THE INTERSECTION OF VICTIM RACE AND GENDER IN CAPITAL CASES: EVIDENCE FROM THE CAPITAL JURY PROJECT

A dissertation presented

by

Alicia A. Girgenti

to

The School of Criminology and Criminal Justice

In partial fulfillment of the requirements for the degree of

Doctor of Philosophy

in the field of

Criminology and Justice Policy

Northeastern University
Boston, Massachusetts
August 2014
THE INTERSECTION OF VICTIM RACE AND GENDER IN CAPITAL CASES: EVIDENCE FROM THE CAPITAL JURY PROJECT

by

Alicia A. Girgenti

ABSTRACT OF DISSERTATION

Submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy in Criminology and Justice Policy in the College of Social Sciences and Humanities of Northeastern University

August 2014
ABSTRACT

For decades, the U.S. Supreme Court has struggled with issues surrounding the arbitrary and capricious imposition of the death penalty. One of the primary sources of concern surrounds race and the death penalty. Juries have broad discretion in their life and death decision and have the power to treat similarly-situated defendants differently because of the race of the defendant or the race of the victim. Previous research has shown that a defendant’s race is only marginally related to whether a homicide results in a death sentence; however, the race of the victim does appear to be a significant predictor of whether a jury decides to impose a death sentence. Although empirical research involving victim race has consistently found death sentencing disparities, less attention has been paid to the effects of victim gender. Past death penalty research on victim race and gender has treated these victim characteristics as distinct categories of interest. With a growing scholarly interest in the intersection of race and gender, it is important to consider the joint effect of victim race and gender in death sentencing outcomes.

This dissertation employs data from the Capital Jury Project (CJP) to examine whether the intersection of victim race and gender is associated with the greater likelihood of offenders receiving a death sentence and whether a “white female victim effect” exists within these cases. The CJP involves interviews with 1,198 capital jurors from 353 trials in 14 death penalty states and seeks to identify the sources and extent of arbitrariness in jurors’ exercise of discretion through both quantitative data and descriptive narratives. Results of a logistic regression analysis with main effects indicate that the odds of a defendant receiving a death sentence in a white victim case are 2.5 times greater than in a black victim case. In my analysis, victim race rather
than victim gender appears to be the factor most strongly influencing jury decision-making in capital cases.

The key finding of the present study pertains to the intersection of victim race and gender. Although, I initially hypothesized a “white female victim” effect, the present study reveals a strong and significant “black male victim” effect. Results of the logistic regression with interaction effects reveal that a defendant’s odds of receiving a death sentence in a white female victim case is 3.8 greater than in a black male victim case, and 3.6 times greater in a white male victims case than in a black male victim cases. Cases that involve black male victims are the least likely to be perceived by jurors as involving brutality and victim suffering. Furthermore, black male victims are perceived by jurors to be the least likely to be respected in the community and the most likely to come from poor, deprived backgrounds. They are perceived by jurors as the most likely to have a problem with drugs and alcohol, to be the most careless and reckless, and the least likely to be perceived as helpless and innocent victims. Moreover, black male victims and their families stand out as the group who receive the least empathy from juries, whom juries feel the most distance from, and who are most to blame for their own victimization. These results are a startling reminder of the enduring devaluation of the lives of black males in American society. I conclude by discussing the theoretical and policy implications of the findings, as well as recommendations for future research on intersectionality and the death penalty.
ACKNOWLEDGMENTS

In Memoriam

Alfio V. Girgenti (1950-2005)

Thank you for watching over me. I have kept you very close to my heart.

I would like to express my sincerest thanks to my dissertation chair, academic advisor, and mentor, Dr. Natasha A. Frost, for believing in me and supporting me through my entire graduate school experience. She has been an exceptional role model and friend. Without her, I would not be here and I cannot thank her enough for all she has done for me.

I would like to express my deepest gratitude and appreciation to the other members of my committee, Dr. Glenn Pierce and Dr. Bill Bowers. As esteemed death penalty scholars, their knowledge and expertise has been an invaluable resource for me. Their work and commitment to death penalty research has inspired me to continue the fight toward abolition. Dr. Bill Bowers deserves special thanks for allowing me access to the Capital Jury Project data for my analyses and for providing enthusiasm and wisdom through this lengthy process.

I would also like to thank Dr. Jack McDevitt for providing encouraging words throughout my graduate years at Northeastern. He always had a keen sense of knowing just when I needed them most.

Most importantly, I would like to thank my mom, Christine Girgenti, whose sacrifice, devotion to family, and unconditional love and understanding over the years has given me freedom to grow and to become myself. I would like to thank my brother, Aaron Girgenti for showing me that hard work builds character and that change is to be embraced rather than feared. His sense of humor has lifted my spirits many times through this process. I would like to thank
my sister, Ashley Girgenti for being my inspiration, my confidant, and my very best friend. She has been by my side through it all. She has consistently been “the wind beneath my wings” and there are no words to express my heartfelt admiration for her.

Last but certainly not least, I would like to thank Vincent Malone for providing endless emotional support through the writing process and for putting his dreams on hold so that I may accomplish mine. He encouraged me to keep going even in times of uncertainty, frustration, and doubt. He has shared with me hope for the future. Thank you for being my strength and my rock.

Thank you to all who have made this dissertation possible. I could not have done it without you.
TABLE OF CONTENTS

ABSTRACT .................................................................................................................................................. 2

ACKNOWLEDGMENTS ............................................................................................................................... 5

LIST OF TABLES .......................................................................................................................................... 10

Chapter 1: Introduction ............................................................................................................................... 12

*The Evolution of Jurisprudence around the Modern Death Penalty* .......................................................... 15

*Aggravating and Mitigating Circumstances* ............................................................................................... 18

*Evolving Standards of Decency* .................................................................................................................. 20

*Deterrence and the Death Penalty* ............................................................................................................ 24

Chapter 2: Jury Decision-Making and the Death Penalty .......................................................................... 29

*Death Qualification* ................................................................................................................................... 31

*Race and the Capital Jury* .......................................................................................................................... 38

*Empirical Evidence of the Influence of Race on Jury Decision-Making* .................................................... 38

Chapter 3: Race, Gender, & the Death Penalty ............................................................................................. 45

*McCleskey v. Kemp (1987) and the Baldus Study* ....................................................................................... 49

*The Racial Justice Act* .................................................................................................................................. 52

*Theories of Racial Discrimination in Sentencing* ....................................................................................... 54

*Gender and the Death Penalty* .................................................................................................................... 58

Chapter 4: Intersectionality ........................................................................................................................... 61

*Intersectionality in Non-Capital Cases* ....................................................................................................... 65

*“White Female Victim Effect” in Capital Cases* ......................................................................................... 69
Chapter 5: The Current Study ........................................................................................................ 76

The Data: Capital Jury Project Design ......................................................................................... 76
Purpose of the Current Study ......................................................................................................... 80
Research Questions & Hypotheses ............................................................................................... 81
  The Influence of Legally Relevant Case Characteristics .......................................................... 81
  The Influence of Jurors’ Perceptions of the Victim and Victim’s Family .................................. 82
The Creation of Additional Variables .......................................................................................... 83
  Social dynamics among jury members ...................................................................................... 85
Strengths and Limitations of the Capital Jury Project ................................................................. 88

Chapter 6: Analytic Techniques & Quantitative Analyses: Case Characteristics ....................... 92

  Descriptive Statistics of Capital Cases ...................................................................................... 92
  Chi-Square: Main Effects and Legally Relevant Case Characteristics ..................................... 94
  Chi-Square: Interaction Effects and Legally Relevant Case Characteristics .......................... 99
  Bivariate Analyses Comparing Heinousness between Groups ............................................... 106
  Logistic Regression with Case Characteristics ...................................................................... 108

Chapter 7: Juror Perceptions of the Victim and the Victim’s Family ........................................ 116

  Descriptive Statistics of Jurors .............................................................................................. 116
  Bivariate Analyses of Juror Perceptions of the Victim and the Victim’s Family ..................... 120

Chapter 8: Empathy, Distance, and Blame .................................................................................. 128

  Factor Analysis of Victim Characteristics ............................................................................. 128
  Empathy ................................................................................................................................. 130
  Distance ................................................................................................................................. 132
Blame ......................................................................................................................... 134

Logistic Regression with Victim Factors ...................................................................... 135

Chapter 9: Contribution to the Literature .................................................................... 140

Discussion of Important Findings .................................................................................. 140

Theoretical and Policy Implications .............................................................................. 146

Recommendations for Future Research ....................................................................... 150

Appendix A. Aggravating Factors in CJP States ............................................................ 153

Appendix B. Aggravating Factors Identified in the Capital Jury Project Data .................. 159

U.S. Supreme Court Cases Cited ...................................................................................... 160

References ....................................................................................................................... 161
LIST OF TABLES

Table 1: Frequencies of Variables Used in Analyses

Table 2: Chi-Square – Victim Gender by Juries’ Final Punishment Decision

Table 3: Chi-Square – Victim Race by Juries’ Final Punishment Decision

Table 4: Chi-Square – Defendant Race by Juries’ Final Punishment Decision

Table 5: Chi-Square – Defendant Prior Record by Juries’ Final Punishment Decision

Table 6: Chi-Square – Multiple Victims by Juries’ Final Punishment Decision

Table 7: Chi-Square - Victim-Offender Relationship by Juries’ Final Punishment Decision

Table 8: Chi-Square – Southern Jurisdiction by Juries’ Final Punishment Decision

Table 9: Chi-Square – Felony Murder by Juries’ Final Punishment Decision

Table 10: Chi-Square – Interaction of Victim Race-Gender by Final Punishment Decision

Table 11: Chi-Square – Interaction of Victim Race-Gender by Multiple Victim Cases

Table 12: Chi-Square – Interaction of Victim Race-Gender by Victim-Offender Relationship

Table 13: Chi-Square – Interaction of Victim Race-Gender by Felony Murder

Table 14: Chi-Square – Interaction of Victim Race-Gender by Juries’ Perception the Killing was Brutal
Table 15: Chi-Square- Interaction of Victim Race-Gender by Juries Perception the Victim Suffered

Table 16: Logistic Regression for Main Effects Predicting Death Sentence

Table 17: Logistic Regression for Interaction Effects Predicting Death Sentence

Table 18: Demographic Characteristics of Jurors

Table 19: Chi-Square – Interaction of Victim Race-Gender by Juries’ Perception Victim had Loving Family

Table 20: Chi-Square – Interaction of Victim Race-Gender by Juries’ Perception Victim’s Family Suffered Severe Loss

Table 21: Rotated Factors Matrix of Victim Characteristics- Empathy, Distance, and Blame

Table 22: Logistic Regression with Victim Factors Predicting Death Sentence
Chapter 1: Introduction

Capital punishment has been and continues to be one of the most controversial criminal justice and human rights issues in the United States and internationally. Laws, in most countries, permit lifelong incarceration for the crime of murder, but do not extend authority to the state to take an offenders’ life for committing such a crime. Currently, one hundred forty countries reject the use of the death penalty either in law or practice. Fifty-eight retain and use the death penalty; however, most do not do so with great regularity (Amnesty International 2013; Death Penalty Information Center 2014). The practice has fallen particularly out of favor among the countries that the United States would likely consider its closest allies. For example, the United Kingdom, Italy, Ireland, Belgium, and Switzerland all abolished the death penalty in the 1990’s, France and the Netherlands in the 1980’s, and Denmark, Norway, and Portugal as far back as the 1970’s (Amnesty International 2013; Death Penalty Information Center 2014). There is no country in Western Europe that currently practices capital punishment.

Many times over the past two decades, the United Nations High Commissioner on Human Rights has called for a worldwide moratorium on executions with hope that such a moratorium would lead to universal abolition (U.N. News Centre 2012). In 2001, the U.S. lost its seat on the U.N. Human Rights Commission and the Bush administration refused to join the newly established Human Rights Council in 2006 (Lynch 2009). It wasn’t until the Obama administration did the U.S. receive enough votes to re-join the Human Rights Council (United Nations Human Rights 2014). Needless to say, the United States remains one of the top five executioners in the world alongside China, Iran, Saudi Arabia, and Iraq (Amnesty International
Although the death penalty is legally authorized in a majority of states across the U.S., its actual use varies greatly. Today in the U.S., 32 states, the federal government, and the military authorize the use of the death penalty for capital crimes (Death Penalty Information Center 2014), but three-quarters of the executions in the U.S. in 2013 took place in less than a handful of states, Oklahoma, Florida, Ohio, and Texas. New Hampshire, for example, has only one inmate currently on death row (e.g. Michael Addison) and has not executed anyone since 1976, whereas together Texas and Virginia account for almost half of all executions since 1976 (Death Penalty Information Center 2014).

One of the major political and legal justifications for the use of the death penalty in the U.S. is its significant public support (Murray 2003). However, death penalty attitudes are dynamic and complex. Early social science research indicates that there is a significant gender difference in support for the death penalty, with males being more supportive of capital punishment than females (Bohm 1987). In addition, research on death penalty opinions has indicated substantial racial differences in support for capital punishment. It has been found that white Americans are generally more supportive of the death penalty than black Americans (Ellsworth & Gross 1994). In a more recent study examining the “racial divide” in support for capital punishment, Unnever and Cullen (2007) found that for white Americans, support for capital punishment increases for those who have high incomes, embrace conservative politics, express confidence in the government, and are religious fundamentalists. But for black

---

1 Until the 2005 U.S. Supreme Court’s decision in Roper v. Simmons (543 U.S. 551), which held that the Eighth and Fourteenth Amendments forbid the execution of juveniles for a crime committed under the age of 18, the U.S. was one of only seven countries known to execute juveniles (the others were Iran, Nigeria, Pakistan, Yemen, Congo, and Saudi Arabia).
Americans, increase in death penalty support is only associated with higher income and greater confidence in the government.

Furthermore, Unnever, Cullen, and Roberts (2005) found that over half of the Americans who support the death penalty do so with reservations and those who have reservations are more likely to believe innocent people have been executed and that the death penalty is applied unfairly. Although social science research on death penalty opinion indicates that death penalty support is far from universal, a recent Gallup poll conducted in May 2012 revealed that 58% of Americans still believe the death penalty is a morally acceptable form of punishment for first-degree murder (Death Penalty Information Center 2014).

This significant public support and belief in the death penalty’s moral acceptability is an important aspect of its continued use because generally speaking, public opinion has considerable influence on public policy outcomes in the United States. Pierce and Radelet (1991) argue that, in the past, politicians have found utility in the death penalty as a campaign tool to prove to the American public that they are “tough on violent crime.” They contend that politicians find it useful because the American public is so responsive to it, partly because the media sensationalizes the crime problem and partly because the death penalty suppresses citizen’s fear of violent victimization (Pierce & Radelet 1991). For example, during the 1988 presidential campaign, Republican candidate George Bush attacked Democratic candidate and then Massachusetts Governor Michael Dukakis for being “soft on crime” by running a television ad about Willie Horton. Willie Horton was a black man who raped a white woman and stabbed her fiancé while on furlough from a Massachusetts prison (New York Times Archives 1988). Another example is then Arkansas Governor Bill Clinton returned to Arkansas to oversee the
execution of Rickey Ray Rector during his 1992 Presidential campaign, in order to show the electorate that he was not “soft on crime” (Applebome 1992; Death Penalty Information Center 2014). Therefore, according to Pierce and Radelet (1991), the death penalty has become a highly effective way for politicians to manipulate political debates and public perceptions about violent crime and its appropriate punishment. This is especially concerning because public opinion has been a key factor used by the U.S. Supreme Court in determining whether executions are constitutional under the Eighth Amendment’s prohibition against cruel and unusual punishment (Soss, Langbein, & Metelko 2003).

**The Evolution of Jurisprudence around the Modern Death Penalty**

For many decades, the U.S. Supreme Court has struggled with issues surrounding the arbitrary and capricious imposition of the death penalty. In the landmark case, *Furman v. Georgia* (1972), members of the U.S. Supreme Court heard arguments in three different cases involving the death penalty for rape and murder (*Jackson v. Georgia*, no. 69-5030 and *Branch v. Texas*, no. 69-5031 were the companion cases). The majority opinion in the case is a one-page curiam declaring the death penalty unconstitutional as administered. Because the Court determined that existing statutes across the states provided no guidelines for determining who should receive the death penalty, the Court invalidated the death sentencing systems of every American jurisdiction on grounds that the existing statutes permitted juries to administer the death penalty in an arbitrary and capricious manner, which constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments (Baldus & Woodworth 1998; Bowers, Steiner, & Sandys 2001).
Each of the nine Justices appended his own separate opinion, none of which was joined by any other Justice, which is highly unusual for the Court (Steiker & Steiker 1995). The *Furman* decision included over 200 pages of concurrence and dissents from the Burger Court. In a 5-4 vote, the Court held that the imposition and carrying out of the death penalty in these three cases constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. Justice Stewart, Douglas, Brennan, White, and Marshall filed opinions in support of the judgment, while Chief Justice Burger, Justice Blackmun, Powell, and Rehnquist filed dissenting opinions. In support of the judgment, Justice Stewart concluded that unguided discretionary jury sentencing violated the Eighth Amendment because no logical basis existed to distinguish between most capital offenders, who did not receive the death penalty and the “capriciously selected random handful” that did. Justice Douglas similarly concluded that it violated the Eighth Amendment because it permitted juries to discriminate between defendants for reasons that offended equal protection. He further argued that that the discretionary capital sentencing schemes at issue in *Furman* were “pregnant with discrimination.” Only Justices Brennan and Marshall argued that the death penalty was *per se* cruel and unusual punishment in all instances. Justice Douglas, Stewart, and White left open the question of whether more structured capital sentencing procedures might someday pass constitutional scrutiny.

Within two years of the *Furman* decision, 35 states amended their statutes in an effort to address the arbitrary and discriminatory exercise of sentencing discretion in capital cases (Baldus & Woodworth 1998; Bowers, Steiner, & Sandys 2001; Latzer 2002). In responding to the *Furman* decision, a few states sought to resolve the problem of arbitrariness by making the death penalty mandatory for a narrow class of capital crimes identified in advance by the legislature.
However, the Court quickly declared mandatory capital punishment a violation of the Eighth Amendment (Woodson v. North Carolina, 428 U.S. 280, 1976; Roberts v. Louisiana, 428 U.S. 325, 1976). In striking down the mandatory provisions, the Court argued that consistency in the imposition of the death penalty would not be achieved by denying defendants their right to an individualized sentencing hearing at which “the focus is on whether this particular offender with this particular life history deserves to be put to death” (Abramson 2004: 125). Other states responded to Furman by creating guided discretion systems and these survived better under Court scrutiny.

In Gregg v. Georgia (1976) and its companion cases, Jurek v. Texas (1976), and Proffitt v. Florida (1976), the U.S. Supreme Court approved a series of state death penalty statutes on the grounds that their new procedural safeguards appeared capable of minimizing the risk of arbitrariness and discrimination in the imposition of the death penalty (Baldus & Woodworth 1998). Not all of the following procedures are required by each state in order for the death penalty to be handed down; however, examples of the new procedures either required juries to weigh aggravating and mitigating circumstances (balancing statutes) or required that the jury find at least one statutorily defined aggravating circumstance (threshold statutes) before imposing a death sentence (Baldus & Woodworth 1998). The Georgia statute approved in Gregg also required a bifurcated process where aggravating and mitigating circumstances must be proven at a separate penalty proceeding, conducted only after the defendant is found guilty of capital murder (Latzer 2002). Furthermore, the Georgia statute provided for direct appeal of a capital conviction to the state’s highest supreme court (Latzer 2002). The Court hoped the appellate process of proportionality review would guard against the constitutional concerns
presented in *Furman* by comparing each death sentence with sentences imposed on similarly situated defendants to ensure that the sentence of death in a particular case was not disproportionate or imposed because of passion or prejudice (Paternoster 1983; Steiker & Steiker 1995; Abramson 2004).

**Aggravating and Mitigating Circumstances**

As part of the automatic appeal to the highest state supreme court in cases in which a death sentence has been imposed, the highest court is also required to review the trial record to determine whether the evidence in the case supports the jury’s finding of a statutorily defined aggravating circumstance (Baldus, Woodworth, & Pulaski 1990). These aggravating circumstances are defined by state legislatures with the goal of designating in advance those offenders most deserving of death. Death penalty states have anywhere from 8 to 20 different aggravating factors defined in their statutes (see Appendix A). In most death penalty states, the prosecution must prove at least one aggravating circumstance beyond a reasonable doubt to make the defendant eligible for a death sentence. Some aggravating circumstances include the murder was especially heinous, atrocious, cruel, depraved, or involved torture; the murder was committed for pecuniary gain; the murder was committed during the course of another felony (such as robbery or rape); the defendant intentionally killed more than one person; the homicide was committed in a cold, calculated, and premeditated manner; and the victim was a government employee, including police officers, in the course of his or her duties (Death Penalty Information Center 2014). Steiker & Steiker (1995) argue that even when the aggravating circumstances are included these definitions of capital murder listed above are extraordinarily vague and broad. For example, almost all murders can be found to be committed in a cruel and depraved manner. They
suggest that “the failure of states to narrow the class of the death-eligible invites the possibility that some defendants will receive the death penalty in circumstances in which it is not deserved according to wider community standards” which results in arbitrariness— the same arbitrariness the Court was attempting to avoid by upholding the procedural safeguards established in *Gregg* (Steiker & Steiker 1995: 375).

In addition to finding one aggravating circumstance present in a case, in some states, such as in Florida, jurors must weigh aggravating circumstances against mitigating circumstances. Mitigating circumstances are those factors related to the defendant that make him or her less culpable and will help reduce the penalty a defendant receives upon conviction. Some mitigating circumstances include the murder was committed while the defendant was under extreme mental or emotional disturbance; whether the defendant acted under extreme duress or under the substantial domination of another person; the capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired; or the existence of any other factors in the defendant’s background that would mitigate against imposition of the death penalty (Lenamon 2010).

According to Steiker and Steiker (1995), this list of mitigating circumstances introduces arbitrariness in exactly the same way that the list of aggravating circumstances does – the list is so broad and so vague that almost any individual experience that sets one defendant apart from another could be considered. Furthermore, in *Lockett v. Ohio* (438 U.S. 586, 1978), the Court held that “a death penalty statute must not preclude consideration of relevant mitigating factors.” This means that during deliberation jurors can consider any mitigating factor present in the case even if it is not statutorily defined. These factors could include any aspect of a defendant’s
character or record and any circumstances of the offense offered as a reason for a sentence less than death. This decision in effect leaves open the opportunity for arbitrariness to infect the capital sentencing decision which undermines the effort to achieve equality in the imposition of the death penalty emphasized by the *Gregg* decision (Steiker & Steiker 1995).

It has been argued that even after post-*Furman* developments requiring legislatures to guide the unbridled discretion of the jury to select the few to die, by statutorily specifying both aggravating and mitigating factors, the law continues to allow the jury to freely “exercise discretionary moral judgment” over those who will live and those who will die (Abramson 2004: 120). Bowers (1983) further argues that jurors often times have difficulty replacing their socially constructed views of victims and offenders with the strictly legal considerations outlined in the *Gregg* decision, especially for crimes they find the most heinous and atrocious. Therefore, he suggests that juror understanding and interpretation of aggravating and mitigating factors in the capital sentencing decision are likely to be influenced by extralegal considerations such as race, gender, and class (Bowers 1983).

**Evolving Standards of Decency**

The U.S. Supreme Court in *Trop v. Dulles* (356 U.S. 86, 1958) decided that the Eighth Amendment contained an “evolving standard of decency that marked the progress of a maturing society.” Although *Trop* was not a death penalty case, the Court has consistently used this analysis to limit the reach of the death penalty to certain classes of offenders, such as juveniles and those with intellectual disabilities, as well as certain types of crimes such as rape that did not result in death. When the Court considers “standards of decency,” the Justices tend to look to state legislation which reflects the conscience of the community, the frequency of imposition by
juries and trial courts, the views of leading organizations knowledgeable about the issues at hand, and the laws of other countries (Streib 2003). For example, in Penry v. Lynaugh (492 U.S. 302, 1989), the Court held that the Eighth Amendment did not prohibit the execution of offenders with mental retardation. In the 5-4 Penry opinion, authored by Justice O’Connor, the Court argued that in 1989 only two states had passed laws excluding mentally retarded offenders from receiving a death sentence (Haas 2008) and therefore, there was no national consensus against imposition of a death sentence for this class of offenders. However, thirteen years later, in Atkins v. Virginia (536 U.S. 304, 2002), the Court held that the Eighth Amendment does prohibit the execution of offenders with intellectual disabilities by concluding that in the thirteen years between Penry and Atkins, the “legislative landscape had changed” and an additional 16 states adopted laws exempting the mentally retarded from execution (Haas 2008: 397; Latzer 2002). The Court argued that this direction of change along with the professional and international community’s disapproval of executing offenders with intellectual disabilities was enough to establish a consensus against such a practice.

Another example of “evolving standards of decency” is seen in the Stanford v. Kentucky (492 U.S. 361, 1989) decision, in which the Court held that the Eighth Amendment does not prohibit the death penalty for a defendant who was 16 or 17 years old at the time he committed the crime (Latzer 2002). The Court denied the petitioner’s claim that the sentencing practices of other countries are relevant to the American conception of decency by arguing that the majority of Americans did not consider the execution of juveniles to be cruel and unusual and therefore, was not unconstitutional. However, the Court found in Roper v. Simmons (543 U.S. 551, 2005) that the 1989 Stanford decision was no longer valid. Numerous state laws passed since the 1989
decision limited the use of the death penalty for minors convicted of murder which suggested that national opinion had changed. In a 5-4 opinion delivered by Justice Kennedy, the Court held that the standards of decency evolved so that executing juveniles is cruel and unusual punishment in violation of the Eighth Amendment. The Court pointed out a consensus against the juvenile death penalty among state legislatures, as well as an overwhelming international opinion against the practice.

Similarly, in *Coker v. Georgia* (433 U.S. 584, 1977), the Court held that the death penalty for the rape of an adult woman is a grossly disproportionate punishment because rape doesn’t involve the taking of another human life. Although the Court acknowledged that rape deserves serious punishment, it argued that almost all states declined to impose such a harsh penalty for rape. Because Georgia was one of the only states that authorized it, the death penalty for the rape of an adult woman constituted excessive punishment in violation of the Eighth Amendment (Latzer 2002). The issue of the crime of rape as deserving of death came before the Court again thirty years later in *Kennedy v. Louisiana* (554 U.S. 407, 2008). The Court held that the Eighth Amendment prohibits states from imposing a death sentence for the rape of a child where the rape did not result, nor intended to result, in the child’s death because there is a social consensus against it. Therefore, it is clear from the cases discussed above that the Eighth Amendment draws its meaning from the “evolving standards of decency that mark the progress of a maturing society” (which often is reflected by a national consensus) and that capital punishment should “be limited to those offenders who commit a narrow category of the most serious crimes and whose extreme culpability makes them the most deserving of execution” (Justice Kennedy, in Baird & Rosenbaum 2011: 185).
That is partially why in the United States, the “ultimate punishment” is reserved for so few “death-eligible” offenders. Death eligibility\(^2\) typically refers to cases where the legal facts are sufficient to support a capital murder conviction and death sentence, whether or not the prosecutor actually seeks a death sentence or whether the jury chooses to impose it in that particular case (Baldus & Woodworth 1998). The primary concern is that the number of those actually sentenced to death represents only a small fraction of those eligible to be executed and that those defendants chosen for capital prosecution and ultimately a death sentence are completely at the whim and unbridled discretion of the prosecutor and jury (Steiker & Steiker 1995). This rarity of imposition led Justice Stewart to argue that the death penalty is “cruel and unusual in the same way that being struck by lightning is cruel and unusual” (\textit{Furman v. Georgia}, 408 U.S. 238, 1972). It also suggests that if the death penalty is being imposed infrequently then it is not serving any useful penal function in society, nor does it reflect the conscience of the community. For example, Justice White pointed out in \textit{Furman} that the deterrent effect of the death penalty requires regularity and predictability. He argued that “deterring others…would not be substantially served where the penalty is so seldom invoked that it ceases to be the credible threat essential to influence the conduct of others.” Although, the Court has never fully rejected deterrence as a justification for the death penalty, it has recognized that empirical evidence about the deterrent effects of capital punishment is often times contradictory and inconclusive. The more apparent public purposes being served by the death penalty are incapacitation and retribution (Abramson 2004).

\(^2\)“Death eligibility” is distinct from “death qualification” which is discussed in more detail in Chapter 2.
Deterrence and the Death Penalty

The Court is correct in its assessment of empirical research examining the deterrent effects of the death penalty in the United States. Deterrence has long been an important argument in favor of the death penalty and there continues to be considerable debate among death penalty and legal scholars surrounding the deterrent (or lack of) effects of capital punishment (Radelet & Borg 2000). Advocates of the death penalty vehemently argue that capital punishment acts as a general deterrent. They may cite economist Isaac Erhlich’s study (1975) proclaiming that one execution saves eight innocent lives, or a more recent study arguing that each execution results in five fewer homicides and each commutation of a death sentence to life prison results in five additional homicides (Mocan & Gittings 2003). One of the most recent studies found a short-term deterrent effect of executions but only for non-felony homicides in Texas (Land, Teske, & Zheng 2012).

Although these studies provide some support for the deterrent effect of the death penalty, Erhlich’s work, as well as a series of new deterrence studies, has been strongly criticized for the structure of the data used, theoretical misspecification and omissions, and measurement errors (Fagan 2006)\(^3\). Contrary to beliefs about the deterrent effect of the death penalty, Bowers and Pierce (1980) argue instead that capital punishment has a brutalizing rather than deterrent effect on society by promoting homicides because executions convey to the public that lethal violence is an appropriate and acceptable response to those who offend. Using data from the state of New

\(^3\) Fagan (2006: 260) argues that replication is “the cornerstone of the scientific process” yet for two decades economists and social scientists attempted to replicate Ehrlich’s (1975) findings without success. Furthermore, the new deterrence studies omit a range of factors that have effects on murder rates, such as life without parole, risk detection through effective policing, drug epidemics, and the use of total homicide rates rather than death-eligible homicide rates. He suggests these omissions distort and inflate execution effects and there is no reliable evidence of deterrence.
York between 1907 and 1963, Bowers and Pierce (1980) found an additional two homicides in the month after an execution, providing support for at least a short-term brutalizing effect in that state.

Furthermore, many law enforcement officers and leading criminologists in the field question the ability of the death penalty to act as a general deterrent. For example, the Washington, D.C. based polling firm Peter D. Hart Research Associates interviewed 386 randomly selected police chiefs and county sheriffs from throughout the U.S. When respondents were asked if the death penalty significantly reduces the number of homicides, 67% of respondents felt it did not, whereas only 26% responded that the death penalty did act as a deterrent (Dieter 1995). Moreover, Radelet and Lacock (2009) mailed questionnaires out to leading criminologists asking whether the scientific literature indicates that the death penalty is a better deterrent than life imprisonment. Eighty-eight percent of the polled criminologists did not believe that the death penalty is a deterrent. Fewer than 10% of the polled experts believed that the deterrence effect of the death penalty is stronger than that of long-term imprisonment.

The debate over whether the death penalty is a better deterrent than life imprisonment is based on the concern about an offender’s future dangerousness. Future dangerousness provisions are found in many state capital statutes, such as in Texas and Virginia. Such provisions reflect the idea that incapacitation of capital offenders protects society from future violence inflicted by those offenders on innocent victims. A study conducted by Marquart and Sorenson (1989) examined the cases of the 558 inmates whose death sentences were commuted to life imprisonment by the 1972 Supreme Court decision in *Furman v. Georgia*. The death row inmates affected by this decision had their sentences commuted to life imprisonment and were
released into the general prison population to serve the remainder of their sentences (Marquart & Sorenson 1989). Correctional administrators and staff considered former death row inmates to be a serious threat to prison security and the American public was fearful of the day these offenders would be released from prison, back into society where they were free to commit further heinous acts of violence. However, evidence suggests that these former death row inmates were not a future danger either to correctional staff while incarcerated or society upon release. Marquart and Sorenson (1989) found that 98% of the Furman-commuted inmates did not kill either in prison or in the community. The majority served their time in prison with few challenges to the prison staff and nearly 80% of those released to society did not committed additional crimes. The 558 Furman-commuted inmates had committed seven new homicides, six in prison and one in the community. Therefore, Radelet and Pierce (1991) concluded that we would have to execute 80 capital murderers to eliminate the one who statistically will repeat and be a future danger to society.

Regardless of whether the death penalty is a better deterrent than life imprisonment or whether the death penalty reduces an offender’s future dangerousness, it is a retributive act and as the Court pointed out “retribution provides the main justification for capital punishment” (Justice Breyer in Ring v. Arizona, 536 U.S. 584, 2002). Retribution is the philosophical approach to punishment that argues that offenders deserve to be punished for the harm they have caused and that the severity of the punishment should be proportionate to the seriousness of the offense. From a strict retributivist perspective, if an offender chooses to infringe on another’s right to life then that offender has ultimately forfeited his or her right to life. Other than those
who support Norval Morris’ theory of limiting retributivism, many retributivists suggest that capital punishment is the only punishment morally appropriate for murder and that its awesome power makes it deserving of both fear and respect (Berns 2011).

The recognition of capital punishment’s awesome power is reflected in Justice Brennan’s “death is different” argument. In his concurring opinion in *Furman*, Justice Brennan attempted to demonstrate that the death penalty is “qualitatively different” from all other punishments and that its “uniqueness” as a punishment, both in severity and finality, rendered it cruel and unusual in all circumstances. Although the remainder of the Court did not agree that the death penalty is cruel and unusual in all circumstances, it has repeatedly argued that the absolute “finality” of execution makes the consequences of error “irrevocable” or “irreversible” (*Gregg v. Georgia*, 428 U.S. 153, 1976). Therefore, at the core of the U.S. Supreme Court’s death-is-different jurisprudence is the requirement that the death penalty possess extraordinary procedural protections against error, including protection against the arbitrary and capricious imposition of the death penalty by capital juries based on a defendant or victims’ race. Unfortunately, it has been argued that the appellate process has failed to adequately safeguard against the influence of offender race and victim race in the imposition of the death penalty under post-*Furman* statutes (Paternoster 1983). Therefore, the concern remains that extra-legal factors, such as race of

---

4 The theory of limiting retributivism incorporates retributive values (especially the importance of limiting maximum sanction severity) and crime-control goals such as deterrence, incapacitation, rehabilitation, and denunciation (Frase 2003).

5 Two important studies have provided support for the notion that error does in fact exist in our capital sentencing system. Liebman, Fagan, and West (2000) found that almost 7 out of every 10 capital cases reviewed by the courts between 1973 and 1995 involved serious reversible error. Gross and colleagues (2014) estimated the rate of erroneous convictions of defendants sentenced to death between 1973 and 2004. They found that if all death-sentenced defendants remained under sentence of death indefinitely, at least 4.1% would be exonerated.
offender and victim, are influencing death sentencing decision-making in an unconstitutionally impermissible way.

The current study examines the ways in which the interaction of victim race and gender affect juror decision-making and capital case outcomes throughout the United States. Chapter 2 reviews the empirical research on jury decision-making and outlines the previous literature on the findings of the Capital Jury Project. Chapter 3 examines the literature on race, gender, and the death penalty, including a discussion of the famous Baldus study and similar research providing evidence of discrimination based on the race and gender of the defendant and victim. Chapter 4 lays the theoretical foundation for the current study by emphasizing the significance of Black feminist theories of intersectionality and its important contribution to death penalty disparity research, including research that provides support for the presence of a “white female victim effect” in capital sentencing. Chapter 5 provides details about the Capital Jury Project design and the current study, including the research purpose, questions, and hypotheses, as well as a description of the variables of interest and their measurement. It also discusses the methodology of the current study and examines the strengths and limitations of the Capital Jury Project as the primary source of data for the study. Chapter 6 discusses the analytic techniques employed and presents the results of quantitative analyses of case characteristics. Chapter 7 provides detailed narratives of selected cases, in order to examine the influence of victim characteristics on capital jury decision-making. Chapter 8 develops three victim factors, empathy, distance, and blame, and examines how these factors affect imposition of a death sentence. Chapter 9 concludes by discussing the current study’s unique contribution to the extant literature, its theoretical and policy implications, and recommendations for future research.
Chapter 2: Jury Decision-Making and the Death Penalty

A defendant’s right to a trial by jury is guaranteed in the Sixth Amendment to the U.S. Constitution which states "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense" (U.S. Courts 2014). These rights apply to the states under the Fourteenth Amendment (Baldus, Woodworth, Zuckerman, Weiner, & Broffitt 2001). The way in which a jury is selected for trial influences the fairness of the proceedings against the accused, as well as the outcome of a trial itself. Jury selection typically begins with the names of potential jurors, usually drawn from a list of registered voters, residents with driver’s licenses, or census lists who are screened to produce a jury and a handful of alternate jurors that are acceptable to both the prosecution and defense (Baldus et al. 2001). During jury selection, courts are seeking to draw potential jurors from a cross-section of the community in order to obtain a group of individuals who are impartial and considered to be a jury of the defendant’s peers.

Impartiality is achieved through a process known as voir dire. Voir dire is the questioning of a prospective juror by a judge or attorney to determine whether the individual is qualified to serve on a jury (Free Legal Dictionary 2013). During this process, prospective jurors may be challenged for cause in which attorneys make objections based on the qualifications or suitability of the juror. For example, the juror may be biased and removed for cause if he/she knows any party in the case; is not old enough to vote; has not been a resident in the district for at least one
year; is not able to read, write, and understand English; is suffering from a mental or physical illness that would impede his/her ability to serve; is under felony indictment at the time; or has been convicted of a felony in the past (Baldus et al. 2001). The ultimate goal of voir dire is to eliminate prospective jurors the attorneys consider to be biased against them or sympathetic to the other side. Voir dire ends with a “venire” or panel of potential jurors, who have been selected from the larger pool of candidates (Baldus et al. 2001).

In addition to challenges for cause, jurors may also be removed through the use of a peremptory challenge which allows dismissal of a prospective juror without needing to provide a reason. There is no limit to the number of challenges for cause that an attorney may request; however, peremptory challenges are statutorily limited in number and often vary by jurisdiction. The only exceptions to an attorneys’ freedom to use a peremptory challenge to strike a juror are that the removal of the juror cannot be based on race (Batson v. Kentucky, 476 U.S. 79, 1986) or gender (J.E.B. v. Alabama, 511 U.S. 127, 1994) (Sandys & McClelland 2003). For example, when defense counsel believes that a prosecutor has based a peremptory challenge on race, the defense attorney may set in motion a Batson challenge by establishing a prima facie case of racial discrimination. If the trial judge is satisfied by the defenses’ arguments, the burden shifts to the prosecution to provide a race-neutral justification for the peremptory challenge (Sommers & Norton 2007: 262-263). Sommers and Norton (2007) argue that decisions made during jury selection are based on criteria that are both ambiguous and subjective. Therefore, they argue that it is fairly easy for attorneys to come up with race-neutral justifications in most cases, which in turn makes it extremely difficult for trial judges to reach conclusions about racial bias (Sommers & Norton 2007: 270).
Although peremptory challenges on the basis of race and gender is constitutionally prohibited, Baldus and colleagues (1998) in an analysis of 317 capital murder cases tried by jury in Philadelphia between 1981 and 1997 found that discrimination in the use of peremptory challenges on the basis of race and gender is quite common among both prosecutors and defense attorneys in that jurisdiction. They further argue that the pervasive use of peremptory challenges has several adverse consequences for capital defendants. For example, it enhances the probability of death for all defendants; it raises the level of racial discrimination in the application of the death penalty; and it denies defendants a trial by a jury of their peers (Baldus et al. 1998: 10). However, the use of peremptory challenges is not the only legal avenue that disadvantages capital defendants in ways that make it more likely that the jury imposes the death penalty.

**Death Qualification**

In capital cases, prospective jurors’ death qualification status also serves as the basis for a challenge for cause (Sandys & McClelland 2003). Death qualification refers to the process of excluding potential jurors from participation in capital trials solely on the basis of their attitudes about the death penalty (Haney, Hurtado, & Vega 1994). In *Witherspoon v. Illinois* (391 U.S. 510, 1968), the U.S. Supreme Court established the standard by which prospective jurors could be constitutionally excluded from service on capital juries as one of “unequivocal opposition” to the death penalty, meaning that a prospective juror could be excluded if that juror would never impose the death penalty, no matter what the facts of the case may be. Under *Witherspoon*, the juror would have to make it “unmistakably clear” that they would “automatically vote against” the death penalty before they could be excluded for cause (Sandys & McClelland 2003).
Seventeen years after the *Witherspoon* decision, the U.S. Supreme Court again grappled with the issue of death qualification. In *Wainwright v. Witt* (469 U.S. 412, 1985), the Court significantly revised the *Witherspoon* standard by which prospective jurors were excluded from capital jury service from one of “unequivocal opposition” to merely holding death penalty attitudes that would “prevent or substantially impair the performance of his or her duties as a juror in accordance with his or her instructions and oath” (citing *Adams v. Texas*, 448 U.S. 38, 1980). In essence, the *Witt* decision invited defense counsel to also challenge for cause extreme supporters of capital punishment whose views would prevent them from performing their duties as a capital juror. According to Sandys and McClelland (2003), these jurors are known as “Automatic Death Penalty” voters because they express that they would vote for a sentence of death in every case in which they found the defendant guilty of capital murder.

The death qualification process has been subject to constitutional challenges based on the argument that it produces unrepresentative and conviction-prone juries (Haney et al. 1994). One study that provided evidence of conviction-proneness was designed by Haney and colleagues (1994). They conducted a telephone survey of California residents using random digit dialing in order to survey death penalty attitudes. They found that approximately one fifth of the public is automatically excluded from having their views considered by the Court because of their attitudes about the death penalty. Haney and colleagues (1994) argue that the population from which capital jurors are drawn is unrepresentative and especially punitive with respect to their death penalty attitudes and other important issues central to the administration of the death penalty in the U.S.
The U.S. Supreme Court does not agree. For example, in *Lockhart v. McCree* (476 U.S. 162, 1986), the Court was presented with 15 social science studies that provided empirical evidence that death qualification results in a conviction-prone jury (Sandys & McClelland 2003). However, the Court rejected the argument by questioning the validity of the social science research and concluded that, even if valid, the research itself was tentative, inconclusive, and fragmentary. The Court argued that the studies were based on the responses of individuals randomly selected from some segment of the population, and were not actual jurors sworn under oath to apply the law to the facts of an actual case involving the fate of an actual capital defendant (Legal Information Institute at Cornell University Law School 2014). Therefore, the Court held that death qualification does not violate a defendant’s constitutional right to an impartial jury.

Another important aspect of death qualification related to the conviction-proneness of a jury is a capital jurors’ ability to consider aggravating and mitigating circumstances in a capital case. In *Morgan v. Illinois* (504 U.S. 719, 1992), the U.S. Supreme Court held that a capital defendant may challenge for cause any prospective juror who will automatically vote for the death penalty because such a juror “will fail in good faith to consider the evidence of aggravating and mitigating circumstances as the instructions require” (Legal Information Institute at Cornell University Law School 2014). Remember, the *Gregg* decision (1976) held that capital cases must be tried as bifurcated proceedings and sentencing decisions are expected to be guided by considerations of aggravating and mitigating circumstances (Sandys & McClelland 2003). The jury must agree unanimously on at least one aggravating factor presented by the state before the defendant is eligible for the death penalty. Furthermore, the U.S. Supreme Court ruled in *Ring v.*
Arizona (536 U.S. 584, 2002), that the ultimate capital sentencing decision, whether a defendant lives or dies, must be made by the jury not a judge (Bowers, Fleury-Steiner, & Antonio 2003; Sandys & McClelland 2003).

However, Sandys and McClelland (2003) argue that there is discrepancy between the law’s intention and the result of death qualification in practice. Evidence from the Capital Jury Project (CJP) suggests that actual capital jurors, who have survived the death qualification process, often are unwilling or unable to consider mitigating evidence in their sentencing decisions (Bowers et al. 2003; Brewer 2004; Sandys & McClelland 2003; Sandys & Trahan 2008). Sandys and Trahan (2008) examined data from the Kentucky cases of the Capital Jury Project. Results from descriptive narratives of their sentencing decisions indicate that jurors tend to dismiss mitigating evidence as irrelevant and as an attempt to avoid responsibility for the crime (Sandys & Trahan 2008). The important discovery that capital jurors tend to be “mitigation-impaired” is only one of many significant findings of the Capital Jury Project concerning departure from the constitutional standards outlined in Gregg.

Much of the research on juror decision-making in capital cases has relied on data collected through the Capital Jury Project (CJP) – (which will form the basis of this dissertation and is described in much more detail in Chapter 5). The Capital Jury Project (CJP) is a continuing program of research on the decision making of capital jurors that was initiated by a consortium of university-based researchers and funded by the National Science Foundation (NSF) in 1991. The project has been administered nationally by Dr. William Bowers, principal investigator. CJP involves three-to-four hour in-depth interviews with 1,198 capital jurors from 353 trials. The project includes capital cases tried in 14 death penalty states between 1988 and
1995. Juror interviews were conducted in Alabama, California, Florida, Georgia, Indiana, Kentucky, Louisiana, Missouri, North Carolina, South Carolina, Pennsylvania, Tennessee, Texas, and Virginia (Bowers, Sandys, & Brewer 2004). There have been over 60 CJP analyses published in law and social science journals, as well as book chapters, and two books written by CJP investigators since its introduction in 1995 (Bowers 2012). Discussion of all previous CJP findings are beyond the scope of this chapter but those most pertinent to the current study will be highlighted below.

Seven major CJP findings have emerged that provide empirical support for the argument that the constitutional guidelines established in *Gregg v. Georgia* (1976) have failed to safeguard against the arbitrary and discriminatory imposition of the death penalty in the U.S. These findings include premature punishment decision-making; failure to understand sentencing instructions; belief that the law requires death for certain types of murder or defendants; evasion of punishment responsibility; underestimation of the death penalty alternative; pro-death predisposition of jurors; and racial bias in jurors’ sentencing decisions (Bowers 2012). Each of these will briefly be discussed below; however, racial bias in jurors’ decision-making is a primary component of the current study and will be discussed in more detail in the next section.

Bowers, Fleury-Steiner, and Antonio (2003) argue that if jurors are to be guided in their exercise of capital sentencing discretion, they must wait until the penalty phase of the bifurcated trial to decide what the most appropriate punishment should be. However, results from the CJP reveal that many jurors do not wait until all the evidence and arguments have been presented and the sentencing instruction given before making their sentencing decision. This clearly violates *Morgan*’s requirement that jurors give effect to both aggravating and mitigating circumstances in
their sentencing decision. In addition, more than half of the jurors interviewed believed that death was the only acceptable punishment for serial murder, premeditated murder, and murder with multiple victims (Bowers et al. 2003). This further implies that jurors are not giving effect to mitigating evidence presented later in the trial, but are making their sentencing decision in the guilt phase of the trial. Bowers and colleagues (2003: 435) suggest that this “contamination of guilt with punishment considerations” leave jurors to make the guilt and sentencing decisions with the same arbitrariness and caprice condemned by Furman (1972).

Moreover, many jurors misunderstand the judge’s sentencing instructions, especially when it comes to mitigation. Bowers and colleagues (2003: 439) argue that the law requires jurors to vote for a life sentence when they become convinced that a death sentence is not appropriate in light of mitigating considerations. However, jurors mistakenly believe that a death sentence is required by law when the crime is especially brutal and heinous or when they strongly believe that the defendant would be dangerous in the future (Bowers 2012). According to CJP jurors’ descriptions of the deliberation process, future dangerousness is an important consideration in sentencing decisions. This may be because most jurors substantially underestimate the length of time a murderer will spend in prison before he is eligible for parole. Most jurors believe that capital murderers not given the death penalty will be back on the streets even before completing the legally mandated minimum sentence for parole considerations in their respective states (Bowers et al. 2003). When the CJP data was being collected, several states did still have life with parole as the alternative to a death sentence; however, since then all death penalty states have adopted a life without the possibility of parole statute, which means
that a murder sentenced to LWOP will never become eligible for parole (Death Penalty Information Center 2014).

Data from the CJP also indicates that in light of automatic appellate review for cases resulting in a death sentence, jurors tend to deny responsibility for their final sentencing decision (Bowers et al. 2003). In *Caldwell v. Mississippi* (472 U.S. 320, 1985), the U.S. Supreme Court held that any suggestion that the responsibility for the ultimate determination of death will rest with others presents an intolerable danger that the jury will minimize the importance of its role. Although this standard has been established by the Court, Haney (1997) argues that there are in fact five mechanisms of “moral disengagement” that allow jurors to overcome the prohibition of using capital violence against another human being and imposing a death sentence. These include the dehumanization of the defendant; exaggeration of difference between the juror and the defendant; the perception that one’s actions are compelled by self-protection because the defendant will be dangerous in the future; the minimization of the human consequences of one’s actions because most jurors believe an execution is unlikely to ever occur; and the diffusion of personal responsibility through reliance on instructional authorization. Similar to CJP findings, Haney (1997: 1484) suggests that poorly understood judicial instructions provide jurors with a kind of protective shield that enables them to avoid a sense of personal responsibility for their sentencing decision. Capital jurors base their decisions on misinformation about the death penalty and personal biases about the types of people who commit capital crimes that never gets addressed in the process. It is, therefore, not surprising that personal biases based on race also influence a jury’s decision-making in a capital case.
**Race and the Capital Jury**

In *Turner v. Murray* (476 U.S. 28, 1986), the U.S. Supreme Court acknowledged that racial attitudes are likely to influence jurors’ sentencing decisions in capital cases, especially in cases involving black defendants and white victims (Bowers, Sandys, & Brewer 2004). The Court agreed that the broad discretion given to a jury allows an opportunity for conscious and unconscious racial prejudice to influence capital sentencing. For example, if a juror holds racial stereotypes that blacks are more prone to violence or are morally inferior to whites, they may be more inclined to favor the death penalty (Bowers et al. 2004). The Court ruled in *Turner* that “a capital defendant accused of an interracial crime is entitled to have prospective jurors informed of the race of the victim and questioned on the issue of racial bias” (Bowers, Steiner, & Sandys, 2001: 178). However, this ruling was not based on empirical evidence but rather the general recognition that racial attitudes could potentially influence capital sentencing outcomes.

**Empirical Evidence of the Influence of Race on Jury Decision-Making**

There are three primary methodologies that researchers use in examining the relationship between race and jury decision-making (Sommers & Ellsworth 2003). Some researchers choose to examine this relationship by developing experiments with mock jurors in which different versions of a trial summary are presented to research participants in a controlled setting (Lynch & Haney 2000; Applegate, Wright, Dunaway, Cullen, & Wooldredge 1993). Others focus on archival analyses of verdicts in actual cases (Balduc et al. 1990), or post-trial interviews with jurors (Bowers et al. 2001).
In mock trial experiments, researchers can control and manipulate variables of interest by introducing a case summary to mock jurors where two versions of the same set of trial facts are presented. For example, if a researcher is interested in the effect of defendant (or victim) race on juror decision-making, the researcher can present one vignette in which the defendant (or victim) is white and one in which the defendant (or victim) is black. If jurors have been randomly assigned (random assignment assumes the statistical equivalence of groups) to receive one of these trial vignettes, any differences in their verdicts can be attributed to the influence of the defendant (or victim’s) race because the only differences between the versions of the trial in question are those variables manipulated by the researcher (Sommers & Ellsworth 2003).

For example, Lynch and Haney (2000) designed a mock jury simulation to explore instructional comprehension, racial bias, and decision-making dynamics in capital sentencing. Using an experimental design in which race of victim and race of defendant were manipulated, the study employed a realistic videotaped simulation of a capital trial (Lynch & Haney 2000: 342). Their sample consisted of eligible jurors in the county where the study took place. They found that those jurors who sentenced a black defendant were significantly more likely to disregard and improperly use mitigating evidence as opposed to those who sentenced a white defendant. Moreover, the poorer jurors were at comprehending judicial instructions, the more likely they were to demonstrate racial bias in their capital sentencing decision (Lynch & Haney 2000).

In another experimental study of capital juror decision-making, Applegate and colleagues (1993) used a factorial vignette methodology to explore how the willingness to impose the death penalty is affected by the race of the victim and offender in a homicide. They found that in
homicides of intermediate seriousness, offender race is statistically significant (respondents were more likely to sentence a black offender to death than a white defendant). However, contrary to the findings of archival analyses, results indicate that the race of the victim is not an important factor in predicting support for capital punishment in homicides of intermediate seriousness (Applegate et al. 1993).

As will be discussed in more detail in Chapter 3, Baldus and colleagues (1990) did find a pattern of racial disparities pertaining to race of defendant and victim in capital cases (especially in midrange cases of intermediate seriousness) where jurors may be “liberated” from case facts that would otherwise result in the death penalty by falling back on preexisting racial prejudices and stereotypes. They examined capital murder trials in Georgia and found that defendants charged with killing a white victim were 4.3 times more likely to receive the death penalty as were defendants convicted of killing a black victim. In fact, post-Furman archival studies consistently find that capital jurors tend to undervalue black victims and over-punish black defendants (General Accounting Office, 1990).

Differences between the results of mock jury experiments and archival analyses may be due to the fact that mock jury simulations typically use college students as participants, rely heavily on written trial summaries instead of live testimony, fail to provide jurors with standard jury instructions, and decisions rendered by mock juries tend to be artificial with no real world consequences (Sommers & Ellsworth 2003). Although archival analyses cannot demonstrate a causal relationship between race and jury decision-making and will always have difficulties in controlling for confounding variables, archival analyses have the advantage of examining actual
capital trial outcomes and exploring the relationships among variables that occur in real courtrooms (Sommers & Ellsworth 2003).

As with archival analyses, the strength of post-trial interviews is that it involves the study of real trials and jurors, not mock trial simulations. A juror interview also has the added benefit of allowing researchers to examine more than just the final verdict rendered by the jury but allows exploration of the entire deliberation process (Sommers & Ellsworth 2003). An excellent example of this type of methodology for examining the relationship between race and jury decision-making is the Capital Jury Project. Prior research using the CJP data has clearly demonstrated the influence of race in capital sentencing (Bowers et al. 2001).

According to Bowers and colleagues (2001), two distinct patterns emerge from the Capital Jury Project data when examining the racial influence of jury composition in black defendant/white victim cases. These include “white male dominance” and “black male presence.” With regard to “white male dominance”, Bowers and colleagues (2001) found that the dominant presence of white males on the jury was strongly associated with the imposition of the death penalty. Death sentences were twice as common in cases with five or more white male jurors (Bowers et al. 2001). In contrast, they found that the presence of a black male on the jury was strongly associated with the imposition of a life sentence – they referred to this as the “black male presence” effect. Death sentences were significantly less common in cases with one or more black male jurors as compared to those with no black male jurors (Bowers et al. 2001). These findings were the result of comparing the decision-making of black and white jurors from the same black defendant/white victim cases. Therefore, these results are not due to differences in the crimes, defendants, or victims in these cases, but rather differences in thinking and
decision-making between black and white jurors (Bowers et al. 2001). These results also highlight the importance of having different races represented on a capital jury by guaranteeing the defendant his Sixth Amendment right to an impartial jury of his peers. Baldus and Woodworth (1998) would agree by suggesting that the risk of defendant and race of victim discrimination is magnified when the jury selection process results in the under-representation of blacks on a jury.

The Capital Jury Project (CJP) data has also revealed differences between black and white jurors in three punishment considerations, including lingering doubts about the defendant’s guilt, impressions of the defendant’s remorsefulness, and perceptions of the defendant’s future dangerousness (Bowers, Steiner, & Sandys 2001; Bowers et al. 2004). For example, black jurors were more likely to have lingering doubts about the defendant’s guilt and were more concerned about the possibility that the jury made mistakes in reaching their sentencing decision (Bowers et al. 2001; Bowers et al. 2004). Black jurors were also much more likely to believe the defendant was remorseful for the crime and deserved mercy than white jurors (Bowers et al. 2001; Bowers et al. 2004). Furthermore, white jurors were more likely to see the defendant as dangerous, especially in black defendant/white victim cases, than black jurors. White jurors also believed that defendants would be back on the street sooner if not given the death penalty than black jurors (Bowers et al. 2001; Bowers et al. 2004). Bowers and colleagues (2001) conclude from their findings that the distinct perspectives of black and white jurors are shaped by their personal experiences and lead to very different assumptions about the causes of crime and the trustworthiness of the criminal justice system.
These differences become even more evident when examining race and jurors’ receptivity to mitigation evidence in capital cases. For example, Brewer (2004) explored the interaction between race and the willingness of capital jurors to consider mitigating evidence during penalty phase deliberations using data from the Capital Jury Project (CJP). He found that black jurors were more receptive to mitigating evidence when the defendant is black and also when the victim is white. Thus, there was a strong and highly significant black juror/ black defendant / white victim effect found which is consistent with results found by Bowers and colleagues (2001). Brewer (2004: 534) suggests that this might be the case because blacks are more likely than whites to be exposed to situations that often serve as evidence of mitigation such as poverty, residence in an inner-city neighborhood, victimization, arrest, and incarceration.

To date, analyses of the CJP data focus primarily on capital juror decision-making and the role of jury composition, as well as the race and gender of individual jurors in the decision-making process and their receptivity to mitigation in capital cases. However, there is little research that focuses on both the impact of victim race and gender in the decision-making process of capital jurors. The only CJP research that I am aware of that includes the influence of victim characteristics examines the influence of victim impact evidence on capital juror sentencing decisions (Eisenberg, Garvey, & Wells 2003; Sundby 2003). This research has been largely inconsistent. For example, Sundby (2003) making use of CJP juror interviews from California found that victim impact evidence does influence capital jurors’ sentencing decisions. He found that victims who are chosen at random and who are going about their daily activities tend to elicit more empathy from jurors, whereas those victims who are found to be engaging in high-risk or illegal behavior leading up to the crime are less likely to provoke outrage and an
empathetic response from jurors; therefore, making a death sentence less likely to be imposed in those cases. However, Eisenberg, Garvey, and Wells (2003) in their examination of South Carolina CJP cases found no significant relationship between increased victim admirability and capital juror sentencing decisions. They found that victim impact evidence did not increase the likelihood of death sentences in South Carolina. Overall evidence from the Capital Jury Project shows a clear racial bias and the potential for victim characteristics to influence jurors’ sentencing decisions. As will be discussed in greater detail in subsequent chapters, the current study seeks to contribute to the extant literature on the CJP by determining the ways in which jury perceptions vary by race and gender of the victim and how these perceptions influence the final sentencing decision.
Historically, race and the death penalty have interacted in several meaningful ways, including cases in which blacks were extra-legally lynched by white mobs and cases in which black defendants were legally condemned by all-white juries (Banner 2006). According to the Tuskegee Institute, approximately 4,730 people were lynched in the United States between 1882 and 1951 (Gibson 2014). Nearly 73% were black. One famous lynching case from 1906 was that of Ed Johnson in Chattanooga, Tennessee. Johnson was a young, uneducated black man wrongly accused of raping a white woman (Ogletree 2006). An all-white jury convicted Johnson of rape and sentenced him to death. When Johnson received a stay of execution from the U.S. Supreme Court, a lynch mob broke into the jail where Johnson was being held and shot, mutilated, and lynched him with the assistance of the local sheriff (*United States v. Shipp*, 203 U.S. 563, 1906). A similar lynching case was that of Jesse Washington in Waco, Texas in 1916. Washington was a 17 year old, black farmhand who was sentenced to death for the rape and murder of his white employer’s wife. Only after an hour-long trial, the jury found him guilty. He was then chained and dragged to the front of City Hall where he was hanged and burned in front of 15,000 spectators (Webster 2005).

In the South, capital crimes were historically defined differently for black and whites. For example, the death penalty was used against whites primarily in cases of murder. However, for blacks, the death penalty was used for attempted murder, rape, robbery, assault with a deadly weapon, and kidnapping a white woman. Furthermore, in the mid-19th century, attempted rape of a white woman was a capital crime for blacks in Texas, Virginia, Florida, Louisiana, Mississippi,  

---

6 In 2000, Hamilton County Tennessee Judge Douglas A. Meyers set aside Ed Johnson's conviction of raping a white woman nearly 94 years after his conviction and lynching (Yellin 2000).
South Carolina, and Tennessee (Banner 2006: 99). As you can see, these types of unequal laws clearly valued the life of whites over the life of blacks (Ogletree 2006). Therefore, it is argued that capital punishment was a method of racial social control. Executions were public spectacles in order to reinforce the racial hierarchy and convey a message of racial dominance and white superiority (Kaufman-Osborn 2006). Today, capital punishment in the U.S. is sometimes described as “legal lynching due to its historical inseparability from the issue of race” (Ogletree 2006: 55).

Due to the long history of racial prejudice and discrimination in the U.S., social science researchers and legal scholars have sought to evaluate the experiences of offenders and victims of different races in the criminal justice system to determine whether extra-legal factors, particularly race, are associated with more punitive punishments. One of the primary sources of concern surrounding race and the death penalty is the broad exercise of discretion that state laws give to prosecutors and juries in their administration of the death penalty (Baldus & Woodworth 1998). Given such broad discretion, prosecutors and juries have the power to treat similarly-situated defendants differently because of the race of the defendant or the race of the victim (Baldus & Woodworth 1998).

There are a number of extra-legal factors that might potentially affect death penalty case outcomes. These include both defendant and victim demographic characteristics, such as race, gender, and socioeconomic status, which are technically impermissible in the consideration of death sentencing, as well as the racial/ethnic composition of counties and geographic variations in death sentencing rates (Bushway & Morrison-Piehl 2001; Pierce & Radelet 2002; Pierce & Radelet 2005; Pierce & Radelet 2011; Radelet & Pierce 2011). Although it has been argued that
in the post-Furman era a defendant’s race is only marginally related to whether a homicide results in a death sentence (Baldus, Woodworth, Zuckerman, Weiner, & Broffitt 1998), a number of researchers have demonstrated that the race of the victim in capital cases is a significant predictor of whether a prosecutor decides to seek the death penalty and whether a jury decides to impose a death sentence (Paternoster 1983; Gross & Mauro 1989; Baldus et al. 1990; Holcomb, Williams, & Demuth 2004; Williams & Holcomb 2004; Williams, Demuth, & Holcomb 2007; Pierce & Radelet 2002; Pierce & Radelet 2005; Pierce & Radelet 2011; Radelet & Pierce, 2011). For example, an early study conducted by Paternoster (1983) examined the charging decisions made by prosecutors in South Carolina in approximately 1,800 homicides committed between June 1977 and December 1981. Paternoster (1983) found that race of victim was the strongest predictor of the prosecutor’s decision to seek the death penalty, even when controlling for a number of aggravating factors, such as number of victims and the relationship between the victim and offender. Differential treatment by race of victim was also found in a study conducted by Gross and Mauro (1989). They examined the death sentencing patterns of eight states from 1976-1980 and found that the odds of a death sentence for killing a white victim in Florida were 4.8 times greater than for killing a black victim and 7.2 times greater in Georgia.

Employing similar procedures, Radelet and Pierce (1991) examined the relationship between defendants’ and victims’ racial characteristics and the imposition of the death penalty in Florida between 1976 and 1987. Not surprisingly, their models indicate that the strongest predictor of a death sentence in Florida is the presence of felony circumstances, which was statistically estimated to increase the odds of a death sentence by 4.95. More importantly, the second strongest predictor of a death sentence is the victim’s race. The odds of a death sentence
are 3.42 times higher for defendants who are suspected of killing whites than for defendants suspected of killing blacks (Radelet & Pierce 1991). Furthermore, when examining the proportion of death sentences by gender of victim, Radelet and Pierce (1991) found that offenders with female victims (6.7%) are significantly more likely than those with male victims (2.5%) to be sentenced to death; those suspected of killing white women (9.7%) are over 5 times more likely to be condemned than those convicted of killing black women (1.8%); and a black offender suspected of killing a white woman (24.4%) is 15 times more likely to be condemned than a black who is suspected of killing a black woman (1.6%). These results suggest death sentencing disparities based on the defendant’s race and the race and gender of the victim.

Moreover, Pierce and Radelet (2005) found in their study of the impact of extra-legal factors on death sentencing in California that the more white and more sparsely populated the county, the higher the death sentencing rate. Moreover, results of a logistic regression indicated that the odds of a defendant receiving a death sentence for killing a black victim was 59.3% lower than those homicides with white victims. They also found a race-of-victim effect and geographic variations in their study of death sentencing in Illinois (Pierce & Radelet 2002). In fact, sentencing county (Cook County) and race of victim were among the independent variables that achieved the highest level of statistical significance. Results of a logistic regression demonstrated that the odds of receiving a death sentence in Cook County was 83.6% lower than in rural counties in Illinois and that the odds of receiving a death sentence in black victim cases was 59.6% lower than in white victim cases (Pierce & Radelet 2002).

Results from the studies discussed above led Radelet and Pierce (2011) to ask the important empirical question: “Why is the probability of a death sentence for those convicted of
killing whites higher than those convicted of killing blacks?” One hypothesis is that homicides with white victims may be more aggravated than homicides with black victims. However, Radelet and Pierce (2011) argue that the relationship between the race of victim and death sentencing is not explained by this possibility because even when controlling for level of aggravation, offenders convicted of killing white victims are still significantly more likely to receive a death sentence than offenders convicted of killing black victims. For example, Radelet and Pierce (2011: 2145) found in their study of death sentencing in North Carolina that aggravating factors are very strong predictors of who is sentenced to death, but even after these factors are controlled, “race of the victim still matters.” Their results indicated that the odds of receiving a death sentence in a white victim homicide case was 2.96 times higher than the odds of receiving a death sentence in a black victim homicide case in North Carolina. They found similar results in East Baton Rouge Parish, Louisiana (Pierce & Radelet 2011). Results of a logistic regression suggested that the odds of receiving a death sentence in a black victim case are 97.3% lower than are the odds of a death sentence in a white victim case, even after controlling for level of aggravation. This suggests that one of the only remaining explanations for this disparity is that race-of-victim is playing a significant role in who is being sentenced to death in these states.

McCleskey v. Kemp (1987) and the Baldus Study

Without question, the most prominent empirical research around racial discrimination in capital cases is a study conducted by David Baldus and colleagues which served as the basis for a discrimination claim in the landmark U.S. Supreme Court case, McCleskey v. Kemp (481 U.S. 279, 1987). In 1978, Warren McCleskey, a young black man was convicted in Georgia, of
robbing a furniture store and killing a white police officer during the commission of that robbery. A jury composed of eleven whites and one black sentenced McCleskey to death for the murder. On appeal, McCleskey claimed that race-of-victim discrimination deprived him of rights provided by the Equal Protection Clause of the Fourteenth Amendment by increasing the likelihood that he would be sentenced to death because his victim was white (Kennedy 1988). McCleskey’s argument was primarily based on the results of the famous Baldus study that was conducted in 1983.

Baldus, Woodworth, and Pulaski (1990) analyzed the relationship between racial characteristics and sentencing outcomes in 2,484 homicide cases charged and sentenced in Georgia from 1973-1979. Taking into account over 230 variables, Baldus and colleagues (1990) found what has been described as “an unmistakable pattern of discrimination by race of victim, a weaker and less consistent pattern of discrimination by race of defendant” (Gross 1985: 1282). The Baldus study found that black defendants were 1.1 times more likely to receive the death penalty than other defendants and that defendants whose victims were white faced an odds of receiving a death sentence that were 4.3 times higher than defendants whose victims were black (Baldus et al. 1990). Baldus and colleagues (1990) further suggested that racial disparities in capital sentencing are most dramatic in the category of homicides containing neither the most aggravated nor the least aggravated circumstances. They argued that racial disparities are greatest in the middle-range of aggravated homicides because in the most aggravated cases, decision-makers typically impose a death sentence, whereas in the least aggravated cases decision-makers typically spare the defendant’s life regardless of racial factors. However, in the
middle-range of aggravation where decisions could go either way, the influence of racial factors emerge most powerfully (Kennedy 1988).

Baldus’ “Charging and Sentencing Study” (1990) documenting race-of-victim discrimination has been cited as “the most comprehensive research ever produced on sentencing disparities” in capital cases (Williams et al. 2007: 868). Although the U.S. Supreme Court accepted the validity of the Baldus study, they still affirmed the district court and appeals court’s decision on the grounds that the statistical racial disparities found in the Baldus study failed to prove a constitutional violation in McCleskey’s case. Narrowly, the U.S. Supreme Court rejected McCleskey’s claim by a vote of 5 to 4. They declared that in order to be successful, McCleskey would have had to produce evidence indicating that his sentence was the product of race-dependent decision-making. The Court insisted that the constitutionality of McCleskey’s sentence must be determined by asking whether the prosecutor or jurors in his case purposefully and intentionally discriminated on the basis of race. The Court concluded that no single petitioner could, on the basis of statistics alone, establish that he received a death sentence only because his victim was white (Kennedy 1988). The Court concluded that the constitutionally required discretion in capital sentencing will inevitably produce some inconsistencies in results (Gross 1985). However, racial disparities that cannot be explained by other legal considerations still do not constitute prima facie evidence of discrimination. In his majority opinion of the court, Justice Powell suggested that “McCleskey’s claim, taken to its logical conclusion, throws into serious question the principles that underlie our entire criminal justice system,” because if

---

7 Justice Powell retired from the Court in June 1987. When his biographer asked if he would change his vote in any case, Justice Powell responded “Yes, McCleskey v. Kemp.” He continued to state that he would vote differently in any capital case because he had “come to think that capital punishment should be abolished” (Gross 2012).
accepted, the Court “could soon be faced with similar claims to other types of penalty” from members of other minority groups alleging bias, including women (Kennedy 1988). In *McCleskey*, the Court reiterated that a defendant’s claim of racial discrimination in capital punishment was best suited for the legislature, not the courts (Chemerinsky 1995; Goodman 2007). The *McCleskey* decision has essentially blocked the courts from the consideration of statistically based claims of racial discrimination in capital sentencing (Baldus & Woodworth 1998).

**The Racial Justice Act**

Not only have the state and federal courts dismissed consideration of statistical evidence involving racial discrimination in the imposition of the death penalty without evidence of intentional and purposeful discrimination, so too has the U.S. Congress. The Racial Justice Act was passed by the House of Representatives as part of the Violent Crime Control and Law Enforcement Act in 1994. However, opposition from Republicans in the Senate led to its exclusion from the final version of the law (Chemerinsky 1995).

The Racial Justice Act’s primary purpose was to allow the use of statistical evidence of racial discrimination in the imposition of a death sentence in a particular case in hope to limit the detrimental effects of the *McCleskey* decision. The Racial Justice Act provided that no person would be put to death under federal or state law if the sentence was imposed because of the race of the defendant or the victim. It would not be enough to show that blacks receive the death penalty significantly more often than whites for the same type of offense (Chemerinsky 1995). Any statistical analysis would need to compare cases similar in level of aggravation to the case being challenged. The failed Act provided that the court would have to independently evaluate
the validity of the evidence presented to establish the inference of racial discrimination (GovTrack, H.R. 4017 (103rd Congress): Racial Justice Act 1994). If the court found that the defendant was able to produce such evidence, the burden of proof would shift to the prosecution to provide a race neutral explanation for the death sentence. The death sentence would be upheld as long as the prosecutor could prove, by preponderance of evidence, that the death sentence was not based on the race of the defendant or the race of the victim.

Although the Racial Justice Act failed to pass in 1994, since then two states have adopted their own Racial Justice Act in an effort to eliminate racial discrimination in the charging and imposition of the death penalty in their respective states. Kentucky was the first to adopt a version of the law in 1998. Under the Kentucky Racial Justice Act, a defendant may establish that a death sentence was racially discriminatory “if the court finds that race was a significant factor in decisions to seek the sentence of death in the Commonwealth at the time the death sentence was sought” (Goodman 2007). Therefore, the Kentucky statute focuses exclusively on the charging decision by the prosecutor, rather than the sentencing decision by the jury. Statistical evidence must show that death sentences were sought significantly more frequently on persons of one race or as punishment for offenses against persons of one race. The defendant must prove discrimination by clear and convincing evidence, and then the Commonwealth of Kentucky may rebut the claim (Goodman 2007).

North Carolina adopted their Racial Justice Act in 2009, which allowed capital defendants to challenge their death sentences if they could successfully prove that race was a significant determinant either in the decision to seek or to impose the death penalty at the time of their capital trials. Since its adoption, four death row inmates have had their sentences commuted
to life in prison without parole under the state’s Racial Justice Act after a judge determined that race played a role in jury selection (American Civil Liberties Union 2012). Furthermore, in January 2013, Dallas County, Texas District Attorney stated that he would advocate for a state law that would allow death row inmates to appeal their death sentence using statistical evidence showing that racial discrimination played a role in their conviction and/or sentence (Death Penalty Information Center 2014). Just when other states are looking to follow suit, legislators in North Carolina voted to repeal the Racial Justice Act on June 5, 2013 (Severson 2013). Convinced that the Racial Justice Act created a “judicial loophole to avoid the death penalty” Republican Governor Pat McCrory signed its complete repeal on June 19, 2013. This decision ignores the widespread systemic racial discrimination in the imposition of the death penalty in North Carolina.

Theories of Racial Discrimination in Sentence

Racial discrimination in the imposition of the death penalty may materialize when differential treatment of a defendant is the result of racial prejudice, the influence of stereotypical perceptions of dangerousness, or perceptions of the heinousness of crimes that happen to be correlated with racial aspects of a particular case (Baldus & Woodworth 1998). Blumer (1958: 3), for example, explains racial discrimination from a group threat perspective suggesting that racial prejudice exists in “a sense of group position,” and must be understood as the process by which racial groups form images of themselves and of others. A fear or suspicion that the subordinate racial group is threatening the position of the dominant group drives racial prejudice (Blumer 1958). Moreover, group threat theorists argue that prejudice and inter-group hostility are primarily reactions to perceived threats by minority groups and that social control will be greater
where racial threat is the highest (King & Wheelock 2007). Racial threat explanations of social control typically assume that members of the dominant group perceive a proportionately large racial minority group as a possible threat to existing social arrangements. For example, Eitle, D’Alessio, and Stolzenberg (2002) found that as the percent of violent felony offenses that involve a black offender and a white victim increase, the likelihood that a black individual will be arrested for a felony crime also increases in South Carolina. Kleck (1981) further suggests that the threat of black-on-white crime is considered to be a distinct manifestation of racial threat which calls for more severe criminal sanctions against blacks who victimize whites, especially in death penalty cases. Bowers (1983) similarly suggests that a death sentence will be imposed for crimes that most offend the conscience of the community even if these crimes are not legally the most deserving of blame. However, if they violate social boundaries, they will be viewed as more offensive and deserving of the most severe punishment of death (Bowers 1983; Holcomb, Williams, & Demuth 2004).

Social theorists have long argued that crimes will be viewed either as more or less blameworthy depending on the status characteristics of victims and offenders (Bowers 1983). In his landmark book on the ways in which law behaves, Donald Black (1976) argues that social status refers to a person’s position in society relative to others and is defined by five elements: vertical, radial, cultural, organizational, and normative status. Stratification is the vertical aspect of social life. Therefore, those of lower vertical status have less law than the higher ranks. If a poor man commits a crime against another poor man it is less serious than if both are wealthy (Black 1976). Radial status refers to the degree of an individuals’ participation in social life. Therefore, people near the center of social life have more law than those further out. For
example, an offense between two employed men is more likely to result in legal action than an offense between two who are unemployed (Black 1976). Cultural status is the symbolic aspect of social life. Black (1976) suggests that law varies directly with literacy and education. If a cultured person offends another cultured person, law is more severe than when an uncultured person offends another like himself. Organizational status is the corporate aspect of social life. Law varies directly with organization. Therefore, an individual’s offense against an organization is more likely to be defined as a crime than an organization’s offense against an individual (Black 1976). Lastly, social control is the normative aspect of social life. Social control defines who is deviant and defines who is respectable. Therefore, the less respectable an offender in relation to a victim, the more law to which he is likely to be subject (Black 1976). Consequently, the highest social status benefits those who are wealthy, integrated, sophisticated, conventional, organized, and respectable (Phillips 2009).

Applying this logic, one could argue that offenders would be more likely to receive a death sentence when their perceived social position in society is different from their victims, especially when their victims are members of the dominant group (Bowers 1983). Phillips (2009) tested this theory using data from Harris County, Texas from 1992-1999 and found that the probability of a defendant receiving a death sentence is almost 6 times greater if the victim is of high social status, as defined by Black (1976). The highest status victim in Phillips (2009) study included a composite measure of a white victim, who was married, earned a college degree, and had a clean criminal record.

Thus, it is not too much of a reach to suggest that crimes committed against whites will be perceived as a more significant threat to the dominant social structure; and due to the
marginalization and subordination of blacks throughout American history, crimes against blacks will be perceived as less harmful to society (Hawkins 1987). Crimes involving black offenders and black victims may be viewed as a “normal” aspect of the lives of blacks in particular communities and “less threatening to the social fabric of the larger white community” (Holcomb et al. 2004: 882; Baumer, Messner, & Felson 2000). Whatever the explanation, sentencing disparity research has consistently found that homicides involving black defendants and black victims tend to be treated more leniently than cases involving other defendant-victim dyads even in non-capital cases (Baldus et al. 1990; Radelet & Pierce 1991; Holcomb et al. 2004). Interracial crimes, on the other hand, especially those involving black offenders and white victims, may be perceived as representing a significant deviation from acceptable race relations and will be more likely to result in a death sentence.

Crime data demonstrate that homicide is an overwhelmingly intra-racial crime. The Bureau of Justice Statistics (2007) reports that between 1976 and 2005, eighty-six percent of white victims were killed by white offenders and 94% of black victims were killed by black offenders. These statistics provide evidence that the majority of homicides committed are in fact intra-racial, not interracial. Therefore, violation of racial group interactions may encourage a more severe response from criminal justice decision makers in order to reinforce social norms (Hawkins 1987). When describing the interracial nature of homicides and executions in the U.S., the Death Penalty Information Center (2014) reports that since the reinstatement of the death penalty in 1976, two hundred seventy-one black defendants have been executed for homicides involving white victims, whereas a mere 20 white defendants have been executed for homicides involving black victims. In fact, research has consistently demonstrated that interracial crimes
with black defendants and white victims are treated more severely in homicide cases (Baldus et al. 1990; Radelet & Pierce 1991).

Lastly, stereotypes that blacks are more likely to engage in illegal behavior and are perceived to be morally inferior, may affect the perceived blameworthiness of the defendant and the perceived harm of a particular crime to the community (Baumer et al. 2000). For example, Eberhardt, Davies, Purdie-Vaughns, and Johnson (2006) examined 600 death-eligible cases from Philadelphia between 1979 and 1999 to determine whether there was a relationship between receiving a death sentence and the degree to which the defendant was perceived to have stereotypical black features, such as broad nose, thick lips, and dark skin. They found that defendants whose appearance was perceived as being more stereotypically black were significantly more likely to receive a death sentence than defendants whose appearance was perceived as less stereotypically black, even when controlling for important aggravating and mitigating factors (Eberhardt et al. 2006). Previous research conducted by Eberhardt, Purdie, Goff, and Davies (2004) similarly found that participants associated black physical traits with criminality. The results of these studies suggest that capital jurors may use race to determine the blameworthiness of the defendant and the harmfulness of the crime, especially in black defendant/white victim cases (Eberhardt et al. 2006).

**Gender and the Death Penalty**

Although empirical research involving victim race has consistently found sentencing disparities among different defendant-victim dyads, less attention has been paid to the effects of victim gender on sentencing outcomes in capital cases. The few researchers that have examined the role of victim gender in death penalty cases have found that defendants who murder females
are significantly more likely to receive a death sentence than defendants who murder males (Baumer et. al. 2000; Holcomb et. al. 2004; Radelet & Pierce 1991; Royer, Hritz, Hans, Eisenberg, Wells, Blume & Johnson 2014). When examining the proportion of death sentences by gender and race of victim and offender, Radelet & Pierce (1991) found that in Florida offenders who murdered a female victim (6.7%) were more likely than those who murder a male victim (2.5%) to be sentenced to death. A more recent study of victim gender and the death penalty in Delaware also found that capital cases involving female victims were more likely to result in a death sentence (Royer et al. 2014). Royer and colleagues (2014) found that the odds of a death sentence were 2.26 times greater when the victim was a female than when the victim was a male.

Scholars have offered number of explanations for this disparity. One explanation is that female victims are thought to engage in fewer behaviors that contribute to their victimization and therefore, may be perceived as less blameworthy for their own victimization (Holcomb et al. 2004; Williams & Holcomb 2004). Furthermore, the victimization of defenseless, vulnerable, or “innocent” persons symbolically represents a greater threat to society, which in turn requires a more punitive response from the criminal justice system that reinforces community protection (Holcomb et al. 2004; Royer et al. 2014). The familial justice model suggests that the victimization of persons having important family responsibilities may be perceived as more harmful to community safety as well (Williams et al. 2007; Royer et al. 2014). A murder involving a female victim may be perceived as disrupting childcare and family responsibilities or social support networks more than the murder of a male victim (Holcomb et al. 2004; Williams & Holcomb 2004; Williams et al. 2007). If female victims are perceived as primary care givers,
criminal justice system decision makers may respond to violence against them more severely (Holcomb et al. 2004). Also Royer and colleagues (2014) have argued that cases involving female victims are more likely to involve sexual violence which contributes to increased perceptions of heinousness in these cases and an increased likelihood of a death sentence.

Most past death penalty research on victim race and gender has treated these victim characteristics as distinct categories of interest (Williams et al. 2007). They have examined the independent effects of victim race and/or gender, but have not considered the potential interaction effects of both. With a growing scholarly interest in the intersection of race and gender, it is increasingly important to consider the interaction effect of victim race and gender in sentencing outcomes, rather than examining victim race and gender as independent effects. The next chapter introduces the theoretical framework of the current study, emphasizes the importance of examining the intersection of victim race and gender in death penalty cases, and discusses the limited number of studies conducted in this area to date.
Chapter 4: Intersectionality

The current study draws upon an intersectional framework on race and gender that is rooted in the work of scholars studying women of color. This body of work is typically referred to as multiracial feminism (Baca Zinn & Thornton Dill 1996). The distinguishing features of multiracial feminism include the assertion that gender is constructed by interlocking inequalities and a focus on the simultaneity of systems that shape women’s experience and identity. It emphasizes the intersectional nature of social hierarchies and the lived experiences of diverse groups of women (Baca Zinn & Thorton Dill 1996). As a theoretical framework, multicultural feminism attempts to go beyond the simple recognition of difference among women. Multiracial feminists examine social structures of domination and subordination and specifically emphasize the importance of race in understanding the social construction of gender.

Because the concept of intersectionality provides the foundation for the current study on the interaction of victim race and gender in capital cases, it is important to explain its development and relevance in the criminal justice system and in the death penalty context in particular. The term “intersectionality” refers to the interaction between gender, race, and other social categories of difference in individual lives, social practices and institutions, as well as cultural ideologies and the outcomes of these interactions (Davis 2008). From this perspective, race, gender, and class are interlocking categories of experiences that affect all aspects of human life and structure the experiences of all people in society (Schwartz & Milovanovic 1996: x). At any time, race, class, or gender may appear more prominent or meaningful in a given person’s life, but they are overlapping and cumulative in their effect on peoples’ lived experience (Andersen & Hill Collins 2007: 5). It has been argued that intersectional experience is greater
than the sum of racism and sexism (Crenshaw 1989). Therefore, intersectional approaches assert that gender and race are not independent analytic categories that can simply be added together. In other words, race is “gendered” and gender is “racialized” so that race and gender join together to create unique experiences and opportunities for different groups of individuals in society (Browne & Misra 2003; Davis 2008).

hooks (1984) argues that white women who dominated early feminist discourse did not question whether their perspectives were shared by all women as a collective group nor were they aware that their perspectives were filled with race and class biases. She argues that black women have a central role to play in developing feminist theory and can offer a perspective that is both unique and valuable. Most feminist theory was developed by privileged white women who live “at the center” and whose perspectives did not include knowledge or even awareness of the lives of those women who live on the margins of society (hooks 1984). Feminism as a struggle to end sexist oppression should direct attention to systems of domination and the interrelatedness of gender, race, and class oppression (hooks 1984).

Originally developed by Kimberlé Crenshaw (1989), intersectionality was intended to address the fact that the unique experiences and struggles of women of color were ignored in both white feminist and anti-racist discourse. Crenshaw (1989, 1991) argued that theorists need to take both gender and race into consideration and demonstrate how they interact to shape the multiple dimensions of black women’s experience. Because of their intersectional identity as both women and of color, black women are marginalized by both discourses, making an intersectional approach essential in order to address their experiences with violence (i.e. intimate partner violence and rape). Both feminist and anti-racist discourses failed to address the ways
that race and gender intersect to produce vulnerability to violence as well as other experiences of exclusion and subordination familiar to women of color in American society (Browne & Misra 2003; Davis 2008; Collins 2009).

Black feminist theories argue that race and gender are socially constructed. These social categories are created to produce and maintain social hierarchy which results in inherent power differences. Collins (2009: 21) refers to the “interlocking systems of race, class and gender” as constructing a “matrix of domination.” Within this matrix of domination, an individual can simultaneously experience disadvantage and privilege through the combined social statuses of gender, race, and class. Black women often experience discrimination that is qualitatively different than their white female and black male counterparts (Crenshaw 1991; Collins 2009). Black feminists claim that beliefs and practices associated with gender are intertwined with beliefs and practices associated with race. For example, the traditional definitions of femininity that include passivity and weakness describe the social norm exclusively for white middle-class women and do not reflect the image of women of color in American culture (Browne & Misra 2003).

According to Young (1986) and Collins (2009), the cultural images and stereotypes of black women that have reinforced these definitions included the asexualized Mammy, the overly aggressive Matriarch, the sinister Sapphire, the promiscuous Jezebel or “hoochie,” and the lazy welfare queen. Not only do these images reinforce racial oppression by belittling black women in comparison to white women, they also reinforce gender inequality among whites by perceiving white women to be weak and in need of white male protection. These characterizations of black and white women have implications for their differential treatment in the criminal justice system.
based on race. For example, Young (1986) argues that in rape cases there may be a lack of confidence in the truthfulness of black female victims because of the widespread belief in the myth of black promiscuity.

Furthermore, because affluent white men control government and industry in the U.S., public policies typically benefit this group. Despite the Constitution’s commitment to the equality of all Americans, historically, the differential treatment of blacks, women, the working class, and other subordinated groups meant that the U.S. operated in a way that disproportionately benefited affluent white men (Collins 2009: 248). Gender and race interact, so that white women, black women, black men, and white men are all afforded different degrees of legal protection. The degree of protection is not simply a consequence of being a “white female” or “black male.” Rather the effect is relative to the interaction of the race and gender of the victim and the offender (Lynch 1996: 19). Who the law reacts to as offender and victim, who the law protects and discriminates against depends upon the race, class, and gender of all parties involved. Therefore, feminist intersectional approaches assume that discrimination is operating in the criminal justice system. For example, criminal justice actors make decisions about arrest, prosecution, conviction, and punishment based on the combination of a defendant or victim’s gender, class, and race (Browne & Misra 2003).

Black women, black men, and white women all occupy different positions within gender, class, and race as intersecting systems of power. These power differences permeate every aspect of social life, including our criminal justice system. Resisting this type of oppression is one of the primary purposes of Black feminist thought (Collins 2009). If intersecting oppressions did not exist, Black feminist thought would be unnecessary. As critical social theory, Black
feminism recognizes that black women constitute one group among many that are differentially placed within situations of injustice. What makes critical theory truly “critical” is its relentless commitment to social justice for one’s own group as well as for other groups (Collins 2009). Focusing on the intersection of gender and race provides a beneficial avenue for understanding inequality and discrimination in the criminal justice system. Systematic attention to how criminal justice experiences are shaped by the intersection of race and gender is our best hope of truly understanding racial and gender disparities in sentencing and in the imposition of the death penalty in the U.S. (Browne & Misra 2003).

**Intersectionality in Non-Capital Cases**

There are a limited number of studies that examine the concept of intersectionality in criminal sentencing. Previous research on the intersectionality of race and gender in non-capital cases focuses primarily on the characteristics of the defendant. Daly (1994) conducted research based on defendants who were sentenced in felony court in New Haven, CT between 1981 and 1986. She obtained pre-sentence investigation reports and transcripts of judicial remarks during sentencing, in order to construct biographies of each defendant to determine what theories of punishment judges used in justifying their sentence and whether these justifications were gender-based. Daly (1994) suggests that judges more frequently linked victimization and criminal behavior in cases involving females which often made these women appear less blameworthy than men. She also found that black men were at risk to receive the harshest sentences. They were most likely to be categorized as committed to street life and were least likely to be seen as having reform potential. However, what stood out in Daly’s (1994) analysis was that the
criminality of young black men is less likely to be affected by the “blurred boundaries between victimization and criminalization” (Daly1994: 234-235).

Blurred boundaries between victimization and criminalization can also be identified in the work of Richie (1996) which demonstrates how intersecting systems of race, class, and gender can lead battered black women to commit criminal offenses. Richie (1996) conducted life history interviews with 37 women incarcerated at Rikers Island Correctional Facility between June 1991 and February 1992. She introduces the concept of “gender entrapment” to explain how battered black women are coerced into crime by their culturally constructed gender roles in African American families, their vulnerability to violence in their intimate relationships, and their subordinate social position in the broader society. When placing the women’s illegal activities in a social context, Richie (1996) argues that black battered women sometimes took blame for their mutual criminal behavior with black men because they believed if they were arrested they would be treated less harshly by the criminal justice system than their male partners. The black women Richie (1996) interviewed appeared to be very much aware of the biased criminal justice practices and the disproportionate incarceration of men of color. This knowledge consciously influenced how these black women responded to abuse in their intimate relationship (Richie1996).

Racial disproportion in the criminal justice system is nothing new (Tonry1995). The harsher treatment of black males in the criminal justice system may be partially due to cultural stereotypes of black male criminality and dangerousness, as well as judge’s perceptions of young black men as more blameworthy, as a greater threat to public safety, and as “doing time” more easily. These attributes are known as the “focal concerns theory of judicial decision-making”
Furthermore, judges may interpret the demeanor of black male offenders as indicating less remorse and may perceive young black males as having a more uncooperative attitude with authority than offenders in other race-age-gender categories (Steffensmeier, Ulmer, & Kramer 1998: 787).

In order to test this assertion, Steffensmeier, Ulmer, and Kramer (1998) used statewide data from 1989 to 1992 compiled by the Pennsylvania Commission on Sentencing to examine the interaction between defendant race, gender, and age on sentencing outcomes to determine whether young black males receive harsher sentences as compared to other race-gender-age combinations. Steffensmeier, Ulmer, and Kramer (1998) suggest that race, age, and gender will interact to influence sentencing because of images associated with membership in social groups thought to be dangerous and crime prone. They found that young black males received more severe sentences than any other race, age, and gender combination; this is true for both the decision as to whether to sentence to incarceration or not, as well as length of incarceration. Young black males were perceived as lacking social bonds that were thought to reduce involvement in future criminal behavior and were more likely to be perceived as dangerous. Steffensmeier and colleagues (1998:789) argue that defendant characteristics influence sentencing outcomes independently and in combination and that “interconnected effects culminate in the disproportionately severe sentencing of young black males.” Therefore, researchers who simply test for the direct effect of defendant’s race on sentencing miss subtle and interesting interactive effects that otherwise would not have been discovered.

Spohn and Holleran (2000) extended Steffensmeier and colleagues (1998) analysis by testing for interactions between race/ethnicity, gender, age, and employment status in three large
urban jurisdictions, Chicago, Miami, and Kansas City. They found that young black and Hispanic offenders are consistently more likely than middle-aged white offenders to be sentenced to prison in each jurisdiction (Spohn & Holleran 2000). Particularly in Chicago, young black and Hispanic males and middle-aged black males face higher odds of incarceration than middle-aged white males. In Miami, young black and Hispanic males and older Hispanic males face higher odds of incarceration than middle-aged white males. In Kansas City, both young black males and young white males face higher odds of incarceration than middle-aged whites. Furthermore, they found that in both Chicago and Kansas City, unemployed blacks and Hispanics are substantially more likely than employed whites to be sentenced to prison (Spohn & Holleran 2000). Therefore, they argued that the combination of youth, unemployment, and minority status produces disparate sentencing outcomes. They found that it is the combination of these characteristics, rather than any individual characteristic alone, that produces the greatest increase in the likelihood of incarceration (Spohn & Holleran 2000: 301).

One of the only studies that I am aware of that moves away from the mere examination of defendant characteristics to include the intersection of victim race and gender in non-capital cases was conducted by Curry in 2010. Curry (2010) used data from the “Sentencing Dynamics Study: A sourcebook of felony sentencing practices in urban Texas in 1991,” which consisted of a random sample of offenders convicted of a felony between January 1 and September 30, 1991 in the seven largest counties in Texas. Curry (2010) hypothesized that sentences would be harsher in cases where victims were white and female, and where victims were white and offenders either Black or Hispanic. Curry (2010) found that homicides committed against white females led to sentences that were significantly longer compared to homicides committed against
males of any race/ethnicity. Furthermore, it was found that victimizing Hispanic females also led to more severe sentences in homicide, sexual assault and robbery cases, and the victimization of a black female did not lead to longer sentences in any of the analyses (Curry 2010). These findings introduce the potential for a “Hispanic female effect” to emerge in non-capital cases and were also consistent with studies that find a “white female victim effect” in capital cases (Holcomb et al. 2004; Williams & Holcomb 2004).

“White Female Victim Effect” in Capital Cases

Prior research on the interactive effects of victim characteristics, such as race and gender, on sentencing outcomes in capital cases is also limited (Paternoster 1983; Holcomb et al. 2004; Williams & Holcomb 2004; Stauffer et al. 2006; Williams et al. 2007). Paternoster (1983) conducted a study using Supplemental Homicide Report (SHR) data from 1,800 non-negligent homicide cases in South Carolina from 1977 to 1981. He was interested in determining whether the decision of the prosecutor to seek a death sentence was related to the race of the victim when similar cases were compared (Paternoster 1983). He examined the effect of victim race on the prosecutor’s decision to seek a death sentence by conducting a multivariate analysis, while controlling for legally relevant characteristics. Paternoster (1983) found that prosecutors were more likely to seek the death penalty in homicide cases involving either male or female white victims compared to homicide cases involving either male or female black victims. Defendants in white female victim cases tended to have the greatest likelihood of prosecutors seeking a death sentence and defendants in black male victim cases tended to have the least likelihood of prosecutors seeking a death sentence (Paternoster 1983).
Similarly, Radelet and Pierce (1991) found that Florida homicide cases with white female victims were the most likely to result in a death sentence and cases with black male victims were the least likely to result in a death sentence. Although both of these studies show that cases involving white female victims were the most likely to result in death sentences, data from both studies were drawn from Southern jurisdictions. Therefore, it is uncertain whether these findings can be generalized to current death sentencing practices in other parts of the U.S. (Williams & Holcomb 2004).

In order to address the limitations of previous research on the interactive effects of victim race and gender on death sentencing outcomes, Holcomb, Williams, and Demuth (2004) conducted a study using data on Ohio homicides from the Supplemental Homicide Reports (SHR) complied by the FBI for the years 1981 through 1997. They hypothesized that cases involving white female victims would be more likely to result in a death sentence compared to any other race-gender victim dyad. In order to test this hypothesis, Holcomb and colleagues (2004) conducted a logistic regression analysis with interaction terms in the form of dummy variables for the race and the gender of the victims, with white female victim as the reference category. They found that the odds of a homicide with a black male victim resulting in a death sentence were 78% lower than in cases with white female victims (Holcomb et al. 2004). The odds of a death sentence with white male victims were 68% lower than in cases with white female victims (Holcomb et al. 2004). The odds of a death sentence in homicides with black female victims were 61% lower than in cases with white female victims (Holcomb et al. 2004). Holcomb and colleagues (2004) referred to these observed results as a “white female victim effect.” Their results are consistent with the view that black female victims do not share the same
social status with white female victims, but challenges the argument that an elevated status extends to all white victims. This suggests that victim gender may be more important than victim race in understanding death sentence disparity (Holcomb et al. 2004).

Holcomb and colleagues (2004) have explained the “white female victim effect” observed in their results as being related to society’s heightened concern for the victimization of white females. Historically, the victimization of white females, especially by black offenders, has had considerable symbolic power in the United States (Williams et al. 2007). As discussed in the cases of Ed Johnson and Jesse Washington at the beginning of Chapter 3, the lynching of persons suspected of rape was reserved almost exclusively for blacks offenders suspected of raping white women in the South. Therefore, white females may be perceived as the group most in need of protection from violence and least likely to be responsible for their victimization (Holcomb et al. 2004). This may be the result of a perception that violence is not a normal part of everyday life for white females, unlike black females and males, for which violence is perceived to be a common experience (Holcomb et al. 2004).

The Holcomb, Williams, and Demuth (2004) study was one of the first of its kind to explicitly examine the interaction of victim race and gender on sentencing outcomes in capital cases. Although Holcomb and colleagues (2004) should be credited for exploring the intersection of race and gender in capital sentencing, their study had a number of limitations. One limitation to the Holcomb study (2004) was that its data was derived from the Supplemental Homicide Reports (SHR). The use of the SHR data for analyzing homicides and sentencing outcomes has been criticized in the literature (Maxfield 1989). According to Maxfield (1989), one limitation to using the SHR data is that there consistently is missing information on the aggravating and
mitigating circumstances of homicides. A second limitation is that information within the SHR may not be representative, because not all police departments participate in the SHR program (Maxfield 1989). Furthermore, Holcomb and colleagues (2004) did not control for the defendant’s prior criminal record in their analyses. A defendant’s prior criminal record is thought to be an important legally relevant factor in decision makers sentencing decisions.

In response to these limitations, a group of researchers set out to expand the Holcomb (2004) results, using different data to determine whether a “white female victim effect” exists (Stauffer, Smith, Cochran, Fogel, & Bjerregaard 2006). Stauffer and colleagues (2006) sought to determine whether the “white female victim effect” discussed in the Holcomb (2004) article similarly influenced death sentencing in North Carolina. They collected information for 1,074 sentences handed down during the period 1979 to 2002. Their data was derived from reviews of capital murder trials in the North Carolina Supreme Court and Court of Appeals cases, public records, defendant and state briefs describing details of the crime, as well as Issues and Recommendation as to Punishment forms completed by the jury in each case. There analyses were based on 953 cases in which 482 of them resulted in a death sentence.

Not surprisingly, results from an initial logistic regression analysis indicated that the coefficient for cases involving black male victims was statistically different from cases involving white female victims (Stauffer et al. 2006). Cases involving black male victims were only about half as likely to receive a death sentence (odds ratio= .464). Furthermore, statistically significant differences were not found between white female victim cases and black female victim cases, emphasizing the dominance of a gender rather than race effect in sentencing outcomes (Stauffer et al. 2006). However, when controlling for additional variables that are thought to be predictors
of an increased risk of a death sentence, such as murder involving a rape, representation by a public defender, and victim-offender relationship, no victim race-gender interaction effects emerged as a predictor of death sentence outcomes (Stauffer et al. 2006). Contrary to the results of Holcomb’s (2004) study, these results suggested that the interaction of victim race and gender does not appear to be a major determinant of death sentencing in North Carolina capital trials (Stauffer et al. 2006).

In an effort to further examine the somewhat divergent findings of the two previously mentioned studies, Williams, Demuth, and Holcomb (2007) examined the influence of victim gender on the death sentencing outcomes reported in the famous Baldus’ Charging and Sentencing Study of capital punishment in Georgia. The researchers wanted to examine both the independent and joint effects of victim race and gender, as well potential victimization characteristics that might explain victim gender effects. They found that the odds of receiving a death sentence were 2.66 times higher for defendants who kill a female victim than for defendants who kill a male victim. However, after accounting for the greater likelihood of sex-related victimization among female victims, such as the victim was forced to disrobe, no victim gender differences existed in death penalty outcomes. Moreover, the odds of receiving a death sentence for killing a white female were approximately 14.5 times higher than the odds of receiving a death sentence for killing a black male. It was black male cases that stood apart from all the others in this study. Williams and colleagues (2007) referred to this as “black male victim effect.” Therefore, the only three studies to specifically address the intersection of victim race and gender in capital cases have produced findings that vary significantly across different victim combinations and case characteristics.
It is important to remember that race, class, and gender effects are not simply additive forces (Anderson & Collins 2007). For example, if someone is a lower class, African American woman, this person does not experience the simple negative additive effect of being female, African American, and lower class. Rather, her experience is an outcome of how these forces intersect with each other through the social and economic structure (Anderson & Collins 2007). To “live as” a lower class, African American woman means something very different than living as a lower class white woman. Understanding such experiences goes beyond statistics, and requires familiarity with qualitative methods that attempt to deal with what it means to “live as” (Lynch 1996: 9). Burgess-Proctor (2006:42) argues that the combination of quantitative and qualitative methods offers unique insight into the ways in which race (and other aspects of a defendant or victim’s social location in society) influences his or her treatment in the criminal justice system. Combining qualitative and quantitative methods allows researchers to take advantage of the representativeness and generalizability of quantitative findings and the rich, contextual nature of qualitative findings (Trahan 2011). Therefore, a research design that uses a mixed methods approach can be particularly relevant to producing intersectional scholarship.

The intersections of gender, class, and race provide the basis for needed research into the questions of domination, repression, and social control (Schwartz & Milovanovic 1996: xiv). Burgess-Proctor (2006) argues that the intersectional approach that is informed by multiracial feminism offers feminists scholars the richest and most complete theoretical framework for studying gender. A race-class-gender framework is applicable to the lives of all people, regardless of their social location. Multiracial feminism and the intersectional framework
through which it operates hold great promise for contemporary feminist scholarship (Burgess-Proctor 2006: 38).

Due to conflicting empirical evidence about whether a “white female victim effect” exists in sentencing outcomes in capital cases and the value of grounding research in an intersectional framework, the current study employs a mixed methods approach to determine if the intersection of race and gender among homicide victims is associated with the greater likelihood of offenders receiving a death sentence in capital cases by analyzing data collected by the Capital Jury Project (CJP). Due to its uniqueness, the CJP data and its collection are described in more detail in the next chapter.
Chapter 5: The Current Study

The Data: Capital Jury Project Design

The Capital Jury Project (CJP) is a consortium of university-based investigators specializing in the analysis of data collected in their respective states and collaborating to address the objectives of the Project. When initiated in 1991, the Capital Jury Project had three general objectives: (1) to examine and systematically describe jurors’ exercise of capital sentencing discretion; (2) to identify the sources and extent of arbitrariness in jurors’ exercise of capital discretion; and (3) to assess the effectiveness of the principal forms of capital statutes in controlling arbitrariness in capital sentencing (Bowers 1995). As previously discussed in Chapter 2, the CJP involved interviews with 1,198 capital jurors from 353 trials in 14 death penalty states between 1988 and 1995. The CJP states include Alabama, California, Florida, Georgia, Indiana, Kentucky, Louisiana, Missouri, North Carolina, South Carolina, Pennsylvania, Tennessee, Texas, and Virginia (Bowers, Sandys, & Brewer 2004).

The fourteen states included in the CJP data represent a combination of the three main types of capital sentencing schemes approved in Gregg v. Georgia (1976). For example, Georgia’s threshold statute requires jurors to find at least one aggravating factor beyond a reasonable doubt from a list specified in the statute before imposing a death sentence (Bowers 1995). Florida’s balancing statute requires jurors to weigh aggravating factors against mitigating factors listed in the statute when making their life-or-death sentencing decision. Texas’ directed statute restricts the death penalty to persons convicted of capital felonies with special aggravating circumstances. Under Texas’ statute, the jurors’ imposition of life or death is strictly

---

8 William J. Bowers is Principal Investigator for the Capital Jury Project (CJP). Michael E. Antonio coordinated data collection and management for the second phase of the CJP on the role race plays in capital sentencing (www.albany.edu).
determined by their findings of the likely future dangerousness of the defendant, the defendant’s intent to kill or level of responsibility for the victim’s death, and the existence of any mitigating evidence which would warrant a life, rather than a death sentence (Bowers 1995). Other CJP states have adopted variations of these three types of sentencing schemes. For example, Virginia, Louisiana, and California have followed Texas’ directed sentencing approach, whereas South Carolina and Kentucky have adopted schemes similar to Georgia’s threshold statute (Bowers 1995). Yet, other states, such as New Jersey\(^9\) and Pennsylvania have followed Florida’s balancing statute. It is also important to note that in two states with balancing statutes, Alabama and Florida, the trial judge may override the jury’s sentencing decision (Bowers 1995).

According to the Equal Justice Initiative (2011), twenty-one percent of inmates currently on death row in Alabama have been sentenced to death through judicial override. This means that an elected trial judge essentially changes the jury’s life or death verdict and imposes his/her own sentence on the defendant in a capital case. Judicial override has received overwhelming criticism. It has been argued that judges may (ab)use their authority and override a jury sentencing recommendation because of political pressure; in order to balance his/her sentencing record; and because of unconscious racial prejudice (Equal Justice Initiative 2011). Therefore, it is not unreasonable to expect that the routine use of judicial override in states like Alabama further contribute to arbitrariness and discrimination in death sentencing.

The primary data for the Capital Jury Project were obtained by conducting three-to-four hour in-person interviews with capital jurors. A lengthy, 50-page juror interview instrument was developed by investigators. The instrument included questions designed to elicit juror’s

---

\(^9\) In 2007, New Jersey replaced the death penalty with life without the possibility of parole (Death Penalty Information Center 2014).
perceptions pertaining to: the case, including the crime, defendant(s), and victim(s); the trial, including the guilt phase of the trial, guilt deliberations, sentencing phase of the trial, and sentencing deliberations; the sentencing decision, including aggravating and mitigating factors; the judge’s instructions to the jury about punishment; juror perceptions of the judge, prosecutor, and defense attorney in the case; jury selection and composition; the jurors’ attitudes about crime and punishment; and demographic information on the background of the juror being interviewed (“Juror Interview Instrument”, n.d.). The interview instrument includes both closed-ended questions with designated response options and open-ended questions that invite detailed narrative descriptions of the jurors’ experience and perceptions. Under the supervision of faculty investigators, advanced law and social science graduate students conducted the majority of the interviewing and data collection in their respective states. An Interviewers’ Guide was developed and training sessions were held to increase the effectiveness of interviewing techniques. All jurors selected were guaranteed confidentiality and offered twenty dollars for their participation in the project (Bowers 1995).

The CJP employed a three-stage sampling design. First, death penalty states were chosen. Participating death penalty states were selected to represent the primary types of guided discretion capital statutes including “threshold,” “balancing,” and “directed” statutes (Bowers 1995: 1078). Although the resulting sample is predominantly southern, priority was given to states with a sufficient number of capital trials and to states that would enhance the regional representativeness of the sample. The final sample includes fourteen death penalty states in total.

---

10 Although a limited number of trial transcripts were collected for cases included in the Capital Jury Project (approximately 60-70), they were not used in this dissertation. All of what is known about the cases comes from capital juror perceptions of the crime, defendant, and victim asked during face-to-face interviews.
Next, a sample of capital murder trials that went through both the guilt and sentencing phases was drawn from each state beginning in January 1988. The target sample was between twenty and thirty capital trials - 10 to 15 trials in which the jury voted for the death penalty and 10 to 15 trials in which the jury voted for life (Bowers 1995). When selecting trials for the sample, investigators favored more recent cases on the assumption that the more current the jurors’ experience, the more reliable will be their recall and memory. The sample included 353 capital cases, 145 cases resulting in a life sentence and 208 cases resulting in a death sentence.

Last, CJP investigators interviewed four randomly selected jurors from each trial. However, investigators did conduct interviews above the four-case-minimum in trials of special interest, especially when initial interviews left questions unanswered. Strict procedures were followed to ensure randomness in the selection of jurors and to minimize selection bias in replacing jurors who could not be located or who did not want to participate in the project.

The juror sampling procedure was as follows: In order to obtain a representative sample of four jurors, the jurors were numbered from 1 to 12 corresponding to the order in which they appeared on the jury list; a random starting point was chosen to minimize the bias that might be associated with the way jurors were listed (e.g. the foreperson is generally listed first or last); from the random starting point on the list, jurors were assigned sample status designations: A1 (starting point), B1 (next juror), C1 (next juror), A2, B2, C2, and so on...A3-C3, A4-C4 (last juror in the sequence). Panel A jurors, designated A1-A4, were the initial four jurors contacted for interviews. Any Panel A juror who did not participate was replaced with the corresponding

---

11 The decision to select an equal number of cases resulting in a life or death sentence has its limitations and will be discussed in more detail at the end of this chapter.

12 The average number of years between serving as a juror on the capital case in question and the jurors’ interview with CJP investigators was 2.5 years.
Panel B juror. After five failed attempts to reach Panel B juror, the Panel A juror was replaced with the corresponding Panel C juror. If both replacement efforts failed, the investigator moved to the next Panel B juror in the sequence, the corresponding Panel C juror, the next Panel B juror, the next corresponding Panel C juror, and so on (Bowers 1995: 1081). Once the jurors in the sample had been identified by name and address, the investigator sent them a letter describing the research purpose and requesting their participation. The investigator followed up with phone calls to schedule interviews. The interviews were typically conducted in the home of the respondent. The interviews were tape recorded with the jurors’ permission.

**Purpose of the Current Study**

The primary goal of the current study is to determine if the intersection of race and gender among homicide victims is associated with the greater likelihood of offenders receiving a death sentence in capital cases. A related goal is to examine whether a “white female victim effect” exists within the capital cases that are part of the Capital Jury Project (CJP). This will be achieved by determining whether cases involving white female victim cases are at increased odds of resulting in a death sentence as compared to other race-gender victim combinations. Because this dissertation is primarily a victim-based analysis and because these data are particularly well suited for understanding juror’s perceptions of victims and offenders, differences in jurors’ perceptions of victims and victim’s families are examined between the four race-gender victim combinations to determine whether these perceptions are associated with the interaction of victim race and gender in capital cases and whether these victim characteristics are significant predictors of capital case outcomes.


**Research Questions & Hypotheses**

The overarching question to be answered by this research is “in what ways does the intersection of victim race and gender affect jury decision-making and capital case outcomes?”

*The Influence of Legally Relevant Case Characteristics*

The following research questions and hypotheses involve the analysis of the 249 capital cases as the unit of analysis:

1. Are white victim cases more likely to receive a death sentence?

2. Are female victim cases more likely to receive a death sentence?

3. Are victim gender effects stronger than victim race effects?

4. Are cases involving white female victims significantly more likely to result in a death sentence than other victim race-gender combinations, when controlling for important legally relevant case characteristics?

With regard to the first three research questions, results of studies conducted by Baldus and colleagues (1990) and Radelet and Pierce (1991) suggest that the race and gender of the victim will each have independent effects on death penalty case outcomes. I, therefore, hypothesize that defendants who kill white victims will be significantly more likely to receive a death sentence than those who kill black victims while controlling for defendant race and other legally relevant factors such as defendant’s prior criminal record, victim-offender relationship, felony murder, and defense attorney’s performance (H1). Similarly, defendants convicted of
killing a female victim will be significantly more likely to receive a death sentence than
defendants who are convicted of killing a male victim while controlling for defendant race and
other legally relevant factors (H2). It is further hypothesized that gender effects will be stronger
than race effects (H3). According to the results of the Holcomb study (2004: 892) discussed in
the previous chapter, the odds of a death sentence are 1.766 ($B = .569$) times greater in cases
involving a white victim rather than a non-white victim and 2.617 ($B = .962$) times greater in
cases involving a female victim rather than a male victim. This finding indicates a strong gender
effect on death sentencing.

In addition to independent effects, I hypothesize that there will be an interactive effect
and that the intersection of victim race and gender will become important. It is hypothesized that
defendants in white female victim cases will be significantly more likely to receive a death
sentence than white male victim (WMV), black female victim (BFV), and black male victim
(BMV) cases (H4). Black male victim cases are expected to be treated the most leniently by
capital jurors because jurors may consider crimes against black male victims as unworthy of the
most severe criminal justice response (Holcomb et al. 2004). Therefore, it is hypothesized that a
hierarchy of “deathworthiness” will emerge with defendants who kill white female victims being
the most likely to receive a death sentence, then those who kill black female victims, then those
who kill white male victims, and finally those who kill black male victims being the least likely
to receive a death sentence (Eberhardt et al. 2006).

*The Influence of Jurors’ Perceptions of the Victim and Victim’s Family*

A distinct, but related set of questions, focuses more on the way in which the jurors
perceive the victims and their families. Here, I am particularly interested in identifying which
victim and victim family characteristics are the most influential in explaining capital case outcomes. Additional questions relate to whether victim characteristics vary by race-gender combinations and whether victim characteristics are significant predictors of whether a capital case results in a death sentence.

According to Sundby (2002: 375), a victim who is engaged in high-risk behavior leading up to the crime is less likely to invoke an empathetic response from the jury or to provoke a sense of outrage, which makes the jury less likely to impose a death sentence. Therefore, it is hypothesized that victim characteristics will play an important role in a juror’s sentencing decision and will vary significantly depending on the race and gender of the victim (H5).

**The Creation of Additional Variables**

Borrowing from Brewer’s (2004), additional variables were created in order to control for some factors that have important influence on death sentencing decision-making. For example, view of defense attorney’s performance, view of prosecutor’s performance, southern jurisdiction, and heinousness of crime have all been identified as playing an important role in sentencing decisions. The variables “view of defense attorney’s performance” and “view of prosecutor’s performance” comprise two survey items relating to the quality of the attorney’s competence, professionalism, and overall impression on the respondent. The two survey items were how well the following words describe the attorney: (1) the defense attorney (prosecutor) was competent and professional; and (2) the defense attorney (prosecutor) did an outstanding job of presenting his/her case. These items were measured as 1= not at all; 2= not so well; 3= fairly

---

13 Brewer (2004) created these measures using CJP variables in order to examine race, empathy, and juror receptivity to mitigation. He found that black jurors overall are more receptive than other jurors and that the variation in receptivity to mitigation by black jurors in capital cases is highly focused in cases where a black defendant murders a white victim.
well; 4= very well. Likert responses were coded such that a higher numerical value indicated more agreement with the statement and summed.

The variable, “southern jurisdiction” indicates whether the trial was held in a southern jurisdiction. The variable was coded as 1= cases in which the trial was held in a state that had been part of the former Confederacy; and 0= if the trial was held outside of this region. The rationale behind choosing southern as a control variable stems from the long-standing tradition of support for capital punishment and racial bias which have traditionally been associated with states in the southern part of the US (Banner 2002).

The variable, “heinousness of crime” measures the respondent’s attitudes regarding the depravity, viciousness, and brutality of the crime. This measure is a scale consisting of survey items that measure the respondents’ level of agreement with nine characterizations of the crime. Respondents were asked “How well do the following words describe the killing?” Bloody, gory, vicious, depraved, cold-blooded, repulsive, made you sick, made the victim suffer, and body was maimed after death. These items were measured as 1= not at all; 2= not so well; 3= fairly well; 4= very well. Likert responses were coded such that a higher numerical value indicates more agreement with the statement. The individual scores for the nine items were averaged and the mean score was used as the measure of the degree of heinousness of the crime.

Additional victim characteristics provided an important foundation for subsequent descriptive narratives which aim to further explain and contextualize perceived victim empathy, distance, and blame. The CJP asks a series of questions asking respondents’ about “how well the following words describe the victim”: admired or respected in the community; from a poor or deprived background; raised in a warm loving home; was an innocent or helpless victim; had a
problem with drugs or alcohol; and was too careless or reckless. Likert responses were coded 1=not at all; 2= not well; 3=fairly well; 4= very well with higher values indicating greater agreement with the statement. These Likert-type questions also measure juror perceptions of the victim’s family, such as imagined yourself in victim family's situation; felt victim family's grief and sense of loss; felt distant or remote from victim's family; felt the victim's family was partly to blame; and victim's family seemed different from your own family.

Social dynamics among jury members

Detailed narratives are included in order to provide a rich description of who these victims are and to place the life-or-death decision in context when considering the importance victim characteristics play in the sentencing decision of capital juries. Once both main effects and interaction effects were established, cases were selected with each victim race-gender dyad; white female, white male, black female, and black male victims, including cases that resulted in a death sentence and cases that resulted in a life sentence for further analyses. Several CJP states did not have all eight victim race-gender combinations by punishment decision so a cluster of states that border one another were selected. North Carolina, South Carolina, and Virginia were chosen in order to have enough cases from each of the victim race-gender dyads to draw from and due to their geographic proximity to one another. This selection process resulted in total of twelve cases to be interlaced with results from the quantitative analyses in order to provide case examples where there were significant findings. Therefore, case examples were only included when a significant finding emerged from the quantitative analyses. Each selected case is investigated using the extensive qualitative Capital Jury Project juror interview data. The selected cases are intended to be illustrative and interpretive rather than representative and do not
add to the statistical power of the quantitative results. However, the selected cases do provide compelling and at times disturbing evidence that race does play an important role in capital case outcomes.

The qualitative CJP interview data is extremely useful because it asks jurors to describe in their own words details of the crime which often includes information on the victim. For example, the very first question asks jurors to describe in their own words the crime that was committed. Although, the detail of jurors responses is based both on their individual perceptions of the crime, as well as their ability to remember important aspects of the crime, the defendant, and the victim, most jurors were able to provide sufficient background information on the crime itself. It is important to note that the crime data is based only on what jurors remember from serving on the capital case and does not include information that was officially collected through court records. Furthermore, when available the victim’s name and occupation are stated; the most memorable victim in the juror’s mind is also identified, as well as the juror’s feelings or thoughts about all of the victims in the case, whether the victim’s family members were present at trial, and if the victim reminded the juror of someone they knew.

The selected cases support juror’s perceptions of victim empathy, distance, and blame for their victimization in an attempt to contextualize the circumstances of the crime and victim characteristics that influence the life-or-death decision in each of the selected cases. Previous research has suggested that perceptions of homicide victims and his or her “worthiness” will most likely shape society’s reaction to their victimization in ways that vary by race, gender, class, and their intersection (Barak, Leighton, & Flavin 2007; Sundby 2003). For example, when a poor black male is murdered, many Americans may be inclined to assume he was engaging in
some activity that precipitated the violence (Holcomb et al. 2004), such as drug or gang involvement. Fleury-Steiner (2002:564) found a similar “blacks are killing the blacks” theme in his analysis of CJP jurors’ interviews from black and white defendant cases resulting in a death sentence. Historically, black women have been characterized as being crack addicts, “welfare queens,” masculine, and oversexed (Barak et al. 2007). These are the types of victim characteristics that provoke feelings of contempt and therefore, are undeserving of the most severe punishment in the eyes of jurors. Moreover, white female victims may be seen as the most deserving of sympathy and protection and are accorded chivalrous behavior by actors in the criminal justice system. In this sense, white women are perceived as being more “valuable” than black females in our society (Nooruddin 2007). Furthermore, the victimization of a white male may be perceived as being a serious violation of the dominant group interests and may therefore be more deserving of death (Holcomb et al. 2004). The present analysis is no exception. As will be discussed in detail in subsequent chapters, victim characteristics do significantly influence jury decision-making in capital cases and they do vary by the intersection of victim race and gender.

Feminist scholarship has focused on the ways in which intersections play out in the social world and have emphasized the contextualization of diverse people’s day-to-day existence by using qualitative, descriptive, and narrative methodologies. This type of contextualization, along with quantitative data analyses, is best suited for demonstrating the nuanced meanings of race, gender, class, and their interactions (Barak et al. 2007: 91). The current study employs both quantitative analyses and descriptive narratives in order to get at the complex ways in which the intersection of victim race and gender influence the imposition of the death penalty in hopes that
a more sophisticated analysis of how these dynamics shape decision-making in capital cases can be identified and better understood to promote the Fourteenth Amendment’s commitment to equal protection of law. The descriptive narratives used in the current study are used to illustrate key findings and were not otherwise analyzed using any qualitative methodology or analytic technique.

**Strengths and Limitations of the Capital Jury Project**

The current study contributes to the wealth of information already furnished by the Capital Jury Project. However, there are a few notable methodological concerns I would like to mention about using the Capital Jury Project data for the current study. These include differences in juror responses to “objective” facts of the crime, defendant, and/or victims in the case and difficulties analyzing multiple victim cases involving different race and genders. First, because the Capital Jury Project’s data is based on juror’s memories of their experience serving on a capital jury, juror responses to “objective” questions, such as the defendant and/or victim’s race, at times differ between jurors in the same case. This concern was overcome by using a “majority rules” criterion whereby responses were coded where most of the jurors in that case agreed on the race and gender of the victim and defendant and therefore, were consistent in their answers.

Another important methodological consideration relates to multiple victim cases. Cases with multiple victims present a challenge to victim-based analyses especially when victims are of different genders and races (Hindson, Potter, & Radelet 2006). Because this study is primarily a victim-based analysis and the validity of my findings depend on a reliable measure of victim race and gender, sixty cases involving multiple victims of different races and genders were excluded
from the analyses. In the end, the final analyses included 209 single victim and 40 multiple victim cases of the same race and gender.

It is also important to note that one of the primary disadvantages of the CJP data is that by restricting analysis solely to jury decision making regarding sentencing in capital cases, other points in the decision making process, such as a prosecutor’s decision to seek the death penalty in particular cases, is ultimately excluded from the analysis. As a result, at least some, if not most, of the discrimination in administration of capital punishment is not captured here. Researchers have found that victim race and gender, as well as the location of where the homicide was committed are significant factors in a prosecutor’s decision to seek the death penalty in the first place (Paternoster 1983; Hindson, Potter, & Radelet 2006). This is a considerable limitation to the current research because it has been argued that prosecutorial decision-making is not subject to judicial review, thereby, giving prosecutors unchecked discretion in their decisions to charge as a capital case in the first place. Consequently, researchers using the CJP data are unable to determine whether the initial charging decision of prosecutors contributes to arbitrariness and discrimination in capital sentencing in these cases.

However, one of the many advantages of using CJP data when examining death sentencing disparities is that much of the previous research on jury decision-making has relied upon mock jury simulations (Hans 1995). In mock jury experiments, participants are asked to play the role of juror and are given cases to deliberate on. These studies tend to manipulate certain characteristics of the offender and victim, such as age, race, and gender, to determine whether these manipulated factors impact jury decision-making. However, mock jury simulations have been extensively criticized for their artificiality and low external validity. The
face-to-face interview method used in the CJP is crucial in reducing the artificiality associated with mock jury trials by providing a more refined picture of jury decision-making processes that usually occur behind closed doors with little oversight of the deliberation process about life and death. Therefore, the CJP data has considerably enhanced our understanding of juror decision-making in capital cases (Hans 1995).

However, the extant literature on race and the death penalty tends to focus exclusively on two racial groups: blacks and whites. Blacks have been historically overrepresented in death penalty prosecutions, especially in southern states where much of the social science research has been conducted (Lynch & Haney 2000). Other racial groups, particularly Hispanic/ Latinos, are not reliably identified in existing data (Gross & Mauro 1989). Regrettably, the current study suffers from the same limitations as previous research and is unable to include Hispanic/Latino defendants or victims in the analysis due to the small number of cases present in the Capital Jury Project data. For example, approximately 7% of cases involved Hispanic or Other defendants and victims. This may be a result of a widespread lack of recognition that race and ethnicity are two separate and distinct categories until 1997 (U.S. Census Bureau 2013). Furthermore, for similar analytical reasons, the small number of female defendant cases (e.g. approximately 2% of CJP cases involve a female defendant) were also excluded from analyses. The exclusion of this small number of cases, along with the exclusion of cases with multiple victims of different races and genders, resulted in the analysis of 249 out of the 353 trial included in the original CJP.

Another significant limitation of using the Capital Jury Project data is its sampling strategy as described above. Because the sampling strategy attempted to collect an equal number of life and death cases, the sample is not purely random. This limitation raises a problem of
sample selection bias (Karp & Warshaw 2006). If the sample was purely random there would be many more life cases than death cases included in the sample. However, the sampling strategy resulted in 106 cases resulting in life and 143 cases resulting in death. Ideally, this bias in the dependent variable could be corrected by weighting the data by the probability a defendant receives a life sentence versus the probability a defendant receives a death sentence in the real world. However, this information is not readily available, and most certainly varies across the fourteen death penalty states included in the CJP data.

The fourteen death penalty states included in the CJP are from different regions of the United States. The advantage is that the data does not focus primarily on one region, such as southern states, which has been done in previous research (Paternoster 1983; Radelet & Pierce 1991; Stauffer et al. 2006; Pierce & Radelet 2011; Radelet & Pierce 2011). Therefore, results observed may be more likely to be generalized to current sentencing practices throughout the U.S. instead of focusing on only one region of the country or one type of capital sentencing scheme.

Most importantly, the Capital Jury Project has provided death penalty scholars with a unique look into the sentencing decisions of actual capital jurors. Through in-depth interviews with almost 1,200 capital jurors, it has highlighted the flaws in our capital sentencing procedures and has provided substantial evidence that arbitrariness still inflicts the imposition of the death penalty in the post-\textit{Furman} era. Therefore, despite its limitations, the Capital Jury Project contains a rich mixture of both quantitative and qualitative data that are in many ways particularly well suited for this type of novel analysis on the intersection of victim race and gender in death penalty cases.
Chapter 6: Analytic Techniques & Quantitative Analyses: Case Characteristics

Descriptive Statistics of Capital Cases

The original 353 capital cases included in the Capital Jury Project were broken down to include only those cases with black and white male defendants and black and white male and female victims. All female defendant (3.7%; \( n = 13 \)) and Hispanic/Other male defendant (6.8%; \( n = 24 \)) cases were ultimately excluded from the final analyses, as were multiple victim cases where the victims were of different races and/or genders (17%; \( n = 60 \)). The final sample size for the following case-level analyses is 249.

Out of 249 capital cases remaining in the analyses, 57.4% resulted in a death sentence and 42.6% resulted in a life sentence\(^\text{14}^\). A little over half of all cases (58.2%), involve a capital trial that took place in a southern jurisdiction\(^\text{15}^\). Approximately 56.2% involved white male defendants and 43.8% involved black male defendants. Although there is an almost equal distribution of male victim (50.2%) and female victim (49.8%) cases, differences begin to emerge when considering the race of the victim. Among the 249 cases in the analyses, 78.3% involve white victims and the remaining 21.7% of cases involve black victims. Victim and defendant race and gender are obviously not the only important attributes in capital cases.

Previous researchers (Holcomb et al. 2004; Stauffer et al. 2006; Williams & Holcomb 2004; Williams et al. 2007) have identified a number of legally relevant variables that are important

---

\(^{14}\) As mentioned in the previous chapter, the number of death sentences is notably higher than would occur if the sample had been randomly selected.

\(^{15}\) Southern jurisdiction is defined as those states that made up the Confederacy during the American Civil War. The CJP states considered to be located in a southern jurisdiction include Alabama, Florida, Georgia, Louisiana, North Carolina, South Carolina, Tennessee, Texas, and Virginia. Therefore, nine out of 14 CJP states were identified as “southern,” whereas the other five CJP states were identified as “non-southern.”
predictors of death sentencing. Homicides involving multiple victims, homicides where the victim and offender are strangers, homicides committed during the course of another felony, such as a robbery, and homicides in which the defendant has a prior criminal record have all been identified as predictive of a death sentence. Approximately, 15% of the capital cases that make up the CJP subsample used in the following analyses involve multiple victims, 38% involve strangers, 36% are felony murder cases, and nearly 55% of capital defendants have a prior criminal record.

When describing the breakdown of capital cases in the CJP by the intersection of victim race and gender, I found that 41% of the 249 cases involve white female victims. Out of these 102 white female victim cases, 61.8% result in a death sentence and 38.2% result in a life sentence. The next largest number of cases involve white male victims (37.8%). Out of these 94 white male victim cases, 59.6% result in a death sentence and 40.4% result in a life sentence. A little over 12% of cases involve black male victims. Out of these 31 black male victim cases, 38.7% result in a death sentence and 61.3% result in a life sentence. The smallest group of cases involve black female victims (8.8%). Out of these 22 black female victim cases, 54.5% result in a death sentence and 45.5% result in a life sentence. According to these descriptive statistics, it appears that nearly 60% of both white female and white male victim cases result in a death sentence, whereas the opposite is true of black male victim cases. Nearly 60% of black male victim cases result in a life, not death sentence. However, the difference is not as pronounced in black female victim cases. Black female victim cases appear to be more evenly distributed between those resulting in a life versus death sentence (see Table 1 below).
Table 1: Frequencies of Variables Used in the Analyses

<table>
<thead>
<tr>
<th>Variables</th>
<th>All Cases (n=249)</th>
<th>Life Sentence (n= 106)</th>
<th>Death Sentence (n= 143)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Death Sentence</td>
<td>57.4% (143)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Main Effects</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female Victim</td>
<td>49.8% (124)</td>
<td>39.5% (49)</td>
<td>60.5% (75)</td>
</tr>
<tr>
<td>White Victim</td>
<td>78.3% (195)</td>
<td>39.5% (77)</td>
<td>60.5% (118)</td>
</tr>
<tr>
<td><strong>Interaction Effects</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White Female Victim</td>
<td>41.0% (102)</td>
<td>38.2% (39)</td>
<td>61.8% (63)</td>
</tr>
<tr>
<td>White Male Victim</td>
<td>37.8% (94)</td>
<td>40.4% (38)</td>
<td>59.6% (56)</td>
</tr>
<tr>
<td>Black Female Victim</td>
<td>8.8% (22)</td>
<td>45.5% (10)</td>
<td>54.5% (12)</td>
</tr>
<tr>
<td>Black Male Victim</td>
<td>12.4% (31)</td>
<td>61.3% (19)</td>
<td>38.7% (12)</td>
</tr>
<tr>
<td><strong>Defendant Characteristics</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black Defendant</td>
<td>43.8% (109)</td>
<td>46.8% (51)</td>
<td>53.2% (58)</td>
</tr>
<tr>
<td>Defendant Prior Record</td>
<td>54.6% (136)</td>
<td>37.5% (51)</td>
<td>62.5% (85)</td>
</tr>
<tr>
<td><strong>Case Characteristics</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Multiple Victims Involved</td>
<td>15.3% (38)</td>
<td>31.6% (12)</td>
<td>68.4% (26)</td>
</tr>
<tr>
<td>Stranger Homicide</td>
<td>38.2% (95)</td>
<td>43.2% (41)</td>
<td>56.8% (54)</td>
</tr>
<tr>
<td>Felony Murder</td>
<td>36.1% (90)</td>
<td>52.2% (47)</td>
<td>47.8% (43)</td>
</tr>
<tr>
<td><strong>Location of Trial</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Southern Jurisdiction</td>
<td>58.2% (145)</td>
<td>43.4% (63)</td>
<td>56.6% (82)</td>
</tr>
</tbody>
</table>

**Chi-Square: Main Effects and Legally Relevant Case Characteristics**

In order to begin exploring the relationship between victim race and victim gender and jurors’ final punishment decision between life and death, a series of chi-square analyses were conducted. Chi-square analyses are employed when examining the relationship between two categorical variables. Results of a chi-square including female victim cases and final punishment decision indicate that the proportion of female victim cases resulting in a death sentence is not statistically different from the proportion of male victim cases resulting in a death sentence.\(^{16}\)

---

\(^{16}\) Yates’ Correction for Continuity is reported because it corrects for the overestimate of the chi-square value when used with a 2 x 2 table, which results in a greater \(p\)-value.
Table 2: Victim Gender by Juries’ Final Punishment Decision

<table>
<thead>
<tr>
<th></th>
<th>Life</th>
<th>Death</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female Victim</td>
<td>39.5%</td>
<td>60.5%</td>
<td>124</td>
</tr>
<tr>
<td>Male Victim</td>
<td>45.6%</td>
<td>54.4%</td>
<td>125</td>
</tr>
</tbody>
</table>

Yates’ Continuity Correction value = .710, p = .399

Next a chi-square including white victim cases and final punishment decision was conducted. Results indicate that the proportion of white victim cases resulting in a death sentence is not statistically different from the proportion of black victim cases resulting in a death sentence. Although this is not significant at the $p < .05$ level, the result almost reached statistical significance and is worth examining further. When sample size is fairly small, it is possible that a non-significant result may be due to insufficient power rather than no true population differences between groups.

Table 3: Victim Race by Juries’ Final Punishment Decision

<table>
<thead>
<tr>
<th></th>
<th>Life</th>
<th>Death</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>White Victim</td>
<td>39.5%</td>
<td>60.5%</td>
<td>195</td>
</tr>
<tr>
<td>Black Victim</td>
<td>53.7%</td>
<td>46.3%</td>
<td>54</td>
</tr>
</tbody>
</table>

Yates’ Continuity Correction value= 2.939, p = .086
Next, a series of chi-square analyses were conducted to determine whether additional defendant and case characteristics were related to death sentences. Results suggest that the proportion of black defendant cases resulting in a death sentence is not statistically different from the proportion of white defendant cases resulting in a death sentence.

**Table 4: Defendant Race by Juries’ Final Punishment Decision**

<table>
<thead>
<tr>
<th></th>
<th>Life</th>
<th>Death</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black Defendant</td>
<td>46.8%</td>
<td>53.2%</td>
<td>109</td>
</tr>
<tr>
<td>White Defendant</td>
<td>39.3%</td>
<td>60.7%</td>
<td>140</td>
</tr>
</tbody>
</table>

Yates’ Continuity Correction value = 1.121, $p = .29$

There are also no statistically significant differences in death sentences for defendants with prior criminal records or for multiple victim cases, stranger homicide cases, cases brought to trial in a southern jurisdiction, and felony murder cases.

**Table 5: Defendant Prior Record by Juries’ Final Punishment Decision**

<table>
<thead>
<tr>
<th></th>
<th>Life</th>
<th>Death</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>No prior criminal record</td>
<td>57.1%</td>
<td>42.9%</td>
<td>35</td>
</tr>
<tr>
<td>Prior criminal record</td>
<td>37.5%</td>
<td>62.5%</td>
<td>136</td>
</tr>
</tbody>
</table>

Chi-square value= 4.639, $p = .098$

---

17 The total $N$ in the following tables does not sum to 249 cases because many jurors were “unsure” whether the defendant had a prior criminal record, whether there were multiple victims, what the victim-offender relationship was, and whether the murder involved another felony.
**Table 6: Multiple Victims by Juries’ Final Punishment Decision**

<table>
<thead>
<tr>
<th></th>
<th>Life</th>
<th>Death</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single victim case</td>
<td>45%</td>
<td>55%</td>
<td>209</td>
</tr>
<tr>
<td>Multiple victim case</td>
<td>31.6%</td>
<td>68.4%</td>
<td>38</td>
</tr>
</tbody>
</table>

Chi-square value = 3.855, \( p = .146 \)

**Table 7: Victim-Offender Relationship by Juries’ Final Punishment Decision**

<table>
<thead>
<tr>
<th></th>
<th>Life</th>
<th>Death</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not strangers</td>
<td>42.7%</td>
<td>57.3%</td>
<td>143</td>
</tr>
<tr>
<td>Strangers</td>
<td>43.2%</td>
<td>56.8%</td>
<td>95</td>
</tr>
</tbody>
</table>

Chi-square value = .187, \( p = .911 \)

**Table 8: Southern Jurisdiction by Juries’ Final Punishment Decision**

<table>
<thead>
<tr>
<th></th>
<th>Life</th>
<th>Death</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-southern jurisdiction</td>
<td>41.3%</td>
<td>58.7%</td>
<td>104</td>
</tr>
<tr>
<td>Southern jurisdiction</td>
<td>43.4%</td>
<td>56.6%</td>
<td>145</td>
</tr>
</tbody>
</table>

Yates Continuity Correction value = .040, \( p = .841 \)

**Table 9: Felony Murder by Juries’ Final Punishment Decision**

<table>
<thead>
<tr>
<th></th>
<th>Life</th>
<th>Death</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not felony murder case</td>
<td>36.7%</td>
<td>63.3%</td>
<td>150</td>
</tr>
<tr>
<td>Felony murder case</td>
<td>52.2%</td>
<td>47.8%</td>
<td>90</td>
</tr>
</tbody>
</table>

Chi-square value = 5.581, \( p = .061 \)
Although felony murder is not statistically significant at the $p < .05$ level, the chi-square value did almost reach statistical significance. What is interesting about this finding is that it appears that a death sentence was imposed more often in non-felony murder cases than in felony murder cases, contrary to findings in previous research (Radelet & Pierce 1991; Holcomb et al. 2004; Stauffer et al. 2006). Radelet and Pierce (1991) found that felony murder increase the odds of a defendant receiving a death sentence by 4.95. Even more striking, Holcomb and colleagues (2004) found that the odds of a defendant receiving a death sentence in cases involving felony circumstances were approximately 24 times greater than in cases with no felony circumstance.

It is possible that my divergent finding is partly due to jurors perceiving felony murder cases as less deserving of death because these types of cases lack the premeditation and depravity associated with the death penalty. It may be that jurors’ decisions about death are being influenced by their perception that the motive of the crime was robbery, rather than murder and the defendant did not set out to intentionally kill the victim. For example, a life sentence was imposed in a North Carolina case, involving the robbery and murder of a convenience store owner. Jurors deliberated extensively about whether the murder was premeditated. Premeditation was identified by jurors as the single most important factor in the jury's decision about what the defendant's punishment should be. Jurors believed that the main motive was robbery, in order for the defendant to pay his rent and feed his alcohol addiction, not murder. One white female juror stated “All the facts showed…that he was guilty. But it wasn’t premeditated….and for that reason, if you didn’t plan something any of us can get caught up in anything. And for that reason I felt like [I was leaning more towards life than death]. Later in the interview, she affirmed that “we [the jurors] agreed it was a spur of the moment, impulsive thing that happened.”
Chi-Square: Interaction Effects and Legally Relevant Case Characteristics

When looking beyond the independent categories of victim race and victim gender and instead including the intersectional categories of white female, white male, black female, and black male victims in the following chi-square analyses, an important finding emerges from the data. Results suggest that there are no statistically significant differences in final punishment decision between white female, white male, black female, and black male victim cases. However, it appears that a significantly greater number of black male victim cases result in a life sentence rather than a death sentence. This is consistent with Stauffer and colleagues (2006) findings that the least likely cases to result in a death sentence are those involving black male victims. In fact, a little more than half of CJP states did not include any black male victim cases resulting in death. These states include Alabama, Florida, Indiana, Kentucky, South Carolina, Texas, Missouri, and Virginia. However, when comparing the proportion of life and death sentences among the four victim-race gender dyads no statistically significant differences between groups emerge.

Table 10: Interaction of Victim Race-Gender by Final Punishment Decision

<table>
<thead>
<tr>
<th>Chi-Square</th>
<th>Life</th>
<th>Death</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>White female victim</td>
<td>37.9%</td>
<td>62.1%</td>
<td>103</td>
</tr>
<tr>
<td>White male victim</td>
<td>41.3%</td>
<td>58.7%</td>
<td>92</td>
</tr>
<tr>
<td>Black female victim</td>
<td>45.5%</td>
<td>54.5%</td>
<td>22</td>
</tr>
<tr>
<td>Black male victim</td>
<td>59.4%</td>
<td>40.6%</td>
<td>32</td>
</tr>
</tbody>
</table>

Chi-square value = 4.765, p = .19
I then wanted to determine which legally relevant factors varied among the four victim race-gender dyads to determine if there were any significant differences. A chi-square analysis between white female victim, white male victim, black female victim, and black male victim and multiple victim cases indicate that there are statistically significant differences in whether the case involves multiple victims between the four victim race-gender combinations. It appears that white female victim cases are significantly less likely to involve multiple victims. Only 7% of white female victim cases involve multiple victims.

<table>
<thead>
<tr>
<th>Table 11: Interaction of Victim Race-Gender by Multiple Victim Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chi-Square</td>
</tr>
<tr>
<td>White female victim</td>
</tr>
<tr>
<td>White male victim</td>
</tr>
<tr>
<td>Black female victim</td>
</tr>
<tr>
<td>Black male victim</td>
</tr>
</tbody>
</table>

Chi-square value = 15.064; p = .02

Furthermore, a chi-square analysis between the four victim race-gender combinations and stranger homicide indicates that there are no statistically significant differences in stranger homicide between any of the four victim race-gender dyads. However, it appears that black female victim cases are less likely to involve strangers. The table shows that approximately 86% of black female victim cases involve a murder where the victim knew her attacker, whereas 14% of black female victim cases involve a stranger homicide.
Table 12: Interaction of Victim Race-Gender by Victim-Offender Relationship\(^{18}\)

<table>
<thead>
<tr>
<th>Chi-Square</th>
<th>Not Strangers</th>
<th>Strangers</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>White female victim</td>
<td>54.4%</td>
<td>40.8%</td>
<td>98</td>
</tr>
<tr>
<td>White male victim</td>
<td>54.3%</td>
<td>40.2%</td>
<td>87</td>
</tr>
<tr>
<td>Black female victim</td>
<td>86.4%</td>
<td>13.6%</td>
<td>22</td>
</tr>
<tr>
<td>Black male victim</td>
<td>56.3%</td>
<td>40.6%</td>
<td>31</td>
</tr>
</tbody>
</table>

Chi-square value = 8.694, \( p = .19 \)

Lastly, a chi-square analysis between the four victim race-gender combinations and felony murder indicate that there are no statistically significant differences in felony murder cases between the four victim race-gender dyads. However, it appears that black female victim cases are less likely to involve felony murder. The table shows that 81.8\% of black female victim cases do not involve felony murder, whereas 13.6\% of black female victim cases do involve felony murder.

Table 13: Interaction of Victim Race-Gender by Felony Murder

<table>
<thead>
<tr>
<th>Chi-Square</th>
<th>Not Felony Murder</th>
<th>Felony Murder</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>White female victim</td>
<td>57.3%</td>
<td>38.8%</td>
<td>99</td>
</tr>
<tr>
<td>White male victim</td>
<td>55.4%</td>
<td>40.2%</td>
<td>88</td>
</tr>
<tr>
<td>Black female victim</td>
<td>81.8%</td>
<td>13.6%</td>
<td>21</td>
</tr>
<tr>
<td>Black male victim</td>
<td>68.8%</td>
<td>31.3%</td>
<td>32</td>
</tr>
</tbody>
</table>

Chi-square value = 7.879, \( p = .27 \)

\(^{18}\) Percentages do not add to 100\% because several jurors were “unsure” whether the victim and offender were strangers.
When comparing important legally relevant variables thought to increase a defendants’ likelihood of receiving a death sentence, it appears that white female victim cases are significantly less likely to involve multiple victims than cases involving white male victims, black female victims, and black male victims, whereas black female victim cases are less likely to involve strangers and felony murder than cases involving the other victim race-gender combinations. Previous research indicates that defendants who kill multiple victims are more likely to receive a death sentence (Holcomb et al. 2004; Williams & Holcomb 2004; Stauffer et al. 2006). Therefore, cases involving multiple victims are unlikely to be a reason why defendants who kill white female victims are more likely to result in a death sentence.

Another important empirical question concerning disparate death penalty outcomes seeks to identify which specific case characteristics (other than the legally relevant factors discussed above) differ among white female, white male, black female, and black male victim cases. A series of chi-square analyses compared the four victim race-gender combinations with juror perceptions that the killing was brutal and the defendant made the victim suffer. These factors are thought to be aggravating in the sense that if present in the case, jurors may perceive the crime to more serious, the defendant more blameworthy, and the case more likely to result in a death sentence. Results indicate that jurors are significantly less likely to perceive the murder as involving brutality in black male victim cases compared to white female, white male, and black female victim cases. The table shows that 78.6% of black male victim cases are perceived not to involve brutality, whereas nearly 71% of white female victim cases and 70% of black female victim cases are perceived by jurors to involve brutality.
Table 14: Interaction of Victim Race-Gender by Juries’ Perception the Killing was Brutal

<table>
<thead>
<tr>
<th></th>
<th>No</th>
<th>Yes</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>White female victim</td>
<td>29.4%</td>
<td>70.6%</td>
<td>85</td>
</tr>
<tr>
<td>White male victim</td>
<td>48.8%</td>
<td>51.2%</td>
<td>80</td>
</tr>
<tr>
<td>Black female victim</td>
<td>30%</td>
<td>70%</td>
<td>20</td>
</tr>
<tr>
<td>Black male victim</td>
<td>78.6%</td>
<td>21.4%</td>
<td>28</td>
</tr>
</tbody>
</table>

Chi-square value = 23.288, \( p < .01 \)

An excellent example of the brutality of a white female victim case is illustrated by a capital case in Virginia where a young white female was brutally raped and stabbed to death by a black male. The brutality of the crime is what stood out in many of the juror’s minds and ultimately led to the jury imposing a death sentence. One white male juror serving on the case stated that “the thing that was most important was not just that the woman had been murdered but that she had been so brutally murdered. The brutality of the murder was almost as important as the murder itself…he really stabbed the young lady about 20 some odd times in all. Broke many of her bones and truly disfigured her considerably…” He goes on to say “that [the murder] was so heinous and so obnoxious and done in such brutality and obvious pain to the victim…that the crime something [sic] worthy of capital punishment.” In this case, the jury even went as far as to re-enact the murder during deliberations in order to fully understand the effort and time it takes to stab someone 20+ times.

Somewhat similar results were found when comparing the proportion of cases among the victim race-gender combinations and the perception that the defendant made the victim suffer before death. Results indicate that there are statistically significant differences in jurors’
perception of victim suffering between the four victim race-gender dyads. Table 15 indicates that jurors perceived victim suffering in 76.8% of white female victim cases but only 31% of black male victim cases. In fact, jurors serving on the white female victim case described above disclosed that the single most important factor in their decision to impose a death sentence was “the cruelty, bruteness, and violence of the crime, the heinousness of the crime….the suffering she had to go through.” This type of perceived brutality and suffering may help to explain the increased likelihood that white female victim cases result in a death sentence.

<table>
<thead>
<tr>
<th>Victim Race-Gender</th>
<th>Jurors’ Perception of Victim Suffered</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>White female</td>
<td>No 24.1%</td>
<td>Yes 75.9%</td>
</tr>
<tr>
<td>White male</td>
<td>No 62%</td>
<td>Yes 38%</td>
</tr>
<tr>
<td>Black female</td>
<td>No 26.3%</td>
<td>Yes 73.7%</td>
</tr>
<tr>
<td>Black male</td>
<td>No 69%</td>
<td>Yes 31%</td>
</tr>
</tbody>
</table>

Chi-square value = 33.343, p < .01

It is important to note that the greatest contrast in perceived brutality and suffering is found in cases involving black male victims. For example, approximately 70% of both white female victim and black female victim cases are perceived by jurors to involve brutality and suffering. However, nearly 79% of black male victim cases are perceived by jurors not to involve brutality and another 69% of black male victim cases are perceived by jurors not to involve suffering. Therefore, it appears that cases involving black male victims are the ones that stand apart from all the others as far as perceived brutality and suffering of the victim is concerned.
This relationship between brutality and the intersection of victim race and gender involves a gripping dynamic during jury deliberations. For example, an equally brutal murder to the white female victim murder discussed above was committed by a group of white males against a black male in North Carolina. Four men drove the victim to a remote area stabbed him 15-17 times in the chest, “cut off his penis and stuffed it down his throat and left.” Although most jurors serving on the case agreed that the strongest factor influencing the jury’s punishment decision was the “brutality and viciousness of the murder,” there was one lone dissenting juror who stated “that there was no way he would vote for the death penalty.” One white female juror believed that the male juror unable to vote for death “was from the old school where a white man shouldn’t have to die for killing a black man.” After a long and contentious deliberation, the rest of the jury realized the lone dissenting juror would not budge, and they agreed to a life sentence for the white male defendant.

So far these results suggest that defendants who murder black male victim may be less likely to receive a death sentence compared to other victim race-gender dyads because black male victim cases are less likely to be perceived by jurors as involving brutality or victim suffering. It is possible that these perceptions are influencing jurors’ death penalty decisions because the degree of heinousness and brutality in black male victim cases is perceived not to be great enough to warrant a death sentence. 19

---
19 Although a more “objective” heinousness/brutality measure is not available in these cases, it would be interesting to examine how closely jurors’ perceptions of heinousness reflect the actual degree of heinousness in the case.
Bivariate Analyses Comparing Heinousness between Groups

Due to the compelling results showing significant differences in perceived brutality and suffering especially between white female victims and black male victims, a heinousness scale was created based on jurors’ perceptions. The heinousness scale is a measure of jurors’ attitudes regarding the depravity, viciousness, and brutality of the crime. This measure is a scale consisting of survey items that measure the jurors’ level of agreement with the following nine characterizations of the crime: the killing was bloody; gory; vicious; depraved; cold-blooded; repulsive; made you sick; made the victim suffer; and the victim’s body was maimed after death. These items were measured on a 4-point Likert-type scale where 1= not at all; 2= not so well; 3= fairly well; 4= very well. Likert responses were coded such that a higher numerical value indicated more agreement with the statement. In capital cases, it is possible that disparities in jurors’ final punishment decision between life and death are based on differences in the degree of heinousness of the crime. The following bivariate analyses seek to first determine whether the degree of heinousness present in a capital case differs between cases involving white versus black victims and female versus male victims.

An independent samples t-test is used when comparing the mean score on a continuous variable for two different groups. Therefore, this test will indicate whether there is a statistically significant difference in mean heinousness scores for white victim versus black victim cases by testing the probability that the two sets of scores come from the same population. When conducting an independent samples t-test, Levene’s Test for Equality of Variance indicates whether the variance of heinousness scores for white victim versus black victim cases is the same. If the significance value is greater than .05, then “equal variance assumed.” Results
suggested that there are no statistically significant differences in heinousness for white victim ($\bar{x} = 26.75, s = 3.56$) and black victim cases ($\bar{x} = 26.23, s = 3.76; t(241) = .916, p = .36$). An independent samples t-test was also conducted to compare perceived heinousness between female victim and male victim cases. Results suggest that there is a statistically significant difference in heinousness for female victim ($\bar{x} = 27.56, s = 3.29$) and male victim cases ($\bar{x} = 25.73, s = 3.68; t(241) = -4.07, p < .001$). It appears that jurors perceive a greater degree of heinousness in female victim cases as compared to male victim cases. Furthermore, effect size provides an indication of the magnitude of the difference in heinousness between female victim and male victim cases. Eta squared represents the proportion of variance in heinousness that is explained by the gender of the victim in death penalty cases. It was determined that the magnitude of the difference in jurors’ perceived heinousness between female victim and male victim cases is moderate (eta squared = .064). This indicates that approximately 6.4% of the variance in heinousness is explained by the gender of the victim in death penalty cases.

Next, I sought to determine whether there is a statistically significant difference in perceived heinousness between white female, white male, black female, and black male victim cases. In order to examine this possibility, a one-way analysis of variance must be conducted. One-way analysis of variance compares the mean heinousness scores of more than two groups. Analysis of variance compares the variability in heinousness between the different groups (believed to be due to the independent variable) with the variability within each of the groups (believed to be due to chance). A significant $F$ test suggests that I can reject the null hypothesis, which states that the population means are equal. This indicates that there are statistically significant differences in mean heinousness scores between groups and then post-hoc tests
indicate where the differences lie. Results of the $F$ test show that there are statistically significant differences in perceived heinousness between the four groups ($F = 5.559; p = .001$). Results of the post-hoc comparisons using the Tukey Honestly Significant Difference test indicate that perceived heinousness of the crime is significantly different between white female and white male victim cases (mean difference = 1.7; $p = .005$) and white female and black male victim cases (mean difference = 2.1; $p = .015$), where white female victim cases are perceived to have a significantly greater degree of heinousness involved as compared to both white male victim and black male victim cases. A calculation of eta squared (effect size = 0.07) suggests a moderate effect. However, there are no statistically significant differences in heinousness between black female victim cases and white female, white male, or black male victim cases.\(^{20}\)

**Logistic Regression with Case Characteristics**

In order to determine whether the intersection of victim race and gender is associated with a greater likelihood of offenders receiving a death sentence in capital cases, a logistic regression analysis was conducted. Logistic regression models estimate the average effect of each independent variable on the odds that a jury will sentence a capital defendant to death. Results for logistic regression models are reported as odds ratios. An odds ratio is the ratio of the probability of a death sentence to the probability of a sentence other than death (Pierce & Radelet 2005). When interpreting odds ratios, an odds ratio of one means that particular characteristic is just as likely to receive a death sentence as not. Odds ratios of greater than one indicate a greater likelihood of the death penalty for those defendants who have positive values for that particular characteristic.

---

\(^{20}\) Additional one-way ANOVA’s were conducted to determine whether perceptions of defense attorney performance and perceptions of prosecutor performance varied between white female, white male, black female, and black male victim cases. No statistically significant differences emerged.
independent variable. When the independent variable is continuous, the odds ratio indicates the increase in the odds of receiving the death penalty for each one unit increase in the independent variable (Pierce & Radelet 2005). Because I am interested in how the odds of a death sentence vary for different groups of cases, such as male and female victims; white and black victims; and white female, white male, black female, black male victim cases, a series of logistic regression analyses were employed in order to determine both the independent and interaction effects of victim race and gender on death sentences.

In order to assess whether the model has a statistically significant effect on death sentencing, a likelihood-ratio test was used that compares two models. The first model (the null model) constrains all coefficients for the independent variables and estimates only the model intercept. The second model (the full model) estimates coefficients for all the independent variables (Britt & Weisburd 2010). Results from the logistic regression with main effects indicate that the model is a better predictor than the null model, $\chi^2 (15, N = 241) = 55.512, p < .001$. The model was able to correctly classify approximately 61% of life sentences and 81% of death sentences, for an overall success of 73%. The model was also able to explain 27.7% of the proportion of variance in death sentencing ($R^2 = .277$).

When only including female victims and white victims in the regression equation without additional controls, tests of statistical significance indicate that victim gender is not a significant predictor of death sentences (Holcomb et al. 2004; Williams & Holcomb 2004). This finding is contrary to previous research, where Holcomb and colleagues (2004) in their study of SHR data, found that the odds of a death sentence are 2.62 times greater in cases involving female victims than cases involving male victims. It is also contrary to the most recent study on gender in the
death penalty where Royer and colleagues found that the odds of a death sentence in female victim cases was 2.26 times higher than in malevictim cases. Although victim gender is not significant, victim race is a significant predictor of death sentences in these analyses. Results suggest that the odds of a defendant receiving a death sentence in a white victim case are 2 times greater than in a black victim case. Even after controlling for several important legally relevant variables, such as the murder was not premeditated but committed during the commission of another felony, the murder involved multiple victims, victim-offender relationship, the defendant had a prior criminal record, defense attorney and prosecutor performance, and heinousness of the crime, the odds of a defendant receiving a death sentence in a white victim case is 2.5 times greater than in a black victim case. This finding is similar to Radelet and Pierce’s (2011) study of death sentencing in North Carolina where they found that the odds of receiving a death sentence in a white victim case is 2.96 times greater than in a black victim cases, even when controlling for legally relevant factors.

Additional results of the final logistic regression model for main effects suggest that multiple victims, defendant prior record, jurors’ view of defense attorney’s performance during trial, jurors’ view of prosecutor’s performance during trial, and perceived heinousness of the crime were all significant predictors of a death sentence. Table 16 indicates that the odds of a defendant receiving a death sentence in a case that involved multiple victims is 2.5 times greater than in a case that involved only one victim. The odds of a defendant receiving a death sentence when he has a prior criminal record is 2.6 times greater than when he does not have a prior criminal record. Furthermore, the odds of a defendant receiving a death sentence is 2.2 times greater for a one unit increase in jurors’ perceptions that the prosecutor was competent,
professional, and did an outstanding job of presenting his/her case. However, the odds of a defendant receiving a death sentence is 44.3% lower for a one unit increase in jurors’ perceptions that the defense attorney was competent, professional, and did an outstanding job at presenting his/her case. Jurors’ perceptions of the heinousness of the crime also increase the odds of a death sentence; however, it was only significant at the .06 level. Other important results to note are the variables found not to be significant predictors of death sentencing. For example, defendant’s race is not a significant predictor of death sentences. This finding is similar to previous research showing that race of defendant does not add to our understanding of who is sentenced to death (Stauffer et al. 2006; Pierce & Radelet 2011; Radel et & Pierce 2011). Furthermore, stranger homicide, felony murder, and southern jurisdiction did not significantly affect the likelihood that a defendant would be sentenced to death.

Table 16: Logistic Regression for Main Effects Predicting Death Sentence

<table>
<thead>
<tr>
<th>Predictor</th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female Victim</td>
<td>.208</td>
<td>.209</td>
<td>.210</td>
</tr>
<tr>
<td>White Victim</td>
<td>.553*</td>
<td>.710*</td>
<td>.912*</td>
</tr>
<tr>
<td>Black Defendant</td>
<td></td>
<td>-.097</td>
<td>.131</td>
</tr>
<tr>
<td>Multiple Victims</td>
<td>.780*</td>
<td>.915*</td>
<td></td>
</tr>
<tr>
<td>Stranger Homicide</td>
<td>.076</td>
<td>.068</td>
<td></td>
</tr>
<tr>
<td>Felony Murder</td>
<td>-.678*</td>
<td>-.506</td>
<td></td>
</tr>
<tr>
<td>Defendant Record</td>
<td>.836*</td>
<td>.946*</td>
<td></td>
</tr>
<tr>
<td>Southern Jurisdiction</td>
<td></td>
<td>-.004</td>
<td></td>
</tr>
<tr>
<td>Defense Attorney Performance</td>
<td>-.585**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecutor Performance</td>
<td>.790**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Heinousness</td>
<td></td>
<td>.084*</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td></td>
<td>-5.596*</td>
<td></td>
</tr>
</tbody>
</table>

\( n = 241 \)

\( R^2 \) (Cox & Snell) = .206

Corrected \( R^2 \) (Nagelkerke) = .277

\(-2 \) Log Likelihood = 272.882

\( \chi^2 = 55.512 \)

\( ***p \leq .01 \quad *p \leq .05 \)

\((df = 15, \ p < .001)\)
In order to determine whether a “white female victim effect” exists within the capital cases that are part of the Capital Jury Project (CJP), another logistic regression analysis was conducted with interaction terms in the form of dummy variables for the race and gender of the victim. The black male victim variable served as the reference category to compare to the other race-gender victim dyads because of significant differences found in the bivariate analyses regarding black male victims. Results from the logistic regression with interaction effects indicate that the model is a better predictor than the null model, $x^2 (16, N = 241) = 57.004, p < .001$. The model was able to correctly classify approximately 58% of life sentences and 82% of death sentences, for an overall success of 71%. The model was also able to explain 28.3% of the proportion of variance in death sentencing ($R^2 = .283$). This is a small improvement over the main effects model previously discussed.

When only including the victim race-gender combinations (excluding black male victims as the reference category) in the regression equation without additional controls, tests of statistical significance indicate that a defendant’s odds of receiving a death sentence in a white female victim case is approximately 3.1 times greater than in a black male victim case and 2.8 times greater in a white male victim case than in a black male victim case. More importantly, after controlling for several important legally relevant variables such as felony murder, multiple victims, stranger homicide, defendant has a prior criminal record, defense attorney and prosecutors’ performance, and jurors’ perceptions of the heinousness of the crime, white female victims and white male victims still emerged as significant predictors of a death sentence. Results of the logistic regression reveal that a defendant’s odds of receiving a death sentence in a white female victim case is 3.8 greater than in a black male victim case, and 3.6 times greater in
a white male victims case than in a black male victim cases, even when controlling for legally
relevant variables known to affect the likelihood of a death sentence in capital cases.

Similar to results from the logistic regression with main effects, statistically significant
predictors of a death sentence include the murder involved multiple victims, the defendant has a
prior criminal record, jurors’ perceptions of defense attorney and prosecutor performance, and
perceived heinousness of the crime. The defendant’s race, stranger homicide, felony murder,
and southern jurisdiction were not statistically significant predictors of death sentencing. The
primary importance of these analyses are that even when controlling for variables thought to
affect the likelihood of a death sentence, cases that involve white female victims appear to be
one of the strongest predictors of a death sentence. This finding is right in line with previous
research identifying a “white female victim effect” (Holcomb et al. 2004). Not surprisingly,
defendants who murder white females are the most likely to receive a death sentence, followed
by those who kill white males, black females, and finally, black males.
Contrary to previous research by Holcomb and colleagues (2004) and Williams and Holcomb (2004), results of a logistic regression analysis suggest that race effects are stronger than gender effects. White female victim and white male victim cases are significantly more likely to result in a death sentence than black male victim cases. Although black female victim cases were not found to be statistically significant, the odds ratio suggests that a defendant’s odds of receiving a death sentence in black female victim cases is approximately 2.4 times greater than in black male victim cases. Therefore, based on my analyses, I argue that victim race, not victim gender is driving juror decision-making in capital cases. That being said, I feel the most interesting finding thus far is that which Williams and colleagues (2007) have called the “black
male victim effect.” It appears that defendants who kill black male victims are significantly less likely to receive a death sentence compared to defendants convicted of killing white female and white male victims, even when controlling for important legally relevant factors. This begs the question as to whether juror perceptions of the character and behavior of black male victims varies significantly from perceptions of other victims and if so, in what ways do they differ? The answer to these questions may add to the earlier findings that jurors perceive black male victim cases as being less brutal and involving less suffering than cases with other victim race-gender combinations and may be a possible explanation for the emergence of the “black male victim effect” identified above.
Chapter 7: Juror Perceptions of the Victim and the Victim’s Family

Unique to this research is the ability of the CJP data to offer juror perceptions of the victim and defendant in the jurors’ own words. The ability to get at perceptions has been lacking in previous research due to the ways in which data has been collected (generally through official police and court records). In contrast, the following analyses, based on in-depth juror interviews, not only allow for the examination of juror’s thoughts about the victim and defendant but they also make temporal sense as well. Once capital jurors hear evidence relevant to guilt, they most likely begin forming an opinion as to the character of the defendant, the behavior of the victim, as well as the impact of the homicide on the victim’s family, in order to come to their final punishment decision. Although these perceptions are not legally defined, nor legally relevant in most cases, they likely influence decision-making during jury deliberations. Jurors do not make their punishment decisions in a vacuum and are likely to be influenced by their own personal experiences, biases, and perceptions of the individuals involved in the process. The following analyses add to the discussion of jury decision-making by determining which perceptions likely have the greatest influence on jury’s life and death decision and whether these perceptions vary by victim race-gender combinations.

Descriptive Statistics of Jurors

Before beginning, I feel it is important to describe the individuals who comprise the capital juries involved in the subsequent analyses. The distribution of the number of jurors interviewed varies by case. For example, the number of jurors interviewed in any particular case ranges from 1-7. In approximately 45% ($n = 112$) of cases 3 or less jurors were interviewed; in
43.4% \((n = 108)\) of cases 4 out of twelve jurors were interviewed for the CJP; and in 11.6% \((n = 29)\) of cases 5 or more jurors were interviewed.

**Histogram: Number of Jurors Interviewed Per Capital Case**

Of the 828 jurors that make up the 249 cases discussed in the previous chapter, approximately 51% were female and 49% were male. Approximately 88% of the jurors were white, 9.7% were black, another 1.5% were Hispanic, and 0.8% were either Asian or Other\(^{21}\).

When examining the intersection of juror race and gender, it was found that 44.6% of jurors were white females, 43.4% were white males, 6% were black females, 3.8% were black males, 1.2% were black females, 1.5% were Hispanic females, 1.2% were Hispanic males, 0.8% were Asian females, 0.8% were Asian males, and 0.8% were Other females and males.

\(^{21}\) It is important to note here that the majority of jurors were white in this subsample of CJP cases. This contrasts with the race of defendant and race of victims in these cases. For example, although 54.2% of cases involved white defendants and white victims, another 24.1% involved black defendants and black victims, 19.7% involved black defendants and white victims, and 2% involved white defendants and black victims. Therefore, guilt and punishment decisions in this sample of capital cases were made by predominately white juries when nearly half of the cases involved either a black defendant or a black victim.
were Hispanic males, 0.4% were either Hispanic or Other females, and 0.6% were either Asian or Other males. Approximately, 76% of jurors are married, 10% are divorced, 4% are widowed, and another 10% have never been married. Approximately 83% of jurors have children and 17% do not have children. Approximately, 70% of jurors work full-time, 7.7% work part-time, 11.5% are retired, and 10.6% do not work for various reasons. Approximately 77% of jurors have never served in the military and 23% have served in the military. Approximately 71% of jurors have never served on a trial jury before and 29% have served on a jury before the capital case in question. Approximately 92% of jurors have not been a victim of a crime in the past five years, whereas almost 8% have been victimized in the past five years.

When asked whether he or she would ever serve on another capital jury if asked, 32% of jurors indicated that they would welcome the opportunity, 40% would do so reluctantly, approximately 17% would try to get out of it, and 11.5% would refuse to serve on another capital jury if asked (see Table 18 below). This information is just a brief summary of the individuals who served on one of the 249 capital cases that comprise the following analyses on jurors’ perceptions of victims and the victim’s family. You will get to know some of these jurors a bit more in this chapter. In the jurors’ own words, descriptions of the crime, victim, victim’s family, defendant, and defendant’s family are interlaced in the previous chapter and this one to illustrate and provide support for the key findings of the quantitative analyses.
Table 18: Demographic Characteristics of Jurors (N= 828)

<table>
<thead>
<tr>
<th>Characteristics</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Juror Gender</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>421</td>
<td>51.1</td>
</tr>
<tr>
<td>Male</td>
<td>403</td>
<td>48.9</td>
</tr>
<tr>
<td><strong>Juror Race</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White</td>
<td>722</td>
<td>87.9</td>
</tr>
<tr>
<td>Black</td>
<td>80</td>
<td>9.7</td>
</tr>
<tr>
<td>Hispanic</td>
<td>12</td>
<td>1.5</td>
</tr>
<tr>
<td>Asian</td>
<td>2</td>
<td>0.2</td>
</tr>
<tr>
<td>Other</td>
<td>5</td>
<td>0.6</td>
</tr>
<tr>
<td><strong>Juror Race and Gender</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White Female</td>
<td>366</td>
<td>44.6</td>
</tr>
<tr>
<td>White Male</td>
<td>356</td>
<td>43.4</td>
</tr>
<tr>
<td>Black Female</td>
<td>49</td>
<td>6.0</td>
</tr>
<tr>
<td>Black Male</td>
<td>31</td>
<td>3.8</td>
</tr>
<tr>
<td>Hispanic Male</td>
<td>10</td>
<td>1.2</td>
</tr>
<tr>
<td>Hispanic Female</td>
<td>2</td>
<td>0.2</td>
</tr>
<tr>
<td>Other Male</td>
<td>5</td>
<td>0.6</td>
</tr>
<tr>
<td>Other Female</td>
<td>2</td>
<td>0.2</td>
</tr>
<tr>
<td><strong>Marital Status</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Married</td>
<td>617</td>
<td>75.8</td>
</tr>
<tr>
<td>Divorced</td>
<td>83</td>
<td>10.2</td>
</tr>
<tr>
<td>Widowed</td>
<td>35</td>
<td>4.3</td>
</tr>
<tr>
<td>Never Married</td>
<td>79</td>
<td>9.7</td>
</tr>
<tr>
<td><strong>Children</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Have children</td>
<td>676</td>
<td>82.6</td>
</tr>
<tr>
<td>No children</td>
<td>141</td>
<td>17.4</td>
</tr>
<tr>
<td><strong>Employment Status</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Full-time</td>
<td>570</td>
<td>69.9</td>
</tr>
<tr>
<td>Part-time</td>
<td>63</td>
<td>7.7</td>
</tr>
<tr>
<td>Retired</td>
<td>94</td>
<td>11.5</td>
</tr>
<tr>
<td>Do not work</td>
<td>88</td>
<td>10.6</td>
</tr>
<tr>
<td><strong>Military Service</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>190</td>
<td>23.1</td>
</tr>
<tr>
<td><strong>Prior Jury Service</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>240</td>
<td>29.3</td>
</tr>
<tr>
<td><strong>Victimization Experience</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>63</td>
<td>7.7</td>
</tr>
<tr>
<td><strong>Serve on Capital Case again</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Welcome the opportunity</td>
<td>246</td>
<td>31.7</td>
</tr>
<tr>
<td>Do so reluctantly</td>
<td>312</td>
<td>40.2</td>
</tr>
<tr>
<td>Try to get out of it</td>
<td>130</td>
<td>16.7</td>
</tr>
<tr>
<td>Refuse to do so</td>
<td>89</td>
<td>11.5</td>
</tr>
</tbody>
</table>
**Bivariate Analyses of Juror Perceptions of the Victim and the Victim’s Family**

It is possible that jurors’ punishment decisions are not only influenced by important legally relevant case characteristics (as discussed in the previous chapter) but also perceptions of the victim’s family and whether the community was outraged over the crime. Surprisingly, there are no significant differences in community outrage among the four victim race-gender combinations. Whether the community felt outrage over the crime does not appear to differ between white female, white male, black female, or black male victim cases. However, an important result emerged concerning perceptions of the victim’s family in black male victim cases only. Results indicate that there are statistically significant differences in jurors’ perceptions that the victim had a loving family and the family suffered severe loss and grief. Jurors in black male victim cases are significantly less likely to perceive the family as loving and to have suffered severe loss. Table 19 shows that jurors perceive the victim to have a loving family in approximately 45% of black male victim cases in comparison to 81% of white female victim, 86% of black female victim, and 77% of white male victim cases.

<table>
<thead>
<tr>
<th>Victim Race-Gender</th>
<th>Victim had loving family</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>White female victim</td>
<td>19.3%</td>
<td>80.7%</td>
<td>88</td>
</tr>
<tr>
<td>White male victim</td>
<td>23%</td>
<td>77%</td>
<td>74</td>
</tr>
<tr>
<td>Black female victim</td>
<td>14.3%</td>
<td>85.7%</td>
<td>14</td>
</tr>
<tr>
<td>Black male victim</td>
<td>55.2%</td>
<td>44.8%</td>
<td>29</td>
</tr>
</tbody>
</table>

Chi-square value = 16.441, \( p = .001 \)
Furthermore, Table 20 indicates that jurors perceive the victim’s family to have suffered severe loss in 50% of black male victim cases in comparison to 68% of black female, 84% of white male, and 82% of white female victim cases.

### Table 20: Interaction of Victim Race-Gender by Juries’ Perception Victims’ Family Suffered Severe Loss

<table>
<thead>
<tr>
<th>Chi-Square: Family suffered severe loss</th>
<th>No</th>
<th>Yes</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>White female victim</td>
<td>18.4%</td>
<td>81.6%</td>
<td>87</td>
</tr>
<tr>
<td>White male victim</td>
<td>16.5%</td>
<td>83.5%</td>
<td>79</td>
</tr>
<tr>
<td>Black female victim</td>
<td>31.6%</td>
<td>68.4%</td>
<td>19</td>
</tr>
<tr>
<td>Black male victim</td>
<td>50%</td>
<td>50%</td>
<td>30</td>
</tr>
</tbody>
</table>

Chi-square value = 15.961, $p = .001$

The influence of jurors’ perceptions of victim’s family in black male victim cases is revealed in a North Carolina case where a father calmly walked up to a car his 24 year old son was sitting in and shot him to death. One white male juror serving on the case was “disturbed” by the wife of the defendant and mother of the victim because she “slept and did crossword puzzles during the trial. She couldn’t care less about what was going on.” This particular juror placed some of the blame for the murder on the victim’s family members. She asserted that “the mother [of the victim] is partly to blame, along with the uncle because the defendant committed crimes against them.” The wife/mother “dropped assault charges [against the defendant]…” This juror strongly believed that those who were previously abused or threatened by the defendant were partly to blame for the crime. However, the defendants repeated abuse of his family is what ultimately led the jury to vote for death.
A one-way ANOVA was conducted in order to identify additional differences in jurors’ perceptions of victims in the CJP cases. Victim characteristics were compared across the four victim race-gender combinations of interest. Post-hoc comparisons allowed me to determine differences in jurors’ perceptions of victims between white female, white male, black female, and black male victims. Results of the $F$ test indicate that there are statistically significant differences in jurors’ perceptions that the victim was respected in the community ($F = 5.81$, $p = .001$), the victim came from a poor/deprived background ($F = 16.41$, $p < .001$), the victim was innocent/helpless ($F = 6.47$, $p < .001$), the victim had a problem with drugs/alcohol ($F = 6.76$, $p < .001$), and the victim was careless/reckless ($F = 3.23$, $p = .023$) between white female, white male, black female, and black male victims.

Post-hoc comparisons indicate a statistically significant difference in jurors’ perceptions that the victim is respected in the community between white females and black males (mean difference $= .567$, $p = .004$), between white males and black males (mean difference $= .662$, $p = .001$), and between black females and black males (mean difference $= .724$, $p = .008$). Overall, it appears that black male victims are the least likely among the four victim race-gender dyads to be perceived by jurors as being respected in the community. Somewhat surprisingly, the greatest difference in perceived respectability lies between black female victims and black male victims. A great example of a black female victim being perceived by jurors as respected in the community is found in a Virginia case where a white male defendant was sentenced to death for the kidnapping and brutal murder of a young black female college student. The young woman was abducted in a mall parking lot, driven to a field, stripped of her clothing, and struck over the head with a large rock. One white male juror provided the following thoughts about the victim “I
respected her for being a clean cut student. She was pursuing the life...we [the jury] admired her.” Another male juror on the same case described the black female victim as “…an innocent girl in the wrong place at the wrong time.” At the time of the interview, one female juror identified so closely with the victim and the victim’s mother that she claimed to still be experiencing nightmares and was in tears by the end of the interview.

Post-hoc comparisons also revealed that black female victims were perceived by jurors as respected in the community only slightly more than white male victims, with a mean difference of approximately .07. Jurors’ interviews suggest that the respectability of white male victims may be related to the victim’s family responsibilities as a father or his work responsibilities. For example, in a North Carolina cases where a white male police officer was killed in the line of duty by a known drug dealer during a raid, one white female juror explained that the single most important factor in the jury's decision about what the defendant's punishment should be was “the nature of the crime…first degree murder of a police officer in the line of duty. [There was] a lot of discussion about how this was pretty much the ultimate crime. Not that it was premeditated or planned but there was a lot of discussion about [police] officers putting their life on the line every day.” She continued to explain that the prosecutor in the case stressed that because a police officer was killed in the line of duty, it was the jury’s “obligation to send a message to the community.” Another white female juror from the same case argued during deliberations that “this man is dead, and his children will never see him again, and he was just doing his job.” She goes on to say that “…I don’t know how [the defendant] can respectively say that he deserved life when he killed an officer in the line of duty.”
Results of post-hoc comparisons further reveal that black male victims were also the least likely to be perceived by jurors as helpless, innocent victims. For example, there was a statistically significant difference in jurors’ perceptions that the victim was helpless, innocent between white females and black males (mean difference = .486, \( p = .001 \)), and black females and black males (mean difference = .651, \( p = .001 \)). Although, it appears from this comparison that regardless of race, female victims are more likely to be perceived by jurors’ as helpless and innocent compared to male victims, black male victims stand apart as the least innocent victim of them all in the eyes of juries. A good example of jurors perceiving black males as the least innocent victims is revealed in a South Carolina case where a black male defendant was on trial for killing another black male. Apparently, the two men were friends and were involved in the murder of a white farmer. The victim threatened to call the police and turn the defendant in for the murder/arsenal of the farmer. The defendant then lured the victim into the woods with promise of drugs and shot the victim in the back of the head and left him in a hole. Not only was one white male juror on the case outraged that the black male defendant was not on trial for killing “the prominent farmer but…was being tried for killing the nigger (sic).” The juror goes on to explain that the victim was not innocent; he was “a killer himself.” The juror’s impression of the victim’s character wasn’t any better than that of the defendant’s. To him they were one in the same and he would have given the black defendant the “electric chair” if the defendant’s mother didn’t beg the jury to spare his life.

Although black male victims were perceived by jurors to be the least likely to be respected in the community and least likely to be helpless/innocent, they were among the four victim race-gender dyads to be perceived by jurors as the most likely to have a problem with
drugs and alcohol, to be careless/reckless, and to come from a poor and deprived background. Post-hoc comparisons indicate that there is a statistically significant difference in jurors’ perceptions that the victim had a problem with drugs and alcohol between white females and black males (mean difference = -.737, \( p < .001 \)), white males and black males (mean difference = -.657, \( p = .001 \)), and black females and black males (mean difference = -.723, \( p = .01 \)). Black male victims stood out among the four victim race-gender dyads as the most likely to be perceived by jurors’ as being reckless and careless as well. Results suggest that there are statistically significant differences in perceived recklessness between black males and black females (mean difference = -.651, \( p = .001 \)), but not white female or white male victims. Therefore, black females were perceived by jurors to be the least reckless and careless among victims.

Contrary to the gender difference in helplessness/innocence, a clear racial difference emerged when comparing jurors’ perceptions that the victim came from a poor and deprived background. For example, statistically significant differences were found between white females and black females (mean difference = -.619, \( p = .006 \)), white females and black males (mean difference = -.919, \( p < .001 \)), white males and black females (mean difference = -.714, \( p = .001 \)), and white males and black males (mean difference = -1.01, \( p < .001 \)), but not between black female and black male victims (mean difference = -.300, \( p = .525 \)). Therefore, it appears from this comparison that regardless of gender, black victims are more likely to be perceived by jurors as coming from a poor and deprived background compared to white victims.

A disheartening example of jurors’ perceptions of black victims coming from a poor and deprived background is exposed in a Virginia case where four black children were killed during a fire set by the father of one of the young victims. The jurors were convinced that the main
motive for the arson/murders was jealousy. It appears that the mother of the children killed in the fire had another man living in the house and the defendant was angry that a new man was taking his place. Throughout the interviews, jurors suggested that these “were real poor people….they didn’t have anything.” One white female juror stated “it was just sad…that people lived in those conditions.” She goes on to explain that she felt both sympathy and distance from the family, not knowing “anybody like them.” She explains her sadness by disclosing “it seemed like nobody really cared who lived there. They [the victim’s family] were all mixed up. I couldn’t figure out the relationship between any of them…it was like move in, move out. It made me wonder how they lived like that.” A white male juror serving on the same case admitted that during the trial he “was exposed to a lifestyle that I had never really seen before. Just the way they [the victim’s family lived] and how nobody really seemed to care about anybody else.” The juror kept wondering “why none of the adults in the house got the children out.”

Results of the previous analyses based on jurors’ perceptions of the victim and victim’s family have revealed a distinct pattern of jury behavior. It appears that black male victims diverge from the other victim race-gender dyads on several factors that may potentially influence jury decision-making in capital cases. These results indicate that jurors in black male victim cases are significantly less likely to perceive the murder to involve brutality and suffering. Moreover, black male victims were perceived by jurors to be the least likely to be respected in the community, and least likely to be helpless/innocent victims. They were also among the four victim race-gender dyads to be perceived by jurors as the most likely to have a problem with drugs and alcohol, to be careless or reckless, and to come from a poor and deprived background. Furthermore, jurors were significantly less likely in black male victim cases to perceive the
victim to have a loving family or feel that the victim’s family suffered severe loss and grief.

Results suggest that black male victims and their families may also stand out as the group who receive the least empathy from juries, whom juries feel the most distance from, and who are most to blame for their own victimization. If these factors vary by victim race-gender combination and are associated with the odds of receiving a death sentence, this finding will further help to explain the influence of victim race and gender on capital case outcomes. The next set of analyses examine whether differences in victim empathy, distance, and blame are able to predict whether a defendant receives a death sentence in capital cases, holding all other legally relevant variables constant.
Chapter 8: Empathy, Distance, and Blame

Factor Analysis of Victim Characteristics

A Principal Components Analysis with Varimax rotation was conducted in order to condense a large number of variables, representing jury’s perceptions of victims, into a smaller set of factors. Principal Components Analysis produces a smaller number of linear combinations of the original variables. First, the data was assessed for the suitability of using factor analysis. Factor analysis is appropriate for this set of data because the Kaiser-Meyer-Olkin Measure of Sampling Adequacy value is .770 and the Bartlett’s Test of Sphericity value is significant at the $p < .001$ level. Next, a screeplot was generated to determine the number of factors to extract. The elbow of the screeplot occurred at three. Therefore, three factors were extracted. The analysis was then re-run with Varimax rotation after setting the number of factors to three. Varimax rotation was used to keep the factors orthogonal (or uncorrelated) and because factors are more easily interpreted using Varimax rotation. Sixteen variables were reduced to three factors which I have labelled Empathy, Distance, and Blame.
<table>
<thead>
<tr>
<th>Variables</th>
<th>Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Imagined victim as a member of your family</td>
<td>.744</td>
</tr>
<tr>
<td>Imagined yourself as a friend of the victim</td>
<td>.720</td>
</tr>
<tr>
<td>Imagined yourself in victim's situation</td>
<td>.620</td>
</tr>
<tr>
<td>Imagined yourself in victim family's situation</td>
<td>.610</td>
</tr>
<tr>
<td>Victim respected or admired</td>
<td>.602</td>
</tr>
<tr>
<td>Felt victim family's grief and sense of loss</td>
<td>.550</td>
</tr>
<tr>
<td>Wished you knew the victim's family personally</td>
<td>.458</td>
</tr>
<tr>
<td>Felt grief or pity for the victim</td>
<td>.430</td>
</tr>
<tr>
<td>Felt distant or remote from victim's family</td>
<td>-.420</td>
</tr>
<tr>
<td>Felt the victim's family was partly to blame</td>
<td>.877</td>
</tr>
<tr>
<td>Victim's family seemed different from your own family</td>
<td>.817</td>
</tr>
<tr>
<td>The victim was an alcoholic</td>
<td></td>
</tr>
<tr>
<td>The victim was a drug addict</td>
<td>.319</td>
</tr>
<tr>
<td>The victim was a known troublemaker</td>
<td></td>
</tr>
<tr>
<td>Were disgusted or repulsed by the victim</td>
<td></td>
</tr>
<tr>
<td>Wished victim had been more careful</td>
<td></td>
</tr>
</tbody>
</table>
Principal Components Analysis extracts factors from a correlation matrix that maximizes the variance explained by each factor. Factor one, Empathy, explains 20.43% of the variance; factor two, Distance, explains 12.5% of the variance; and factor three, Blame, explains approximately 12.17% of the variance in the variables. The final three rotated factor scores were saved as variables to be used in subsequent analyses.

Using the three victim characteristic factors, a one-way between groups ANOVA was conducted to examine whether statistically significant differences exist in jurors’ feelings of empathy towards the victim and the victim’s family, feelings of distance from the victim and the victim’s family, and jurors’ perceptions that the victim was responsible for or in some way to blame for their victimization between white female, white male, black female, and black male victims. Results suggest that there is a statistically significant difference in empathy ($F (3, 205) = 5.451, p = .001$), distance ($F (3, 205) = 5.454, p = .001$), and blame ($F (3, 205) = 4.867, p = .003$) between the four victim race-gender combinations. The effect size calculated using eta squared is approximately 0.07 for each factor, which indicates that the difference in empathy, distance, and blame between the groups is modest.

**Empathy**

Post-hoc comparisons using the Tukey HSD test indicates that there is a statistically significant difference in jurors’ feelings of empathy towards the victim and the victim’s family between white female and black male victims ($p = .001$) and between white male and black male victims ($p = .001$). Differences in empathy between black female victims and black male victims did not reach statistical significance at the $p < .05$ but was close with $p = .058$. This may partly be due to the fact that only 17 black female victims were included in this analysis. It appears that
jurors are significantly less likely to empathize with black male victims and their families as compared to white female, white male, and black female victims.

An example of jurors’ feelings of empathy toward the victim and victim’s family is revealed in a North Carolina case where a black male was sentenced to death for the robbery and murder of a white male convenience store owner. There was a clear divergence between jurors’ empathetic feelings for the victim and victim’s family and their hostile feelings for the defendant and defendant’s family. For example, several of the jurors had the same impression of the victim and the victims’ family describing them as “decent, hardworking people.” One white female juror described the victim as someone who was “real personable.” The [victim’s convenience] “store was in a black community….he was well liked by both blacks and whites and had black admirers which shows he must have been a nice guy.” One white male juror further explained that he “could sympathize [with the victim’s wife.] He “felt sorry for the wife because [he] had lost his wife also about four years ago and could feel for her.” The jury sympathized with the wife of the victim because she came to court every day and cried throughout the entire trial. Many of the jurors expressed obvious sadness for the victim and the victim’s family throughout the interviews.

However, when describing the defendant and the defendant’s family in the same case, jurors clearly could not empathize with the defendant or his family. A telling example is the words of one white female juror as she described the appearance of the defendant in court, “he was a big man who looked like a criminal…he was big and black and kind of ugly.” Another white female juror mirrored the sentiment by explaining that the defendant was “basically a street kid…it was a very sad situation all the way around, he was black, raised in the ghetto.”
When describing the appearance of the “girl who had [the defendant’s] baby”, the female juror went on to say that “the girl was young, the process repeats itself. The black community needs to change it. The girl looked unkempt…swampy….had a tiny baby. Her baby was not more than two.” Moreover, the same white male juror who clearly empathized with the wife of the victim above expressed very strong feelings about the defendant by stating that the trial was a “sad commentary on the social gap between the haves and the have nots…our welfare system makes these people. Our dollars we give them. It’s terrible and awful.” He goes on to suggest that coming from a poor or deprived background does not excuse the defendant’s crime. The juror argues that he doesn’t “get upset about people like that. I just want to put them away from society…hang them if they have to be hung, or the death penalty, whatever…there is so much stupid crime, it’s ridiculous. We have so many liberal “do wells” those bleeding heart liberals. This is nonsense…the guy knew what he was doing when he pumped four shots into the guy” and that is why this juror voted for death. Now, it is possible that this example is not a valid representation of juror’s impressions of victims and defendants in interracial murder cases but it is a vivid example of the differing perceptions of jurors when they perceive the victim to be a “businessman and good father” and the defendant to be a product of “ghetto life” and the social welfare system.

**Distance**

Additional post-hoc comparisons indicate that there is a statistically significant difference in jurors’ feelings of distance from the victim and victim’s family between white female victims and black male victims ($p = .021$) and between white male victims and black male victims ($p =.004$). But no statistically significance difference exists between black female
and black male victim cases. However, a significant difference did emerge between black female victims and white male victims at the $p = .051$ level. It appears that jurors are significantly more likely to feel distant from black male and black female victims and their families as compared to white female victims and white male victims. Again, this appears to support the effect of race, rather than gender on jurors’ feelings of distance from the victim and victim’s family and may reflect white jurors’ perceptions that “black on black crime” is not deserving of the most severe punishment.

A revealing example of jurors’ perceptions of distance from the victim based on race can be seen in a North Carolina case where a black male defendant was convicted of killing a black male victim during the course of a late-night convenience store robbery. Although the jurors ultimately decided to impose a death sentence in the case because the defendant had admitted guilt and was considered to be very dangerous, jury members admitted having discussions in church about “race and class and the differences…one of our parishioners says he’s not prejudiced but pragmatic. How many murders were there in Raleigh? Let’s say there were 46. How many would there have been if they’d [offenders and victims] been white? Four [The juror laughs].” When the same white female juror was asked by the interviewer if she had remembered the victim’s name, she responded “it’s been a year…all of them were black, everyone involved. There was a white person in the store.” Another white female juror serving on the same jury admitted that the victim was a family man, a real “neat guy” but “if the victim had been as bad as he is [the defendant], my attitude really would’ve been well, you know, just arm them all and let ‘em wipe each other out.” She goes on to reveal that during jury selection she was not asked whether she was prejudiced against black men but if she had been asked she
“would have had to say yes. Anybody that is born and raised in the south and says they’re not prejudice is a liar. I try very, very hard to get over it. Every time I get somewhere, I meet a nigger (sic) and I don’t like white ones any more than I do [black ones]. However, she felt she was entitled to her own opinion and “would try not to let that affect me.” She further reveals that “when I heard about the killing, I thought they’re just wiping each other out again. If they’d [offender and victims] been white people, I would’ve had a different attitude.” This description suggests that white female jurors in this particular case hold strong racist views of blacks. This may lead them to feel that blacks (whether offenders or victims) are very different from themselves. In turn, they may feel distance from the victims and allow these prejudices to cloud their punishment decisions no matter how much they try to remain impartial.

**Blame**

Lastly, the Tukey HSD test indicates that there is a statistically significant difference in jurors’ perceptions that the victim was responsible for or in some way to blame for their victimization between white female victims and black male victims ($p = .003$) and between black female victims and black male victims ($p = .016$). A difference did emerge between white male victims and black male victims at the $p = .063$ level. Overall, it appears that juries are less likely to blame female victims for their victimization as compared to male victims; however, jurors appear to place the greatest amount of blame and responsibility for their own victimization on black male victims as compared to the other victim race-gender dyads.

It is possible that a greater amount of blame is placed on black male victims because jurors perceive them to be in some way contributing to their own victimization by engaging in risky or illegal behavior themselves. This can best be observed in an intra-racial North Carolina
case where a black male defendant was sentenced to life imprisonment for the attempted robbery and murder of a black male victim. Jurors described the motive for the crime as being a drug-related robbery. Apparently, the black male victim was a well-known drug dealer of crack cocaine. The black male defendant attempted to rob the victim for his drugs and money but the victim pulled out a gun. A fight ensued and the defendant shot the victim in the chest with his own gun. One male juror described the victim as a “tough guy,” who “showed extremely poor judgment.” Several jurors believed the murder was not premeditated but rather a “robbery gone awry” and blamed the victim for “resisting the robbery.” Another white male juror serving on the same case believed that the crime was “sudden and unpremeditated.” He described the crime as “a lowlife killing lowlifes” and didn’t feel that the crime was deserving of a death sentence. In fact, the interviewer noted at the end of the interview that this male juror spoke with “clear racist overtones” calling both the defendant and victim “niggers” (sic) and “stressed their low living standards and drug use.”

In conclusion, black male victims and their families stand out as the group who receive the least empathy from jurors, whom jurors feel the most distance from, and who are most to blame for their own victimization.

**Logistic Regression with Victim Factors**

In order to determine whether victim empathy, distance, and blame are significant predictors of whether a defendant receives a death sentence, a logistic regression was conducted. Black male victim cases have been excluded as the reference category due to the unique nature of the differences between black male victims and other victim race-gender dyads in earlier analyses. Furthermore, the following logistic regression analyses are based on 208 capital cases.
because those cases where only one juror out of twelve was interviewed have been excluded. The response of only one juror is not representative of the perceptions of all jurors serving on that jury and therefore, 41 “one-juror” cases have not been included in the following analyses.

Results from the logistic regression with interaction effects indicate that the model is a better predictor than the null model \( x^2 (19, N = 208) = 64.507, p < .001 \). The model was able to correctly classify approximately 61% of life sentences and 80% of death sentences, for an overall success of 72%. The model was able to explain 35.7% of the proportion of variance in death sentencing \( (R^2 = .357) \). This is a significant improvement over the earlier models.

Of the three victim factors included in Model 4, blame is the only one to be found statistically significant at the \( p = .008 \) level. Empathy \( (p = .614) \) and distance \( (p = .499) \) are not significant predictors of whether a defendant receives a death sentence. Results suggest that blame is negatively related to death sentencing. Therefore, the more a jury blames a victim for their own victimization, the less likely a capital defendant is to be sentenced to death. This finding is similar to Sundby’s (2003) results of an analysis of California CJP cases. He found that a victim who is engaged in high-risk or antisocial behavior leading up to the crime is less likely to invoke an empathetic response from the jury and, therefore, the jury is less likely to impose a death sentence (Sundby 2003). In this data, blame comes in the form of drug and alcohol addiction, being a known troublemaker, and not being more careful. It is therefore not surprising that juries are less likely to impose a death sentence in capital cases where the victim is perceived to at least be partly responsible for their victimization.

What is an even more interesting result is that after controlling for victim empathy, distance, and blame, the interaction of victim race and gender is still a significant predictor of
death sentencing. For example, the odds of a defendant receiving a death sentence in white male victim cases is 6.4 times greater and 5.4 times greater in white female victim cases than in black male victim cases. Although the odds of receiving a death sentence in black female victim cases is not statistically significant ($p = .285$), the relationship is in the hypothesized direction. Black female victim cases appear to be more likely than black male victim cases to result in a death sentence. Therefore, even when controlling for important legally relevant variables such as multiple victims, stranger homicide, felony murder, and crime heinousness, as well as victim characteristics such as empathy, distance, and blame, cases involving black male victims are significantly less likely to result in a death sentence compared to white female, white male, and black female victim cases.
Table 22: Logistic Regression with Victim Factors Predicting Death Sentence

<table>
<thead>
<tr>
<th>Predictor</th>
<th>Model 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>White Female Victim</td>
<td>1.679*</td>
</tr>
<tr>
<td>White Male Victim</td>
<td>1.858**</td>
</tr>
<tr>
<td>Black Female Victim</td>
<td>.885</td>
</tr>
<tr>
<td>Black Defendant</td>
<td>.372</td>
</tr>
<tr>
<td>Multiple Victims</td>
<td>1.526**</td>
</tr>
<tr>
<td>Stranger Homicide</td>
<td>-.005</td>
</tr>
<tr>
<td>Felony Murder</td>
<td>-.668</td>
</tr>
<tr>
<td>Defendant Record</td>
<td>1.138*</td>
</tr>
<tr>
<td>Southern Jurisdiction</td>
<td>.174</td>
</tr>
<tr>
<td>Defense Attorney Performance</td>
<td>-.731**</td>
</tr>
<tr>
<td>Prosecutor Performance</td>
<td>.962**</td>
</tr>
<tr>
<td>Heinousness</td>
<td>.070</td>
</tr>
<tr>
<td>Empathy</td>
<td>.101</td>
</tr>
<tr>
<td>Distance</td>
<td>-.133</td>
</tr>
<tr>
<td>Blame</td>
<td>-.619**</td>
</tr>
<tr>
<td>Constant</td>
<td>-6.606**</td>
</tr>
</tbody>
</table>

\( n = 208 \)

\( R^2 \) (Cox & Snell) = .267

Corrected \( R^2 \) (Nagelkerke) = .357

-2 Log Likelihood = 221.066  ** \( p \leq .01 \)  * \( p \leq .05 \)

Model \( \chi^2 = 64.507 \)  \((df = 19, p < .001)\)

Reference Category = Black Male Victim

In conclusion, these findings are consistent with and contribute to previous findings on what Williams and colleagues (2007) have coined the ‘black male victim effect.’ A summary of the current findings suggest that capital cases involving black male victims are distinguished from cases involving other victim race-gender combinations because jurors perceive black male victims to be the least likely to be respected in the community and least likely to be helpless/innocent victims. They are also among the four victim race-gender dyads to be perceived by jurors as the most likely to have a problem with drugs and alcohol, to be careless or
reckless, and to come from a poor and deprived background. Black male victims and their families also stand out as the group who receive the least empathy from jurors, whom jurors feel the most distance from, and who are most to blame for their own victimization. Furthermore, murders that involve black male victims are perceived by jurors to lack the brutality and suffering necessary to impose a death sentence. Therefore, contrary to the predicted “white female victim effect,” black male victim cases are the capital murders least likely to result in a death sentence even when taking into account important characteristics of the crime, defendant, and victims.
Chapter 9: Contribution to the Literature

Discussion of Important Findings

Using the Capital Jury Project (CJP) data, the current study examines the intersection of victim race and gender on jury decision-making in capital cases. Contrary to previous research on the effects of victim gender on death penalty outcomes, I did not find that victim gender significantly predicted whether a defendant receives a death sentence (Holcomb et al. 2004; Williams & Holcomb 2004; Stauffer et al. 2006; Royer et al. 2014). There is a possibility that no gender effects appear because of the small number of black female victim cases in the CJP subsample. Some results indicate that this might be true, such as the degree of heinousness and brutality associated with female victim cases compared to male victim cases. Overall, jurors in the sample perceived a greater degree of brutality and heinousness in female victim cases regardless of race. Jurors are also more likely to perceive females as innocent and helpless victims compared to males.

However, victim race did emerge as a significant predictor of death sentencing. Results indicate that the odds of a defendant receiving a death sentence in a white victim case are 2.5 times greater than in a black victim case, even when controlling for important legally relevant variables. In my analysis, victim race rather than victim gender appears to be the factor most strongly influencing jury decision-making in capital cases. This finding is not all that surprising in the sense that an abundance of empirical support already exists for race-of-victim effects in capital cases (Gross & Mauro 1989; Baldus et al. 1990; Radelet & Pierce 1991; Pierce & Radelet 2002; Pierce & Radelet 2005; Pierce & Radelet 2011; Radelet & Pierce 2011).
The most essential finding of the current study, however, pertains to the intersection of victim race and gender. Initially, I hypothesized a “white female victim” effect meaning that a death sentence is significantly more likely to be imposed on a defendant when the victim is a white female. This “white female victim” effect has been empirically supported by Holcomb and colleagues (2004) using Supplementary Homicide Report (SHR) data from Ohio. Some explanations of a “white female victim” effect include the view that white female victims are awarded special protection by the criminal justice system because of their race privilege and chivalrous attitudes toward their gender (Curry 2010). White female victims may also be perceived as being less responsible for their own victimization (Holcomb et al. 2004). Although, cases with white female victims were perceived by capital jurors as involving a significantly greater degree of heinousness, brutality, and victim suffering than other victim race-gender combinations, I argue that a “white female victim” effect does not uniquely standout in the CJP subsample used for the current study. Results of the logistic regression reveal that a defendant’s odds of receiving a death sentence in a white female victim case is 3.8 greater than in a black male victim case, and 3.6 times greater in a white male victims case than in a black male victim cases, even when controlling for legally relevant variables known to affect the likelihood of a death sentence in capital cases. A hierarchy of “deathworthiness” emerges from the data in which defendants who murder white females are the most likely to receive a death sentence, followed by those who kill white males, black females, and finally black males.

However, it is the story at the bottom of the hierarchy that is most compelling. The current study reveals a strong and significant “black male victim effect” in the cases that make up the Capital Jury Project (CJP). For example, cases that involve black male victims are the
least likely to be perceived by jurors as involving brutality and victim suffering. Furthermore, black male victims are perceived by jurors to be the least likely to be respected in the community and the most likely to come from poor, deprived backgrounds. They are among the four victim race-gender dyads to be perceived by jurors as the most likely to have a problem with drugs and alcohol, to be the most careless and reckless, and the least likely to be perceived as helpless and innocent victims. Moreover, black male victims and their families stand out as the group who receive the least empathy from jurors, whom jurors feel the most distance from, and who are most to blame for their own victimization. Although, these findings are not particularly surprising due to the large number of white jurors in the CJP subsample, these results are a startling reminder of the enduring devaluation of the lives of black males in American society.

The current study expands upon previous research identifying cases involving defendants who kill black male victims as the least likely to receive a death sentence (Williams et al. 2007) by highlighting some of the victim characteristics most influential in the decision-making process. Juror attitudes toward black male victims are reflective of a wider cultural perception that black males are dangerous criminals. This is not surprising considering that perceptions of black criminality is supported by national statistics illuminating black male incarceration rates, empirical research on racial prejudice and perceptions of criminality, and media representations of the dangerous black man. According to the Sentencing Project (2003), 1 in every 3 black males can expect to spend time in prison during his lifetime. Currently, 1 in 9 young black men in America are behind bars (NAACP 2008). These are staggering estimates. Moreover, empirical research has demonstrated that racial prejudice and stereotypes are more likely to be applied to individuals with more stereotypically black features. For example, Eberhardt and colleagues
(2006) found that black male defendants in capital murder cases are more likely to receive a death sentence when their appearance is thought to be more stereotypically black including dark skin, wide noses, and thick lips. Furthermore, Fleury-Steiner’s (2002) qualitative analysis of black defendant death cases found in the CJP data revealed that white jurors tell stories of cultural distance and racial inferiority. White jurors see the black defendant as “other” and worthy of a death sentence.

The current study suggests that this form of negative racial stereotyping carries over to black male victims as well. Defendants who kill black male victims are significantly less likely to receive a death sentence. In this research, it has been shown that black male victims are more likely to be blamed for their victimization because jurors perceive them to be engaging in risky or illegal behavior that may precipitate their own victimization, such as drug/alcohol use and carrying a weapon. Moreover, several jurors in the sample alluded to increasing “black on black violence” and to blacks “wiping each other out.” This racial stereotype tends to place as much blame on the victim as it does on the defendant and can have crippling consequences in our capital sentencing systems.

Perceptions of black male criminality portrayed in the news and popular media also have disastrous real-life consequences. The tragic death of 17-year-old Trayvon Martin in February 2012 is a fairly recent example of how perceptions of black criminality led George Zimmerman to fatally shoot Trayvon on the street in Sanford, Florida. According to a 911 call on the night of the shooting, Zimmerman told the dispatcher that there was a “real suspicious guy.” He goes on to say “this guy looks like he's up to no good, or he's on drugs or something. It's raining, and he's just walking around.” Trayvon’s sweatshirt hood was pulled up over his head as he walked to his
father’s home from 7-Eleven that night. There was speculation that Zimmerman used a racial slur to describe Trayvon to the 911 dispatcher and although Zimmerman denied it, Trayvon’s family strongly believed that Zimmerman racially profiled him. Zimmerman was acquitted of second degree murder in July 2013 (CNN Library 2013). Over 100 protests took place across the country after the verdict was read (USA Today 2013). Protesters carried signs reading “No Justice, No Peace” and “We are all Trayvon Martin.” NBA team, the Miami Heat, showed their support of Trayvon Martin by posting a team picture with all players wearing a “hoodie” and bowing their heads (ESPN News 2012).

Although it was not proven in Zimmerman’s case, the use of racial slurs to describe men of color has received wide-spread media attention recently. NBA owner of the Los Angeles Clippers, Donald Sterling, is being forced by the NBA to sell his team after being recorded by his girlfriend “not to bring black people to his games.” Celebrity Chef, Paula Deen, lost her show on Food Network and major endorsements after admitting to use the “n-word” (sic) against an African-American employee. Duck Dynasty reality star, Phil Robertson, was briefly suspended from the show after making both racist and homophobic remarks during an interview with GQ magazine. Lastly, the 82 year old police commissioner in Wolfeboro, New Hampshire, Robert Copeland, resigned after being accused of using a racial slur in reference to President Obama. All of these examples have elicited media attention and public outrage, yet we still allow those who hold racist views to determine not only a defendant’s guilt in a capital case but whether the defendant will live or die. This is an awesome responsibility being placed in the hands of jurors who do not hesitate using both subtle and overtly racist language to describe black male defendants, black male victims, and their family members. The claim that jurors’ personal views
and biases do not inhibit their ability to make an impartial decision about life and death is not corroborated by the descriptive narratives used in the current study to illustrate and provide support for the crucial finding surrounding the “black male victim effect.”

The descriptive juror narratives selected for this study further suggest that procedures to uncover racial attitudes during voir dire questioning of capital jurors have not succeeded. It appears that both black and white jurors rely heavily on personal conceptions of criminality, the causes of crime, and the trustworthiness of the criminal justice system that are undoubtedly related to race (Bowers et al. 2001). Two very good examples of black jurors mistrust of the criminal justice system is highlighted in one North Carolina case and one Virginia case where a black male defendant was on trial for capital murder. From several white male jurors’ perspectives serving on the Virginia case, it appears that one black female juror had reservations about giving the black male defendant a death sentence because she “thought that he [the defendant] had been pressured into his confession by the white police officer. She brought up the racist part… when that first came up we [the majority white jury] kind of got upset because none of the rest of us thought it was something racist.” Similarly, the lone black female juror serving on a North Carolina case expressed mistrust of the system because (as one white male juror described it) “she had problems before. Her son had been picked up, accused of a crime…falsely because he was black. She was a little bit sour on the system.” You can see from these two descriptions that the personal experiences of both black and white jurors have implications for their service as jurors in capital cases (Bowers et al. 2001) and race continues to play a meaningful role in capital sentencing.
Theoretical and Policy Implications

Drawing on Black feminist theories of intersectionality, the current research is an important contribution to death penalty disparity research because it examines the relationship between the intersection of victim race and gender and sentencing outcomes, rather than considering the race and gender of the victim as independent factors. The independent consideration of victim race and gender overlooks the complex interaction of these two victim characteristics in a jurors’ decision to impose life or death and is unable to contribute to the understanding of the unique lived experiences of groups of individuals, either privileged or oppressed, in the criminal justice system. The application of feminist theories of intersectionality to jury decision-making in capital cases uncovers the interaction of race and gender discrimination not yet examined extensively in death penalty disparity research. In fact, the intersectional perspective has been proclaimed as one of the most important contributions to feminist scholarship and is regarded by many feminist scholars as the cutting edge of contemporary feminist theory (Davis 2008: 69).

As I argue in earlier chapters, most past death penalty research on victim race and gender has treated these victim characteristics as distinct categories of interest (Williams et al. 2007). They have examined the independent effects of victim race and/or gender, but have not considered the potential joint effects of both. Examining the joint effects of victim race and gender is crucial because they reveal effects significantly larger than any single main effect alone (Williams et al. 2007). Daly and Tonry (1997: 208) have argued that “the most interesting analytical and political questions center on the intersections of race and gender, not merely the separate categories of black, white, male and female” because it is unlikely that decision makers
consider the race or gender of a victim independent of one another (Williams & Holcomb 2004). By incorporating Black feminist scholarship on intersectionality with the knowledge already accumulated regarding the differential treatment of capital defendants based on the race and gender of their victims, greater awareness about the devaluation of human life and equal protection of law can be restored as central issues in contemporary death penalty jurisprudence.

In previous intersectionality research the primary debate has focused on whether people with multiple subordinate-group identities experience more prejudice and discrimination than those with single subordinate-group identities (Purdie-Vaughn 2008: 377). Purdie-Vaughn (2008: 378) argues that because people with multiple subordinate-group identities (e.g. black women) do not usually fit the prototypes of their respective subordinate groups (e.g. African Americans or women) they will experience “intersectional invisibility.” Intersectional invisibility helps to explain the lack of empirical support for black female victim discrimination and unsettling support for black male victim discrimination in the current study. For example, intersectional invisibility argues that group members with a single devalued identity bear the brunt of discrimination targeting their group. More specifically, the subordinate male target hypothesis (SMTH) claims that black men are the focus of oppression and experience more direct prejudice and discrimination than black women (Sidanius & Pratto1999). This applies directly to the current research by describing how a person with multiple subordinate-group identities (e.g. black female victims) become legally invisible in the capital sentencing process since capital jurors are more prominently discriminating against black male victims by not imposing a death sentence on their murderers.
Although I argue that intersectionality can be applied to all those who have multiple interlocking identities and experience discrimination in the criminal justice system, future intersectional research should place greater emphasis on the core/fundamental assertions laid out in the intersectional framework by focusing on the discrimination of women of color in the criminal justice system, both as offenders and victims. The way the criminal justice and death sentencing systems respond to women of color is of pressing concern and opens a line of social scientific inquiry not yet fully appreciated in criminology (Potter 2013). I regret not having the capability to sufficiently examine the experience of women of color in our capital sentencing system in this research. However, the lack of ability to do so is not an oversight on my part but rather is constrained by available data. The subsample of CJP data includes cases involving only 22 black female victim cases- due to the methodological decision to exclude cases involving multiple victims of different race and genders,- this is not a large enough sample size to draw conclusions about the unique experience of black female victims in capital cases.

Shields (2008:309) contends that an intersectional approach reflects the belief that empirical research can be beneficial to society and that it is our obligation to study scientifically those problems and issues that are relevant to real people’s lived experience. In line with intersectional methodologies, future research should continue to use a mixed methods approach to improve our understanding of the lived experiences of all those who face discrimination in a criminal justice system presumed to protect every individual equally. Black Americans are entitled to the equal protection of law authorized by the Fourteenth Amendment. This means that they deserve the same degree of respect, empathy, and concern that states provide to whites (Kennedy 1988). By continuing not to impose the death penalty in cases involving black male
victims, capital jurors are sending the message that they value the life of white males and females more than the life of black males and that a black male’s life is expendable (Civil Liberties Union 2011).

We, as a society, have acknowledged that racial discrimination exists and provide important protections against its influence on employment, education, and housing opportunities. The Civil Rights Act of 1964 and 1968 is legislation that prohibits these types of discrimination. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, sex or national origin (U.S. Equal Opportunity Employment Commission 2014). Title IV prohibits discrimination on the basis of race, color, sex, religion or national origin by public elementary and secondary schools and public institutions of higher learning (U.S. Department of Justice 2014). Lastly, Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex or national origin (U.S. Department of Housing and Urban Development 2007). For decades, we have protected individuals against discrimination in these areas yet we continue to tolerate racial discrimination in our criminal justice and capital sentencing systems.

Some scholars have proposed affirmative jury selection procedures to encourage racial and ethnic diversity on capital juries (Bowers et al. 2001). Others have argued for greater jury transparency through post-trial hearings where capital jurors would be expected to provide reasons for imposing a death sentence in a particular case (Hoeffel 2005). Yet others have called for a “drastic legislative narrowing of the breadth of death eligibility to the most highly aggravated cases coupled with close scrutiny by the state supreme court” or abolition of the death penalty altogether (Baldus, Woodworth & Grosso 2007: 177). Although I don’t foresee
complete abolition anytime soon, one-by-one states are beginning to call into question their own
capital sentencing systems by recognizing the continued risk of arbitrary imposition of the death
penalty condemned by the U.S. Supreme Court four decades ago. I am reluctantly convinced that
research will continue to provide evidence of systemic racial discrimination in the imposition of
the death penalty in the United States and place in the public spotlight a commitment to its end.

**Recommendations for Future Research**

Although the current study significantly contributes to growing evidence of racial
discrimination in the imposition of the death penalty, it involves only a victim-based analysis,
which is only part of the capital sentencing story. Future research should include juror
perceptions of defendant and defendant’s family characteristics as well, in order to explain a
greater percentage of variance in death sentencing and to examine the ways in which victim and
defendant characteristics intersect to explain capital case outcomes. For example, Bowers and
colleagues (2001) have found that juror perceptions of a defendant’s remorsefulness and
dangerousness, as well as lingering doubts about a defendant’s guilt significantly vary by juror
race and jury composition, especially in black defendant-white victim cases. It would be
interesting to examine how jurors’ perceptions of defendants and defendant’s family vary based
on the intersection of juror race and gender, defendant race and gender, as well as victim race
and gender.

It is also extremely important for future intersectionality research on the death penalty to
include capital cases that involve Hispanic/Latino male and female defendants and victims in
order to examine how juror perceptions differ from perceptions of white and black, male and
female defendants and victims. American society is not a black-white dichotomy. The Latino population is growing in the U.S. and research should ideally reflect the society in which we live. According to the U.S. Census Bureau (2010), there are approximately 52 million Hispanics living in the U.S., representing almost 17% of the total population. This makes people of Latino/Hispanic origin the nation’s largest ethnic or race minority (Centers for Disease Control and Prevention 2013). Therefore, it is disadvantageous to ignore the lived experiences of Hispanic men and women in our capital sentencing systems. Curry (2010) argues for broadening the scholarship on sentencing outcomes to include Hispanics. He found that in homicide cases, offenders who victimized Hispanics received milder sentences than those who victimized whites. However, in sexual assault and robbery cases, those who victimized Hispanic females led to more severe sentences (Curry 2010). It is imperative that future research on intersectionality and the death penalty include the unique lived experiences of Hispanic defendants and victims in the analysis.

Another important factor that was regrettably excluded from the current research that should be included in future research is a reliable measure of social class in order to examine whether differences in death sentencing exist according to the intersection of race, gender, and social class. These factors are likely to influence each other in important ways within our death penalty systems but it was not able to be captured reliably in the present analysis. An indication that social class is just as important as race was present in some of the descriptive narratives included in the current study. For example, in a Kentucky case where a black male defendant was sentenced to life imprisonment for the robbery and murder of a black male victim, one white male juror “wondered how common it was” in the “poorer neighborhoods” for something like
this crime to happen. He states that although the victim was poor, he “was not destitute because he got a retirement check. The place he [the victim] lived almost set you up to be a victim with those locks.” It was clear from the jurors description of the crime that he believed that the ‘bad bolts” and “fairly poor, run-down neighborhood” the victim lived I ultimately led to his victimization. Therefore, a valid representation of defendant and victim social class will likely further complicate the discussion of intersectionality and death penalty outcomes in the future.
### Appendix A. Aggravating Factors in CJP States

<table>
<thead>
<tr>
<th>Aggravating Factors</th>
<th>AL</th>
<th>CA</th>
<th>FL</th>
<th>GA</th>
<th>IN</th>
<th>KY</th>
<th>LA</th>
<th>MO</th>
<th>NC</th>
<th>SC</th>
<th>PA</th>
<th>TN</th>
<th>TX</th>
<th>VA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder was heinous, atrocious, cruel, or depraved (or involved torture)</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>The capital offense was committed during the commission of, attempt of, or escape from a specified felony (such as robbery, kidnapping, rape, sodomy, arson, oral copulation, train wrecking, carjacking, criminal gang activity, drug dealing, or aircraft piracy)</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>The defendant knowingly created a grave risk of death for one or more persons in addition to the victim of the offense (&quot;weapon of mass destruction&quot; in Kentucky)</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>The murder was committed while the defendant was engaged in “ritualistic acts”</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The defendant committed ‘mass murder’ which is defined as the murder of three or more persons whether in a single episode or at different times within a forty-eight month period</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The murder was part of a course of conduct in which the defendant engaged</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The murder was committed for pecuniary gain or pursuant to an agreement that the defendant would receive something of value</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>The defendant caused or directed another to commit murder, or the defendant procured the commission of the offense by payment, promise of payment, or anything of pecuniary value</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------------------------------------------------------------------------------------------</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The murder was committed to avoid or prevent arrest, to effect an escape, or to conceal the commission of a crime</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The capital offense was committed to interfere with the lawful exercise of any government function or the enforcement of the laws</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The defendant has been convicted of, or committed, a prior murder, a felony involving violence, or other serious felony</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The capital offense was committed by a person who is incarcerated, has escaped, is on probation, is in jail, or is under a sentence of imprisonment</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The defendant intentionally caused the death of two or more persons by one act pursuant to one scheme or course of conduct</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The capital offense was one of a series of intentional killings committed by the defendant</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The murder was committed from a motor vehicle or near a motor vehicle that transported the defendant</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The murder was committed by intentionally discharging a firearm into an inhabited dwelling</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The defendant committed or attempted to commit more than one murder at the same time</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The murder was committed by means of a bomb, destructive device, explosive, or similar device</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The defendant killed the victim while lying in wait</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The person murders another person in retaliation for or on account of the service or status of the other person as a judge or justice of a court</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The defendant committed the murder after substantial planning and premeditation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The victim was a government employee, including peace officers, police officers, federal agents, firefighters, judges, jurors, defense attorneys, and prosecutors, in the course of his or her duties</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The victim was an elected or appointed official or former official of the federal government, or local or state government, and the killing intentionally prevented the victim’s official duties</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Murder committed against any emergency medical or rescue worker, emergency medical technician, paramedic or firefighter, who was engaged in the performance of official duties, and the defendant knew or reasonably should have known</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The victim was a correctional officer</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The murder was committed against a witness, a potential witness, or a family member of a witness in a criminal or civil proceeding to prevent the witness from appearing, or for revenge</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The victim was killed because of his or her race, color, religion, nationality, or country of origin</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The defendant committed treason</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------------------------------</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The defendant was a criminal street gang member</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The victim of the capital felony was a person less than 12 years of age (6 years of age in TX &amp; 14 in VA)</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The victim of the capital felony was particularly vulnerable due to disability, or because the defendant stood in a position of familial or custodial authority over the victim</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The victim was a pregnant woman, and the murder resulted in the intentional killing of a fetus that has attained viability</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The victim was over the age of 65 (age 70 in Tennessee)</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The defendant was a drug dealer or has prior convictions involving the distribution of a controlled substance</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The defendant engaged in drug trafficking</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The defendant raped a child</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The capital felony was committed by a person designated as a sexual predator or a person previously designated as a sexual predator who had the sexual predator designation removed</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The offense of murder, rape, or kidnapping was committed by a person</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>previously convicted of rape, aggravated sodomy, aggravated child molestation, or aggravated sexual battery</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------------------------------------------------------</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The defendant showed cruelty to juveniles or second-degree cruelty to juveniles</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The defendant was involved in acts of terrorism</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The defendant committed incident to a high jacking</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The victim was an inmate of a correction facility</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The defendant placed a bomb near a bus terminal</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The defendant knowingly or purposely and without lawful authority restrained another person by either secreting or holding in a place of isolation or by using or threatening to use physical force</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The victim was a family member of a governmental official</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The murder was committed against a person held as a shield, as a hostage, or for ransom</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The victim was the Attorney General, a deputy attorney general, district attorney, assistant district attorney, member of the general assembly, governor, lieutenant governor, auditor general, state treasurer who was killed in the performance of his duties or as a result of his official position</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The victim was a nongovernmental informant and the defendant committed the murder or was an accomplice to the killing...and the killing was in retaliation for the</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>victim’s activities</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The victim was involved, associated, or in competition with the defendant in the sale, manufacture, distribution, or delivery of any controlled substance or counterfeit controlled substance</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>At the time of the killing the defendant was subject to a court order restricting in any way the defendant’s behavior toward the victim or any other order of a court of common pleas or of the minor judiciary designated in whole or in part to protect the victim from the defendant</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defendant was involved in killings in the course of or attempt of aggravated child neglect and aggravated child abuse</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The defendant knowingly mutilated the body of the victim after death</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The defendant is a future danger</td>
<td>X X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The willful, deliberate, and premeditated killing of any person by another pursuant to the direction or order of one who is engaged in a continuing criminal enterprise</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Appendix B. Aggravating Factors\textsuperscript{22} Identified in the Capital Jury Project Data

\textit{About the crime:}
The killing was brutal, involving torture or physical abuse
The killing was especially bloody or gory
The killing was not premeditated but was committed during another crime, such as a robbery, when the victim tried to resist

\textit{About the defendant:}
The defendant made the victim suffer before death
The defendant maimed or mutilated the victim’s body after death
The defendant did not express any remorse, regret, or sorrow for the crime
There is a possibility that the defendant would be a danger to society in the future
The defendant had a history of violence
The defendant did not testify on his own behalf

\textit{About the victim:}
The victim was a child
The victim was a female
The victim was respected in the community
The victim had a loving family
The victim’s family suffered severe loss or grief
The victim’s family asked for the death penalty
The community was outraged over the crime
Most community members wanted the death penalty

\textsuperscript{22} These aggravating factors were measured in three ways:
(1) Was the aggravating factor present in the case? 0= no; 1= yes; 2= not sure
(2) If yes, how important was this aggravating factor in your punishment decision?
   1= not important; 2= fairly important; 3= very important
(3) If no, would this aggravating factor make you more or less likely to vote for death?
   1= much less likely to vote for death; 2= slightly less likely to vote for death; 3= just as likely to vote for death; 4= slightly more likely to vote for death; 5= much more likely to vote for death
U.S. Supreme Court Cases Cited

Coker v. Georgia, 433 U.S. 584 (1977)
Furman v. Georgia, 408 U.S. 238 (1972)
Lockett v. Ohio, 438 U.S. 586 (1978)
Roberts v. Louisiana, 428 U.S. 325 (1976)
Roper v. Simmons, 543 U.S. 551 (2005)
United States v. Shipp, 203 U.S. 563 (1906)
Wainwright v. Witt, 469 U.S. 412 (1985)
Witherspoon v. Illinois, 391 U.S. 510 (1968)
References


