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JUSTICE BY GEOGRAPHY AND RACE: THE ADMINISTRATION OF THE DEATH PENALTY IN MARYLAND, 1978-1999

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I. INTRODUCTION

On June 17th, 2004, Steven Oken was executed by the State of Maryland.¹ His was the first execution in six years and only the third person executed in the state since the state's new death penalty law took effect in July of 1978.² His execution lifted a moratorium that was placed on the death penalty by Maryland's former Governor, Parris N. Glendenning who, while supporting the death penalty, was concerned about how it was being administered.³ Apprehension regarding the death penalty in Maryland is not new.

There have been repeated suggestions over the years that the imposition of the death penalty in Maryland has been influenced by factors such as race and the particular legal jurisdiction where the homicide occurred. One source of this speculation are the characteristics of the condemned on Maryland's death row. For example, in January 2004, eight of the twelve (67%) men on death row were African-American, eleven of twelve (92%) were sentenced to death for the killing of at least one white victim, and in seven of these twelve cases (58%) the offender was black and the victim white.⁴

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1. Julie Bykowitz and Alec MacGillis, *Md. Puts Oken to Death*, BALT. SUN, June 18, 2004, at A1.

2. *Id.*

3. *Id.*

4. This information is contained in the database for this research project. Justice By Geography and Race: The Administration of the Death Penalty in Maryland 1978-1999 Database (on file with first author). It is also available from the Maryland Office of the Public Defender, Death Penalty Defense Unit.

Moreover, of these eight (67%) came from just one jurisdiction, Baltimore County.⁵

It is these kinds of “statistics” that have fueled the belief that there is some mischief in the way Maryland has administered the death penalty. Critics of the death penalty can point to the fact that African Americans do not make up 67% of Maryland’s population, black on white killings do not make up nearly 60% of all homicides, nor do 90% of the homicides in Maryland occur in Baltimore County. It would appear at first blush, then, that African-Americans, especially those who slay whites, and defendants from Baltimore County are disproportionately represented on death row and that such disparity is due to discrimination. However suggestive of racial or geographic disparity these figures may be, they cannot on their own provide much support for the position that the state’s death penalty system is biased by either race or geography. In fact, even if all offenders on Maryland’s death row were African-American, and all had killed white victims, and all came from one jurisdiction, that alone would not constitute adequate social scientific evidence of race or geographic disparity. If, for example, African-American offenders who killed white victims also happened to commit the most aggravated and serious murders in the state then their disproportionate appearance on death row would be due to the kinds of crimes they committed and not racial bias.

Therefore, it was necessary to collect detailed data from the broadest possible group of offenses and offenders to determine if Maryland’s system does, in fact, possess any racial or geographic disparities. The need to study the death penalty in Maryland was recognized and in September of 2000, Governor Parris N. Glendening commissioned the current empirical study of the death penalty, and subsequently imposed a moratorium on all executions in the state until the study’s completion.

The purpose of this study was to examine whether the imposition of the death penalty in Maryland was affected by race (either of the offender, victim or both) or geography (the jurisdiction where the crime occurred). The influence of race and geography was examined at four critical decision-making points in the administration of Maryland’s capital punishment system:

1. The decision of the state’s attorney to file a formal notification to seek a death sentence;

5. *Id.*

2. The decision of the state's attorney to not withdraw a death notification once filed, in other words, the decision to make the death notification "stick" to the offender;
3. The decision of the state's attorney to advance a death-eligible offense to a penalty trial upon a conviction for first-degree murder; and
4. The decision of the jury or judge to sentence a defendant to death.⁶

The principal goal of this research was to estimate the effect that race and geography has on these four decision points while taking into account numerous case characteristics that may explain these decisions. There are many factors that affect these decision making points, such as the criminal history of the offender, the number of victims, the brutality of the murder that must be considered when examining the effect of race and geography. These factors were taken into consideration when completing the study.

Part II of this study provides a brief description of the recent history of capital punishment in the state of Maryland, including concerns about the fairness with which it has been imposed in the past. This part also describes the legal structure or mechanics of the death penalty under Maryland law. Part III reviews the past death penalty research in Maryland. The study describes in Part IV the methodology followed in this empirical study of the death penalty in Maryland, with particular attention devoted to describing how we characterized an offense as "death eligible", and the statistical strategy followed in determining the influence of race and geography on the four decision making points. Part V contains a detailed presentation of our results – what we found with respect to the administration of the death penalty. In Part VI, the study concludes with a summary of our findings.

6. We did not look at the pre-prosecutorial aspects of the case, which may include interrogation, arrest, police investigation, pretrial hearings, or a prosecutorial decision to charge for a lesser offense such as manslaughter. It should, however, be noted that these decisions have a filtering effect on the cases that eventually arrive at the state's attorneys' office.

II. A RECENT HISTORY OF THE DEATH PENALTY IN MARYLAND

A. Pre-1978 Maryland Death Penalty Statutes

In 1972, the United States Supreme Court declared then-existing procedures for imposing capital punishment unconstitutional because they gave juries unlimited and standardless discretion when sentencing offenders to death.⁷ The 5-4 decision⁸ in *Furman v. Georgia*, had significant constitutional ramifications. The court held that the then-existing manner in which death sentences were imposed created a risk that defendants would be sentenced to death on the basis of constitutionally suspect factors—for example, that the capital sentencing system was discriminatory, or that because the capital sentencing system was arbitrary and capricious, there was no rational and meaningful basis to distinguish offenders sentenced to death from those whose life was spared.⁹

The practical impact of *Furman*, called into question the constitutionality of death penalty statutes in states, including Maryland that gave wide discretion to the authority responsible for sentencing criminals to death. In 1972, Maryland law provided no guidance or standards to juries as to the appropriate penalty in deciding which defendants convicted of rape and murder should be sentenced to death.¹⁰ At that time, a death sentence in rape and murder cases was

7. *Furman v. Georgia*, 408 U.S. 238 (1972).

8. *Furman v. Georgia* was a 5-4 opinion of some 233 pages with each Justice writing his own opinion, and no one Justice in the majority joining any part of the opinion of another. Robert Weisberg characterized *Furman* as “not so much a case as a badly orchestrated opera, with nine characters taking turns to offer their own arias.” Robert Weisberg, *Deregulating Death*, 1983 Sup. Ct. Rev. 305, 315 (1983).

9. Justice Douglas argued that “these discretionary statutes are unconstitutional in their operation. They are pregnant with discrimination and discrimination is an ingredient not compatible with the idea of equal protection of the laws that is implicit in the ban on ‘cruel and unusual’ punishments” *Furman*, 408 U.S. at 256-57. In his opinion, Justice Stewart characterized standardless capital statutes the following way: “These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual...the petitioners are among a capriciously selected random handful upon whom the sentence of death has in fact been imposed.” *Id.* at 309-310 (Stewart, J., concurring). Justice White concluded that under these statutes “the death penalty is exacted with great infrequency even for the most atrocious crimes and that there is no meaningful basis for distinguishing the few cases in which it is imposed from the many cases in which it is not.” *Id.* at 313 (White, J., concurring).

10. MD. ANN. CODE art. 27, § 413 (1967) (current version at MD. CODE ANN., CRIM. LAW § 2-303 (2002)).

mandatory in Maryland unless the jury specifically stated in its guilty verdict “without capital punishment.”¹¹

Based on *Furman*, the Maryland Court of Appeals invalidated the state’s death penalty statute in *Bartholmey v. State*.¹² Defendant Joseph James Bartholomey and three other defendants on Maryland’s death row had their death sentences vacated to life imprisonment and the case paved the way for other defendants to have their death sentences vacated.¹³ The court held that “[w]e entertain not the slightest doubt that the imposition of the death sentence under any of the presently existing discretionary statutes of Maryland which authorize, but do not require, that penalty is unconstitutional under *Furman* as violative of the Eighth and Fourteenth Amendments to the federal constitution.”¹⁴

Subsequent to *Bartholmey*, the Maryland legislature enacted a new death penalty statute that was intended to remedy the problem of unguided or standardless discretion as identified by the *Furman* Court.¹⁵ The new statute¹⁶ addressed the problem of giving too much discretion to juries by establishing eight narrowly defined categories of

11. When *Furman* was decided, the Maryland statute stated that:

Every person convicted of murder in the first degree . . . shall suffer death, or undergo a confinement in the penitentiary of the State for the period of their natural life, in the discretion of the court before whom such person may be tried; provided, however, that the jury in a murder case . . . may add thereto the words, ‘without capital punishment,’ in which case the sentence of the court shall be imprisonment for life.

Bartholmey v. State, 297 A.2d 696, 699 n.1 (Md. 1972) (quoting MD. CODE ANN. art. 27, § 413 (1967) (current version at MD. CODE ANN., CRIM. LAW § 2-303 (2002))).

12. *Bartholomey v. State*, 297 A.2d 696 (Md. 1972).

13. *Id.* at 707-08, 707 n.18, 708 n.19.

14. *Id.* at 701.

15. In his dissent in *Furman*, Chief Justice Burger noted both the ambiguity of the decision and two possible remedies to the defects in standardless juries found by the plurality:

While I would not undertake to make a definitive statement as to the parameters of the Court’s ruling, it is clear that if state legislatures and the Congress wish to maintain the availability of capital punishment, significant statutory changes will have to be made. Since the two pivotal concurring opinions [those of Justice Stewart and Justice White] turn on the assumption that the punishment of death is now meted out in a random and unpredictable manner, legislative bodies may seek to bring their laws into compliance with the Court’s ruling by providing standards for juries and judges to follow in determining the sentence in capital cases or by more narrowly defining the crimes for which the penalty is to be imposed. If such standards can be devised or the crimes more meticulously defined, the result cannot be detrimental.

Furman v. Georgia, 408 U.S. 238, 400-01 (1972).

16. MD. CODE ANN. art. 27, § 413 (1976) (current version at MD. CODE ANN., CRIM. LAW § 2-303 (2002)).

first-degree murder.¹⁷ A finding that one or more of these circumstances existed, plus findings of two other factors,¹⁸ resulted in a mandatory death sentence. The new statute took effect on July 1, 1975,¹⁹ and Maryland again began to sentence defendants to death.

In July 1976, the United States Supreme Court decided three cases that upheld the constitutionality of capital statutes that structured and guided the discretion of capital juries²⁰ and judges,²¹ but struck down mandatory statutes in two other cases.²² The Court held that mandatory statutes failed to allow the decision-maker in the trial—jury or judge—to consider the unique culpability of individual defendants and thus treated them “as members of a faceless, undifferentiated mass to be subjected to the blind infliction of the penalty of death.”²³

The statute in effect in Maryland was indistinguishable from the North Carolina and Louisiana statutes rejected by the Court,²⁴ and

17. Under the 1975 statute, these eight circumstances were:

- (i) The defendant committed the murder at a time when he was confined or under sentence of confinement to any correctional institution in this State;
- (ii) the defendant committed the murder in furtherance of an attempt to escape from or evade the lawful custody, arrest, or detention of or by a law-enforcement officer, correctional officer, or guard;
- (iii) the victim was a hostage taken or attempted to be taken in the course of a kidnapping or an attempt to kidnap;
- (iv) the victim was a child abducted in violation of § 2 of this article;
- (v) the defendant committed the murder pursuant to an agreement or contract to commit the murder for pecuniary gain;
- (vi) at the time of the murder, the defendant was under a sentence of life imprisonment;
- (vii) the defendant committed more than one offense of murder in the first degree arising out of the same or separate incidents;
- (viii) the defendant committed the murder while committing or attempting to commit robbery.

Id.

18. The statute mandated a sentence of death for first degree murder if: “[the accused] is found by the trier of fact to have been the person who actually committed an act which proximately caused the victim’s death; and (2) [a]t the time of the commission of the act, [the accused] was 18 years of age or older; and, (3) the murder was committed under one or more of the circumstances. *Id.*

19. *Id.*

20. *Gregg v. Georgia*, 428 U.S. 153 (1976); *Jurek v. Texas*, 428 U.S. 262 (1976).

21. *Proffitt v. Florida*, 428 U.S. 242 (1976).

22. *Woodson v. North Carolina*, 428 U.S. 280 (1976); *Roberts v. Louisiana*, 428 U.S. 325 (1976).

23. *Woodson*, 428 U.S. at 304.

24. The mandatory North Carolina statute held unconstitutional in *Woodson* read: Murder in the first and second degree defined; punishment. - A murder which shall be perpetrated by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery, kidnapping, burglary or other felony, shall be deemed to be murder in the first degree and shall be punished with death.

was therefore constitutionally suspect. Recognizing this, the Maryland Court of Appeals vacated the two death sentences handed down under the revised 1975 statute in *Blackwell v. State*.²⁵ In response to *Blackwell*, the Maryland legislature constructed a guided discretion statute during its 1977 and 1978 sessions.²⁶ This new guided discretion statute was modeled along the lines of the Georgia law²⁷ and became effective on July 1, 1978. It provides the foundation for Maryland's current capital punishment law.²⁸ In August of 1979, the

See N.C. GEN. STAT. § 14-17 (1975).

The mandatory Maryland statute was facially similar. It mandated the imposition of the death penalty if the accused actually committed the act which caused the victim's death, was 18 years of age or older at the time of the crime, and the murder was committed under one or more of the following circumstances:

(i) The defendant committed the murder at a time when he was confined or under sentence of confinement to any correctional institution in this State;

(ii) The defendant committed the murder in furtherance of an attempt to escape from or evade the lawful custody, arrest, or detention of or by a law-enforcement officer, correctional officer, or guard;

(iii) The victim was a hostage taken or attempted to be taken in the course of a kidnapping or an attempt to kidnap;

(iv) The victim was a child abducted in violation of § 2 of this article;

(v) The defendant committed the murder pursuant to an agreement or contract to commit the murder for pecuniary gain;

(vi) At the time of the murder, the defendant was under a sentence of life imprisonment;

(vii) The defendant committed more than one offense of murder in the first degree arising out of the same or separate incidents;

(viii) The defendant committed the murder while committing or attempting to commit robbery.

MD. CODE ANN. art. 27, § 413 (1976) (current version at MD. CODE ANN., CRIM. LAW § 2-303 (2002)).

25. *Blackwell v. State*, 365 A.2d 545 (Md. 1976). In *Blackwell*, the Maryland Court of Appeals noted that the mandatory capital statutes of North Carolina and Louisiana that were struck down were infirm because they failed to allow a consideration of the unique characteristics of individual defendants. The Maryland statute, they reasoned, was virtually indistinguishable in this regard from North Carolina's and Louisiana's:

The Maryland death penalty statute limits the imposition of the death sentence to eight narrowly drawn categories of first degree murder in cases where the accused actually committed an act which proximately caused the victim's death and where he was at least 18 years of age when the crime was considered. The statute does not provide any other standards whereby the sentencing authority can consider the individual circumstances or characteristics of either the offense or offender; indeed, all those convicted under the statute are treated alike, without regard to the circumstances.

Id. at 549.

26. 1978 Md. Laws 3, amended by 1979 Md. Laws 521 (current version at MD. CODE ANN., CRIM. LAW §§ 2-303, 2-401 (2002)).

27. GA. CODE ANN. §§26-1101, 26-1311, 26-1902, 26-2001, 26-2201, 26-3301 (1972).

28. MD. CODE ANN., CRIM. LAW §§ 2-201-2-202, 2-301, 2-303 (2002).

first death sentence under the state's new law was imposed on Richard Danny Tichnell in Wicomico County.²⁹

*B. Maryland's Current Capital Statute*³⁰

The following factors must be satisfied for a defendant to be sentenced to death under Maryland's death penalty statute:

1. After 1987,³¹ the defendant must be 18 years old or older at the time of the offense.³²
2. After 1989,³³ the defendant cannot be deemed mentally retarded, with mental retardation established at the penalty phase of the capital trial by a preponderance of the evidence. A jury finding of mental retardation must be unanimous.³⁴
3. The defendant must have been convicted of first-degree murder and have been found to be a principal in the first degree. The "principalship" requirement means that a defendant is considered a principal if that defendant is convicted of first-degree murder and is either the actual killer or the one who pays the killer. A jury finding of principalship must be unanimous. There is one exception to the principalship requirement. When the aggravating circumstance charged is the death of a law enforcement officer during the course of the officer's duties, the accused need not be the principal in the first degree. In this case, a sentence of death may be imposed upon a principal in the second degree who, (a) willfully, deliberately, and with premeditation intended the death of the law enforcement officer, (b) was a major participant in the

29. Richard Danny Tichnell was sentenced to death for the killing of a police officer on January 18, 1979 during the course of a breaking and entering. After receiving a death sentence and having it overturned, Tichnell was re-sentenced to life imprisonment on February 6, 1991. This information is contained in the database for this research project. Justice By Geography and Race: The Administration of the Death Penalty in Maryland 1978-1999 Database (on file with first author). It is also available from the Maryland Office of the Public Defender, Death Penalty Defense Unit.

30. MD. CODE ANN., CRIM. LAW §§ 2-201-2-202, 2-301, 2-303 (2002).

31. 1987 Md. Laws 626.

32. MD. CODE ANN., CRIM. LAW § 2-202 (b) (2)(i) (2002).

33. 1989 Md. Laws 677.

34. MD. CODE ANN., CRIM. LAW § 2-202(b) (2002).

murder, and (c) was actually present at the time and place of the murder.³⁵

4. The state's attorney prosecuting the case must have notified defense counsel at least 30 days in advance of the trial that the state intends to seek a death sentence (or a sentence of life without parole) and the specific aggravating factors that the state intends to rely on.³⁶

In addition to the factors named above, at least one of the following ten statutory aggravating factors must be found by the fact finder beyond a reasonable doubt.³⁷ These are:

A1. The victim of the murder was a law enforcement officer in the performance of his/her duties.

A2. The defendant committed the murder when confined in a correctional institution.

A3. The defendant committed the murder while trying to escape from custody.

A4. The victim was taken in the course of a kidnapping or abduction.

A5. The victim was a child abducted in violation of § 3-503 (a) (1) of [the Criminal Law] article,

A6. The defendant murdered pursuant to an agreement for remuneration.

A7. The defendant employed another who killed for remuneration.

A8. The defendant committed murder when under sentence of death or life imprisonment.

A9. The same incident produced multiple murder victims.

A10. The defendant committed the murder while committing, or attempting to commit, a carjacking, armed carjacking, robbery, arson in the first degree, rape or sexual offense in the first degree.³⁸

35. MD. CODE ANN., CRIM. LAW § 2-202 (a) (2) (2002).

36. MD. CODE ANN., CRIM. LAW § 2-202 (a) (1) (2002).

37. MD. CODE ANN., CRIM. LAW §§ 2-202, 2-303(g) (2002).

38. MD. CODE ANN., CRIM. LAW § 2-303(g)(1) (2002).

The presence of at least one of these statutory aggravators is necessary to make a defendant eligible for the death penalty,³⁹ but the existence of one or more of these factors do not require the state's attorney to seek a death sentence.⁴⁰

In Maryland, State's attorneys have the discretion to not seek a death sentence even if the defendant is charged with a death-eligible offense.⁴¹ Moreover, state's attorneys have the discretion to withdraw a notification to seek a death sentence once filed⁴² either unilaterally or in exchange for a plea from a defendant. Further, they have the discretion to advance a case to a penalty hearing upon a conviction for capital murder.⁴³ Even if a death sentence is sought by the state, and the case is advanced to a penalty hearing, the sentencing judge or jury has the discretion not to impose a death sentence if it feels that capital punishment is not warranted in a particular case.⁴⁴ According to Maryland law, the sentencing body in a capital case must find at least one statutory aggravating circumstance beyond a reasonable doubt before it may consider a death sentence.⁴⁵ If it does find at least one aggravating circumstance, and determines that the defendant is eligible for the death penalty, it must then determine if there are mitigating circumstances in the case.⁴⁶ There are eight mitigating factors enumerated in the Maryland statute that the jury must consider:

M1. The defendant has not previously been convicted of a crime of violence.

39. MD. CODE ANN., CRIM. LAW § 2-202(a) (2002).

40. Maryland prosecutors have historically been given discretion to charge or not charge a death eligible offense as a capital crime as part of their package of prosecutorial discretion. See *Calhoun v. State*, 468 A.2d 45, 63-65 (Md. 1983); *Richardson v. State*, 598 A.2d 1, *passim* (Md. Ct. Spec. App. 1991), *aff'd*, 630 A.2d 238 (Md. 1993).

One of the findings of the current research is that this discretion is regularly exercised. For example, out of a universe of 1,311 death eligible cases from July 1, 1978 to December 31, 1999 a notification to seek the death penalty was filed in only 353. See Figure 1 *infra* p.52.

41. The Maryland Court of Appeals has acknowledged and given approval to the existence both of considerable prosecutorial discretion in seeking a death sentence and the fact that there are no explicit standards guiding prosecutorial conduct at the point of deciding to file a notification to seek death. See *Calhoun v. State*, 468 A.2d 45, 63-65 (Md. Ct. App. 1983).

42. MD. CODE ANN., CRIM. LAW § 2-301 (2002).

43. MD. CODE ANN., CRIM. LAW § 2-301 (2002).

44. Under Maryland law, the jury could simply find that the mitigating factors outweigh any number of aggravating factors. MD. CODE ANN., CRIM. LAW § 2-303(g)-(i) (2002 & Supp. 2003).

45. MD. CODE ANN., CRIM. LAW § 2-303(g)(2).

46. MD. CODE ANN., CRIM. LAW § 2-303(h)(2).

M2. The victim participated in the defendant's conduct or consented to the act that caused the victim's death.

M3. The defendant acted under substantial duress, domination, or provocation, but not so substantial as to constitute a complete defense to the prosecution.

M4. The defendant's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired as a result of mental incapacity, mental disorder, or emotional disturbance.

M5. The youthful age of the defendant at the time of the crime.

M6. The act of the defendant was not the sole proximate cause of the victim's death.

M7. It is unlikely that the defendant will engage in further criminal activity that would constitute a continuing threat to society.

M8. Any other facts which the jury or the court specifically sets forth in writing that it finds as mitigating circumstances in the case.⁴⁷

With respect to any mitigating circumstances offered by the defense, each individual juror must determine whether that circumstance has been proven by a preponderance of the evidence.⁴⁸ If no mitigating factors are found, the presumptive sentence is death.⁴⁹ If at least one mitigating circumstance is found, then the sentencing authority must weigh the aggravating circumstances against the mitigating circumstance.⁵⁰ To impose a sentence of death, the aggravating circumstances must be found to "outweigh" the mitigating circumstances by "a preponderance of the evidence."⁵¹ If the aggravating circumstances do not outweigh the mitigating circumstances by a preponderance of the evidence, a death sentence

47. *Id.*

48. *Id.*

49. The Maryland statute is silent with respect to the mandatory nature of the death penalty when there are aggravating circumstances found and no factors in mitigation. The Maryland Court of Appeals has, however, interpreted the statute as requiring the judge or jury to impose a sentence of death in the presence of aggravators and no mitigators. *Scott v. State*, 529 A.2d 340, 345 (Md, 1987).

50. MD. CODE ANN., CRIM. LAW §2-303(i)(1) (2002).

51. MD. CODE ANN., CRIM. LAW § 2-303(i)(1)-(2) (2002).

may not be imposed.⁵² If the State advised the defendant prior to trial that it would seek a life without parole sentence, then the court or jury must decide if the convicted defendant is to be sentenced to a regular life term or life without parole.⁵³ Any death sentence imposed in the state of Maryland is subject to automatic appellate review by the Maryland Court of Appeals.⁵⁴ This initial review may not be waived by a defendant.⁵⁵

III. PAST RESEARCH ON THE MARYLAND DEATH PENALTY

Since 1978, there have been four investigations into the administration of the death penalty in Maryland. Each placed some emphasis on the issues of racial disparity and arbitrariness (geographic disparity). In 1987, at the request of the Maryland Court of Appeals, the Maryland Office of the Public Defender (OPD) collected some preliminary information on death sentencing patterns in the state from 1978-1987.⁵⁶ The authors of that study identified 415 homicides that were deemed to be “death eligible”—meaning facts were presented to show that those homicides were legally qualified for the death penalty, ninety of which resulted in a penalty phase hearing.⁵⁷ In addition, the study indicated that the rate at which Maryland State’s attorneys filed death notices substantially varied from county to county.⁵⁸ The OPD also reported that state’s attorneys were approximately twice as likely to file a notification to seek a death sentence and not withdraw that notification when the homicide victim was white rather than black.⁵⁹ The OPD report did not, however, consider all possible death eligible cases such as those that resulted in second-degree murder convictions. More importantly, the study did not consider the numerous characteristics about a homicide, such as the number of aggravating

52. MD. CODE ANN., CRIM. LAW § 2-303(i)(1)-(2) (2002).

53. MD. CODE ANN., CRIM. LAW § 2-304(a)(1) (2002).

54. MD. CODE ANN., CRIM. LAW § 2-401 (2002 & Supp. 2003).

55. The statute describes the review as *automatic* implying that there is no opportunity for the defendant to waive their first round of appeals. The automatic nature of this first review has been interpreted as such by the Court of Appeals. *Colvin v. State*, 472 A.2d 953, 967 (Md. 1984).

56. MARYLAND OFFICE OF THE PUBLIC DEFENDER – DEATH PENALTY DEFENSE UNIT, CAPITAL PUNISHMENT IN MARYLAND 1978-1987: A REPORT BY THE MARYLAND PUBLIC DEFENDER ON THE ADMINISTRATION OF CAPITAL PUNISHMENT (1987).

57. *Id.* at 21.

58. *Id.* at 26-27.

59. Under Maryland law, state’s attorneys may withdraw a notification to seek a death sentence. MD. CODE ANN., CRIM. LAW § 2-301 (2002).

factors, the criminal history of the defendant, or the characteristics of the victim characteristics, which could explain any apparent racial or geographic disparity.

In 1993, the Governor's Commission on the Death Penalty in Maryland published its report on the administration of capital punishment in the state from 1978 to 1993.⁶⁰ This study examined death sentences that were actually imposed, penalty phase hearings that resulted in a life or a life without parole sentence, and death notifications that were filed but subsequently withdrawn. No data was collected, however, on such case characteristics as possible non-statutory aggravating and mitigating factors, or the criminal history of the defendant. The Commission also did not examine all possible death eligible cases and the manner in which they filtered through the sentencing system. Given the inadequacies of the data, it is not surprising that the conclusions were a bit ambiguous. One of the Commission's findings⁶¹ was that "the data does not establish discrimination against African American defendants or in favor of white victims; neither does the data disprove racial discrimination."⁶² The Commission's report ultimately concluded that "[t]here is no evidence of intentional discrimination in the implementation of the death penalty in Maryland, but racial disparities in its implementation remain a matter of legitimate concern."⁶³

In 1996, the Task Force on the Fair Imposition of Capital Punishment (Task Force) was created⁶⁴ to specifically examine the issue of racial discrimination in the administration of the death penalty in Maryland.⁶⁵ The Task Force collected no original data nor did it complete its own analysis, and limited its examination to the racial composition of Maryland's then-current death row. It observed that "[t]he high percentage of African-American prisoners under sentence of death and the low percentage of prisoners under sentence of death whose victims were African-American remains a cause for concern."⁶⁶ The basis of this conclusion was the finding that of the seventeen

60. GOVERNOR'S COMMISSION ON THE DEATH PENALTY, THE REPORT OF THE GOVERNOR'S COMMISSION ON THE DEATH PENALTY: AN ANALYSIS OF CAPITAL PUNISHMENT IN MARYLAND: 1978-1993 (1993) [hereinafter 1993 REPORT].

61. *Id.* at 201.

62. *Id.* at 202.

63. *Id.* at 201.

64. The Task Force on the Fair Imposition of Capital Punishment was created by Executive Order signed on July 2, 1996 by Governor Parris N. Glendening. Executive Order 01.01.1996.16, 23 Md. Reg. 15, 1162 (July 19, 1996).

65. REPORT OF THE TASK FORCE ON THE FAIR IMPOSITION OF THE DEATH PENALTY (1996).

66. *Id.* at 39.

condemned persons then on Maryland's death row, fourteen (82%) were African American and the victims of the homicides included sixteen whites and six African-Americans. The Task Force recommended a more comprehensive empirical study of Maryland's capital sentencing system.

Finally, in February of 2001, Professors David Baldus and George Woodworth of the University of Iowa conducted an analysis of race disparities among 346 Maryland first-degree homicide cases where the state served notice of its intention to seek the death penalty.⁶⁷ They found that, even when considering the number of statutory aggravating factors charged, defendants who killed white victims were more likely to advance to a penalty trial and were more likely to be sentenced to death than those who killed a black victim. This was particularly true for black offenders who killed white victims.

The authors acknowledged the two central limitations of their study: (1) their sample did not include all possible death eligible cases, (2) and they had limited information on the non-statutory aggravating and mitigating factors in the case and other case characteristics. With these limitations in mind, Baldus and Woodworth concluded that "although our preliminary finding may be construed as supportive of the disparate treatment hypothesis, a definitive judgment on the issue must await the results of a study that has better controls for case severity and defendant culpability than the preliminary results reported in this report."⁶⁸

There have been four previous examinations into the possibility that there are disparities (either by race, geography or both) in the administration of the death penalty in Maryland. These four studies have tried to examine a population of offenders broader than those on death row, and each has recognized the importance of collecting detailed information about each case. Each of these previous attempts, however, has been hampered by the fact that they did not examine all homicides where death *could have* been requested, and they all have failed to collect sufficiently detailed case information about possible aggravating and mitigating factors and other relevant offense and offender characteristics. As a result, there is too little empirical

67. David C. Baldus and George Woodworth, *Race of Victim and Race of Defendant Disparities in the Administration of Maryland's Capital Charging and Sentencing System (1979-1996): Preliminary Finding (Feb. 14, 2001)* (unpublished manuscript, on file with MARGINS: Maryland's Law Journal on Race, Religion, Gender and Class).

68. *Id.* at 12.

information upon which to base a conclusion about the fair and even handed imposition of the death penalty in the state. The purpose of the present study reported on in this article was to provide the kind of empirical information needed by the Office of the Governor and state legislature to determine if race or other suspect factors are influential in determining which death eligible defendants live and which die.

IV. METHODOLOGY

A. Sample

We initially examined and screened approximately 6,000 first and second-degree murders committed in the state of Maryland from August 1978 (when the state's new death penalty law took effect) until September 1999.⁶⁹ A list of all first and second-degree murderers was obtained from the Maryland Division of Corrections Research Office (Maryland Division of Corrections). The data produced consisted of a computer-generated list of all convicted first and second degree murderers sentenced to any Maryland correctional institution during the 1978-1999 time period. The Maryland Division of Corrections also made available the inmate's institutional record or file, which had much of the detailed kind of information needed to characterize the murder, the defendant, and frequently had information on the victim as well.⁷⁰ The file contained a great deal of useful information such as a defendant's criminal history, a pre-sentence report about the defendant's educational, social, employment, and mental health history, information about the victim, and a detailed description of the offense, crime scene, and the type of evidence proffered at trial (for example, if there was physical evidence available or if the fact-finder based its assessment on the testimony of an eye-witness). This information was transcribed onto our initial data collection instrument, the Maryland Screening Instrument (MDSI).⁷¹ From the information

69. The offense dates cover the period from August 1, 1978 until September 25, 1999.

70. The senior investigator entered into a research agreement with the Maryland Division of Corrections insuring confidentiality with respect to the information extracted from the inmate files. A similar research agreement was signed with the Maryland Division of Probation and Parole with specific reference to access to pre-sentence reports and a guarantee of confidentiality of information.

71. The MDSI was a three-page instrument onto which information was coded describing each homicide in the database. Included was information that would have provided evidence supporting the factual existence of a statutory aggravating circumstance (such as the number of victims killed, whether the victim was a police officer, if the defendant was serving

in the MDSI we were able to determine for most of the cases whether or not they were “death eligible.” For those cases that were deemed death eligible, additional, far more extensive information was collected on each case and transcribed onto the primary data collection instrument, the Maryland Data Collection Instrument (MDCI).⁷²

The list produced by the Division of Corrections, and access to inmate files were important sources of information, but not the only sources relied on. For cases that both were death eligible and had advanced to a penalty phase hearing, we examined the court transcript and the trial judge’s report on file with the Clerk of the Maryland Court of Appeals. An additional source of information was the file on each case in the office of the state’s attorney for the twenty-three Maryland counties and Baltimore City. In addition to using their files as a valuable source of information, we sought the assistance of each of the state’s attorneys to both correct and supplement our original list of cases. We sent a list of homicide cases that the Division of Corrections had identified as coming from that particular county to each of the twenty-four state’s attorneys. They were asked to verify if the list was correct and to provide names of any additional murder defendants who were not on the list, but who had been convicted during the study’s time period of first or second-degree murder. Each state’s attorney was also asked to name any defendants who were charged with first or second-degree murder, but were subsequently acquitted or disposed of in ways other than a conviction. The state’s attorneys files provided a substantial amount of very rich information, which included police reports and the state’s version of the case. We were also able to verify information initially received from other sources. Information on the homicide victim was also obtained from the victim’s death certificate obtained from the Maryland Office of Public Health (OPH).

a life sentence at the time of the murder, and if the murder was committed during the commission of a specified felony like rape, armed robbery or kidnapping). The MDSI also contained a detailed narrative written by the data collector describing the exact circumstances surrounding the crime, and any information about the offender and victim obtained in the record (on file with author).

72. The MDCI was a data collection instrument of over seventy pages onto which information from the different sources were transcribed by data collectors. It contained detailed questions about the offense, offender, information for up to four victims, type of evidence that existed, criminal history questions for both defendant and victim, and information about the attorneys involved in the case. Information from the MDCI was then computer coded for analysis. Information sources for the MDCI included police reports, pre-sentence reports, files of the state’s attorney, correctional files, trial transcripts and judge’s reports, and death certificates (on file with author).

Since one of the decision points examined in this research is the decision of the state's attorney to seek a death sentence, assuming that a defendant was eligible for the death penalty, the first task was to determine which among the universe of murder cases was eligible for the death penalty. Determining whether or not a murder is death eligible (i.e., a capital offense) is a controversial issue. In one sense the only true way to categorize a murder case as eligible for the death penalty is if a state's attorney determines that the case meets the all of eligibility requirements as listed in the state statute:

1. The defendant was a principal in the first degree and the state could prove this beyond a reasonable doubt, or the defendant fit under the exception to the principalship requirement,
2. The defendant was not mentally retarded at the time of the offense (after May of 1989) and the state could prove this with a preponderance of the evidence,
3. The defendant was not less than 18 years old at the time of the offense (after June of 1987),
4. The murder also included at least one statutory aggravating circumstance and the state could prove this beyond a reasonable doubt, and
5. The state's attorney files a notice 30 days prior to trial of the state's intention to seek a death sentence, and the statutory aggravating factors it intends to rely on.⁷³

Clearly, a murder case that meets these statutory eligibility requirements and is followed by the state's attorney also formally filing a notice to seek a death sentence, is death eligible and should be treated as such. However, a homicide may also meet the first four of these requirements, but the state's attorney may decide not to seek a death sentence for other reasons. The reasons may include the potential cost of the case to the county, the reluctance of the victim's family to support a death sentence, a low probability that a jury would return a death sentence in the eyes of the state's attorney. In this instance, a homicide that was technically "death eligible," in that it fit all the statutory requirements as being a capital case would not be followed by a decision to seek a death sentence, and the case would be

73. See MD. CODE ANN., CRIM. LAW § 2-202 (2002).

handled as a non-capital homicide. In addition, different state's attorneys in different offices (or even different state's attorneys within the same office) may evaluate a case as to its death eligibility and come to a different conclusion. The issue of first-degree principalship, for instance, is not always easy to determine and different state's attorneys may disagree as to whether or not principalship exists, or if it does exist, whether it could be proven beyond a reasonable doubt. Similar ambiguity may exist with respect to the presence in a murder of a statutory aggravating circumstance, or if the aggravating circumstance could be proven beyond a reasonable doubt, or if the available mitigating evidence would in the minds of the jury outweigh the aggravating circumstance. There are no automatic or indisputable answers to these issues; they are inherently ambiguous.

Some murder cases, therefore, may be "death eligible" in the sense that they meet all of the statutory criteria for death eligibility, and yet the state's attorney does not treat the case as such and does not file a formal notification to seek death. If one is interested, as we are here, in examining the factors that explain the state's attorneys' decision to seek death in some death eligible cases but not others, there is a need to define a death eligible case in ways other than the filing of a formal notice to seek death. We proceeded with caution, however, because the issue as to whether or not a murder case is death eligible involves a great deal of ambiguity and inevitable controversy.

For the purpose of this research, we defined a case to be death eligible if:

1. The state's attorney filed a notice of an intention to seek a death sentence, even if that notice was later withdrawn unilaterally or in exchange for a plea.
2. The facts of the case clearly established that a first-degree murder was committed, the defendant was the principal in the first degree (or met the principle in the second-degree exception), the defendant was eligible by age at the time of the offense, the defendant was not mentally retarded at the time of the offense, and the murder included at least one statutory aggravating circumstance.

From an initial pool of approximately 6,000 homicides, these two criteria produced a universe of 1,311 death eligible cases. Initially included in the universe of 6,000 homicides was a pool of

approximately 300 homicide cases where the state's attorney did not file a notification to seek a death sentence and the issue of death eligibility based upon the available facts of the case was ambiguous to the research team. In these cases, it was not clear if the defendant was the principal in the first degree in the killing, or if there was a statutory aggravating circumstance present to make the homicide death eligible. In order to determine death eligibility in these cases we submitted them for review to a panel of attorneys who had experience in death penalty cases. This panel consisted of a roughly equal number of state's attorneys, public defenders, and private lawyers who have handled death penalty cases as former prosecutors, public defenders or as private defense counsel.⁷⁴

Panel members read narratives of each homicide in question that were prepared by the research staff as part of the MDSI. These narratives presented the facts of the case and all known information about the offender and victim. Panel attorneys were asked to read the narrative in each of these suspect cases and were asked to make two determinations:

1. Do you think this case is "death eligible" under Maryland law? With response options, "yes" or "no".
2. On a scale from 1 ("not very confident at all") to 10 ("very confident") how confident do you feel in making this determination?

Each case was read and rated by a group of panel attorneys.⁷⁵ We included as death eligible those homicides where a majority of panel attorneys rated the case as death eligible *and* where the confidence of the rating averaged 5.0 or higher. In other words, a majority of the reviewing panel had to rate the case as death eligible and they had to state that they were at least moderately confident in making that assessment. Out of the approximately 300 cases reviewed by the panel of attorneys, fewer than fifty were determined to be death eligible and were added to the pool of death eligible cases.

Our universe of cases includes the 1,311 death eligible cases in Maryland from July 1, 1978 to December 31, 1999, and we illustrate

74. A majority of the lawyers on the panel requested that their participation be kept strictly confidential.

75. For each case reviewed, the number of panel attorneys ranged from 5 to 10.

the number of cases at each decision point in Figure 1.⁷⁶ Out of these 1,311 death eligible cases (Stage 1), state's attorneys filed a formal notification to seek the death penalty in 353 (Stage 2). As can be seen from this figure, state's attorneys frequently exercise their discretion not to file a capital charge even though the facts of the case would warrant it. Although 353 notifications to seek death were filed, 140 were subsequently withdrawn by the state's attorney either unilaterally or most often (in approximately 90% of these cases) in exchange for a plea from the defendant. A death notification filed by the state's attorney was retained or "stuck" in 213 cases (Stage 3). Of these 213 cases where a death notification was filed and not withdrawn, 180 were advanced to a penalty trial (Stage 4). A case would not be advanced to a penalty trial for a number of reasons: the state determines that it is unlikely to obtain a death sentence and unilaterally decides not to advance a case, there were no aggravators found during the guilt phase, or the defendant was found not to have been a principal in the first degree. From 180 penalty trials, a death sentence was obtained in 76 cases (Stage 5).⁷⁷

From Figure 1, we can calculate some very simple probabilities that will provide the risk that an offender will pass through each step of the capital punishment process. First, let us take all death eligible cases. The unconditional probability that the state's attorney would file a formal notification to seek the death penalty among all death eligible cases is .27 (353/1,311). In other words, given the existence of a case that was eligible for the death penalty by statute, state prosecutors exercised their discretion and filed a formal notification to seek death in only slightly more than one-quarter of them. The unconditional probability that the state's attorney would not withdraw the notification to seek a death sentence among all death eligible cases is .16 (213/1,311). The unconditional probability that the case would be advanced to a penalty trial is .14 (180/1,311). Finally, the unconditional probability of a death sentence among all death eligible cases is .058 (76/1,311). In other words, out of a pool of 1,311 death eligible cases, a sentence of death was handed down by a judge or jury only about 6% of the time.

76. The data contained in this paper are slightly different from those used in the final report on this project. This is because some race of the offender and race of victim information, which was missing in the original final report were found and were able to be included in the database for the analyses reported in this paper. None of the substantive conclusions changed from the final project report to this paper.

77. Seventy-six death sentences were imposed on fifty-nine different defendants. An implication of this is that the same offender could appear in the database more than once.

Now, let us examine the conditional probability of a case being advanced to each successive stage of the capital punishment process. We know that the probability that the state's attorney will file a formal notification to seek a death sentence given the fact that it is death eligible is .27 (353/1,311). The conditional probability that a state's attorney will not withdraw a notification to seek a death sentence given that one was filed was .61 (215/353). Once a death notification is filed, it is retained or not withdrawn 61% of the time. Given the fact that a notification to seek death was not withdrawn, the conditional probability that the state's attorney will advance the case to a penalty trial is .84 (180/215). Finally, given the fact that a case is advanced to the penalty phase, the probability that a death sentence was imposed by a judge or jury is .42 (76/180). Even among the subgroup of cases where there is the second phase of a capital trial (the penalty phase), judges and juries impose a sentence of death in less than half of the cases 42%.

B. Analytic Strategy of the Current Research

Although the substantive issue in this study is the effect of race and geography, each of the four decision making points in the Maryland capital sentencing system is influenced by many homicide case characteristics that we have captured in our data collection instrument—MDCI, including the number of statutory and non-statutory aggravating circumstances and the presence of factors in mitigation. The key inferential task is to examine whether race or geography has any material affect on each of these decision points after carefully considering or “controlling for” these case characteristics. We will examine the role that race and geography may play at four critical points in the Maryland capital sentencing system while simultaneously considering important features of a case that make it more or less deserving of a capital charge, a penalty phase hearing, or a death sentence. In trying to determine the impact of factors such as race and geography, it is critical that these numerous case characteristics be considered. As we have argued in the introduction, such characteristics are inevitably confounded both with the variables of substantive interest (race and geography) and with the outcome variable we are interested in (the four decision making points we focus on). Our methodological task is to “purge” our

race/geography variables of all reasonable legitimate case characteristics that may affect any given decision point.

Suppose, for example, there is a finding that black offenders are treated more severely than white offenders at some decision point in the capital sentencing process. We observe any “race of the offender” disparity for one or both of two reasons: (1) black offenders really are at a disadvantage and receive disparate treatment, or (2) black offenders or the offenses committed by black offenders are more likely to have the characteristics that incline prosecutors to seek the death penalty.⁷⁸ From an inferential perspective, therefore, it is critical that as many characteristics or factors of a case be considered or “controlled” in order to distinguish the effect of race from the effect of legally relevant factors that may be associated or correlated with race.

There is a direct analogy between estimating a race or geography effect and determining the effect of smoking on lung cancer. People are not randomly assigned to smoke or not smoke. People who smoke, therefore, are systematically different from those who do not—they may live more sedentary lives or have less healthy diets, etc. When a researcher is looking at the effect of smoking on lung cancer, therefore, they must also consider other characteristics that distinguish smokers and non-smokers, which increase their risk of lung cancer besides the fact that they smoke. What public health researchers strive to do, therefore, is to compare lung cancer rates between smokers and non-smokers who are “alike” on such factors as how well they eat, how sedentary their life styles are, their family history of cancer, where they live, and other important factors that are also related to the risk of lung cancer. Researchers do this so that any observed differences in lung cancer rates between smokers and non-smokers can be attributed to smoking and not some other experience, event, or characteristic that is simply correlated with smoking.⁷⁹

Our inferential problem is the same within the context of this study. To isolate the effect of race or geography, we need to identify and consider differences among offenders of different races, and offenders who murder whites versus non-whites, or who live in Montgomery versus Baltimore County.⁸⁰ We will do this by directly

78. For example, they have more extensive criminal histories, or commit their crimes in a more brutal/egregious manner.

79. See PAUL R. ROSENBAUM, *OBSERVATIONAL STUDIES*, 1-5, 112-14 (Springer 2d ed. 2002).

80. We are interested in three types of race variables, the race of the offender (white versus non-white offender), the race of the victim (white versus non-white victim), and the combination of race of offender and race of victim (whites who murder whites, whites who

incorporating into our statistical model factors that we find to be empirically related to the geography and race variables. A list of the potential explanatory factors used in our modeling is provided in Table 1. There are 112 possible factors or case characteristics used for the decision to file a notification to seek the death penalty for which we have collected data. For decisions beyond the notice to file stage—the decision to withdraw the notification, decision to advance a case to the penalty phase, and the sentencing decision—we supplemented this covariate list with 11 additional case characteristics based on the presence of statutory aggravating circumstances found in the charging document.⁸¹ These additional case factors are shown at the bottom of Table 1.

Our procedures for incorporating these case characteristics into the multivariate models were as follows: At each decision point we first examined each case characteristic listed in Table 1 separately to see if it was related to the geography or race variable of interest.⁸² For the death notice and death sentence imposed outcomes with the universe of death eligible cases, those factors that were significantly related at the .05 statistical level were retained for further analysis, those not meeting that criterion were dropped. For the analyses that condition on a subset of the universe of death eligible cases we used a less stringent criterion of statistical significance ($p < .10$)⁸³ since the samples sizes were so much smaller for these analyses. The variables that were retained at this first screening were then entered into a full logistic regression model with the particular decision point as the outcome variable, and a test for county and race differences conducted. The case characteristic variables from the full model that were not significant at ($p < .10$) were then dropped and a reduced model was estimated. The parameter estimates of the reduced model are reported in each table in our results section discussed below along with a

murder non-whites, non-whites who murder whites, and non-whites who murder non-whites). Our geographic variable includes the jurisdictions covered by the twenty-four state's attorneys in Maryland—twenty-three counties and Baltimore City.

81. The charging document is a form filled out by the office of the state's attorney that lists each charge filed against a given defendant. On this document, the state's attorney lists the specific aggravating factors that will be charged and pursued at trial.

82. We pursued this multiple stage approach to the analysis rather than entering the more than 100 case characteristics into our model in order to avoid the problem of "overfitting" the data—having too many variables in the statistical model relative to the number of observations.

83. For example: cases where the notification to seek death was not withdrawn, cases that are advanced to a penalty trial given that the death notice was not withdrawn and cases where a sentence of death was imposed given that there was a penalty trial.

statistical test for the difference between the full and reduced model. In every case, the reduced model was not significantly different from the full model.⁸⁴ The parameter estimates reported in each table are those from the reduced model.

V. RESULTS

A. Unadjusted Analysis

We began our empirical examination by conducting basic descriptive analyses of county and race patterns at each of the four key decision points in the Maryland death penalty sentencing system. First, the prosecutor's decision to issue a notice of intention to seek the death penalty to a death eligible defendant. In 353 cases, the prosecutor issued a notice and in the remaining 958 cases no notice was filed). Second, the prosecutor's decision to either withdraw or "stick" with a death notification among the 353 death-notified cases. In 213 of these cases the prosecutor stuck with the notice and in the remaining 140 the prosecutor retracted the death notice. Third, a decision by the prosecutor to have the case proceed to a penalty trial among the 213 cases where the death notification was not withdrawn. In 180 instances, the case advanced to a penalty trial while in the remaining 33 it did not. Fourth, the decision to actually impose a death sentence. In 180 penalty trials, a sentence of death was imposed 76 times, and in 104 trials, a sentence other than death was imposed. Figures 2-5 and Tables 2-5 present a number of key descriptive statistics associated with the Maryland death penalty system.

1. Race

Basic descriptive information for the race of the offender is shown in Figure 2. This figure shows that white offenders comprise about .24 of the pool of death eligible cases, black offenders .74 and offenders of other races .02. The contribution of white offenders increases slightly at the next stage—the decision to file a death notification—where .34 of all offenders who are charged with a capital crime are white and the proportion of black offenders declines slightly

84. Since the reduced model is nested (a subset of) under the full model, the test for the statistical difference between them is simply calculated as the difference in the chi-square statistic between them, with the degrees of freedom equal to the difference in the number of parameters estimated in the two models.

to .65. After the decision to file a notification to seek death, the proportion of white and black offenders who do not have their death notification withdrawn by the state's attorney (Stage 3), and who are advanced to a penalty trial (Stage 4) remains fairly constant. There is a slight increase in the proportion of black offenders who are sentenced to death from .64 of those advanced to a penalty phase to .68 of those sentenced to death; and a corresponding decline among white offenders from .35 of those advanced to a penalty phase to .32 of those sentenced to death.

Table 2 reports the rate at which offender race groups are processed through the Maryland death penalty system. The probability that a death notification will be filed given a death eligible case is .24 for black offenders, and .37 for non-black offenders (over 90% of whom are white). At this first decision point and without taking into account case characteristics, then, *non-black offenders* are significantly more likely to have a death notice filed against them than are *black offenders*. At each subsequent stage of the process there are no statistically significant differences in the handling of black offender and non-black offender cases.

Figure 3 reports the proportion of white victim and non-white victim cases at each stage of the death penalty system. White victims comprise approximately .44 of all death eligible cases. At each subsequent stage of the process, however, the proportion of white victim cases increases. White victim homicides make up .66 of those cases where a death notification is filed, .74 of the cases where a death notification "sticks," .77 of the cases that are advanced to a penalty trial and .80 of the death sentences imposed in Maryland during this period. Correspondingly, the representation of cases with non-white victims consistently declines at each successive stage of the system from approximately .57 of all death eligible cases to about .20 of those where a sentence of death is imposed. These unadjusted figures suggest that there is a filtering of white victim cases into and non-white victim cases out of the Maryland capital punishment system. We do not know, however, to what extent this selective filtering is due to differences in case characteristics between white and non-white victim cases or whether it reflects racial bias.

Table 3 reports the unadjusted rate at which white and non-white victim cases are processed through the system. The probability that a state's attorney will file a notification to seek the death penalty in a death eligible case is .42 when there is at least one white victim and .17 when there are no white victims. This difference in these

statistics is significant in this study. State's attorneys are also significantly more likely to retain a death notification once filed in white victim cases compared with non-white victim cases (.69 versus .46). The probability that a case will be advanced to a penalty trial is also significantly higher in white victim (.88) than non-white victim (.75) cases. There is no race of victim disparity when the decision is whether to sentence someone to death given a penalty trial (.44 for white victim cases and .37 for non-white victim cases). Overall, however, the probability of a death sentence given the fact that a case is death eligible is higher in white victim compared with non-white victim cases (.11 versus .02), a statistically significant difference. These unadjusted figures suggest that the race of the victim appears to matter at least in the early stages of the capital punishment system. State's attorneys are more likely to seek a death sentence and less likely to withdraw a death notification when a white victim is killed, and this disparate impact is filtered down to the sentencing stage—those who kill a white victim are over five times more likely to be sentenced to death than are those who kill non-whites.⁸⁵

Figure 4 provides the distribution of combinations of offender's and victim's race at various stages of the Maryland capital punishment system. There are two clear patterns from this figure. The first is that the proportion of cases involving a black offender and a white victim increases dramatically as a defendant move further into the process (from Stage 1 to Stage 5). The other is that the proportion of cases involving a black offender and a black victim consistently declines from charging a defendant with murder to the sentencing phase. For example, black-on-white homicides comprise about .23 of all death eligible cases, but .35 of those where the state's attorney files a notification to seek a death sentence, .40 of those where the death notification "sticks," .43 of the penalty trials and one-half of the death sentences imposed. The proportion of cases involving a black offender who killed at least one white victim, more than doubles from Stage 1 (death eligible cases; $p=.225$) to Stage 5 (death sentenced cases; $p=.500$). Killings involving a black offender and a black victim make up .49 of the total number of death eligible cases, but only .28 of the death notifications, .22 of the notifications that "stick," .19 of the penalty trials, and only .18 of the 76 death sentences. In other words, the proportion of cases involving a non-white offender and non-white

85. We would caution the reader that sometimes the "times more likely" phrase is used in situations where there is a low base rate. The hurdle for getting a larger "times more likely" number is lower when the base rates are lower than when they are higher.

victim is reduced by more than one-half from Stage 1 to Stage 5. The proportion of homicides involving white offenders and white victims also increases at each successive stage of the process, but not as dramatically as we observed for black-on-white killings.

Tables 4A to 4D report the rate at which various race of offender/victim groups are processed at each decision point in the Maryland capital sentencing system. Table 4A shows that homicides involving white offenders and white victims are significantly more likely than all other racial combinations to result in a formal notification to seek the death penalty (.41 versus .25). White-on-white killings are not treated significantly different from other cases at any other stage of the process. However, because of the different rate at which the prosecutor seeks death in these cases (Stage 1), white defendants who kill at least one white victim are more likely to be sentenced to death compared to all other racial combinations (.09 versus .06).

Table 4B shows the rate at which black-on-black killings are processed. Compared with the other racial groups, black offenders who kill blacks are significantly less likely to have a death notification filed (.16 in black on black killings versus .41 in all others), and less likely to have the notification “stick” (.47 in black on black killings versus .66 in all others). There is no difference at the stage of advancing a case to a penalty trial or the rate of death sentencing given that a penalty trial occurs. The unconditional probability of a death sentence in a death eligible case is, however, significantly lower for black-on-black killings compared with all other racial groups (.02 versus .10), and this is because of the differential treatment of these cases in the hands of prosecutors.

Table 4C reports the rate of processing cases involving black offenders and white victims. State’s attorneys in Maryland are significantly more likely to file a formal notification to seek the death penalty in black-on-white killings compared with other racial combinations (.45 versus .24). They are also significantly more likely not to withdraw a death notification once filed in exchange for a plea bargain when a black offender murders a white victim (.69 for black on white killings versus .56 for all other racial combinations). Black offenders that kill whites are not treated significantly different at the decision to advance a case to a penalty trial or the sentencing decision given that fact that there is a penalty trial. The unconditional probability of a death sentence is higher in black-on-white killings that are death eligible, however, (.14 in black on white killings versus .04

in all others) because of decisions made by state's attorneys earlier in the process—the decision to file a death notification, and not to withdraw a death notification once filed).

Table 4D reports the processing of white-on-black homicides. While whites that kill blacks are significantly more likely to be death notified than other racial combinations (.50 versus .28), not much weight should be given to these results since there were only 22 cases involving white offenders and black victims. This diminishes to only 3 white killing black cases at the penalty phase and only 1 such case at the sentencing stage.

2. *Geography*

Figure 5 presents the distribution of cases for several Maryland jurisdictions at each stage of the capital punishment process. Two findings stand out from the data collected pertaining to geography. First, the proportion of cases from Baltimore City declines substantially from Stage 1 (death eligibility) to Stage 5 (death sentencing). Second, the proportion of cases from Baltimore County increases substantially from Stage 1 to Stage 5. Baltimore City homicides comprise .44 of all death eligible homicides, but only .10 of the death notifications, only .11 of the death notifications that are not withdrawn, .10 of the penalty trials, and only .13 of the death sentences. Baltimore County homicides comprise only .12 of all death eligible homicides in the state but .28 of all death notifications, .39 of all notifications that “stick,” .42 of all penalty trials, and .45 of all death sentences. Baltimore County, therefore, which only contributed 12% to the total number death eligible homicides in the state from 1978-1999, was responsible for almost one-half of the total number of death sentences that were imposed.

Table 4 reports the processing of cases at each decision making point for these same jurisdictions. There is statistically significant variation across these jurisdictions in the probability that a death eligible case will result in a notification to seek a death sentence by the state's attorney. This probability is .65 for Baltimore County, .54 for Harford County, .38 for Prince George's County, .23 for Anne Arundel County, .19 for Montgomery County, .06 for Baltimore City, and .46 for other counties in Maryland. There is also statistically significant jurisdictional variation in the rate at which death notifications once filed are retained or withdrawn, from a high of .84 in Baltimore County to a low of .40 in Prince George's County. There is no significant variation by jurisdiction in the decision to advance a

case to a penalty trial stage or in the decision to impose a sentence of death at the penalty trial phase. However, there is statistically significant variation across the different jurisdictions in the probability of a death sentence for all death eligible cases, due to the way the charging decisions are handled by different state's attorneys offices. The unconditional probability of a death sentence in Baltimore County is 12 times higher than in adjacent Baltimore City (.224 versus .018). Death sentencing rates are highest in Baltimore (.224), Harford (.086), and Anne Arundel (.063) Counties; and the lowest in Baltimore City (.018), Montgomery (.034), and Prince George's (.035) County. In sum, our unadjusted analysis would suggest the following:

1. White offenders are more likely to be death notified than non-white offenders.
2. Offenders who kill at least one white victim are more likely to be death notified, more likely to have that notification "stick," and more likely to be advanced to a penalty trial than cases without a white victim.
3. White offenders who kill whites are more likely to be death notified than others.
4. Black offenders who kill blacks are less likely to be death notified and have that notification "stick" than others.
5. Black offenders who kill whites are more likely to be death notified and have that notification "stick."
6. There is substantial and significant variation in the way different state's attorneys in Maryland make the decision to file a notification to seek the death penalty and whether or not that notification is withdrawn.

While we have found substantial disparate treatment by race and geography in the processing of cases in the Maryland death penalty system, this unadjusted analysis does not take into account numerous facts/circumstances about these homicides that may legitimately explain this disparate treatment. We now proceed to examine what happens to this evidence of disparate treatment by race and geography once legitimate case characteristics are taken into account.

B. *Adjusted Analysis*

Professors David Baldus and George Woodworth of the University of Iowa have previously examined offender and victim race data for the subset of death noticed cases in Maryland.⁸⁶ A key recommendation emerging from their report was that a study controlling for other variables in addition to the statutory aggravating factors would provide more definitive answers to questions about the Maryland system.⁸⁷ The goal of the adjusted analysis was to examine geographic as well as victim and offender race disparities in Maryland after controlling for a wide variety of relevant individual case characteristics (those listed in Table 1). Unfortunately, there was no information on some of the covariates for some of the cases. Consequently, it is necessary to attain a balance between including as many cases as possible with as many explanatory variables or covariates as possible. It is not possible to optimize both of these quantities simultaneously – an increase in the number of cases necessitates a loss of some of the covariates and an increase in the number of covariates necessitates a loss of some of the cases.

After examining a variety of different possibilities, a list of variables with complete data on 1,202 of the original 1,311 cases (91.7% of the original number) was devised. A comparison of the notice rates and death sentence rates for the dropped cases compared to the included cases reveals that they are not significantly different ($p(\text{drop} \mid \text{notice}) = .074$ compared to $p(\text{drop} \mid \text{not noticed}) = 0.087$; $\chi^2_{(1)} = 0.571$; $p > .05$ and $p(\text{drop} \mid \text{death sentence}) = 0.066$ compared to $p(\text{drop} \mid \text{no death sentence}) = 0.084$; $\chi^2_{(1)} = 0.319$; $p > .05$).⁸⁸

The race of victim and race of defendant variables had additional missing data problems. There were 18 additional cases with missing offender race information yielding a sample of $1,202 - 18 = 1,184$ cases for race of offender analyses. There were 54 cases with missing victim race information yielding a sample of $1,202 - 54 =$

86. David C. Baldus and George Woodworth, *Race of Victim and Race of Defendant Disparities in the Administration of Maryland's Capital Charging and Sentencing System (1979-1996): Preliminary Finding (Feb. 14, 2001)* (unpublished manuscript, on file with MARGINS: Maryland's Law Journal on Race, Religion, Gender and Class).

87. *Id.* at 10-11.

88. To address the impact of losing these cases on the results, a series of analyses was conducted. On balance, these data reveal very little change in any of the basic descriptive quantities presented earlier. This evidence suggests (but does not prove) that the missing cases are a relatively representative sample of the universe of death eligible cases. The descriptive data and unadjusted analyses with the reduced sample are available from the authors upon request.

1,148 cases for race of victim analyses. Finally, to analyze the intersection of victim and offender race, an additional 72 cases were lost yielding a sample of $1,202 - 72 = 1,130$ cases.

Table 1 presents the list of covariates used in the study. The first set of covariates in this table were observed for the full 1,202 cases, while the second set were measures of statutory aggravating factors which were only observed for the 327 cases that were death noticed (26 cases out of the original 353 death noticed cases were lost to missing data as described above). Most of the entries in Table 1 are proportions, meaning that they can be interpreted as the number of cases having the characteristic divided by the total number of cases. The total number of cases is 1,202, except for the statutory aggravating factors where the total number of cases is 327.

1. Adjusted Analysis: Between-Jurisdiction Variation

First, we will present the results for jurisdiction-to-jurisdiction variation because as we will discuss in some detail later, jurisdiction will impact the “race effect.” Tables 6A-6F present the details of a multiple-variable logistic regression analysis of county processing patterns at different stages of the death penalty system in Maryland. Our purpose in this analysis is to examine whether the jurisdiction where the crime occurred and where the defendant was charged has an effect on our four decision making points, after considering relevant case characteristics.⁸⁹ Table 6A reports the results for the decision of the state’s attorney to file a notification to seek the death penalty. The parameter estimates for the case characteristics are given in Table 6A, along with the estimated effects for each county. We also report a Type III chi-square statistical test that the addition of the county variables as a block significantly increases the log-likelihood of the model. This chi-square test ($\chi^2 = 191.92$ with 6 degrees of freedom; $p < .05$) shows that there is significant jurisdiction-to-jurisdiction variation in the way the decision to file a death notification is handled. Compared to the reference category, state’s attorneys in Anne Arundel County, Baltimore City and Montgomery County are significantly less likely to file a notification to seek the death penalty, while cases in Baltimore County are significantly more likely to be death notified. *It*

89. We will not interpret the coefficients for the case characteristics in this paper because our interest in them is purely statistical. We know that there are characteristics of the homicide that are related both to the outcome variable of interest (in the case of Table 6A, the prosecutor’s charging decision) and our geography and race variables. In order to determine the effect of geography and race, we need to statistically control for these homicide characteristics variables in our statistical models.

is important to note that this substantial variation by legal jurisdiction in the state's attorneys' decision to seek a death sentence exists even after controlling for numerous case characteristics.

Table 6B reports the results of the decision to not withdraw a death notification once filed. Again, there is substantial and statistically significant variation across legal jurisdictions in Maryland in the decision to withdraw a death notification ($\chi^2 = 26.97$ with 6 degrees of freedom; $p < .05$). State's attorneys in Baltimore County are more likely to have a death notification once filed "stick" compared to the reference category "other counties" made up of all other Maryland counties excluding Anne Arundel, Harford, Montgomery, and Prince George's. Baltimore City, Anne Arundel County, Harford County, Montgomery County and Prince George's County are not significantly different from the "other counties" in the state in withdrawing death notifications. In examining Table 6C there is no longer a significant jurisdiction effect ($\chi^2 = 4.00$ with 6 degrees of freedom; $p > .05$). This means that in terms of the decision by the state's attorney to advance a case to a penalty trial among the group of death eligible cases where the notification to seek death is not withdrawn, there is no significant variation across the different legal jurisdictions in Maryland. Table 6D reports the results for the decision to impose a death sentence given that a penalty trial occurs. Although the overall chi-square test for the county variables is not significant ($\chi^2 = 8.77$ with 6 degrees of freedom; $p > .05$), there is a marginally significant jurisdictional effect with cases from Baltimore County more likely to be sentenced to death given that a penalty trial occurs, even after case characteristics are considered. Table 6E reports the logistic regression analysis of whether a defendant receives a death sentence given the fact that it is a death eligible case. The results again show a significant effect for the charging jurisdiction ($\chi^2 = 56.37$ with 6 degrees of freedom; $p < .05$). Net of case characteristics, death eligible defendants in Baltimore City and Prince George's County are significantly less likely on average to be sentenced to death while those in Baltimore County are significantly more likely on average to be sentenced to death. The reason for this considerable variation is the different rate at which prosecutors in the different locations in the state make capital charges (Table 6A).

To provide an easy way to interpret the magnitude of the county effect at each decision making point, the predicted probability of each outcome both before (unadjusted) and after (adjusted) the statistical control for case characteristics is reported for each

jurisdiction in Table 6F.⁹⁰ Looking at the decision to file a death notification, we can see that the predicted probability that a death notice will be filed in a death eligible case ranges from a high of (.620) in Baltimore County to a low of (.046) in Baltimore City. Given the fact that a death eligible homicide has occurred, *the probability that a notification to seek death will be filed in Baltimore County is over 13 times higher than in adjacent Baltimore City, even after taking into account important case characteristics. The probability of being death notified if a case is in Baltimore County is over five times greater than if it occurred in Montgomery County and three times greater than if it occurred in Anne Arundel County. The probability that the state's attorney will file a formal notification to seek death in Harford County is more than ten times higher than in Baltimore City, and four times greater than in Montgomery County.* The substantial jurisdiction-to-jurisdiction variation in the probability of a death notice given a death eligible offense is statistically significant.

There is also substantial variation across the different Maryland jurisdictions in the probability that a death notice once filed will “stick”. This probability is highest in Baltimore County ($p=.857$), Anne Arundel County ($p=.783$), and Baltimore City ($p=.648$) and lowest in Prince George's County ($p=.468$). These jurisdictional variations are also statistically significant. In looking at the probability that a case will be advanced to a penalty trial or will be sentenced to death after a penalty trial, the variation by jurisdiction becomes much smaller and is not statistically significant. It is easy to see from Table 5F that the probability of these latter two decisions is fairly consistent across the different jurisdictions in the states.

The effect of early prosecutorial decisions on later stages of the capital sentencing process can be seen in the unconditional probability of a death sentence. The last column of Table 6F reports the adjusted probability of a death sentence for all death eligible cases. There is significant jurisdictional variation in the decision to impose a death sentence for a death eligible homicide that is unexplained by case characteristics. *The unconditional probability of a death sentence among death eligible cases is twenty-three times higher in Baltimore*

90. These predicted probabilities were determined after setting each covariate at the sample mean. This does not, of course, ensure that we have a “typical” case, just that the hypothetical offenders have equal values set at the sample mean on each of the covariates. This approach is simply one method for comparing two hypothetical offenders who have covariate values at the sample means. The choice of other covariate values would change the “times more likely” interpretation because changing the covariate values would change the expected base rate of the outcome.

County than it is in Baltimore City, even after considering case characteristics. This difference is all the more striking because Baltimore County and Baltimore City are adjacent jurisdictions in Maryland. The probability of a death sentence in Baltimore County is almost 14 times higher than it is in Montgomery County and eight times higher than in Prince George's County. The probability of a death sentence in Anne Arundel and Harford Counties is almost five times greater than it is in Montgomery County and nearly three times higher than in Prince George's County.

What these results clearly indicate is that the jurisdiction where the homicide occurs and where the defendant is charged matters a great deal. There are large differences in how different legal jurisdictions process their death penalty cases in Maryland. Our research clearly indicates that these differences are manifested in how state's attorneys charge death eligible cases and whether they retain a capital charge or decide to withdraw it. *Although the jurisdictional differences occur early in the process at the decisions made by local prosecutors, they are propagated to later points and go uncorrected.* It is also important to note that the variation in how death cases are handled in the different legal jurisdictions in Maryland found in the previously reported unadjusted analysis holds up in the multivariate analysis when numerous case characteristics are considered. In other words, the differences in how different jurisdictions handle death eligible cases cannot be attributed to the kinds of homicides committed in those jurisdictions.

2. *Adjusted Analysis: Offender's Race*

Tables 7A to 7F report the results of a multivariate logistic regression analysis looking at the race of the offender at various stages of Maryland's death sentencing process after controlling for both case characteristics and charging county.⁹¹ Looking across the different decision points, *there is no evidence that the race of the defendant matters at any stage once case characteristics and jurisdiction are controlled.* Table 7A shows that state's attorneys are more likely to file a formal notification to seek a death sentence against black

91. As we will discuss later in the study, it is necessary to control for county effects as well as relevant case characteristics because the race variables are confounded with county. There is substantial variation across Maryland jurisdictions in the proportion of death eligible homicides that are black defendant, white victim, and black defendant with white victim cases. The failure to control for county in our multiple logistic regression models would mean that effects on the dependent variable that are due to the omitted county variable would be attributed in part to the race variable.

offenders, but the effect is not statistically significant. In the decisions not to withdraw a death notification (Table 7B), to advance a case to a penalty trial (Table 7C), to impose a death sentence among the subset of penalty trial cases (Table 7D), or to impose a death sentence among the universe of all death eligible case (Table 7E), the effect of the offender's race is substantively trivial and not significantly different from zero. The absence of any appreciable effect for the offender's race on any of the four decision making points in the Maryland capital sentencing system can best be seen in Table 7F, which reports predicted probabilities for black and non-black offenders both before and after considering case characteristics and the charging jurisdiction. The largest difference in probabilities occurs at the decision to impose a death sentence given a penalty trial. There, the probability that a black offender will be sentenced to death is .444 and the probability for non-black offenders is .376, a statistically non-significant difference of .068. In sum, we have found no evidence that the race of the defendant by itself matters in the processing of capital cases in Maryland.

3. *Victim's Race*

In Tables 8A to 8G we report race of victim patterns at various stages of Maryland's death penalty system. Recall that in the unadjusted analysis offenders committing murders of white victims were significantly more likely to be death notified, to have that death notification "stick," to be advanced to a penalty trial than those who killed non-black victims, and to be sentenced to death given that a case was death eligible (Table 3). In the adjusted (multivariate) analysis, we find that this difference in the handling of black victim and non-black victim cases is reduced but cannot entirely be explained by the case characteristics of the homicide or the charging jurisdiction. Table 8A shows that even after case factors and jurisdictional differences are taken into account, those who kill whites are still significantly more likely to have the state's attorney file a notification to seek the death penalty. The logistic regression coefficient for victim's race is .669 which means that the odds that the state's attorney will file a formal notification to seek death is almost twice as high when a white victim is murdered than when a non-white is murdered.⁹² Table 8B reveals

92. The "odds multiplier" for a logistic regression coefficient can be found by taking the anti-log or exponent of the logistic coefficient. It is important to keep in mind that the odds multiplier indicates the change in odds of the dependent variable occurring, and is not a probability (an odds is the ratio of two probabilities, the probability of an event occurring over

that the decision not to withdraw a death notification is also related to the race of the victim. After considering jurisdiction and case characteristics, state's attorneys are significantly less likely to withdraw a death notification (most often in exchange for a plea) if a white victim is killed, compared with a non-white victim. The logistic regression coefficient is 1.017, and the odds multiplier is 2.8, indicating that the odds that the state's attorney will not withdraw a death notification once filed is almost three times higher.

This "race of victim" effect does not hold up, however, at the decision of the state's attorney to advance a case to a penalty trial. In Table 8C we provide two versions of the relationship between victim's race and the decision to advance a case to a penalty trial. In the first, there is a case characteristic that is not significantly related to the outcome variable but is included to make a more conservative test of the racial disparity hypothesis. In the second version, this factor is dropped and there is only one significant case characteristic included. In the first version, the coefficient for a homicide involving a white victim is positive, and marginally significant ($b = .837$, $p < .10$; an odds ratio of 2.3). At least in this model, then, there is an indication that state's attorneys are more likely to advance a case to a penalty trial if the victim killed is white rather than non-white. In the second model specification, however, the magnitude of the coefficient for victim's race was reduced by approximately twenty-five percent and is no longer even marginally significant ($b = .667$, odds ratio of 1.9). Table 8D reports the results of two models for victim's race at the decision of the judge or jury to impose a death sentence given that a penalty trial has occurred. The race of the victim has no effect in either of the two models (the odds ratio in both models is close to 1.0).

In Table 8E we report the results of a logistic regression model for defendants who are sentenced to death among the universe of all death eligible cases. This table shows that, even taking into account jurisdiction and relevant case characteristics, offenders who murder white victims are significantly more likely to be sentenced to death than those who slay all non-white victims. The logistic regression coefficient in this model is 1.317, and the odds multiplier is 3.7, indicating that the odds that a death eligible defendant will be sentenced to death is almost four times higher if they kill a white victim than if no victim was white.

the probability of the event not occurring). Since we find them useful, we will calculate and report probabilities for each set of results.

For all of the multivariate analyses reported in this paper we also estimated a stepwise logistic regression model to see if our results would hold up under a different model specification, and with only two exceptions, they did. We report one of these exceptions in Table 8F. The stepwise logistic regression model for the race of the victim on whether the defendant receives a death sentence for all death eligible cases shows that the effect of killing a white victim was still present, but now it was statistically significant at only a .11 level. The estimated logistic regression parameter was reduced from 1.317 (with an odds multiplier of 3.73) to .644 (with an odds multiplier of 1.90). Even in this second model specification, the race of the victim still substantively matters, but we would note that both its magnitude and its level of statistical significance declines.

In order to better capture the magnitude of the race of victim effect, in Table 8G we have calculated the predicted probability of each outcome in the death sentencing process for white and non-white victim cases both before and after adjusting for case characteristics. The adjusted probability that a state's attorney will file a death notification when a white is killed is .254 and .149 when a black is killed. This means that the probability of a death notification in a white victim cases is 1.7 times higher than that for a black victim homicide, even after considering relevant case characteristics and the jurisdiction where the homicide occurred. The probability of a death notification not being withdrawn is 1.5 times higher in white victim than black victim homicides, again, even after taking into account case factors and jurisdiction. At both of these early decision making points, then, the race of the victim killed in a homicide is an important factor in determining which death eligible defendants are notified that the state will seek the death penalty against them, and for whom that notification will "stick." The probability that the state's attorney will advance a case to a penalty trial once a death notification is filed and not withdrawn does not appear to be materially affected by the race of the victim. In both versions of the statistical model, the probability of a penalty trial is fairly comparable in white and non-white victim cases. For the probability of a death sentence conditional on a penalty trial, the difference between white victim and non-white victim cases is also small.

The last entry in Table 8F, however, shows that for all death eligible homicides the probability of a death sentence in a white victim case is over three times higher than in a non-white victim homicide (.031 for white victim cases and .009 for non-white victims cases;

Version #1). The estimated probability of a death sentence among death eligible homicides in the stepwise logistic model is twice as high for white victim cases (.018) than it is for non-white victim cases (.009). In the stepwise model, the effect of victim's race does diminish from our earlier model specification (Version # 1), but killing a white victim rather than a non-white victim still materially affects a person's risk that they will be sentenced to death. Net of case characteristics and jurisdiction, killing a white victim at a minimum doubles the risk of a death sentence among death eligible homicides when compared with killing a non-white victim.

In sum, we find a significant effect for the race of the victim in the way the prosecutor initially handles death eligible homicides. State's attorneys in Maryland are more likely to file a notification to seek a death sentence and more likely to retain that notification when the race of the victim is white rather than black. Furthermore, this "race of victim" effect is explained neither by the case characteristics of white and non-white victim homicides nor by the jurisdiction where the homicide occurred. Nor is this initial disparity in prosecutorial decision-making corrected at later stages of the capital sentencing process. While the race of the victim does not appear to matter when the decision is to advance a case to the penalty phase or to sentence a defendant to death after a penalty phase hearing, the overall risk of a death sentence among the universe of death eligible cases is substantially higher for those accused of murdering a white victim.

4. Offender-Victim Race Combinations

In Tables 9A to 9G we report logistic regression models for combinations of offender's and victim's race. The racial combination of offender's and victim's race is expressed in our statistical models as a series of dummy variables, where the reference category are homicides involving black defendants and white victims. Table 9A shows that net of relevant case characteristics and the jurisdiction where the homicide occurred, all combinations of offender's and victim's race are significantly less likely to be charged with a capital crime given that it is death eligible than black offenders who kill white victims.⁹³ Both blacks who kill blacks and homicides involving "other" combinations of offender's and victim's race are significantly less likely to have a death notification "stick" than homicides

93. Other combinations include white offenders who kill blacks and a very small number of cases involving "other" races (Hispanic, Asian, Native American) of either the victim or offender.

involving black offenders and white victims (Table 13B). The only other occasion where the stepwise logistic regression model that we estimated as a check on our model specification produced a different result is in this instance. Table 9C shows that in the stepwise specification there are no significant differences in the decision to withdraw a death notification across race of offender/victim groups. There is no race of offender/victim effect at either the decision to advance a case to a penalty hearing (Table 9D) or the decision to sentence a defendant to death given the fact that there is a penalty hearing (Table 9E). Table 9F does show, however, that compared with black offenders who slay white victims, whites who kill whites and blacks who kill blacks are significantly less likely to be sentenced to death given that a homicide is death eligible. The primary reason for this elevated risk of a death sentence for black offenders who cross racial lines and slay whites is the differential charging decisions of Maryland state's attorneys (Table 9A).

Table 9G provides the predicted probabilities of each outcome for the four race- of-offender/victim combinations at each stage of the Maryland capital sentencing system. After controlling for case characteristics and charging jurisdiction, the probability that the state's attorney will file a notification to seek the death penalty is highest in cases where a black offender kills a white victim (.336). The probability of being death notified for black on white killings is over twice as high as when a black slays another black (.141), and nearly twice as high as when a white kills a white (.187). The probability that a death notification will "stick" is comparably high for both white on white ($p = .768$) and black on white ($p = .726$) killings and both are about one and one-half times higher than when blacks kill other blacks ($p = .500$). These differences are diminished in the probabilities estimated from the stepwise logistic regression (version 2 in Table 9G). The probability of a penalty trial conditional on a death notification not being withdrawn and the probability of a death sentence conditional on a penalty trial is fairly similar for the four racial groups (other combinations for the conditional probability of a death sentence is the exception).

Finally, the unconditional probability of a death sentence within the universe of all death eligible cases shows pronounced racial effects. Even after considering case characteristics and the charging jurisdiction, black defendants who cross racial lines and slay a white victim are most likely to be sentenced to death ($p = .041$). This probability is more than twice as high as for white-on-white killings,

almost three and one-half times higher as for black-on-black killings, and nearly seven times higher than other racial combinations. Consistently, black offenders who kill white victims are at greater risk of in Maryland's capital sentencing system even after controlling for numerous case characteristics and the jurisdiction where the crime occurred. The primary reason for this is the differential treatment of black-on-white killings given by local prosecutors at the charging stage, a differential treatment, however, that goes uncorrected at subsequent decision making points.

In sum, in our analysis we have found evidence for a race of victim effect and an effect for the combination of offender's and victim's race. Offenders who kill white victims, especially if the offender is black, are significantly and substantially more likely to be charged with a capital crime (state's attorney decides to file a notification to seek the death penalty). Those who kill white victims are also significantly more likely to have their death notification "stick" than those who kill non-whites. These effects persist even in the presence of what we think are very rigorous controls for relevant case characteristics and the charging jurisdiction. Moreover, while these effects do not appear at other, later decision making points in the capital sentencing process they are generally not corrected either.

C. Further Analysis: The Combined Impact of Jurisdiction and Race on Maryland Death Eligible Cases

Our analyses have thus far revealed two interesting substantive findings. One of the most impressive findings from this research is that in terms of the handling of death eligible homicides, the jurisdiction where the homicide occurred and where the defendant was charged by the state's attorney matter a great deal. Under state law, Maryland state's attorneys have considerable and unguided discretion in determining whether or not to charge a death eligible crime as a capital offense⁹⁴, and once charged whether or not to withdraw the capital charge.⁹⁵ We find in this research that this discretion is used with great frequency. The variation in the treatment of death eligible cases in the hands of local prosecutors across the different legal jurisdictions was substantial and robust. In the Maryland death penalty system, the jurisdiction where the crime occurs and legal

94. See *Calhoun v. State*, 468 A.2d 45, 63-65 (Md. 1983); *Richardson v. State*, 598 A.2d 1, *passim* (Md. Ct. Spec. App. 1991), *aff'd*, 630 A.2d 238 (Md. 1993).

95. MD. CODE ANN., CRIM. LAW § 2-301 (2002).

prosecution begins is clearly one of the most important factors in determining which death eligible defendants are ultimately sentenced to death and which are not.

Our second finding is that even taking into consideration the charging jurisdiction and relevant case characteristics race matters as well. Those who kill whites, particularly if they happen to be non-white, are at an increased risk of being charged with a capital offense, of having that capital charge not withdrawn, and ultimately of being sentenced to death. We also have found that our two key variables, jurisdiction and race, are confounded. To further address what we think is a third important finding, we now provide some supplemental analyses to further demonstrate the role of legal jurisdiction and race in the handling of death penalty cases in Maryland. In this analysis, we focus on what happens to the magnitude of the “race effect” with and without controls for the charging jurisdiction. Our examination of the “race effect” includes the victim’s race, and intra-racial homicides involving black offenders and white victims.

In Table 10, we report the results of a series of logistic regression models. The subset of cases are all those where a notification was filed by the state’s attorney that the state intends to seek the death penalty, and the decision is whether or not a death sentence is imposed. Model 1 shows that considered alone the race of the victim matters, and matters a great deal. Those who kill white victims are at a substantially increased risk of being sentenced to death compared with those who kill non-whites. In Model 2, we enter the number of statutory aggravating factors that the prosecutor charges in the death notification document.⁹⁶ The number of statutory aggravating factors that are alleged by the state’s attorney clearly elevates the risk of a death sentence, but it only slightly diminishes the race of victim effect (the estimated logistic regression coefficient declines from .779 in Model 1 to .762 in Model 2). The results for Model 2 are identical to those reported by Professors Baldus and Woodworth in their 2001 analysis of Maryland death-noticed cases.⁹⁷ In Model 3 we drop the number of statutory aggravating factors alleged in the charging document and add each of the separate

96. Under state law, state’s attorneys must file a notification that they intend to seek a death sentence against a defendant, and the statutory aggravating circumstances that they will prove. MD. CODE ANN., CRIM. LAW § 2-202 (a) (1) (2002).

97. David C. Baldus and George Woodworth, *Race of Victim and Race of Defendant Disparities in the Administration of Maryland’s Capital Charging and Sentencing System (1979-1996): Preliminary Finding (Feb. 14, 2001)* (unpublished manuscript, on file with MARGINS: Maryland’s Law Journal on Race, Religion, Gender and Class).

charging jurisdictions (counties and Baltimore City). When the prosecuting jurisdictions are added to the model, the effect for the victim's race diminishes substantially, and is no longer statistically significant. This would suggest that jurisdiction and race of victim are confounded. There are state's attorneys in Maryland who more frequently pursue the death penalty than others do. There are also more white-victim homicides committed in these jurisdictions where there is a more aggressive pursuit of the death penalty. When both jurisdiction and the number of statutory aggravating factors are included in the model (Model 4), the effect of victim's race declines again, but only slightly, while the estimated effect for the number of statutory aggravating circumstances increases slightly, indicating that jurisdiction is acting as a suppressor. These results imply that, at least in Maryland, any discussion of possible race of victim effects in the processing of capital cases must explicitly consider the jurisdiction where the crime was charged.

We report a similar analysis in Table 11, but here we focus on black offenders who kill white victims among the subset of death-notified cases. Model 1 shows that black offenders who kill white victims are significantly more likely than all other racial combinations to be sentenced to death. This is true even when there are controls for the number of statutory aggravating factors (Model 2). When the charging jurisdiction is entered in Model 3, the effect for black offenders who kill white victims is reduced by about 22%, but is still significant and substantively important. It continues to be significant even with controls for both county and the number of statutory aggravating factors (Model 4). The findings with respect to cross-racial murders involving black defendants and white victims are robust with respect to statutory aggravating factors and jurisdiction, but there is a non-trivial reduction in the magnitude of the effect when jurisdiction is controlled.

The effect of jurisdiction in reducing the "race effect" (revealing the confound between jurisdiction and race) is further shown in Tables 12 and 13. Table 12 reports the results of a logistic regression analysis for the race of the victim on both the death notice decision and the death sentence decision within the universe of all death eligible homicides. Without jurisdiction controls, there is a very strong relationship between killing a white victim and being death noticed (Table 12: logistic regression coefficient of 1.311, $\chi^2 = 89.86$). With the addition of the jurisdiction controls, however, this relationship, though still statistically significant, is reduced

dramatically (logistic regression coefficient of .697, $\chi^2 = 17.17$). For the death notice decision, the estimated probability of a death notice among white victim cases drops from .430 in the model without jurisdiction to .282 in the model that includes county controls – a 52% decline.

Among the universe of death eligible cases reported in Table 12 there is also a strong relationship between killing a white victim and receiving a death sentence. Without controlling for jurisdiction the logistic regression coefficient for the relationship between killing a white victim and receiving a death sentence is substantively strong and statistically significant (logistic regression coefficient of 1.657, $\chi^2 = 31.06$). With the addition of *only* the jurisdiction controls, however, this relationship, though still statistically significant, is reduced dramatically (logistic regression coefficient of .943, $\chi^2 = 8.15$). Without jurisdiction controls, the predicted probability of a death sentence for those who kill white victims is .111 and is .023 for those who kill non-white victims. Killers of whites, therefore, are almost five times more likely to be sentenced to death if death eligible than are killers of non-whites. With controls for jurisdiction, however, the estimated probability of a death sentence in white victim homicides is almost cut in half, to .060. The estimated probability of a death sentence in homicides with non-white victims is virtually unchanged in non-white victim cases. After controls for jurisdiction, the probability of a death sentence among death eligible cases is only 2.5 times higher in white victim compared with non-white victim cases.

Table 13 reports comparable results for homicides involving black offenders who slay white victims. The cases include the universe of all death eligible homicides, and both the decision to file a notification to seek death and the decision to impose a death sentence are examined. Without jurisdiction controls blacks that kill whites are significantly more likely to receive a notification to seek death than homicides involving all other racial combinations (logistic regression coefficient of 1.099, $\chi^2 = 44.88$). When the charging jurisdiction is controlled, the magnitude of the regression coefficient remains substantively strong and statistically significant, but declines to .899 (with a $\chi^2 = 27.61$). When jurisdiction is not controlled, the estimated probability of being death notified is .463 among homicides with black offenders and white victims, and .239 for all other racial combinations. Blacks who kill whites, therefore, are almost twice as likely to be death notified. When jurisdiction is controlled, the estimated probability of being death notified declines for both racial

combinations to .353 in black-on-white killings and to .182 in all other racial combinations. The risk of being death notified, however, remains almost twice as high in homicides with black offenders and white victims.

Much the same pattern prevails when the decision to impose a death sentence among all death eligible cases is examined (Table 13). Without jurisdiction controls, blacks who kill whites are more than three times more likely to be sentenced to death than all other racial combinations (.139 versus .042). When the charging jurisdiction is added to the model, the magnitude of the logistic regression coefficient declines (as does the chi-square), and blacks that kill whites are 2.6 times more likely to be sentenced to death than other racial combinations (.077 versus .030).

What these supplemental analyses clearly reveal is that jurisdiction and the racial characteristics of the homicide are confounded. Different legal jurisdictions in the state of Maryland, jurisdictions that follow very different practices regarding the handling of death eligible homicides, differ with respect to the racial characteristics of their homicides. At least in these data, failure to control for jurisdictional differences can lead to a biased estimate of the "race effect".

The relationship between the differential handling of death eligible homicides in Maryland and the racial characteristics of the homicide are summarized in Table 14. The first two columns show quite clearly that in terms of filing a formal notification to seek death and death sentencing rates, there are clear jurisdictional differences. Some jurisdictions are substantially more aggressive in seeking and imposing death sentences than others. What the last two columns show is that the aggressiveness of the jurisdiction with respect to its handling of death eligible homicides is related to the racial characteristics of those homicides. Jurisdictions that are less aggressive in their handling of death eligible cases (Baltimore City, Prince George's County) tend to be those with a lower rate of white victim and black-on-white homicides. Conversely, those jurisdictions that are more aggressive (Baltimore County, Harford County) in how they process death eligible cases have higher rates of white victim and black-on-white homicides. What this implies is that any attempt to deal with any racial disparity in the imposition of the death penalty in Maryland cannot ignore the substantial variability that exists in different state's attorneys' offices in the processing of death cases.

VI. CONCLUSION AND DISCUSSION

The analyses presented in this study have explored a number of issues related to the death penalty sentencing system in Maryland. The primary focus has been on the possible effects of geography and race of victim and race of defendant variables. The analysis suggests that both classes of variables play an important role in the Maryland system. The evidence indicates that these factors exert their greatest effects at the death notification and death notice retraction decisions. Later stages of the system do not appear to exacerbate or increase the magnitude of these effects, but neither are the results of these prosecutors' decisions corrected at later points. The effects of prosecutorial decision-making remain apparent in the imposition of death sentences among the universe of death eligible cases.

It might not be too surprising that evidence of disparity by race and geography are manifested at the level of the Maryland State's Attorney. We have noted in the introduction that under Maryland law the decision to charge a defendant with a capital crime by formally filing a notification to seek the death penalty, and the decision to withdraw that notification once filed are completely discretionary decisions by the state's attorney. Maryland prosecutors are by law given extremely wide discretion to seek death, there are no formal guidelines or standards they need to follow, nor is there any accountability for decisions made or not made. This virtually complete granting of discretion provides ample opportunity for the influence of other factors in state's attorney's decisions, such as the race of the offender and/or victim. This discretion is also the source of the substantial jurisdiction-to-jurisdiction variation in the decision to seek a death sentence and ultimately the decision to impose death.

Our empirical findings with respect to racial and geographic disparity in the administration of the death penalty in Maryland are not strikingly unusual or aberrant results. The evidence found in Maryland squares well with numerous other studies with somewhat different methodologies in different states.⁹⁸ Since there is an

98. A persistent finding in this body of research is that the race of the victim is substantially influential in the death penalty process. Murderers of white victims, particularly if they happened to be African-American, fare worse at virtually every decision making point, but especially with charging decisions made by prosecutors. There is some, but considerably less consistent evidence of a race of defendant effect. See DAVID C. BALDUS, ET AL., *EQUAL JUSTICE AND THE DEATH PENALTY: A LEGAL AND EMPIRICAL ANALYSIS*, 403-04, *passim* (1990).; SAMUEL R. GROSS & ROBERT MAURO, *DEATH & DISCRIMINATION: RACIAL*

abundant literature now available, we have not reviewed these previous findings here. We would note, however, that while evidence of disparity in the imposition of the death penalty by race and geography have not always been found, the majority of the empirical research has found both that those who kill white victims are at a substantially higher risk of being sentenced to death (especially if they are non-white) than those who kill non-white victims, and that the risk of being sentenced to death varies substantially within the state.⁹⁹ With respect to the influence of victim's race, the United States General Accounting Office after reviewing twenty-eight studies of the death penalty concluded that:

In 82% of the studies, race of victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e., those who murdered whites were found to be more likely to be sentenced to death than those who murdered blacks. This finding was remarkably consistent across data sets, states, data collection methods, and analytic techniques.¹⁰⁰

We have no reason to believe, therefore, that our findings that race and geography matter in Maryland are idiosyncratic. They fit a much broader pattern of how the death penalty is generally administered in the United States today.¹⁰¹

While this research has documented the existence of both racial and geographic disparity in the administration of the death penalty in Maryland, our empirical findings are silent with respect to the question

DISPARITIES IN CAPITAL SENTENCING, 43-94 (1989); BARRY NAKELL & KENNETH A. HARDY, THE ARBITRARINESS OF THE DEATH PENALTY, 70-150 (1987); Lee Bienan, et al., *The Reimposition of Capital Punishment in New Jersey: The Role of Prosecutorial Discretion*, 41 RUTGERS L. REV. 27, 158-240 (1988); Thomas J. Keil and Gennardo F. Vito, *Race and the Death Penalty in Kentucky Murder Trials: 1976-1991*, 20 AM. J. CRIM. J. (1995); Stephen P. Klein & John E. Rolph, *Relationship of Offender and Victim Race to Death Penalty Sentences in California*, 32 JURIMETRICS J., 33, *passim* (1991); Raymond Paternoster & Ann Marie Kazyaka, *The Administration of the Death Penalty in South Carolina: Experiences Over the First Few Years*, 39 S.C. L. REV. 245, 283-334 (1988).

99. See *supra* note 96.

100. U.S. GENERAL ACCOUNTING OFFICE, GENERAL GOVERNMENT DIVISION, GAO/GGD-90-57, DEATH PENALTY SENTENCING: RESEARCH INDICIATES PATTERN OF RACIAL DISPARITIES 5 (1990).

101. See, e.g., David C. Baldus, et al., *Racial Discrimination and the Death Penalty in the Post-Furman Era: An Empirical and Legal Overview, with Recent Findings From Philadelphia*, 83 CORNELL L. REV., 1638, 1713-1715, *passim* (1998).

as to *how* these disparities came about. Anyone vaguely familiar with the history of race relations in the United States cannot be surprised at our findings of a race effect. It was not that long ago in our history that lynchings and other forms of violence were used to enforce rules of racial etiquette and re-establish the supremacy of whites.¹⁰² Nor are we far removed from the fate of the Scottsboro Boys, nine young black males accused of raping two white women in Alabama. The trials, which began only twelve days after the crime and lasted only four days, resulted in eight of the nine youths being sentenced to death, in each case by an all white jury.¹⁰³

There is abundant evidence of the closeness of our current history with this troubled past. In a 1974 murder trial, Wilburn Dobbs, a black male accused of the murder of a white man in Georgia, was referred to by both the judge and his own defense lawyer as a "colored boy."¹⁰⁴ Dobbs' counsel stated that blacks are generally an uneducated lot who are better basketball players than teachers.¹⁰⁵ He further observed that racial integration was responsible for the deterioration of local neighborhoods and schools, and referred to the African-American community of Chattanooga, Tennessee as "black boy jungle."¹⁰⁶ In a 1986 Florida case, the judge referred to the parents of an African-American defendant as the "nigger mom and dad."¹⁰⁷ The lawyer for Jose Guzman, a Salvadoran, referred to him as a "wetback" before his all-white jury during Mr. Guzman's 1985 trial.¹⁰⁸ In 1981, the former District Attorney of Jackson County, Mississippi, Ed Peters, publicly announced his policy to "get rid of as many" blacks as possible when using his peremptory challenges to

102. See EDWARD L. AYERS, *VENGEANCE AND JUSTICE: CRIME AND PUNISHMENT IN THE 19TH-CENTURY AMERICAN SOUTH* (1984); W. FITZHUGH BRUNDAGE, *LYNCHINGS IN THE NEW SOUTH: GEORGIA AND VIRGINIA, 1880-1930* (1993); JOEL WILLIAMSON, *THE CRUCIBLE OF RACE: BLACK-WHITE RELATIONS IN THE AMERICAN SOUTH SINCE EMANCIPATION, 183-189* (1984).

103. DAN T. CARTER, *SCOTTSBORO: A TRAGEDY OF THE AMERICAN SOUTH, passim* (2d ed. 1994); JAMES GOODMAN, *STORIES OF SCOTTSBORO*, 85-89 (Vintage Books 1995).

104. *Dobbs v. Zant*, 720 F. Supp. 1566, 1578 (N.D. Ga. 1989), *aff'd*, 963 F.2d 1403 (11th Cir. 1991), *rev'd*, 506 U.S. 357 (1993).

105. *Id.* at 1577.

106. *Id.*

107. *Peek v. Florida*, 488 So. 2d 52, 56 (Fla. 1986). In its review of the case, the Florida Supreme Court stated that judges in the state should be careful with their language so as to avoid the "appearance" of impartiality. *Id.* For a further discussion of *Peek v. Florida, Dobbs v. Zant* and a discussion of the impact of racial attitudes on the application of the death penalty see Stephen B. Bright, *Discrimination, Death and Denial: The Tolerance of Racial Discrimination in Infliction of the Death Penalty*, 35 SANTA CLARA L. REV., 433 (1995).

108. *Ex parte Guzman*, 730 S.W.2d 724, 726 (Tex. Crim. App. 1987) (en banc).

select a jury.¹⁰⁹ These and many other examples from far too many cases¹¹⁰ reveals that the reach of our history of racial animus is not beyond us, a point eloquently made by Justice Brennan in *McCleskey v. Kemp*:

A mere three generations ago, this Court sanctioned racial segregation, stating that “[i]f one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.”

In more recent times, we have sought to free ourselves from the burden of this history. Yet, it has been scarcely a generation since this Court’s first decision striking down racial segregation, and barely two decades since the legislative prohibition of racial discrimination in major domains of national life. These have been honorable steps, but we cannot pretend that in three decades we have completely escaped the grip of a historical legacy spanning centuries. We remain imprisoned by the past as long as we deny its influence in the present.¹¹¹

Our finding that race influences the decisions made by state’s attorneys whether to seek or withdraw a capital charge does not mean that they are motivated by intentional racial prejudice or bigotry. In its report, the Governor’s Task Force on Capital Punishment noted that a survey of Maryland State’s Attorneys revealed that several used the wishes of the victim’s family in deciding whether to seek a death sentence.¹¹² Public opinion polls consistently show that support for the death penalty is substantially higher among whites than among

109. *Edwards v. Scroggy*, 849 F.2d 204, 207 (5th Cir. 1988).

110. *See, e.g.*, John H. Blume, et al., *Post-McCleskey Racial Discrimination Claims in Capital Cases*, 83 CORNELL L. REV. 1771, (1998); Stephen B. Bright, *Discrimination, Death and Denial: The Tolerance of Racial Discrimination in Infliction of the Death Penalty*, 35 SANTA CLARA L. REV. 433 (1995); TEXAS DEFENDER SERVICE, *A STATE OF DENIAL: TEXAS JUSTICE AND THE DEATH PENALTY* (2000), <http://www.texasdefender.org/publications.htm> (last visited May 19, 2004) (on file with MARGINS: Maryland’s Law Journal on Race, Religion, Gender and Class). For a discussion of the impact of ineffective representation for indigent defendants in capital cases see Stephen B. Bright, *Counsel for the Poor: The Death Sentence Not for the Worst Crime but for the Worst Lawyer*, 103 YALE L.J. 1835 (1994).

109. *McCleskey v. Kemp*, 481 U.S. 279, 344 (1987) (quoting *Plessy v. Ferguson*, 163 U.S. 537, 552 (1896)).

112. 1993 REPORT, *supra* note 58, at 113-18.

African-Americans, as is general trust in legal authorities.¹¹³ Although we have no data on this issue, it is reasonable to suppose that the families of white murder victims may more aggressively push a state's attorney to seek the penalty than families of non-white murder victims. Assuming also that state's attorney's are responsive to the demands of victim's families, they would, then, be more likely to charge a capital crime and less likely to withdraw that charge for white victim cases. Because they are all too aware of the history of the death penalty and are generally suspicious of legal authorities, black family members may have fewer and less responsive interactions with their state's attorneys' offices.¹¹⁴

There are even more subtle ways for racial effects to manifest themselves given the opportunity provided by the discretion in the hands of state's attorneys. For example, psychological evidence points to the fact that whites are more likely to empathize with and feel sympathy for other whites more than non-whites.¹¹⁵ White decision makers in the capital punishment system may, therefore, unconsciously make decisions that favor white victims.¹¹⁶ This greater sympathy for white victims by white decision makers may be

113. Public opinion consistently shows that support for the death penalty among whites is substantially higher than among blacks. In the General Social Survey (a nationally representative sampling of American adults conducted by the National Opinion Research Center at the University of Chicago), for example, pooling the data across all years (N= approximately 35,000) finds that 78% of whites support the death penalty for those who commit murder while only 50% of blacks. In each of the 21 times that the capital punishment question has been asked from 1974-2000, the percentage difference in support for the death penalty between whites and blacks is generally thirty percent. See TOM R. TYLER, ET AL., *SOCIAL JUSTICE IN A DIVERSE SOCIETY*, (Westview Press 1997); TOM R. TYLER AND YUEN J. HUO, *TRUST IN THE LAW: ENCOURAGING PUBLIC COOPERATION WITH THE POLICE AND COURTS* (Russell Sage Foundation 2002); Robert J. Sampson and Dawn Jeglum Bartusch, *Legal Cynicism and (Subcultural?) Tolerance of Deviance: The Neighborhood Context of Racial Differences*, 32 *Law & Soc'y Rev.* 777, 790-800 (1998).

114. See TOM R. TYLER, ET AL., *SOCIAL JUSTICE IN A DIVERSE SOCIETY* (Westview Press 1997); TOM R. TYLER AND YUEN J. HUO, *TRUST IN THE LAW: ENCOURAGING PUBLIC COOPERATION WITH THE POLICE AND COURTS* (Russell Sage Foundation 2002).

115. Stephen P. Garvey, *The Emotional Economy of Capital Sentencing*, 75 *N.Y.U. L. REV.* 26, (2000); Douglas Linder, *Jury Empathy and Race*, 63 *TENN. L. REV.* 887, 900-02 (1996); Scott E. Sundby, *The Capital Jury and Empathy: The Problem of Worthy and Unworthy Victims*, 88 *CORNELL L. REV.* 343, (2003); Bryan Edelman, *Misguided Discretion: A Dual Process Model of Juror and Jury Decision Making in Capital Trials* (2003) (unpublished Ph.D. Dissertation, University of Nevada) (on file with author).

116. See, e.g., Charles R. Lawrence, III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 *STAN. L. REV.* 317 (1987); Samuel H. Pillsbury, *Emotional Justice: Moralizing the Passions of Criminal Punishment*, 74 *CORNELL L. REV.* 655 (1989).

particularly salient in intra-racial slayings, and certainly would characterize other decision makers besides state's attorneys.¹¹⁷

We noted in the introduction that our empirical analysis of Maryland's capital sentencing system did not include all possible decision making points. For example, we did not consider the role of race or geography in the many decisions law enforcement makes in investigating death homicide cases. We know that state's attorneys' decisions to file (and retain) a notification to seek a death sentence is based at least in part of the strength of the evidence that law enforcement officers develop and construct. An important issue to address in future research is the whether or not there is variation in the extent to which law enforcement officers investigate white victim and black victim homicides. We clearly speculate here, but if police officers empathize more easily with white victims and are suspicious of or reluctant to work within the black community, they may more aggressively investigate white victims. For similar reasons, police departments that are predominately white may routinely investigate white victim crimes more aggressively than those committed against non-whites. This difference in how aggressively white and non-white victim cases are investigated, both within the same police department and across different police departments, would mean that state's attorneys are handed white victim cases with much stronger evidence with which to prosecute. Even if state's attorneys' decisions are completely evenhanded, the disparity in the evidence (both its quantity and quality) gathered by law enforcement officers would result in a greater likelihood that a sentence of death would be sought and not withdrawn in white victim cases than in non-white victim cases. We are quick to point out that we have no evidence that police officers do behave in such a manner, but it is a question worthy of detailed research.

It is clear that this research has found that some of the earliest decisions in the process that leads from a homicide to the death chamber are materially affected by both geography and race. Within the context of Justice Brennan's decision in *McCleskey v. Kemp*,¹¹⁸

117. Cf. Pillsbury, *supra* note 114, at 703-10.

118. Justice Brennan stated:

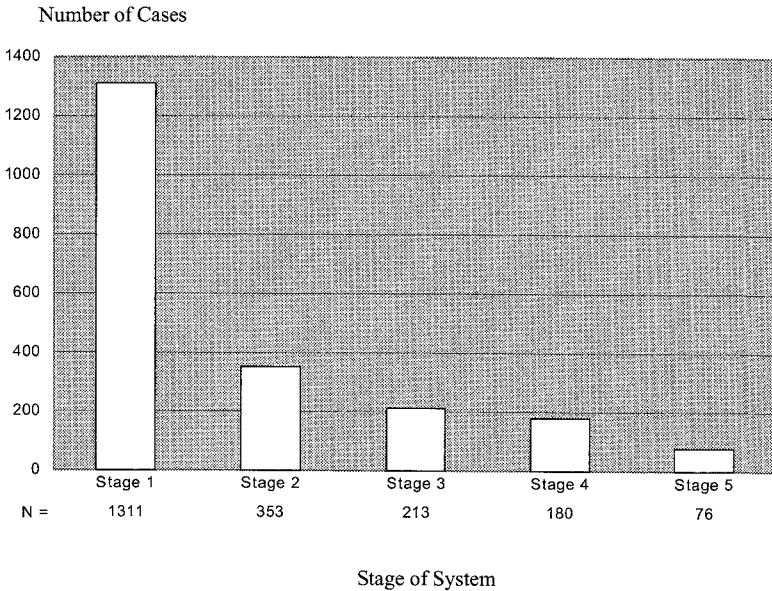
At some point in this case, Warren McCleskey doubtless asked his lawyer whether a jury was likely to sentence him to die. A candid reply to this question would have been disturbing. First, counsel would have to tell McCleskey that few of the details of the crime or of McCleskey's past criminal conduct were more important than the fact that his victim was white Finally, the assessment would not be complete

when defense attorneys have conversations with their condemned clients on Maryland's death row as to what got them there, that conversation must include the troubling recognition that among other things, they likely killed the wrong person in the wrong place.

without the information that cases involving black defendants and white victims are more likely to result in a death sentence than cases featuring any other racial combination of defendant and victim. The story could be told in a variety of ways, but McCleskey could not fail to grasp its essential narrative line: there was a significant chance that race would play a prominent role in determining if he lived or died.

McCleskey v. Kemp, 481 U.S. 279, 321 (1987) (Brennan, J., dissenting) (citation omitted).

Figure 1
Number of Cases Progressing Through Each Stage of the Maryland Death Penalty System



Notes:

Stage 1 = Universe of death eligible cases in Maryland from July 1, 1978 to December 31, 1999 (N = 1,311).

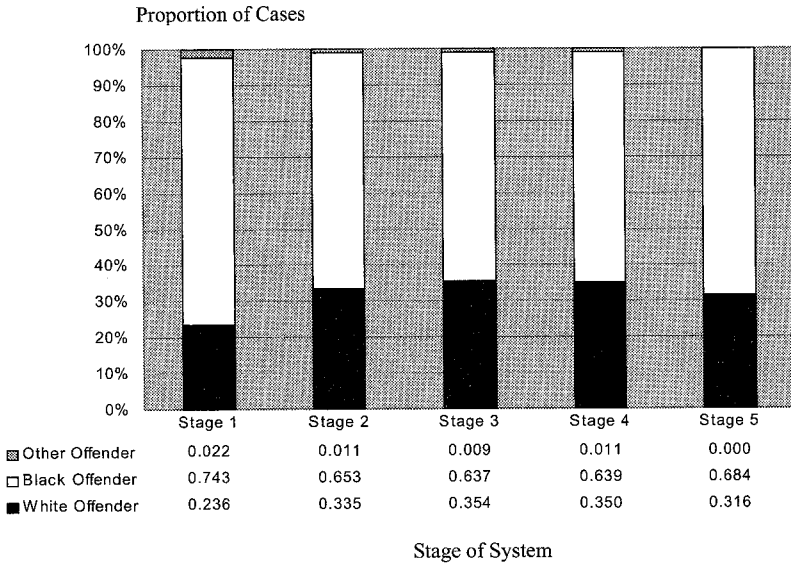
Stage 2 = Subset of death eligible cases where the prosecutor files notice of intent to seek the death penalty (N = 353). The conditional probability of filing notice given a death eligible case is $353/1311 = 0.269$.

Stage 3 = Subset of death-noticed cases where the prosecutor does not retract notice (i.e., the death notice "sticks.") (N = 213). The conditional probability of notice sticking given a death eligible case is $213/1311 = 0.162$ and the conditional probability of notice sticking given that the prosecutor files notice is $213/353 = 0.603$.

Stage 4 = Subset of "stuck" death-noticed cases advancing to a penalty trial (N = 180). The conditional probability of a case advancing to the penalty phase given that the prosecutor sticks with the death notice is $180/213 = 0.845$.

Stage 5 = Subset of penalty trial cases resulting in the imposition of a death sentence (N = 76). The conditional probability of a death sentence being imposed given a death eligible case is $76/1311 = 0.058$. The conditional probability of a death sentence being imposed given a death notice that sticks is $76/213 = 0.357$. Finally, the conditional probability of a death sentence being imposed given a penalty trial is $76/180 = 0.422$.

Figure 2
Offender Race Distribution



Notes:

Stage 1 = Universe of death eligible cases in Maryland from July 1, 1978 to December 31, 1999 (N = 1,311). There is no information about the race of the defendant in 20 (1.5%) of the cases.

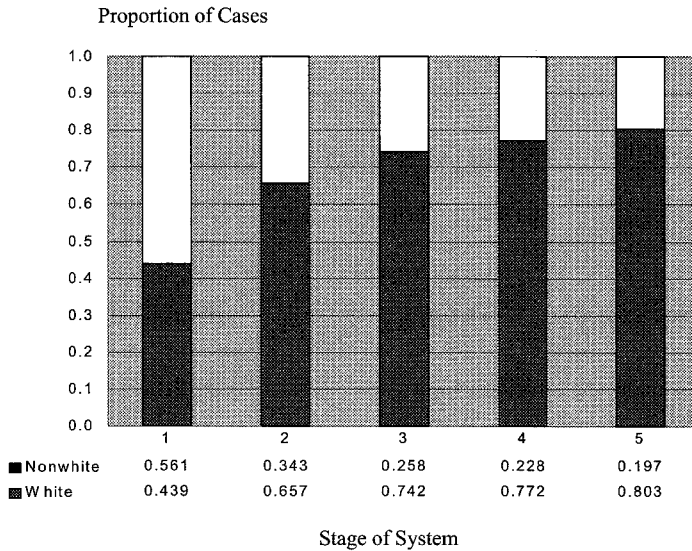
Stage 2 = Subset of death eligible cases where the prosecutor files notice of intent to seek the death penalty (N = 353). The defendant's race is unknown in 1 case.

Stage 3 = Subset of death-noticed cases where the prosecutor does not retract notice (i.e., the death notice "sticks.") (N = 213). The defendant's race is unknown in 1 case.

Stage 4 = Subset of cases that advance to a penalty trial (N = 180). The defendant's race is unknown in 1 case.

Stage 5 = Subset of cases reaching the penalty phase resulting in the imposition of a death sentence (N = 76). The defendant's race is observed for all 76 cases.

Figure 3
Victim Race Distribution



Notes:

Stage 1 = Universe of death eligible cases in Maryland from July 1, 1978 to December 31, 1999 (N = 1,311). There is no information about the race of victim in 64 (4.9%) of the cases. The case is considered a "white victim case" if at least one white person is killed (in 12 cases at least one white and at least one black were killed; these cases are considered "white" because at least one white person was killed). The nonwhite victim group (i.e., cases with no white victims) is comprised mainly of cases with at least one black victim (N = 649; 92.7%).

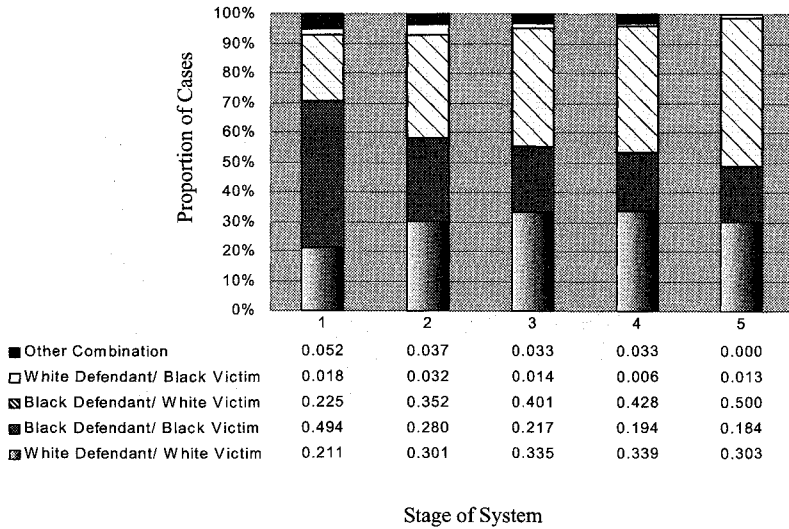
Stage 2 = Subset of death eligible cases where the prosecutor files notice of intent to seek the death penalty (N = 353). The victim's race is unknown in 3 (0.9%) of the 353 cases. The nonwhite victim group is comprised mainly of cases with at least one black victim (N = 109; 90.8%).

Stage 3 = Subset of death-noticed cases where the prosecutor does not retract notice (i.e., the death notice "sticks.") (N = 213). The nonwhite victim group is comprised mainly of cases with at least one black victim (N = 49; 89.1%).

Stage 4 = Subset of cases that advance to a penalty trial (N = 180). The nonwhite victim group is comprised mainly of cases with at least one black victim (N = 36; 87.8%).

Stage 5 = Subset of cases reaching the penalty phase resulting in the imposition of a death sentence (N = 76). The victim's race is observed for all 76 cases. The nonwhite victim group is comprised entirely of cases with at least one black victim (N = 15).

Figure 4
Joint Offender-Victim Race Distribution



Notes:

Stage 1 = Universe of death eligible cases in Maryland from July 1, 1978 to December 31, 1999 (N = 1,311). Either the race of the victim or the defendant is unknown in 84 (6.4%) of the cases.

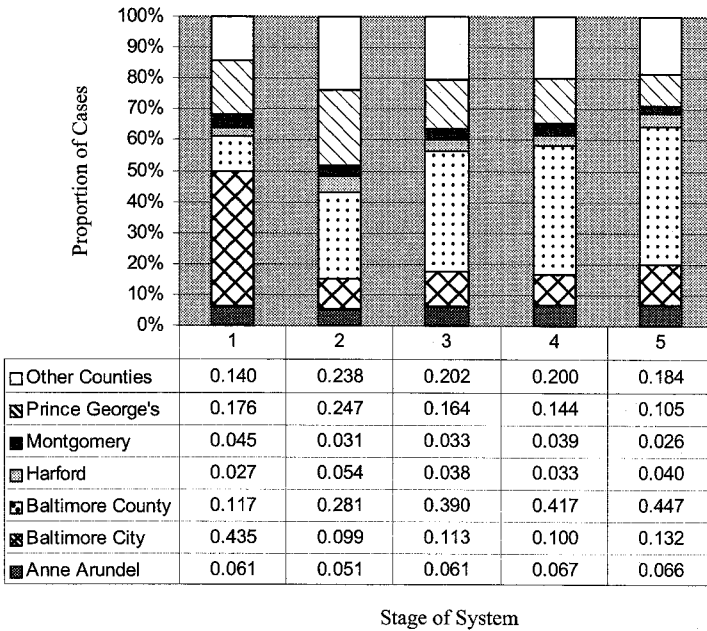
Stage 2 = Subset of death eligible cases where the prosecutor files notice of intent to seek the death penalty (N = 353). Either the race of the victim or the defendant is unknown in 4 of these 353 (1.1%) cases.

Stage 3 = Subset of death-noticed cases where the prosecutor does not retract notice (i.e., the death notice “sticks.”) (N = 213). Either the race of the victim or the defendant is unknown in 1 of these cases.

Stage 4 = Subset of cases advancing to a penalty trial (N = 180). Both the race of the victim and the defendant are observed for all 180 cases.

Stage 5 = Subset of cases reaching the penalty phase resulting in the imposition of a death sentence (N = 76). Both the race of the victim and the defendant are observed for all 76 cases.

Figure 5
County Contributions to Each Stage of the Maryland Death Penalty System



Notes:

Stage 1 = Universe of death eligible cases in Maryland from July 1, 1978 to December 31, 1999 (N = 1,311). The county in which the charge is brought is unknown in six of these cases. For all subsequent stages there is no missing county information.

Stage 2 = Subset of death eligible cases where the prosecutor files notice of intent to seek the death penalty (N = 353).

Stage 3 = Subset of death-noticed cases where the prosecutor does not retract notice (i.e., the death notice "sticks.") (N = 213).

Stage 4 = Subset of cases advancing to a penalty trial (N = 180).

Stage 5 = Subset of cases reaching the penalty phase resulting in the imposition of a death sentence (N = 76).

Table 1
List of Covariates Used For Statistical Analysis

Covariates Studied For Universe of Death Eligible Cases (N = 1,202)	Mean/Proportion
1. Number of prior violent felony convictions (0,1,2,3+)	0.558
2. Multiple victim case	0.183
3. Any of the victims a stranger to defendant	0.414
4. Any of the victims has a criminal history	0.083
5. Defendant has a history of alcohol abuse	0.339
6. Defendant has a history of drug abuse	0.506
7. Defendant has history of mental illness/emotional problems	0.217
8. Defendant under age 21 at time of offense	0.265
9. Defendant over age 60	0.005
10. Defendant unable to control conduct due to alcohol/drugs	0.289
11. Defendant unable to control conduct due to mental/emotional problems	0.127
12. Defendant under control/influence of another person	0.080
13. Defendant's participation in crime was minor	0.022
14. Defendant claims killing was accidental	0.067
15. Defendant was physically abused as a child	0.113
16. Defendant was sexually abused as a child	0.043
17. Defendant had generally good character	0.075
18. Defendant had trouble in school	0.504
19. Defendant had trouble holding a job	0.385
20. Defendant has history of physical abuse as a child	0.116
21. Defendant has history of sexual abuse as a child	0.043
22. Defendant has spouse and/or family	0.285
23. Defendant admitted crime	0.334
24. Defendant expressed remorse for crime	0.126
25. Defendant has history of mental illness/emotional problems	0.205
26. Defendant has history of drug or alcohol use/abuse	0.512
27. Defendant has an organic brain disorder	0.027
28. Defendant maintains innocence	0.427
29. Defendant has no major criminal history	0.240
30. Defendant aided or assisted the victim	0.004
31. Defendant surrendered within 24 hours	0.032
32. Defendant was not the actual killer	0.037
33. Defendant lay in wait for/ambushed the victim	0.363
34. Defendant showed no remorse for the killing	0.116
35. Defendant expressed pleasure at the killing	0.031
36. Defendant alleged to have committed additional crimes contemporaneously	0.297
37. Defendant actively evaded arrest	0.095
38. Defendant was a fugitive for a prior violent crime	0.012
39. Defendant escaped from custody	0.017
40. Defendant implicated in other killing(s)	0.052
41. Defendant interfered with judicial process	0.017
42. Defendant has previously threatened/attempted to kill victim	0.017
43. Defendant threatened victim in front of family	0.036
44. Defendant threatened other family members	0.028
45. Defendant threatened to kill victim in advance	0.021
46. Defendant abandoned victim who might otherwise have lived	0.075
47. Defendant persisted in attack even after death was certain	0.140
48. Defendant forced his/her way into place of murder of any of the victims	0.176
49. Weapon brought to the murder scene of any of the victims	0.659
50. Any of the victims killed with a bizarre or unusual weapon	0.097

Table 1 (continued)
List of Covariates Used For Statistical Analysis

Covariates Studied For Universe of Death Eligible Cases (N = 1,202)	Mean/Proportion
51. Any of the victims forced to beg/plead for their lives	0.069
52. Any of the victims' murder planned for more than five minutes	0.282
53. Any of the victims offered no resistance to killer	0.240
54. Any of the victims not clothed or in bedclothes at time of killing	0.170
55. Any of the victims suffered multiple trauma	0.212
56. Any of the victims bound/gagged or otherwise restrained	0.121
57. Any of the victims forced to do something against their will	0.166
58. Any of the victims held hostage prior to killing	0.037
59. Any of the victims tortured or mutilated before killing	0.056
60. Any of the victims mutilated after killing	0.034
61. Any of the victims brutally clubbed, beaten, stomped on	0.146
62. Any of the victims shot more than one time	0.265
63. Any of the victims shot in the face	0.089
64. Any of the victims killed execution style	0.129
65. Defendant tried to hide or dispose of bodies of any of the victims	0.130
66. Defendant lay in wait for any of the victims	0.098
67. Any of the victims stabbed many times or had throat slashed	0.183
68. There was another victim that was injured but not killed by defendant	0.131
69. Any of the victims killed in front of another person (not co-defendant)	0.339
70. Crime scene was described as a bloody mess or particularly gruesome	0.121
71. Any of the victims' murder took a long time to complete	0.087
72. Physical details of crime are unusually repulsive/horrific	0.044
73. Any of the victims bedridden or physically handicapped	0.021
74. Any of the victims mentally/emotionally impaired	0.004
75. Any of the victims defenseless due to youth	0.057
76. Any of the victims defenseless due to advanced age	0.115
77. Any of the victims pregnant	0.009
78. Any of the victims asleep, just awakened or in bedroom	0.116
79. Any of the victims in own house when defendant intruded	0.247
80. Any of the victims defenseless due to gross size/strength disparity	0.131
81. Any of the victims defenseless due to intoxication	0.082
82. Any of the victims defenseless due to frail condition/illness	0.033
83. Any of the victims have children or grandchildren	0.225
84. Any of the victims killed after kidnapping/abduction	0.060
85. Any of the victims verbally/physically mistreated prior to killing	0.336
86. Any of the victims dismembered before killing	0.004
87. Any of the victims mutilated in some way before killing	0.030
88. Any of the victims sexually abused before killing	0.094
89. Any of the victims burned before killing	0.026
90. Defendant slapped, kicked, or punched any of the victims before death	0.165
91. Any of the victims thrown in a body of water before being killed	0.004
92. Any of the victims subjected to unknown form of abuse before killing	0.022
93. Any of the victims dismembered after being killed	0.004
94. Any of the victims mutilated after being killed	0.017
95. Any of the victims sexually abused after killing	0.018
96. Any of the victims burned after killing	0.030
97. Defendant slapped, kicked, or punched any of the victims after death	0.003
98. Any of the victims put in the trash or dump after death	0.015

Table 1 (continued)
List of Covariates Used For Statistical Analysis

Covariates Studied For Universe of Death Eligible Cases (N = 1,202)		Mean/Proportion
99.	Any of the victims thrown in a body of water after being killed	0.020
100.	Any of the victims subjected to unknown form of abuse after killing	0.008
101.	Defendant made full confession to first-degree murder to police	0.182
102.	Defendant made full confession to second-degree murder	0.063
103.	Defendant made full confession to aggravating circumstances	0.151
104.	Defendant made partial/qualified confession to first-degree murder	0.025
105.	Defendant made partial/qualified confession to second-degree murder	0.045
106.	Defendant made partial/qualified confession to aggravating circumstances	0.047
107.	One eyewitness to the event testified	0.259
108.	More than one eyewitness to the event testified	0.209
109.	Physical evidence linking defendant to the crime was present	0.256
110.	An informant or jail-house snitch testified against defendant	0.092
111.	Defense claims case is based on circumstantial evidence	0.022
112.	Defense claims state's burden of proof not met	0.020
Statutory Aggravating Factors (Death-Noticed Cases Only; N = 327)		Mean/Proportion
113.	Victim was a law enforcement officer	0.055
114.	Murder committed while defendant was in an institution	0.043
115.	Murder committed in effort to evade capture by authorities	0.037
116.	Murder committed in course of kidnapping	0.156
117.	Victim was a child under the age of 12	0.000
118.	Defendant carried out a contract killing	0.049
119.	Defendant solicited killing	0.018
120.	Defendant was serving a sentence of life imprisonment or death	0.012
121.	Multiple victim murder	0.205
122.	Murder committed along with carjacking/robbery/rape/arson	0.810
123.	Number of Statutory Aggravating Factors Present (1, 2, 3+)	1.544

Table 2
Processing of Offender Race Groups at Various Stages of Maryland Death Penalty System

Test #1

$$\left. \begin{array}{l}
 p(\text{death notice} \mid \text{death eligible offense, offender is black}) = 0.240 \\
 p(\text{death notice} \mid \text{death eligible offense, offender is not black}) = 0.368 \\
 N = 1,291 \text{ (20 Missing Cases); } \chi^2 \text{ w/1 df} = 20.259; p < .05
 \end{array} \right\} 0.240 - 0.368 = -0.128$$

Test #2

$$\left. \begin{array}{l}
 p(\text{death notice sticks} \mid \text{death notice, offender is black}) = 0.581 \\
 p(\text{death notice sticks} \mid \text{death notice, offender is not black}) = 0.631 \\
 N = 352 \text{ (1 Missing Case); } \chi^2 \text{ w/1 df} = 0.650; p > .05
 \end{array} \right\} 0.581 - 0.631 = -0.050$$

Test #3

$$\left. \begin{array}{l}
 p(\text{penalty trial} \mid \text{death notice sticks, offender is black}) = 0.852 \\
 p(\text{penalty trial} \mid \text{death notice sticks, offender is not black}) = 0.844 \\
 N = 212 \text{ (1 Missing Case); } \chi^2 \text{ w/1 df} = 0.023; p > .05
 \end{array} \right\} 0.852 - 0.844 = 0.012$$

Test #4

$$\left. \begin{array}{l}
 p(\text{death sentence} \mid \text{penalty trial, offender is black}) = 0.452 \\
 p(\text{death sentence} \mid \text{penalty trial, offender is not black}) = 0.369 \\
 N = 180; \chi^2 \text{ w/1 df} = 1.171; p > .05
 \end{array} \right\} 0.452 - 0.369 = 0.083$$

Test #5

$$\left. \begin{array}{l}
 p(\text{death sentence} \mid \text{death eligible offense, offender is black}) = 0.054 \\
 p(\text{death sentence} \mid \text{death eligible offense, offender is not black}) = 0.072 \\
 N = 1291 \text{ (20 Missing Cases); } \chi^2 \text{ w/1 df} = 1.453; p > .05
 \end{array} \right\} 0.054 - 0.072 = -0.018$$

Table 3
Processing of Victim Race Groups at Various Stages of Maryland Death Penalty System

Test #1

$$\left. \begin{array}{l} p(\text{death notice} \mid \text{death eligible offense, at least one victim is white}) = 0.421 \\ p(\text{death notice} \mid \text{death eligible offense, no white victim}) = 0.171 \\ N = 1,247 \text{ (64 Missing Cases); } \chi^2 \text{ w/1 df} = 94.311; p < .05 \end{array} \right\} 0.421 - 0.171 = 0.250$$

Test #2

$$\left. \begin{array}{l} p(\text{death notice sticks} \mid \text{death notice, at least one victim is white}) = 0.687 \\ p(\text{death notice sticks} \mid \text{death notice, no white victim}) = 0.458 \\ N = 350 \text{ (3 Missing Cases); } \chi^2 \text{ w/1 df} = 17.303; p < .05 \end{array} \right\} 0.687 - 0.458 = 0.229$$

Test #3

$$\left. \begin{array}{l} p(\text{penalty trial} \mid \text{death notice sticks, at least one victim is white}) = 0.880 \\ p(\text{penalty trial} \mid \text{death notice sticks, no white victim}) = 0.746 \\ N = 213; \chi^2 \text{ w/1 df} = 5.620; p < .05 \end{array} \right\} 0.880 - 0.746 = 0.134$$

Test #4

$$\left. \begin{array}{l} p(\text{death sentence} \mid \text{penalty trial, at least one victim is white}) = 0.439 \\ p(\text{death sentence} \mid \text{penalty trial, no white victim}) = 0.366 \\ N = 180; \chi^2 \text{ w/1 df} = 0.692; p > .05 \end{array} \right\} 0.439 - 0.366 = 0.073$$

Test #5

$$\left. \begin{array}{l} p(\text{death sentence} \mid \text{death eligible offense, at least one victim is white}) = 0.112 \\ p(\text{death sentence} \mid \text{death eligible offense, no white victim}) = 0.021 \\ N = 1,247 \text{ (64 Missing Cases); } \chi^2 \text{ w/1 df} = 43.544; p < .05 \end{array} \right\} 0.112 - 0.021 = .091$$

Table 4A
Processing of White Defendant-White Victim Cases at Various Stages of the Maryland Death Penalty System

Test #1		
$p(\text{death notice} \mid \text{death eligible offense, white defendant \& at least one white victim}) = 0.405$	}	$0.405 - 0.252 = 0.153$
$p(\text{death notice} \mid \text{death eligible offense, all other victim-offender race combinations}) = 0.252$		
$N = 1,227$ (84 Missing Cases); χ^2 w/1 df = 23.605; $p < .05$		
Test #2		
$p(\text{death notice sticks} \mid \text{death notice, white defendant \& at least one white victim}) = 0.676$	}	$0.676 - 0.578 = 0.098$
$p(\text{death notice sticks} \mid \text{death notice, all other victim-offender race combinations}) = 0.578$		
$N = 349$ (4 Missing Cases); χ^2 w/1 df = 2.976; $p > .05$		
Test #3		
$p(\text{penalty trial} \mid \text{death notice sticks, white defendant \& at least one white victim}) = 0.859$	}	$0.859 - 0.844 = 0.015$
$p(\text{penalty trial} \mid \text{death notice sticks, all other victim-offender race combinations}) = 0.844$		
$N = 212$ (1 Missing Case); χ^2 w/1 df = 0.085; $p > .05$		
Test #4		
$p(\text{death sentence} \mid \text{penalty trial, white defendant \& at least one white victim}) = 0.377$	}	$0.377 - 0.445 = -0.068$
$p(\text{death sentence} \mid \text{penalty trial, all other victim-offender race combinations}) = 0.445$		
$N = 180$; χ^2 w/1 df = 0.772; $p > .05$		
Test #5		
$p(\text{death sentence} \mid \text{death eligible case, white defendant \& at least one white victim}) = 0.089$	}	$0.089 - 0.055 = 0.034$
$p(\text{death sentence} \mid \text{death eligible case, all other victim-offender race combinations}) = 0.055$		
$N = 1,227$ (84 Cases Missing); χ^2 w/1 df = 4.078; $p < .05$		

Note: any case with at least one white victim is defined as a "white victim" case.

Table 4B
Processing of Black Defendant-Black Victim Cases at Various Stages of the Maryland Death Penalty System

Test #1	$p(\text{death notice} \mid \text{death eligible offense, black defendant \& black victim}) = 0.160$ $p(\text{death notice} \mid \text{death eligible offense, all other victim-offender race combinations}) = 0.406$ $N = 1,227$ (84 Missing Cases); χ^2 w/1 df = 90.993; $p < .05$	$0.160-0.406 = -0.246$
Test #2	$p(\text{death notice sticks} \mid \text{death eligible offense, black defendant \& black victim}) = 0.474$ $p(\text{death notice sticks} \mid \text{death eligible offense, all other victim-offender race combinations}) = 0.659$ $N = 349$ (4 Missing Cases); χ^2 w/1 df = 10.000; $p < .05$	$0.474-0.659 = -0.185$
Test #3	$p(\text{penalty trial} \mid \text{death notice sticks, black defendant \& black victim}) = 0.761$ $p(\text{penalty trial} \mid \text{death notice sticks, all other victim-offender race combinations}) = 0.874$ $N = 212$ (1 Missing Case); χ^2 w/1 df = 3.565; $p > .05$	$0.761-0.874 = -0.113$
Test #4	$p(\text{death sentence} \mid \text{penalty trial, black defendant \& black victim}) = 0.400$ $p(\text{death sentence} \mid \text{penalty trial, all other victim-offender race combinations}) = 0.428$ $N = 180$; χ^2 w/1 df = 0.089; $p > .05$	$0.400-0.428 = -0.028$
Test #5	$p(\text{death sentence} \mid \text{death eligible case, black defendant \& black victim}) = 0.023$ $p(\text{death sentence} \mid \text{death eligible case, all other victim-offender race combinations}) = 0.100$ $N = 1,227$ (84 Missing Cases); χ^2 w/1 df = 31.083; $p < .05$	$0.023-0.100 = -0.077$

Note: any case with no white victims and at least one black victim is defined as a "black victim" case.

Table 4C
Processing of Black Defendant-White Victim Cases at Various Stages of the Maryland Death Penalty System

Test #1	$p(\text{death notice} \mid \text{death eligible offense, black defendant \& white victim}) = 0.446$ $p(\text{death notice} \mid \text{death eligible offense, all other victim-offender race combinations}) = 0.238$ $N = 1,227$ (84 Missing Cases); χ^2 w/1 df = 45.475; $p < .05$	$0.446 - 0.238 = 0.208$
Test #2	$p(\text{death notice sticks} \mid \text{death eligible offense, black defendant \& white victim}) = 0.691$ $p(\text{death notice sticks} \mid \text{death eligible offense, all other victim-offender race combinations}) = 0.562$ $N = 349$ (4 Missing Cases); χ^2 w/1 df = 5.568; $p < .05$	$0.691 - 0.562 = 0.129$
Test #3	$p(\text{penalty trial} \mid \text{death notice sticks, black defendant \& white victim}) = 0.906$ $p(\text{penalty trial} \mid \text{death notice sticks, all other victim-offender race combinations}) = 0.811$ $N = 212$ (1 Missing Case); χ^2 w/1 df = 3.565; $p > .05$	$0.906 - 0.811 = 0.095$
Test #4	$p(\text{death sentence} \mid \text{penalty trial, black defendant \& white victim}) = 0.494$ $p(\text{death sentence} \mid \text{penalty trial, all other victim-offender race combinations}) = 0.369$ $N = 180$; χ^2 w/1 df = 2.803; $p > .05$	$0.494 - 0.369 = 0.125$
Test #5	$p(\text{death sentence} \mid \text{death eligible case, black defendant \& white victim}) = 0.138$ $p(\text{death sentence} \mid \text{death eligible case, all other victim-offender race combinations}) = 0.040$ $N = 1,227$ (84 Missing Cases); χ^2 w/1 df = 35.159; $p < .05$	$0.138 - 0.040 = 0.098$

Note: any case with at least one white victim is defined as a "white victim" case.

Table 4D
Processing of White Defendant-Black Victim Cases at Various Stages of the Maryland Death Penalty System

<p>Test #1</p> <p>$p(\text{death notice} \mid \text{death eligible offense, white defendant \& black victim}) = 0.500$ $p(\text{death notice} \mid \text{death eligible offense, all other victim-offender race combinations}) = 0.281$ $N = 1,227$ (84 Missing Cases); χ^2 w/1 df = 5.115; $p < .05$ Note: there are only 22 cases with a white defendant and a black victim in this test.</p>	<p>} 0.500-0.281 = 0.219</p>
<p>Test #2</p> <p>$p(\text{death notice sticks} \mid \text{death eligible offense, white defendant \& black victim}) = 0.273$ $p(\text{death notice sticks} \mid \text{death eligible offense, all other victim-offender race combinations}) = 0.618$ $N = 349$ (4 Missing Cases); χ^2 w/1 df = 5.337; $p < .05$ Note: there are only 11 cases with a white defendant and a black victim in this test.</p>	<p>} 0.273-0.624 = -0.345</p>
<p>Test #3</p> <p>$p(\text{penalty trial} \mid \text{death notice sticks, white defendant \& black victim}) = 0.333$ $p(\text{penalty trial} \mid \text{death notice sticks, all other victim-offender race combinations}) = 0.857$ $N = 212$ (1 Missing Case); χ^2 w/1 df = 6.315; $p < .05$ Note: there are only 3 cases with a white defendant and a black victim in this test.</p>	<p>} 0.333-0.857 = -0.524</p>
<p>Test #4</p> <p>$p(\text{death sentence} \mid \text{penalty trial, white defendant \& black victim}) = 1.000$ $p(\text{death sentence} \mid \text{penalty trial, all other victim-offender race combinations}) = 0.419$ $N = 180$; χ^2 w/1 df = 1.376; $p > .05$ Note: there is only one case with a white defendant and a black victim in this test.</p>	<p>} 1.0-0.419 = 0.581</p>
<p>Test #5</p> <p>$p(\text{death sentence} \mid \text{death eligible case, white defendant \& black victim}) = 0.046$ $p(\text{death sentence} \mid \text{death eligible case, all other victim-offender race combinations}) = 0.062$ $N = 1,227$ (84 Missing Cases); χ^2 w/1 df = 0.105; $p > .05$ Note: only one case with a white defendant and a black victim receives the death penalty.</p>	<p>} 0.046-0.062 = -0.016</p>

Note: any case with no white victims and at least one black victim is defined as a "black victim" case.

Table 5
County Processing Patterns at Various Stages of the Maryland Death Penalty System (N = 1,305; 6 Cases Missing)

County	Unconditional Prevalence	$p(\text{Death Notice} \text{Death Eligible Case})$	$p(\text{Notice Sticks} \text{Death Notice})$	$p(\text{Penalty Trial} \text{Notice Sticks})$	$p(\text{Death Sentence} \text{Penalty Trial})$	$p(\text{Death Sentence} \text{Death Eligible Case})$
Anne Arundel	0.061	0.228	0.722	0.923	0.417	0.063
Baltimore City	0.435	0.062	0.686	0.750	0.556	0.018
Baltimore County	0.117	0.651	0.838	0.904	0.453	0.224
Harford County	0.027	0.543	0.421	0.750	0.500	0.086
Montgomery County	0.045	0.186	0.636	1.000	0.286	0.034
Prince George's County	0.176	0.378	0.402	0.743	0.308	0.035
All Other Counties	0.140	0.459	0.512	0.837	0.389	0.077
Total Number of Cases (Not Including Cases with Missing County Information)	1,305	1,305	353	213	180	1,305
χ^2 with 6 degrees of freedom		299.436 *	45.227 *	9.083	3.856	97.478 *

* $p < .05$

Note: Missing cases affect the unconditional prevalence, $p(\text{Death Notice} | \text{Death Eligible Case})$ and $p(\text{Death Sentence} | \text{Death Eligible Case})$ calculations. The other calculations have complete county information. The unconditional prevalence statistic is calculated by dividing the number of death eligible cases in each county by the total number of cases (N = 1,305).

Table 6A
 Logistic Regression Model Estimating Effects of County on Notice Decision (N = 1,202)

Covariate	Coefficient	χ^2
Intercept	-0.635	8.94 *
Number of prior violent felony convictions	0.152	2.99
Multiple victim case	0.636	8.68 *
Any of the victims a stranger to defendant	0.626	14.14 *
Defendant has a history of alcohol abuse	-0.436	5.73 *
Defendant under age 21 at time of offense	-0.615	9.72 *
Defendant unable to control conduct due to mental/emotional problems	0.810	11.55 *
Defendant actively evaded arrest	0.449	2.92
Defendant persisted in attack even after death was certain	0.704	9.19 *
Any of the victims forced to beg/plead for their lives	0.611	3.69
Any of the victims killed execution style	0.436	3.27
Any of the victims' murder took a long time to complete	-0.691	5.39 *
Any of the victims in own house when defendant intruded	-0.307	2.54
Any of the victims defenseless due to frail condition/illness	1.511	10.76 *
Any of the victims sexually abused before killing	0.844	9.93 *
Defendant made full confession to aggravating circumstances	0.523	5.77 *
Defense claims case is based on circumstantial evidence	-0.151	0.10
County = Anne Arundel	-1.306	14.60 *
County = Baltimore City	-2.948	117.32 *
County = Baltimore County	0.565	4.78 *
County = Harford	0.076	0.03
County = Montgomery	-1.943	20.61 *
County = Prince George's	-0.409	3.02
County = Other Counties (Reference Category)	-----	
Type III Test For County Effect ($\chi^2_{(6)} = 191.92; p < .05$)		
Log-likelihood (Reduced Model; 23 Parameter Estimates)	-490.13	
Log-likelihood (Full Model; 76 Parameter Estimates)	-466.67	
Likelihood Ratio Test of Full v. Reduced Model w/53 df	46.92	NS

* $p < .05$

Table 6B
 Logistic Regression Model Estimating Effects
 of County on "Notice Sticks" Decision (N = 327)

Covariate	Coefficient	χ^2
Intercept	-0.956	8.85 *
Any prior violent felony convictions	0.631	4.14 *
Defendant has a history of alcohol abuse	0.122	0.18
Defendant maintains innocence	0.938	10.26 *
Defendant expressed pleasure at the killing	1.906	5.27 *
Defendant forced his/her way into place of murder of any of the victims	1.123	9.19 *
Any of the victims defenseless due to advanced age	0.960	4.85 *
Any of the victims defenseless due to gross size/strength disparity	-0.568	2.38
Victim was a law enforcement officer	2.911	7.40 *
County = Anne Arundel	1.036	2.75
County = Baltimore City	0.364	0.47
County = Baltimore County	1.542	15.31 *
County = Harford	0.008	0.00
County = Montgomery	0.070	0.01
County = Prince George's	-0.375	1.00
County = Other Counties (Reference Category)	-----	
Type III Test For County Effect ($\chi^2_{(6)} = 26.97; p < .05$)		
Log-likelihood (Reduced Model; 15 Parameter Estimates)	-165.67	
Log-likelihood (Full Model; 64 Parameter Estimates)	-146.91	
Likelihood Ratio Test of Full v. Reduced Model w/49 df	37.52 ^{NS}	

* $p < .05$

Table 6C
 Logistic Regression Model Estimating Effects of
 County on Whether Case Advances to a Penalty Trial (N = 198)

Covariate	Coefficient	χ^2
Intercept	-0.135	0.06
Defendant has history of mental illness/emotional problems	1.463	4.49 *
Defendant expressed remorse for crime	0.679	0.88
Defendant maintains innocence	1.842	11.74 *
Defendant alleged to have committed additional crimes contemporaneously	1.292	4.88 *
Physical evidence linking defendant to the crime was present	1.466	4.54 *
County = Anne Arundel	1.018	0.69
County = Baltimore City	0.020	0.00
County = Baltimore County	0.567	0.75
County = Harford	-0.579	0.25
County = Montgomery	-----	
County = Prince George's	-0.598	0.77
County = Other Counties (Reference Category)	-----	
Type III Test For County Effect ($\chi^2_{(5)} = 4.00; p > .05$)		
Log-likelihood (Reduced Model; 11 Parameter Estimates)	-61.00	
Log-likelihood (Full Model; 39 Parameter Estimates)	-46.53	
Likelihood Ratio Test of Full v. Reduced Model w/28 df	28.94	^{NS}

* $p < .05$

Table 6D
 Logistic Regression Model Estimating Effects of
 County on Whether Defendant Receives a Death Sentence (N = 169)

Covariate	Coefficient	χ^2
Intercept	-0.939	3.15
Multiple victim case	1.029	5.93 *
Defendant has spouse and/or family	-0.527	1.74
Defendant expressed remorse for crime	-0.886	3.40
Defendant alleged to have committed additional crimes contemporaneously	0.896	5.62 *
Any of the victims offered no resistance to killer	-0.900	4.49 *
Any of the victims bedridden or physically handicapped	0.967	1.33
Any of the victims asleep, just awakened or in bedroom	-0.791	2.57
An informant or jail-house snitch testified against defendant	1.133	4.77 *
County = Anne Arundel	0.661	0.72
County = Baltimore City	0.762	1.09
County = Baltimore County	1.046	4.18 *
County = Harford	1.090	1.31
County = Montgomery	-0.436	0.18
County = Prince George's	-0.498	0.60
County = Other Counties (Reference Category)	-----	
Type III Test For County Effect ($\chi^2_{(6)} = 8.77; p > .05$)		
Log-likelihood (Reduced Model; 15 Parameter Estimates)	-101.76	
Log-likelihood (Full Model; 40 Parameter Estimates)	-92.39	
Likelihood Ratio Test of Full v. Reduced Model w/22 df	18.75 ^{NS}	

* $p < .05$

Table 6E
 Logistic Regression Model Estimating Effects of County
 on Whether Defendant Receives A Death Sentence (N = 1,202)

Covariate	Coefficient	χ^2
Intercept	-3.992	68.92 *
Number of prior violent felony convictions	0.590	21.54 *
Multiple victim case	1.321	13.47 *
Any of the victims a stranger to defendant	0.772	6.15 *
Defendant has a history of alcohol abuse	-0.462	1.87
Defendant was physically abused as a child	0.591	2.12
Defendant was sexually abused as a child	1.608	8.99 *
Any of the victims suffered multiple trauma	-0.664	2.86
Any of the victims killed execution style	1.213	11.40 *
There was another victim that was injured but not killed by defendant	-0.594	1.45
Any of the victims sexually abused after killing	1.786	6.34 *
Defendant made full confession to aggravating circumstances	0.940	8.09 *
One eyewitness to the event testified	0.605	3.40
County = Anne Arundel	-0.155	0.07
County = Baltimore City	-2.221	17.05 *
County = Baltimore County	1.012	5.93 *
County = Harford	-0.208	0.07
County = Montgomery	-1.726	3.77
County = Prince George's	-1.184	5.07 *
County = Other Counties (Reference Category)	-----	
Type III Test For County Effect ($\chi^2_{(6)} = 56.37; p < .05$)		
Log-likelihood (Reduced Model; 19 Parameter Estimates)	-181.95	
Log-likelihood (Full Model; 75 Parameter Estimates)	-148.32	NS
Likelihood Ratio Test of Full v. Reduced Model w/56 df	67.26	

* $p < .05$

Table 6F
Estimated Outcome Probability by County (Covariates Held Constant at their Means)

County	$p(\text{death notice filed} \mid \text{death eligible case})$		$p(\text{death notice sticks} \mid \text{death notice filed})$	
	Unadjusted	Adjusted	Unadjusted	Adjusted
Anne Arundel	0.234	0.201	0.722	0.783
Baltimore City	0.055	0.046	0.643	0.648
Baltimore County	0.662	0.620	0.840	0.857
Harford	0.532	0.500	0.471	0.563
Montgomery	0.200	0.117	0.636	0.579
Prince George's	0.367	0.381	0.392	0.468
Other Counties	0.468	0.481	0.525	0.561

County	$p(\text{penalty trial} \mid \text{death notice sticks})$		$p(\text{death sentence} \mid \text{penalty trial})$	
	Unadjusted	Adjusted	Unadjusted	Adjusted
Anne Arundel	0.923	0.965	0.417	0.441
Baltimore City	0.778	0.911	0.500	0.466
Baltimore County	0.911	0.946	0.458	0.537
Harford	0.750	0.849	0.500	0.548
Montgomery	-----	-----	0.286	0.209
Prince George's	0.742	0.847	0.348	0.199
Other Counties	0.857	0.909	0.371	0.290

County	$p(\text{death sentence} \mid \text{death eligible case})$	
	Unadjusted	Adjusted
Anne Arundel	0.065	0.047
Baltimore City	0.014	0.006
Baltimore County	0.232	0.137
Harford	0.094	0.045
Montgomery	0.036	0.010
Prince George's	0.037	0.017
Other Counties	0.076	0.055

Table 7A
 Logistic Regression Model Estimating Effects of
 Defendant Race on Notice Decision (N = 1,202 - 18 Missing = 1,184)

Covariate	Coefficient	χ^2
Intercept	-0.317	1.63
Number of prior violent felony convictions	0.141	2.52
Defendant has a history of alcohol abuse	-0.320	3.08
Defendant unable to control conduct due to mental/emotional problems	0.953	16.45 *
Defendant admitted crime	-0.609	7.81 *
Defendant maintains innocence	-0.603	10.19 *
Defendant alleged to have committed additional crimes contemporaneously	0.318	2.98
Defendant actively evaded arrest	0.438	2.65
Defendant interfered with judicial process	2.014	10.04 *
Defendant persisted in attack even after death was certain	0.836	13.60 *
Any of the victims killed execution style	0.486	4.08 *
There was another victim that was injured but not killed by defendant	-0.570	3.87 *
Any of the victims killed in front of another person (not co-defendant)	0.313	2.67
Any of the victims' murder took a long time to complete	-0.413	2.17
Any of the victims in own house when defendant intruded	-0.087	0.22
Defendant made full confession to aggravating circumstances	0.866	12.89 *
Defense claims state's burden of proof not met	0.793	2.53
County = Anne Arundel	-1.349	15.13 *
County = Baltimore City	-2.951	111.96 *
County = Baltimore County	0.800	9.60 *
County = Harford	0.066	0.02
County = Montgomery	-1.471	13.25 *
County = Prince George's	-0.534	4.95 *
County = Other Counties (Reference Category)	-----	
Offender is Black (vs. Others)	0.221	1.34 ^{NS}
Log-likelihood (Reduced Model; 24 Parameter Estimates)	-496.82	
Log-likelihood (Full Model; 65 Parameter Estimates)	-474.52	
Likelihood Ratio Test of Full v. Reduced Model w/41 df	44.60 ^{NS}	

* $p < .05$

Table 7B
 Logistic Regression Model Estimating Effects of Defendant
 Race on "Notice Sticks" Decision (N = 327 - 1 Missing = 326)

Covariate	Coefficient	χ^2
Intercept	-0.257	0.50
Defendant unable to control conduct due to alcohol/drugs	0.652	4.45 *
Defendant has history of physical abuse as a child	1.166	7.59 *
Defendant admitted crime	-0.712	5.59 *
Defendant implicated in other killing(s)	-1.009	3.29
Defendant forced his/her way into place of murder of any of the victims	1.394	13.97 *
Any of the victims not clothed or in bedclothes at time of killing	-0.616	1.87
Any of the victims asleep, just awakened or in bedroom	0.725	1.65
Any of the victims thrown in a body of water after being killed	-0.850	1.39
Defense claims state's burden of proof not met	1.777	3.51
Victim was a law enforcement officer	2.890	7.23 *
County = Anne Arundel	0.938	2.15
County = Baltimore City	0.674	1.61
County = Baltimore County	1.677	18.29 *
County = Harford	-0.709	1.19
County = Montgomery	0.171	0.05
County = Prince George's	-0.391	1.04
County = Other Counties (Reference Category)	-----	
Offender is Black (vs. Others)	-0.278	0.72
Log-likelihood (Reduced Model; 18 Parameter Estimates)	-165.79	
Log-likelihood (Full Model; 51 Parameter Estimates)	-152.71	
Likelihood Ratio Test of Full v. Reduced Model w/33 df	26.16	^{NS}

* $p < .05$

Table 7C
 Logistic Regression Model Estimating Effects of Defendant
 Race on Whether Case Advances to a Penalty Trial (N = 198 - 1 Missing = 197)

Covariate	Coefficient	χ^2
Intercept	-0.356	0.35
Number of prior violent felony convictions	1.560	14.07 *
Defendant has a history of alcohol abuse	1.479	4.01 *
Defendant unable to control conduct due to alcohol/drugs	1.872	5.89 *
Defendant unable to control conduct due to mental/emotional problems	4.207	9.63 *
Defendant has spouse and/or family	1.477	4.81 *
Defendant has no major criminal history	3.435	12.55 *
Defendant tried to hide or dispose of bodies of any of the victims	-2.075	5.37 *
Murder committed in course of kidnapping	2.361	4.06 *
Offender is Black (vs. Others)	0.358	0.35
Log-likelihood (Reduced Model; 10 Parameter Estimates)	-52.84	
Log-likelihood (Full Model; 35 Parameter Estimates)	-39.58	
Likelihood Ratio Test of Full v. Reduced Model w/25 df	26.53	^{NS}

* $p < .05$

Table 7D
 Logistic Regression Model Estimating Effects of Defendant's
 Race on Whether Defendant Receives a Death Sentence (N = 169)

Covariate	Coefficient	χ^2
Intercept	-1.025	10.78 *
Number of prior violent felony convictions	0.347	5.66 *
Defendant was sexually abused as a child	0.777	2.10
Defendant implicated in other killing(s)	1.666	5.69 *
Offender is Black (vs. Others)	0.283	0.61
Log-likelihood (Reduced Model; 5 Parameter Estimates)	-106.66	
Log-likelihood (Full Model; 36 Parameter Estimates)	-94.88	
Likelihood Ratio Test of Full v. Reduced Model w/31 df	23.56	NS

* $p < .05$

Table 7E
 Logistic Regression Model Estimating Effects of Defendant's
 Race on Whether Defendant Receives a Death Sentence (N = 1,202 - 18 = 1,184)

Covariate	Coefficient	χ^2
Intercept	-4.940	81.09 *
Number of prior violent felony convictions	0.504	15.41 *
Defendant unable to control conduct due to mental/emotional problems	0.831	4.45 *
Defendant alleged to have committed additional crimes contemporaneously	0.921	8.19 *
Defendant interfered with judicial process	1.604	4.69 *
Any of the victims killed with a bizarre or unusual weapon	0.994	5.08 *
Any of the victims suffered multiple trauma	-0.939	4.76 *
Any of the victims killed execution style	1.027	7.94 *
Defendant tried to hide or dispose of bodies of any of the victims	1.019	6.51 *
Any of the victims killed in front of another person (not co-defendant)	0.722	4.85 *
Any of the victims have children or grandchildren	0.686	4.35 *
Any of the victims mutilated in some way before killing	1.062	2.70
Defendant slapped, kicked, or punched any of the victims before death	-1.051	4.01 *
Defendant made full confession to first-degree murder to police	-0.767	2.52
Defendant made full confession to aggravating circumstances	1.420	11.21 *
An informant or jail-house snitch testified against defendant	1.085	7.72 *
County = Anne Arundel	0.052	0.01
County = Baltimore City	-1.488	7.28 *
County = Baltimore County	1.703	15.72 *
County = Harford	0.828	1.04
County = Montgomery	-0.445	0.28
County = Prince George's	-1.007	3.33
County = Other Counties (Reference Category)	-----	
Offender is Black (vs. Others)	0.340	0.93
Log-likelihood (Reduced Model; 23 Parameter Estimates)	-179.41	
Log-likelihood (Full Model; 59 Parameter Estimates)	-160.94	
Likelihood Ratio Test of Full v. Reduced Model w/36 df	36.94	NS

* $p < .05$

Table 7F
 Estimated Outcome Probability by Defendant Race (Covariates Held Constant at their Means)

Conditional Probability	Unadjusted Estimates			Adjusted Estimates		
	Black Defendant	Non-Black Defendant	Difference	Black Defendant	Non-Black Defendant	Difference
$p(\text{death notice filed} \mid \text{death eligible case})$	0.242	0.368	-0.126	0.198	0.165	0.033
$p(\text{death notice sticks} \mid \text{death notice filed})$	0.581	0.647	-0.066	0.531	0.600	-0.069
$p(\text{penalty trial} \mid \text{death notice sticks})$	0.861	0.853	0.008	0.970	0.957	0.013
$p(\text{death sentence} \mid \text{penalty trial})$	0.457	0.359	0.098	0.444	0.376	0.068
$p(\text{death sentence} \mid \text{death eligible case})$	0.055	0.073	-0.018	0.019	0.014	0.005

Table 8A
 Logistic Regression Model Estimating Effects of
 Victim Race on Notice Decision (N = 1,202 - 54 Missing = 1,148)

Covariate	Coefficient	χ^2
Intercept	-0.756	9.52 *
Any of the victims a stranger to defendant	0.416	5.89 *
Defendant has a history of alcohol abuse	-0.477	6.69 *
Defendant under age 21 at time of offense	-0.642	10.47 *
Defendant unable to control conduct due to mental/emotional problems	0.827	11.93 *
Defendant had trouble holding job	0.279	2.71
Defendant admitted crime	-0.286	1.97
Defendant implicated in other killing(s)	0.769	4.60 *
Defendant persisted in attack even after death was certain	0.590	6.44 *
Any of the victims forced to beg/plead for life	0.788	6.18 *
Any of the victims killed execution style	0.605	6.44 *
Murder took a long time to complete	-0.820	7.59 *
Any of the victims defenseless because of size/strength disparity	0.739	9.19 *
Any of the victims have children or grandchildren	-0.272	2.09
Defendant made full confession to aggravating circumstances	0.679	7.67 *
County = Anne Arundel	-1.289	13.92 *
County = Baltimore City	-2.749	96.40 *
County = Baltimore County	0.489	3.65
County = Harford	-0.087	0.04
County = Montgomery	-1.542	13.64 *
County = Prince George's	-0.105	0.18
County = Other Counties (Reference Category)	-----	
Victim is White (vs. Others)	0.669	12.31 *
Log-likelihood (Reduced Model; 22 Parameter Estimates)	-476.88	
Log-likelihood (Full Model; 62 Parameter Estimates)	-463.16	
Likelihood Ratio Test of Full v. Reduced Model w/40 df	27.44	NS

* $p < .05$

Table 8B
 Logistic Regression Model Estimating Effects of
 Victim Race on "Notice Sticks" Decision (N = 327 - 1 Missing = 326)

Covariate	Coefficient	χ^2
Intercept	-1.952	16.68 *
Any of the victims has a criminal history	-1.298	3.08
Any of the victims killed execution style	1.202	8.92 *
Any of the victims killed in front of another person (not co-defendant)	0.657	4.39 *
Any of the victims defenseless due to advanced age	0.854	3.94 *
Any of the victims asleep or just awakened at time of attack	0.660	2.39
Any of the victims defenseless due to gross size/strength disparity	-0.746	3.95 *
Defendant slapped, kicked, or punched any of the victims before death	0.780	4.26 *
Number of Statutory Aggravating Circumstances	0.569	6.95 *
County = Anne Arundel	1.722	5.60 *
County = Baltimore City	0.882	2.75
County = Baltimore County	1.483	14.92 *
County = Harford	-1.138	3.16
County = Montgomery	-0.100	0.02
County = Prince George's	-0.413	1.23
County = Other Counties (Reference Category)	-----	
Victim is White (vs. Others)	1.017	10.68 *
Log-likelihood (Reduced Model; 16 Parameter Estimates)	-171.84	
Log-likelihood (Full Model; 42 Parameter Estimates)	-153.41	
Likelihood Ratio Test of Full v. Reduced Model w/26 df	36.86	NS

* $p < .05$

Table 8C
 Logistic Regression Model Estimating Effects of Victim Race
 on Whether Case Advances to a Penalty Trial (N = 198)

Covariate	Coefficient	χ^2
<u>Version #1</u>		
Intercept	0.569	2.26
Any of the victims a stranger to defendant	0.988	4.83 *
Any of the victims killed execution style	1.023	2.35
Victim is White (vs. Others)	0.837	3.40
Log-likelihood (Reduced Model; 4 Parameter Estimates)	-75.45	
Log-likelihood (Full Model; 25 Parameter Estimates)	-62.29	
Likelihood Ratio Test of Full v. Reduced Model w/21 df	26.32	NS
<u>Version #2</u>		
Intercept	0.803	5.19
Any of the victims a stranger to defendant	1.088	5.97 *
Victim is White (vs. Others)	0.667	2.29
Log-likelihood (Reduced Model; 3 Parameter Estimates)	-76.85	
Log-likelihood (Full Model; 25 Parameter Estimates)	-62.29	
Likelihood Ratio Test of Full v. Reduced Model w/22 df	29.13	NS

* $p < .05$

Table 8D
 Logistic Regression Model Estimating Effects
 of Victim Race on Whether A Death Sentence Is Imposed (N = 169)

Covariate	Coefficient	χ^2
<u>Version #1</u>		
Intercept	-0.781	3.82
Any of the victims a stranger to defendant	0.279	0.68
Defendant implicated in other killings	1.685	5.70 *
Victim is White (vs. Others)	0.206	0.24
Log-likelihood (Reduced Model; 4 Parameter Estimates)	-110.83	
Log-likelihood (Full Model; 30 Parameter Estimates)	-101.61	
Likelihood Ratio Test of Full v. Reduced Model w/26 df	18.44	NS
<u>Version #2</u>		
Intercept	-0.676	3.21
Defendant implicated in other killings	1.754	6.29 *
Victim is White (vs. Others)	0.285	0.48
Log-likelihood (Reduced Model; 3 Parameter Estimates)	-111.18	
Log-likelihood (Full Model; 30 Parameter Estimates)	-101.61	
Likelihood Ratio Test of Full v. Reduced Model w/27 df	19.14	NS

* $p < .05$

Table 8E
 Logistic Regression Model Estimating Effects of Defendant's
 Race on Whether Defendant Receives a Death Sentence (N = 1,202 - 54 = 1,148)

Covariate	Coefficient	χ^2
Intercept	-4.889	67.46 *
Any of the victims a stranger to defendant	0.419	1.71
Defendant has a history of alcohol abuse	-1.167	9.14 *
Defendant has a history of drug abuse	0.846	5.77 *
Defendant was sexually abused as a child	2.131	18.98 *
Defendant implicated in other killing(s)	1.115	4.71 *
Defendant forced his/her way into place of murder of any of the victims	1.054	10.16 *
Any of the victims suffered multiple trauma	-1.340	8.82 *
Any of the victims killed execution style	1.250	11.14 *
Defendant tried to hide or dispose of bodies of any of the victims	1.196	9.20 *
Crime scene was described as a bloody mess or particularly gruesome	0.860	3.70
Any of the victims' murder took long time to complete	-1.234	4.55 *
Any of the victims mutilated in some way before killing	1.042	2.61
Any of the victims sexually abused after killing	1.723	4.72 *
Defendant made full confession to first-degree murder to police	-0.859	3.39
Defendant made full confession to aggravating circumstances	1.455	11.77 *
One eyewitness to the event testified	0.908	7.24 *
County = Anne Arundel	-0.019	0.00 *
County = Baltimore City	-1.564	7.21 *
County = Baltimore County	0.822	3.60
County = Harford	-0.295	0.14
County = Montgomery	-1.436	2.50
County = Prince George's	-0.991	2.94
County = Other Counties (Reference Category)	-----	
Victim is White (vs. Others)	1.317	10.68 *
Log-likelihood (Reduced Model; 24 Parameter Estimates)	-172.70	
Log-likelihood (Full Model; 60 Parameter Estimates)	-155.82	
Likelihood Ratio Test of Full v. Reduced Model w/36 df	33.76	NS

* $p < .05$

Table 8F
 Stepwise Logistic Regression Model Estimating Effects of Defendant's
 Race on Whether Defendant Receives a Death Sentence (N = 1,202 - 54 = 1,148)

Covariate	Coefficient	χ^2
Intercept	-5.750	77.79*
Number of prior violent felony convictions	0.779	25.51*
Multiple victim case	1.775	23.14*
Any of the victims a stranger to defendant	0.672	3.94*
Defendant has history of sexual abuse as a child	1.322	7.46*
Defendant has no major criminal history	0.724	3.20
Defendant expressed pleasure at the killing	2.374	21.88*
Defendant alleged to have committed additional crimes contemporaneously	0.752	7.05*
Defendant forced his/her way into place of murder of any of the victims	0.916	7.53*
Defendant tried to hide or dispose of bodies of any of the victims	0.784	4.28*
Any of the victims defenseless due to advanced age	0.752	3.67
Defendant slapped, kicked, or punched any of the victims before death	-1.610	8.43*
County = Anne Arundel	0.737	1.34
County = Baltimore City	-1.595	7.03*
County = Baltimore County	1.379	9.49*
County = Harford	0.550	0.48
County = Montgomery	-0.953	1.05
County = Prince George's	-0.668	1.29
County = Other Counties (Reference Category)	-----	
Victim is White (vs. Others)	0.644	2.62
Log-likelihood (18 Parameters)	-163.28	

* $p < .05$

Table 8G
 Estimated Outcome Probability by Victim Race (Covariates Held Constant at their Means)

Conditional Probability	Unadjusted Estimates			Adjusted Estimates		
	White Victim	Nonwhite Victim	Difference	White Victim	Nonwhite Victim	Difference
$p(\text{death notice filed} \mid \text{death eligible case})$	0.431	0.169	0.262	0.254	0.149	0.105
$p(\text{death notice sticks} \mid \text{death notice filed})$	0.691	0.440	0.251	0.729	0.492	0.237
$p(\text{penalty trial} \mid \text{death notice sticks})$	0.887	0.750	0.137			
Version #1				0.899	0.793	0.106
Version #2				0.889	0.805	0.084
$p(\text{death sentence} \mid \text{penalty trial})$	0.421	0.417	0.004			
Version #1				0.432	0.382	0.050
Version #2				0.417	0.368	0.049
$p(\text{death sentence} \mid \text{death eligible case})$	0.111	0.023	0.088			
Version #1				0.031	0.009	0.022
Version #2				0.018	0.009	0.009

Table 9A
 Logistic Regression Model Estimating Effects of Defendant and
 Victim Race on Notice Decision (N = 1,202 - 72 Missing = 1,130)

Covariate	Coefficient	χ^2
Intercept	0.443	2.11
Number of prior violent felony convictions (0,1,2,3+)	0.214	4.72 *
Multiple victim case	0.799	10.88 *
Any of the victims a stranger to defendant	0.429	5.34 *
Defendant has a history of alcohol abuse	-0.410	4.63 *
Defendant under age 21	-0.597	8.37 *
Defendant unable to control conduct due to mental/emotional problems	0.884	13.20 *
Defendant admitted crime	-0.608	6.79 *
Defendant maintains innocence	-0.619	9.47 *
Defendant has no major criminal history	0.491	5.40 *
Defendant actively evaded arrest	0.515	3.64
Defendant implicated in other killing(s)	0.822	4.83 *
Defendant persisted in attack even after death was certain	0.673	7.72 *
Any of the victims forced to beg/plead for their lives	0.697	4.38 *
Any of the victims killed execution style	0.436	2.84
Any of the victims killed in presence of another person (not co-defendant)	-0.183	0.79
Any of the victims' murder took a long time to complete	-0.870	8.49 *
Any of the victims have children or grandchildren	-0.311	2.38
Any of the victims physically/verbally mistreated prior to killing	0.535	8.23 *
Defendant made full confession to aggravating circumstances	0.559	4.72 *
County = Anne Arundel	-1.309	13.52 *
County = Baltimore City	-2.881	97.65 *
County = Baltimore County	0.439	2.72
County = Harford	-0.189	0.18
County = Montgomery	-1.922	18.67 *
County = Prince George's	-0.312	1.42
County = Other Counties (Reference Category)	-----	
White Defendant - White Victim	-0.786	10.21 *
Black Defendant - Black Victim	-1.122	22.16 *
Other Combinations	-0.904	6.70 *
Black Defendant - White Victim (Reference Category)	-----	
Type III Test For Effect of Defendant-Victim Race: $\chi^2_{(3)} = 23.83; p < .05$		
Log-likelihood (Reduced Model; 29 Parameter Estimates)	-454.43	
Log-likelihood (Full Model; 76 Parameter Estimates)	-437.66	
Likelihood Ratio Test of Full v. Reduced Model w/47 df	33.54	NS

* $p < .05$

Table 9B

Logistic Regression Model Estimating Effects of Defendant and Victim Race on the "Notice Sticks" Decision (N = 327 - 2 Missing = 325)

Covariate	Coefficient	χ^2
Intercept	-0.286	0.61
Number of prior violent felony convictions	0.266	3.24
Defendant admitted crime	-0.696	5.25 *
Defendant forced his/her way into place of murder of any of the victims	1.270	10.11 *
Any of the victims not clothed or in bedclothes at time of killing	-0.371	1.04
Any of the victims killed execution style	0.753	2.85
Crime scene was described as a bloody mess or particularly gruesome	-0.230	0.31
Defendant slapped, kicked, or punched any of the victims before death	0.802	3.52
Any of the victims burned after killing	2.054	5.03 *
Victim was a law enforcement officer	3.436	8.93 *
County = Anne Arundel	1.617	6.13 *
County = Baltimore City	1.240	4.93 *
County = Baltimore County	1.806	20.21 *
County = Harford	-0.620	0.90
County = Montgomery	-0.025	0.00
County = Prince George's	-0.325	0.67
County = Other Counties (Reference Category)		
White Defendant - White Victim	0.223	0.37
Black Defendant - Black Victim	-0.972	6.48 *
Other Combinations	-1.285	4.11 *
Black Defendant - White Victim (Reference Category)	-----	
Type III Test For Effect of Defendant-Victim Race: $\chi^2_{(3)} = 12.80; p < .05$		
Log-likelihood (Reduced Model; 19 Parameter Estimates)	-161.99	
Log-likelihood (Full Model; 50 Parameter Estimates)	-148.62	NS
Likelihood Ratio Test of Full v. Reduced Model w/31 df	26.73	

* $p < .05$

Table 9C
 Stepwise Logistic Regression Model Estimating Effects of Defendant and
 Victim Race on the "Notice Sticks" Decision (N = 327 - 3 Missing = 324)

Covariate	Coefficient	χ^2
Intercept	-0.679	3.60
Defendant has history of physical abuse as a child	1.009	6.76 *
Defendant maintains innocence	0.953	10.68 *
Defendant forced his/her way into place of murder of any of the victims	1.201	11.04 *
Victim was a law enforcement officer	2.766	6.68 *
County = Anne Arundel	1.214	3.53
County = Baltimore City	0.852	2.77
County = Baltimore County	1.518	15.06 *
County = Harford	-0.350	0.31
County = Montgomery	-0.009	0.00
County = Prince George's	-0.201	0.28
County = Other Counties (Reference Category)	-----	
White Defendant - White Victim	0.090	0.07
Black Defendant - Black Victim	-0.612	2.93
Other Combinations	-0.857	1.96
Black Defendant - White Victim (Reference Category)	-----	
Type III Test For Effect of Defendant-Victim Race: $\chi^2_{(3)} = 5.638; p > .05$		

* $p < .05$

Table 9D
Logistic Regression Model Estimating Effects of Defendant and
Victim Race on Whether Case Advances to a Penalty Trial (N = 198 - 1 Missing = 197)

Covariate	Coefficient	χ^2
Intercept	-1.153	0.96
Any prior violent felony convictions	1.922	8.26 *
Any of the victims a stranger to defendant	1.677	7.62 *
Defendant unable to control conduct due to mental/emotional problems	3.364	7.63 *
Defendant has spouse and/or family	1.241	3.56
Defendant has history of drug or alcohol use/abuse	0.788	1.64
Defendant has no major criminal history	2.402	10.67 *
Defendant tried to hide or dispose of bodies of any of the victims	-0.846	1.42
Any of the victims' murder took a long time to complete	-1.887	4.12 *
White Defendant - White Victim	-0.036	0.00
Black Defendant - Black Victim	-0.013	0.00
Black Defendant - White Victim	1.082	0.77
Other Combinations (Reference Category)	-----	
Type III Test For Effect of Defendant-Victim Race: $\chi^2_{(3)} = 3.19; p > .05$		
Log-likelihood (Reduced Model; 12 Parameter Estimates)	-50.12	
Log-likelihood (Full Model; 41 Parameter Estimates)	-36.00	
Likelihood Ratio Test of Full v. Reduced Model w/29 df	28.24	^{NS}

* $p < .05$

Table 9E
 Logistic Regression Model Estimating Effects of Defendant
 and Victim Race on Whether Death Sentence is Imposed (N = 169)

Covariate	Coefficient	χ^2
Intercept	-2.308	4.07 *
Any prior violent felony convictions	0.565	2.75
Any of the victims a stranger to defendant	0.373	0.99
Defendant was sexually abused as a child	0.901	2.74
Defendant implicated in other killing(s)	1.557	4.71 *
White Defendant - White Victim	1.113	0.96
Black Defendant - Black Victim	1.449	1.49
Black Defendant - White Victim	1.441	1.66
Other Combinations (Reference Category)	-----	
Type III Test For Effect of Defendant-Victim Race: $\chi^2_{(3)} = 2.25; p > .05$		
Log-likelihood (Reduced Model; 8 Parameter Estimates)	-106.35	
Log-likelihood (Full Model; 43 Parameter Estimates)	-89.95	
Likelihood Ratio Test of Full v. Reduced Model w/35 df	32.80 ^{NS}	

* $p < .05$

Table 9F
 Logistic Regression Model Estimating Effects of Defendant and
 Victim Race on Imposition of Death Sentence (N = 1,202 - 72 Missing = 1,130)

Covariate	Coefficient	χ^2
Intercept	-3.761	42.15 *
Number of prior violent felony convictions	0.519	15.17 *
Multiple victim case	1.287	10.81 *
Any of the victims a stranger to defendant	0.400	1.39
Defendant was sexually abused as a child	1.966	16.54 *
Defendant implicated in other killing(s)	0.995	3.93 *
Defendant forced his/her way into place of murder of any of the victims	1.004	9.27 *
Any of the victims' murder(s) planned for more than five minutes	0.361	1.12
Any of the victims suffered multiple trauma	-0.813	3.71
Any of the victims killed execution style	0.994	6.34 *
Another victim injured but not killed	-0.610	1.37
Any of the victims sexually abused after killing	1.112	1.89
Any of the victims thrown in water after death	1.268	2.31
Defendant made full confession to aggravating circumstances	0.983	8.46 *
One eyewitness to the event testified	0.779	5.18 *
County = Anne Arundel	0.180	0.08
County = Baltimore City	-1.962	8.26 *
County = Baltimore County	1.038	5.50 *
County = Harford	0.074	0.01
County = Montgomery	-1.534	2.37
County = Prince George's	-0.855	2.17
County = Other Counties (Reference Category)	-----	
White Defendant - White Victim	-0.937	5.45 *
Black Defendant - Black Victim	-1.302	8.56 *
Other Combinations	-2.050	3.61
Black Defendant - White Victim (Reference Category)	-----	
Type III Test For Effect of Defendant-Victim Race: $\chi^2_{(3)} = 12.06; p < .05$		
Log-likelihood (Reduced Model; 24 Parameter Estimates)	-168.05	
Log-likelihood (Full Model; 75 Parameter Estimates)	-141.51	
Likelihood Ratio Test of Full v. Reduced Model w/51 df	53.07	NS

* $p < .05$

Table 9G
 Estimated Outcome Probability by Defendant-Victim Race Groups

Group	$p(\text{death notice filed} \mid \text{death eligible case})$		$p(\text{death notice sticks} \mid \text{death notice filed}) (1)$	
	Unadjusted	Adjusted	Unadjusted	Adjusted
White D - White V	0.411	0.187	0.677	0.768
Black D - Black V	0.157	0.141	0.443	0.500
Black D - White V	0.463	0.336	0.699	0.726
Other Combinations	0.279	0.170	0.455	0.423

Group	$p(\text{death notice sticks} \mid \text{death notice filed}) (2)$		$p(\text{penalty trial} \mid \text{death notice sticks})$	
	Unadjusted	Adjusted	Unadjusted	Adjusted
White D - White V	0.677	0.715	0.870	0.925
Black D - Black V	0.443	0.555	0.769	0.927
Black D - White V	0.699	0.697	0.911	0.974
Other Combinations	0.455	0.494	0.700	0.928

Group	$p(\text{death sentence} \mid \text{penalty trial})$		$p(\text{death sentence} \mid \text{death eligible case})$	
	Unadjusted	Adjusted	Unadjusted	Adjusted
White D - White V	0.367	0.377	0.089	0.017
Black D - Black V	0.467	0.459	0.025	0.012
Black D - White V	0.472	0.457	0.139	0.041
Other Combinations	0.143	0.166	0.013	0.006

Table 10
 Estimated Race-of-Victim Effects Among Death-Noticed Cases on Likelihood of Receiving a Death Sentence (N = 326)

Parameter	Model 1		Model 2		Model 3		Model 4	
	Coefficient	χ^2	Coefficient	χ^2	Coefficient	χ^2	Coefficient	χ^2
Intercept	-1.835	43.57 *	-2.524	35.52 *	-2.072	25.60 *	-2.803	28.92 *
Anne Arundel					0.758	1.54	0.696	1.25
Baltimore City					0.654	1.49	0.630	1.34
Baltimore County					0.992	7.02 *	0.972	6.64 *
Harford					0.086	0.01	-0.227	0.10
Montgomery					0.052	0.00	-0.158	0.03
Prince George's					-0.357	0.53	-0.404	0.66
Other								
White Victim	0.779	5.99 *	0.762	5.65 *	0.559	2.71	0.545	2.52
Odds Multiplier	2.180		2.143		1.749		1.724	
# of Statutory Aggravating Circumstances (1,2,3+)			0.436	5.21 *			0.489	5.96 *

* $p < .05$

Table 11
 Estimated Black Defendant-White Victim Effects Among Death-Noticed Cases on Likelihood of Receiving a Death Sentence (N = 325)

Parameter	Model 1		Model 2		Model 3		Model 4	
	Coefficient	χ^2	Coefficient	χ^2	Coefficient	χ^2	Coefficient	χ^2
Intercept	-1.554	73.75 *	-2.222	37.71 *	-1.832	32.27 *	-2.572	31.84 *
Anne Arundel					0.631	1.06	0.572	0.84
Baltimore City					0.462	0.74	0.439	0.65
Baltimore County					0.957	6.48 *	0.941	6.17 *
Harford					0.096	0.02	-0.235	0.10
Montgomery					-0.119	0.02	-0.353	0.16
Prince George's					-0.485	1.01	-0.531	1.19
Other					-----			
Black D Kills White V	0.711	6.75 *	0.686	6.19 *	0.585	4.21 *	0.579	4.02 *
Odds Multiplier	2.036		1.986		1.795		1.784	
# of Statutory Aggravating Circumstances (1,2,3+)			0.422	4.94 *			0.489	5.91 *

* $p < .05$

Table 12
 Estimated Effects of Charging County and White Victim on Death Notices
 and Death Sentences Among the Universe of Death Eligible Cases (N = 1,148)

Parameter	Death Notice Logistic Regression Models				Death Sentence Logistic Regression Models			
	Without County Controls		With County Controls		Without County Controls		With County Controls	
	Coefficient	χ^2	Coefficient	χ^2	Coefficient	χ^2	Coefficient	χ^2
Intercept	-1.591	229.19 *	-0.550	7.56 *	-3.736	204.50 *	-3.194	62.54 *
Anne Arundel			-1.122	12.67 *			-0.183	0.11
Baltimore City			-2.454	89.88 *			-1.345	7.27 *
Baltimore County			0.683	8.17 *			1.216	11.87 *
Harford			0.130	0.11			0.134	0.04
Montgomery			-1.104	8.46 *			-0.549	0.49
Prince George's			-0.082	0.13			-0.340	0.51
Other (Reference Category)			-----				-----	
White Victim	1.311	89.86 *	0.697	17.17 *	1.657	31.06 *	0.943	8.15 *
Odds Multiplier	3.711		2.008		5.242		2.568	
Estimated $p(\text{Outcome} \text{White Victim})$	0.430	0.261	0.282	0.118	0.111	0.088	0.060	0.036
Estimated $p(\text{Outcome} \text{Nonwhite Victim})$	0.169		0.164		0.023		0.024	

* $p < .05$

Table 13
 Estimated Effects of Charging County and Black Defendant-White Victim on
 Death Notices and Death Sentences Among the Universe of Death Eligible Cases (N = 1,130)

Parameter	Death Notice Logistic Regression Models				Death Sentence Logistic Regression Models			
	Without County Controls		With County Controls		Without County Controls		With County Controls	
	Coefficient	χ^2	Coefficient	χ^2	Coefficient	χ^2	Coefficient	χ^2
Intercept	-1.157	215.74 *	-0.231	1.97	-3.133	348.05 *	-2.761	78.69 *
Anne Arundel			-1.143	12.70 *			-0.195	0.12
Baltimore City			-2.740	117.24 *			-1.685	12.28 *
Baltimore County			0.607	6.30 *			1.133	10.11 *
Harford			0.206	0.26			0.181	0.07
Montgomery			-1.391	13.19 *			-0.864	1.22
Prince George's			-0.372	2.86			-0.660	2.01
Other (Reference Category)			-----				-----	
Black D - White V	1.009	44.88 *	0.899	25.60 *	1.312	27.61 *	1.010	14.70 *
Odds Multiplier	2.743		2.458		3.715		2.746	
Estimated $p(\text{Outcome} \text{Black D} - \text{White V})$	0.463	0.224	0.353	0.171	0.139	0.097	0.077	0.047
Estimated $p(\text{Outcome} \text{Other Groups})$	0.239		0.182		0.042		0.030	

* $p < .05$

Table 14
 Death Notice Rates, Sentencing Rates, White Victim Case Rates, and Black Defendant-White Victim Case Rates by County

County	N =	Death Notice Rate	Death Sentence Rate	White Victim Rate	Black D-White V Rate
Anne Arundel	77	0.234 (-)	0.065 (+)	0.707 (+)	0.264 (+)
Baltimore City	510	0.055 (-)	0.014 (-)	0.234 (-)	0.157 (-)
Baltimore County	142	0.662 (+)	0.232 (+)	0.789 (+)	0.366 (+)
Harford	32	0.531 (+)	0.094 (+)	0.781 (+)	0.258 (+)
Montgomery	55	0.200 (-)	0.036 (-)	0.471 (+)	0.314 (+)
Prince George's	215	0.367 (+)	0.037 (-)	0.301 (-)	0.185 (-)
Other Counties	171	0.468 (+)	0.076 (+)	0.713 (+)	0.235 (+)
State Totals	1,202	0.272	0.059	0.439	0.216

Notes: N = represents the number of death eligible cases in the analysis database. The death notice rate is calculated by dividing the number of death noticed cases by the total number of death eligible cases. The death sentence rate is calculated by dividing the number of death sentences by the total number of death eligible cases. The white victim rate is calculated by dividing the number of death eligible cases where at least one white victim was killed by the total number of death eligible cases. The black defendant - white victim rate is calculated by dividing the total number of black defendant - white victim cases by the total number of death eligible cases. The (+) and (-) signs indicate whether the county is above average or below the state average.

