments concerning co-defendants:
_____
_____
_____
_____

15. Other Accomplices:
a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes ( ) No ( )
b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known:
_____
_____
_____

c. Did the accomplice(s) testify at the defendant's trial? Yes ( ) No ( )

## D. REPRESENTATION OF THE DEFENDANT

1. How many attorneys represented defendant?_____
(If more than one counsel served, answer the following questions as to each counsel and attach a copy for each to this report.)
2. Name of counsel:_____
_____
3. Date counsel secured:_____
_____
4. How was counsel secured:
a. Retained by defendant ( )
b. Appointed by court ( )
c. Public defender ( )
5. If counsel was appointed by court, was it because:
a. Defendant unable to afford counsel ( )
b. Defendant refused to secure counsel ( )
c. Other (explain):_____
_____
6. How many years has counsel practiced law?
a. 0 to 5 ( )

b. 5 to 10 ( )
c. Over 10 ( )

7. What is the nature of counsel's practice?
   a. Mostly civil ( )
   b. General ( )
   c. Mostly criminal ( )
8. Did counsel serve throughout the trial? Yes ( ) No ( )
9. If not, explain in detail:_____
   _____
   _____
10. Other significant data about defense representation:_____
    _____
    _____

## E. GENERAL CONSIDERATIONS

1. What percentage of the population of the county from which the jury was selected is the same race as the defendant?
   a. Under 10% ( )
   b. 10% - 25% ( )
   c. 25% - 50% ( )
   d. 50% - 75% ( )
   e. 75% - 90% ( )
   f. Over 90% ( )
2. Were members of defendant's race represented on the jury? Yes ( ) No ( )
   How many of defendant's race were jurors?_____
3. a. Was a change of venue requested? Yes ( ) No ( )
   b. If yes, was it granted? Yes ( ) No ( )
   Reasons for change, if granted:_____
   _____
   _____

## F. CHRONOLOGY OF CASE

Elapsed Days

1. Date of offense_____
2. Date of arrest_____
3. Date trial began_____
4. Date sentence imposed_____
5. Date post-trial motions ruled on_____
6. Date trial judge's report completed_____
*7. Dated received by Supreme Court_____
*8. Date sentence review completed_____
*9. Total elapsed days_____
10. Other_____

*To be completed by Supreme Court

This report was submitted to the defendant's counsel and to the attorney for the State for such comments as either desired to make concerning its factual accuracy.

| | D.A. | Defense Counsel |
|---|---|---|
| 1. Comments are attached | ( ) | ( ) |
| 2. Had no comments | ( ) | ( ) |
| 3. Has not responded | ( ) | ( ) |

I hereby certify that I have completed this report to the best of my ability and that the information herein is accurate and complete.

_____ _____

Date Judge,_____

Court of_____ County

Judicial District_____

**APPENDIX C**: Motion to Dismiss Death Penalty[82]

[82] Motion to Dismiss filed in Tennessee v. Davidson requesting the death penalty be dismissed as a possible punishment due to disproportional application. Motion was denied by Judge Richard Baumgartner.

**IN THE CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE**
**DIVISION I**



| | | |
|---|---|---|
| **STATE OF TENNESSEE** | ) | |
| | ) | |
| **v.** | ) | **NO.: 86216B** |
| | ) | |
| **LEMARICUS DEVALL DAVIDSON** | ) | |

**MOTION TO DISMISS DEATH PENALTY**
**BECAUSE OF RACIAL DISPROPORTIONALITY**

Comes, the defendant, Lemaricus Davidson, by and through counsel, David M. Eldridge and Douglas A. Trant, to move this Court to dismiss the death penalty as possible punishment in this case because of gross racial disproportionality in its imposition and execution. In support of this Motion, the defendant attaches the statistics on death penalty and race from the Death Penalty Information Center.

The percentage of white persons to black persons in Tennessee is 80.4% to 16.9%, and in the United States, 80% to 12.8%. (U. S. Census Bureau 2008. A copy of which is attached hereto.) The defendant in this case is black, and the victims are white.

Respectfully submitted this the 19th day of May, 2009,

DAVID M. ELDRIDGE (BPR # 012408)
The Cherokee Building
400 West Church Avenue, Suite 101
Knoxville, Tennessee 37902
(865) 544-2010

DOUGLAS A. TRANT (BPR # 006871)
900 S. Gay Street
Suite 1502
Knoxville, TN 37902
(865) 525-7980

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing pleading was forwarded, via e-mail transmission, by hand delivery and/or by placing the same in the United States mail, with proper postage affixed thereon, to:

Randall E. Nichols,
District Attorney General
Leland Price,
Assistant District Attorney General
Takisha Fitzgerald,
Assistant District Attorney General
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Russell T. Greene, Esq.
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This the 19th day of May, 2009.

DAVID M. ELDRIDGE
DOUGLAS A. TRANT

# VITA

Kristin A. Wagers is a graduate of the University of Tennessee, where she was a Political Science major. At the University of Tennessee, she was a member of the Dean's List and recipient of the *Ruth Stephens Scholarship* for a superior record in academic achievement in political science. She was also a member of Pi Sigma Alpha, the political science undergraduate honor society, and a member of Phi Beta Kappa honor society. She obtained her Masters in Public Administration with a concentration in Criminal Justice from the University of Tennessee in 2006. As a doctoral student, she was the recipient of the *John W. Shanks Award* for excellence in the study of American politics, specifically public law. She obtained her PhD in Political Science in 2010. In addition, she is currently a law student at the University of Tennessee College of Law with an expected graduation date of May 2011.