THE ROLE OF RACE IN WASHINGTON STATE CAPITAL SENTENCING, 1981-2012*

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INTRODUCTION

As is now well-known, many studies indicate that race played an important role in the administration of capital punishment prior to the *Furman v. Georgia* ruling in 1972.[1] The possibility that race continues to influence the imposition of the death penalty concerns many.[2] Although modern death penalty statutes were designed to reduce arbitrariness and discrimination in capital sentencing, researchers have found that race and other extra-legal factors continue to play a significant role in determining which capital defendants live and which die in the post-Furman era.[3] In particular, studies indicate that the race of homicide victims influences the administration of the death penalty in many locales: defendants accused of killing whites are more likely than similarly situated defendants accused of killing blacks to be sentenced to death. Although findings regarding the race of the defendant are more mixed, studies indicate that the race of the defendant continues to impact sentencing outcomes in death-eligible cases over and above case characteristics (such as the number of victims) in some, though not all, locales.[4]

To date, however, no published study has examined the role of race in capital sentencing in Washington State. Washington State's current death penalty statute was enacted in 1981 and is comparatively restrictive. Under RCW Ch. 10.95, the death penalty may only be imposed if the State has filed a notice of intent to seek the death penalty, the defendant is convicted of aggravated first-degree murder, and a judge or jury has determined there are not sufficient mitigating circumstances to merit leniency. (See Appendix A for a list of aggravating factors).

This report assesses whether race influences the administration of the death penalty in Washington State. Since 1981, 313 cases have been adjudicated in Washington State that involved defendants convicted of aggravated murder and for which trial reports are available.[5]

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[1] See David C. Baldus and George Woodworth, "Race Discrimination and the Death Penalty" (Chapter 16 in *America's Experiment with Capital Punishment: Reflections on the Past, Present, and Future of the Ultimate Penal Sanction*, edited by James R. Acker, Robert M. Bohm, and Charles S. Lanier, Carolina Academic Press, 2003, 2nd edition), at 516.

[2] See, for example, American Bar Foundation, "Death Penalty Assessments: Key Findings." Available online at http://apps.americanbar.org/abanet/media/release/news_release.cfm?releaseid=209 (accessed December 15, 2013).

[3] Ibid, pp. 519-526. See also Samuel Walker, Cassia Spohn and Miriam Delone, "The Color of Death" (Chapter 8 in *The Color of Justice: Race, Ethnicity and Crime in America*, Thomson-Wadsworth, 4th edition); Jamie L. Flexon, *Racial Disparities in Capital Sentencing* (El Paso: LFB Scholarly Publishing 2012).

[4] Ibid.

[5] We obtained the trial reports from attorneys for Mr. Allen Gregory; these were originally provided by the Washington State Supreme Court and were current as of May 2013. However, according to these attorneys,

Twenty-eight of these cases involved defendants who were under the age of 18 at the time of the offense. Prosecutors sought the death penalty in just under one-third (30.9%) of the cases involving adults, and juries imposed it in about one eighth (12.3%) of them. Some of these death sentences have been over-turned on appeal. Of the 285 adults convicted of aggravated murder in Washington State since 1981, five have been executed, and another eight are currently on death row.[6]

Recent studies stress the importance of analyzing prosecutorial and jury decision-making in capital cases separately in order to specify where race matters in capital sentencing, if it does at all.[7] The following analysis therefore explores the impact of race on prosecutorial decisions to seek the death penalty and, separately, on juries' decisions to impose it in aggravated murder cases involving adult defendants.[8] Specifically, we examine whether prosecutors are more likely to seek, and juries more likely to impose, the death penalty in cases involving defendants of color, and black defendants specifically. We also assess whether the race of the victim(s) influences prosecutorial and/or jury decision-making in capital cases.

Key findings pertaining to race include the following:

- Prosecutors sought the death penalty in a larger share of aggravated murder cases involving white defendants than they did in cases involving non-white defendants.
- By contrast, juries imposed a death sentence in a notably larger share of cases involving black defendants than in cases involving white or other defendants.
- The results of regression analyses indicate that neither the race of the victim(s) nor the race of the defendant influenced whether prosecutors sought the death penalty.
- By contrast, the results of regression analyses indicate that *juries were three times more likely to impose a sentence of death when the defendant was black than in cases involving similarly situated white defendants.*

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approximately twenty such reports have not been filed with the Supreme Court and are therefore unavailable. The implications of this are discussed in footnote 8.

[6] See Washington State Department of Corrections, "Capital Punishment in Washington State." Available at http://www.doc.wa.gov/offenderinfo/capitalpunishment/ (accessed November 3, 2013).

[7] See David C. Baldus and George Woodworth, "Race Discrimination and the Death Penalty" (Chapter 16 in *America's Experiment with Capital Punishment: Reflections on the Past, Present, and Future of1 the Ultimate Penal Sanction*, edited by James R. Acker, Robert M. Bohm, and Charles S. Lanier, Carolina Academic Press, 2003, 2nd edition).

[8] If a defendant waives his or her right to a jury trial, a judge may impose the death penalty in cases in which a death notice has been filed following a special sentencing proceeding. As a practical matter, however, it is juries that almost always decide whether to impose a sentence of death. We therefore link sentencing decisions to jury decision-making throughout the discussion.

Other key findings include the following:

- The proportion of death-eligible cases in which prosecutors sought the death penalty varied notably by county, from a high of 67% in Thurston County to a low of 0% in Okanogan County. Among larger counties with more aggravated murder cases, the proportion of cases in which prosecutors sought death also varied markedly, from a high of 48% in Kitsap County to a low of 0% in Yakima County.

- Case characteristics such as the number of aggravating circumstances and victims explain only 6% of the variation in decisions to seek the death penalty and 18% of the variation in the decision to impose the death penalty.

- Two case characteristics were significant predictors of prosecutorial decisions to seek death: the number of prior convictions possessed by the defendant, and the number of aggravating circumstances alleged to exist by prosecutors. Neither the number of victims nor evidence of prolonged victim suffering were significant predictors of prosecutorial efforts to seek the death penalty.

- Prosecutors were nearly three times more likely to seek death in cases that received extensive publicity than in cases that did not.

DATA AND ANALYTIC STRATEGY

Trial judges are required to file reports in all aggravated murder cases, citing the relevant details of the crime and the defendant, in order to facilitate proportionality review in capital cases. Specifically, RCW 10.95.130(2)(b) mandates that the Court determine whether "the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant." "Similar cases" means all cases resulting in one or more convictions for aggravated murder, regardless of whether a death sentence was sought or imposed. The purpose of this review "is to ensure that the sentence, in a particular case, is proportional to sentences given in similar cases, is not freakish, wanton or random, and is not based on race or other suspect classifications."[9]

This study analyzes data derived from all of the available trial reports pertaining to these cases.[10] These were provided by Mr. Gregory's attorneys. The full sample thus includes all

[9] *State v. Cross*, 156 Wn.2d 580, 630, 132 P.3d 80 (2006).

[10] According to attorneys for Mr. Gregory, approximately twenty such reports pertaining to cases in which the defendant was sentenced to life without parole have not been filed with the Supreme Court and are therefore unavailable. If this is correct, the dataset analyzed in this report is incomplete, and it is impossible to determine if there is any systematic bias in the sample of cases analyzed. That is, if the missing trial reports have

aggravated murder cases in which the defendant was sentenced in Washington State between December 1981 and May 2013 for which a trial report is available.

As noted previously, however, 28 of these cases involved defendants who are known to have been under 18 years of age at the time of offense.[11] Because the Washington State Supreme Court determined that juveniles are ineligible for the death penalty in 1993,[12] including juveniles would create a systematic bias in the sample. Moreover, the Court did not hold that the statute in question was unconstitutional, but rather construed the statute to mean that the death penalty could never have been imposed upon juveniles. From a legal point of view, this means that juveniles were never eligible for the death penalty under Washington's statute. For these reasons, we have removed minors from the analyses presented here. As a result, the sample analyzed includes 285 aggravated first-degree murder cases involving adult defendants.

The trial reports were coded according to a detailed coding protocol (available upon request). Two University of Washington students were trained to code the trial reports; their work was periodically audited to ensure reliability. Although the trial reports ask judges to supply detailed information about a variety of case, defendant and victim characteristics, we discovered through the coding process that many of the trial reports were quite incomplete. We were therefore unable to include a number of relevant factors (such as defendant IQ, mental health status, and victim occupation) in our analyses that may, in fact, influence the administration of capital punishment.

In the aggravated murder cases we analyze, prosecutors may or may not have sought the death penalty, and juries may or may not have imposed it. The analysis presented here employs a variety of methods to analyze the role of race in these two stages of capital sentencing in Washington State.[13] Part I provides descriptive statistics in order to illuminate the prevalence and distribution of death sentences. We begin by comparing the distribution of efforts to seek death and death sentences at the county level. Next, we compare the proportion of black, white and other defendants who were convicted of aggravated murder against whom prosecutors sought death, who were sentenced to death, and who have been executed or are currently on death row. Finally, we compare the proportion of cases involving a black

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some characteristic in common (e.g., they involve defendants of overwhelmingly one race), the sample analyzed here is not a representative one.

[11] In seven cases, the age of the defendant at the time of offense could not be determined from the trial report. Because they were not noted to be juveniles, these defendants are assumed to be adults and are included in the regression models.

[12] *State v. Furman*, 858 P.2d 1092 (1993).

[13] Prosecutors also exercise discretion in deciding whether to charge aggravated vs. non-aggravated murder and whether to allow a defendant to plead down from an aggravated murder charge. These decisions are also quite consequential but cannot be analyzed with the dataset utilized in this report.

defendant and white victim that resulted in a death sentence with the proportion of cases with different defendant-victim configurations in which a death sentence was sought or imposed.

The results of these descriptive analyses show that there is notable variation in the proportion of aggravated murder cases in which prosecutors seek, and juries impose, the death penalty at the county level. They also suggest that prosecutors sought death in a larger share of cases involving white than black defendants. However, a comparatively large proportion of black defendants were sentenced to death (and have had this sentence retained as of December 2013). However, it is important to note that these descriptive statistics are suggestive rather than conclusive because they capture only two or three variables at once and do not take simultaneously into account the other case characteristics that may influence prosecutorial and jury decision-making.

To remedy this, Part II presents the results of statistical regression analysis to assess whether the race differences described in Part I are affected when case characteristics are taken into account. Regression analysis is a statistical technique used to estimate the degree of correlation among variables included in a given model. Regression models include an outcome or dependent variable – such as a death sentence – as well as a number of factors (independent variables) that may affect the outcome. The results of the regression analysis reveal how much the outcome changes when any one of the independent variables is varied and the other independent variables are held constant. *Regression analysis allows researchers to identify the unique impact of each independent variable – including race of the defendant and victim – on a particular outcome over and above any differences in case characteristics.*

Two types of variables were included in the regression models: case characteristics, which could be expected to impact case outcomes, and extra-legal or social factors (such as race), which ideally would not. Several case characteristics were included in the regression models. In the analysis of prosecutorial decision-making, we included case characteristics that would have been known to prosecutors early in the criminal process: the number of aggravators alleged by prosecutors; the number of defendant prior convictions; the number of victims; and whether the victim's suffering was prolonged. In the analysis of jury decision-making, case characteristics that would have been known by judges and jurors were incorporated in the models. These include: the number of aggravating circumstances affirmed by the jury; the nature of the defendant's plea (guilty vs. not guilty); the number of victims; and whether the victim was held hostage.[14]

[14] We treat evidence that the victim was held hostage or subjected to prolonged suffering as two measures of victim-suffering. Whether a victim was held hostage is included as a discrete section (marked 'yes' or 'no') completed (in most cases) by the judge on the trial report. Evidence of prolonged suffering was noted when judges

After assessing the role of case characteristics, several extra-legal (i.e. social) factors were added to the models. In the analysis of prosecutorial discretion, these included: race of the defendant and victim(s); victim-gender; population density of the county in which the conviction occurred; and whether there was extensive publicity about the case. Unfortunately, not all of these factors could be included simultaneously in the analysis of sentencing decisions because the smaller sample size in these analyses reduces the number of variables that can be included in the models. For this reason, the only social factors included in the analysis of sentencing decisions were the race of the defendant and the race of the victim(s). See Appendix B for details about the measurement of each of the aforementioned variables.

For each set of regression analyses, we first report the regression results obtained when only case characteristics are included in the model. This allows us to identify which case characteristics influence decision-making in death-eligible cases; it also allows us to assess the proportion of the variation in outcomes that is explained by case characteristics as a group. Next, we present the results of a more complete model that also includes social factors. These results allow us to assess the degree to which outcomes in aggravated murder cases are influenced by race over and above any differences in case characteristics.

Regression analysis allows researchers to assess whether a given variable is a significant predictor of an outcome. By convention, social scientists often identify statistical significance when there is a 5 percent or less chance of finding this result by random chance (noted as p-value ≤ .05.) However, when samples are small or hypotheses are directional (e.g., the researcher expects covariates to increase and not decrease the probability of receiving the death penalty) a cut off of p-value ≤ .10 is used instead. For this reason, we report the p-values of covariates that are statistically significant at both the .05 and .10 levels.

Diagnostic tools were used to help identify the most appropriate regression models. In this case, diagnostic tests indicated that there were a handful of outliers with respect to the number of victims. We therefore measured the number of victims in terms of three categories: 1 victim; 2-4 victims; or 5 or more victims. Diagnostics also showed that number of prior convictions was heavily skewed; logging this variable normalizes its distribution. The number of

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indicated such in their narrative description of the crime. Although these measures were correlated (0.38) they did not match as closely as we might have expected. For this reason, we tested both measures in each model. The latter measure was included in the models analyzing prosecutorial decision-making because it provides a comprehensive evaluation of victim suffering. (Neither measure was significantly correlated with the decision to seek death). Because we found that "prolonged suffering" was not a significant predictor of sentencing decisions, but whether the victim was held hostage did have a significant impact on sentencing outcomes, we include the latter as our measure of victim suffering in the analysis of sentencing decisions.

defenses and number of aggravators also showed some signs of skew, but after testing, the model fit was better (assessed by comparing pseudo R^2 scores) when these variables were included as raw values rather than logged. We fitted a logistic regression model, each with an outcome of 0 or 1, using Maximum Likelihood Estimation (MLE) procedures to estimate the probability of receiving the death penalty given a number of covariates. In general, MLE estimates should be interpreted with caution for samples with fewer than 100 cases.[15]

PART I. DESCRIPTIVE STATISTICS

The descriptive statistics presented below provide an initial overview of the distribution of efforts to obtain, decisions to impose, and retained death sentences by county and across various groups of defendants. Table 1 shows the proportion of aggravated murder cases involving adult defendants in which prosecutors sought death and death was imposed across Washington State counties. All counties in which five or more aggravated murder cases occurred between 1981 and 2012 are identified individually.

As the table makes evident, the proportion of cases for which prosecutors seek death varies notably. In Thurston County, for example, prosecutors sought the death penalty in 67% of the aggravated murder cases, whereas prosecutors in Okanogan County did not seek the death penalty in any of the six aggravated murder cases that took place there. In larger counties with more aggravated murder cases, the proportion of cases in which prosecutors sought death also varied markedly, from a high of 48% in Kitsap County to a low of 0% in Yakima County. The proportion of cases in which juries imposed a sentence of death also varies notably, from a high of 40% in Clallam County to 0% in several counties. Moreover, it does not appear that these differences are a function of the number of aggravating circumstances or the number of victims involved in the relevant cases.

[15] See Long, J. Scott and Jeremy Freese, *Regression Models for Categorical Dependent Variables Using Stata*, 2nd Ed. College Station, Texas: StataCorp LP, 2006).

Table 1. Death Penalty Sought and Imposed as a Proportion of Aggravated Murder Cases with Adult Defendants, by County, 1981-2012				
County	Proportion of Aggravated Murder Cases in which Death Penalty was Sought	Proportion of Aggravated Murder Cases in which Death Penalty was Imposed	Median Number of Victims	Median Number of Aggravators
Thurston	67% (4/6)	33% (2/6)	1	1
Clallam	60% (3/5)	40% (2/5)	2	1
Kitsap	48% (10/21)	10% (2/21)	1	2
Pierce	47% (26/55)	22% (12/55)	1	1
Spokane	47% (8/17)	6% (1/17)	1	1
Snohomish	25% (7/28)	14% (4/28)	1	2
King	22% (16/73)	8% (6/73)	1	1
Benton	17% (1/6)	17% (1/6)	1	2
Clark	20% (4/20)	15% (3/20)	1	3
Skagit	20% (1/5)	0% (0/5)	1	2
Whatcom	17% (1/6)	17% (1/6)	1	1
Cowlitz	13% (1/8)	0% (0/8)	1	1
Okanogan	0% (0/6)	0% (0/6)	2	1
Yakima	0% (0/9)	0% (0/9)	1	1
All Washington State Counties	31% (88/285)	11% (35/285)	1	1

Note: Counties with five or more aggravated murder cases from 1981-2012 are included.

The figures above provide evidence that the likelihood that prosecutors will seek and juries will impose death for a given defendant in an aggravated murder case depends in part on the place in which the case is adjudicated.

Below, Table 2 compares the proportion of black, white and other death-eligible defendants against whom prosecutors sought death, who received a sentence of death, and whose death sentences have been retained as of December 2013. The results indicate that prosecutors sought death sentences in a larger proportion (33.9%) of aggravated murder cases involving white defendants than they did in cases involving black (26.8%) or other (23.5%) defendants. However, juries imposed death in a larger share (16.1%) of cases involving black defendants than they did in cases involving white defendants (12.4%) or other defendants (7.8%). Moreover, the death penalty has been retained in a larger proportion of cases involving black defendants (7.1%) than it has in cases involving white (4.5%) or other (2%) defendants (see Table 2).[16]

Table 2. Capital Sentence Outcomes among Washington State Aggravated Murder Defendants, 1981-2012, by Race of Defendant

Defendant Race	Death Penalty Sought	Death Penalty Imposed	Death Penalty Retained
White	33.9% (60/177)	12.4% (22/177)	4.5% (8/177)
Black	26.8% (15/56)	16.1% (9/56)	7.1% (4/56)
Other	23.5% (12/51)	7.8% (4/51)	2.0% (1/51)
All	30.6% (87/284)	12.3% (35/284)	4.6% (13/284)

Note: Defendant race is missing for one case.

The over-representation of black defendants among those sentenced to death is especially striking given that prosecutors were more likely to seek death in cases involving white defendants. Based on these figures, we can calculate that juries imposed death in 36.6% of the cases involving white defendants, but 60% of the cases involving black defendants, in which prosecutors sought the death penalty.

In light of research indicating that the race of victims often influences the likelihood that similarly situated defendants receive the death penalty, Table 3 compares outcomes for black and white defendants convicted of killing a single white victim versus a single black victim. The results show that prosecutors sought death in a slightly larger share of cases involving a white defendant and white victim (30%) and cases involving a black defendant and white victim (28%)

[16] "Retained" means that the death sentence was re-imposed after reversal of the original death sentence.

than in cases involving a black defendant and black victim (25%). However, a death sentence was imposed in a larger proportion of cases involving black defendants than of cases involving white defendants – regardless of the race of the victim. Interestingly, the death penalty has been retained in a notably larger share (8%) of cases involving a black defendant and white victim than in cases involving other racial configurations.

Table 3. Capital Sentence Outcomes among Washington State Aggravated Murder Defendants, 1981-2012, by Race of Defendant and Race of Victim

Defendant/ Victim Race	Death Penalty Sought	Death Penalty Imposed	Death Penalty Retained
Black Defendant/ White Victim	28% (7/25)	20% (5/25)	8% (2/25)
Black Defendant/ Black Victim	25% (1/4)	25% (1/4)	0% (0/4)
White Defendant/ White Victim	30% (33/110)	7.3% (8/110)	2.7% (3/110)
White Defendant/ Black Victim	0% (0/0)	0% (0/0)	0% (0/0)

Note: Figures include only black and white "death eligible" defendants with one white or black victim.

In summary, the descriptive results presented above suggest that counties vary in terms of their propensity to seek and impose death in aggravated murder cases. They also provide support for the hypothesis that the race of the defendant notably influenced decisions to impose (but not seek) the death penalty in aggravated murder cases adjudicated in Washington State since 1981. However, it is conceivable that the racial differences described above are a function of case characteristics rather than of race itself. Below, we present the results of regression analyses that control for case characteristics and isolate the impact of race on case outcomes.

PART II. REGRESSION ANALYSES

Below, we present two sets of regression analyses. The first set analyzes the impact of case characteristics and social factors on prosecutors' decisions to seek the death penalty. The second set identifies the case characteristics and social factors that influence sentencing outcomes in capital cases in which prosecutors sought death. As noted previously, multivariate regression analysis tests for significant relationships between the independent variables included in the model and the outcome or dependent variable. Regression results provide a measure of the direction and strength of the correlation between each potential explanatory

variable and the outcome being analyzed. In this case, the direction of the association (i.e. whether the coefficient has a negative or positive value) indicates whether the variable causes a decrease or increase the likelihood of receiving the death penalty; the strength (statistical significance) of the association indicates how likely it is that the correlation is due to chance. Estimates resulting from a logistic MLE model are presented as log-odds. In order to facilitate interpretation, we convert these to odds and provide a general interpretation of each coefficient.

It is important to note that the results of this analysis identify which of the explanatory variables included in the model are significantly associated with the dependent variable *holding all other variables included the model constant*. That is, regression analysis simultaneously takes a number of factors into consideration and identifies the unique impact of each variable on the outcome. If the regression results indicate that being black is positively and significantly associated with being sentenced to death, this would mean that defendants who are black are more likely to be sentenced to death *after taking all other variables in the model, including number of priors, aggravators, and victims, into account*.

Factors Influencing Prosecutorial Discretion in Aggravated Murder Cases

Prosecutors may or may not elect to seek the death penalty in aggravated murder cases. The regression models presented below assess the extent to which a variety of case characteristics predict whether prosecutors sought the death penalty in aggravated murder cases involving adult defendants. These models include case characteristics that are evident in the early stages of criminal processing: the number of prior convictions; the number of aggravating circumstances alleged by prosecutors to exist; the number of victims; and whether the victim(s) experienced prolonged suffering. Because the defendant's plea is sometimes entered after prosecutors have decided whether to seek death, it is not included as a potential predictor in this analysis. In this model, the number of aggravating circumstances alleged by prosecutors to exist is included, as this measure best captures the prosecutors' view of the case and because it is not yet known how many of these aggravating circumstances will be affirmed by the judge or jury.

Table 4 shows the results that are obtained when only these case characteristics are included in the model. (For a more complete presentation of the regression results, see Appendix C). Note that coefficient results are log-odds ratios. Negative values indicate that the predictor reduces the probability of prosecutors seeking the death penalty; positive coefficients indicate that the variable in question increases the probability that prosecutors sought the death penalty. There

are missing data on at least one of the variables included for 13 cases (4.6%); these cases were dropped from the analysis.

Table 4. Impact of Case Characteristics on Prosecutorial Decisions to Seek the Death Penalty in Washington State Aggravated Murder Cases with Adult Defendants, 1981-2012

N= 272	Death Penalty Sought			R^2 = 0.0603
Variable	Coefficient	Statistical Significance	Odds	Referent (Compared to)
Prior Convictions	0.116	**	1.123	
1 Victim	-0.199		0.820	5 or more victims
2-4 Victims	0.175		1.191	5 or more victims
Alleged Aggravators	0.256	***	1.292	
Prolonged Suffering	0.531		1.701	Not indicated

* significant at α = .10 ** significant at α = .05 *** significant at α = .01

Overall, these results show that legal factors explain a small proportion (just 6%) of the variation in whether the death penalty is sought. That is, most of the variation in prosecutorial decisions regarding whether to seek the death penalty is *not* a function of the case characteristics included in this model. However, two case characteristics are significant predictors of prosecutors' decisions to seek the death penalty. Specifically, prosecutors are significantly more likely to seek death in cases involving defendants with more alleged aggravators and more prior convictions. In a separate analysis, we found that the number of prior violent convictions also increases the likelihood that prosecutors will seek death.[17] By contrast, neither the number of victims nor prolonged victim suffering appears to significantly impact prosecutors' decisions.

The next model includes social factors as well as case characteristics to identify significant extra-legal predictors of prosecutorial discretion. There are missing data on some of these variables; 33 cases (11.6%) were thus dropped from the analysis. Adding social factors to the model doubles the proportion of variation in outcomes explained (to 12%).

Table 5 displays the results obtained when social characteristics are included in the model. These results indicate that neither the race of the defendant nor the race of the victim(s) impact prosecutorial decision-making; victim-gender also appears to be irrelevant at this stage

[17] Although the results indicate that the total number of prior convictions and number of violent prior convictions are significant predictors of prosecutorial efforts to seek death, we found in separate analyses that the number of prior homicide convictions and the number of prior sex offense convictions were not. Results available upon request.

of the criminal process.[18] However, whether a case received extensive publicity does impact prosecutors' decisions: prosecutors were 2.8 times more likely to seek death in cases characterized by extensive publicity (as indicated by the judge in the trial report) than they were in cases that were not highly publicized. This finding is significant at a p-value ≤ 0.01.

Table 5. Impact of Case Characteristics and Social Factors on Prosecutorial Decisions to Seek the Death Penalty in Aggravated Murder Cases with Adult Defendants, 1981-2012

N= 252	Death Penalty Sought			R^2 = 0.1174
Variable	Coefficient	Statistical Significance	Odds	Referent (Compared to)
Case Characteristics				
Prior Convictions	0.141	**	1.151	
1 Victim	-0.722		0.486	5 or more victims
2-4 Victims	-0.237		0.789	5 or more victims
Alleged Aggravators	0.213	**	1.237	
Prolonged Suffering	0.424		1.528	Not indicated
Social Factors				
Black Defendant	-0.121		0.886	White defendants
Other Race Defendant	-0.241		0.786	White defendants
Black Victim(s)	-0.608		0.544	White victim(s)
Other Race Victim(s)	-0.763		0.466	White victim(s)
Multiple Race Victim(s)	-0.869		0.419	White victim(s)
Female Victim(s)	0.389		1.476	Males/Both sexes
Publicity	1.025	***	2.787	No publicity

* significant at α = .10 ** significant at α = .05 *** significant at α = .01

Overall, these results indicate that case characteristics explain a very small proportion of the variation that characterizes prosecutorial decisions about whether to seek death, although two case characteristics – the number of alleged aggravators and the number of defendant prior convictions – were found to be significant predictors of these decisions. The results also indicate that neither the race of the victim nor the race of the defendant had a significant impact on prosecutorial decision-making, although one extra-legal factor – publicity – does influence this process.

[18] This variable was included because some studies have found that death sentences are more likely to be sought or imposed when the victim(s) are female. See David C. Baldus and George Woodworth, "Race Discrimination and the Death Penalty" (Chapter 16 in *America's Experiment with Capital Punishment: Reflections on the Past, Present, and Future of1 the Ultimate Penal Sanction*, edited by James R. Acker, Robert M. Bohm, and Charles S. Lanier, Carolina Academic Press, 2003, 2nd edition).

Factors Influencing the Imposition of Death Sentences in Aggravated Murder Cases

The death penalty was sought in 88 cases involving adults charged with aggravating murder. It was imposed in 35 (39.8%) of these cases. The next regressions identify the factors that predict the decision to impose a sentence of death in these cases. (For a more complete presentation of the regression results, see Appendix D). Because these analyses only include cases in which a death sentence was sought by prosecutors, the sample size is notably smaller than it was in the previous analyses. As a result, the number of predictors that can be included in a given model is limited and the results should be interpreted with caution.

A number of case characteristics that would have been known by judges and jurors are included in the first model: the number of victims (included here as a binary variable for 1 victim/multiple victims); the number of applied aggravators (as determined by the judge or jury); the nature of the defendant's plea; and whether the victim was held hostage. In this model, 4 cases (4.5%) were missing data and were dropped from the analysis.

The results are shown in Table 6 below. Together, case characteristics explain 17 percent of the variation that characterizes decisions to impose the death penalty. Several case characteristics were significant predictors of the imposition of a death sentence. Specifically, each additional aggravating circumstance increased the odds that a defendant was sentenced to death by 1.4. Holding a victim hostage also had a significant impact on receiving a death sentence: these defendants were nearly four times more likely to be sentenced to death than others. On the other hand, each defense mounted on behalf of the defendant significantly decreased the odds of the jury imposing death (by 0.4). Defendants who pled guilty were also significantly less likely to receive the death penalty than those who did not. The number of victims did not influence decisions to impose the death penalty.

Table 6. Impact of Case Characteristics on Decisions to Impose the Death Penalty in Aggravated Murder Cases with Adult Defendants, 1981-2012				
N= 84	Death Penalty Imposed			R^2 = 0.1720
Variable	Coefficient	Statistical Significance	Odds	Referent (compared to)
1 Victim	-0.286		0.751	Multiple victims
Applied Aggravators	0.318	*	1.374	
Defenses	-0.954	***	0.385	
Pled Guilty	-1.236	*	0.291	Pled Not Guilty
Victim Held Hostage	1.447	**	4.250	Not Held Hostage

* significant at α = .10 ** significant at α = .05 *** significant at α = .01

The results obtained when both case characteristics and social factors are included in the model are shown in Table 7 below. Because the number of victims is not significant predictor of the decision to impose death, it is not included in this model. Adding social characteristics improves the model: the amount of variation explained increases from 17 to 21 percent. After controlling for social characteristics, the number of defenses continues to significantly decrease the odds that the death penalty was imposed. Conversely, each additional aggravator and having held the victim hostage significantly increase the odds that the death penalty was imposed. Notably, the results indicate that *black defendants are more than three times more likely than similarly situated white defendants to be sentenced to death, after controlling for all other variables in the model*.

Table 7. Impact of Case Characteristics and Social Factors on Decisions to Impose the Death Penalty in Aggravated Murder Cases with Adult Defendants, 1981-2012				
N= 83	Death Penalty Imposed			R^2 = 0.2089
Variable	Coefficient	Statistical Significance	Odds	Referent (Compared to)
Applied Aggravators	0.411	**	1.508	
Defenses	-0.921	**	0.398	
Pled Guilty	-0.740		0.477	Pled Not Guilty
Victim(s) Held Hostage	1.431	**	4.183	Not Held Hostage
Black Defendant	1.179	*	3.251	White Defendant
Other Race Defendant	-0.039		0.962	White Defendant
White Victim(s)	-0.772		0.462	Not White Victim

* significant at α = .10 ** significant at α = .05 *** significant at α = .01

CONCLUSIONS

The results of the analyses presented above support three main conclusions. First, there is significant variation in efforts to obtain death sentenced, and decisions to impose them, at the county level. The proportion of cases in which prosecutors sought the death penalty varies notably by county, from a high of 67% in Thurston County to a low of 0% in Okanogan County. Among larger counties with more aggravated murder cases, the proportion of cases in which prosecutors sought death also varied markedly, from a high of 48% in Kitsap County to a low of 0% in Yakima County. Although the regression models to not indicate that county-level population density is a significant predictor of case outcomes in the regression models, the descriptive statistics nonetheless indicate that considerable variation in death penalty-related practices exists at the county level.

Second, the regression results indicate that case characteristics such as the number of aggravating circumstances and victims explain only a small proportion of the variation in the case outcomes analyzed here. Two case characteristics were significant predictors of prosecutorial decisions to seek death: the number of prior convictions possessed by the defendant, and the number of aggravating circumstances alleged by prosecutors to exist. The number of victims was not found to be a significant predictor of decisions to seek a death sentence. Several case characteristics were also significant predictors of the decision to impose a sentence of death: the number of defenses, whether the victim was held hostage, the nature of the defendant's plea, and the number of applied aggravating circumstances. Overall, however, case characteristics explain a small proportion of the variance in case outcomes in aggravated murder cases.

Two factors likely explain the fact that case characteristics explain a small proportion of the variation in case outcomes. First, as noted previously, many trial reports – from which the data analyzed here were derived – were incomplete. As a result, we were unable to include a number of factors (such as defendant IQ and mental health status) in our analyses that may, in fact, be relevant in the administration of capital punishment. Second, it also appears that decision-making in aggravated murder cases is driven, to a large extent, by extra-legal factors, only some of which could be included in our models. The results of the regression analyses confirm that one such factor – extensive publicity – has a significant impact on prosecutorial decisions to file a death notice. Notably, the race of the defendant was also found to be a significant predictor of sentencing outcomes. The large proportion of remaining unexplained variation in these models suggest that other extra-legal and social factors – not captured by our statistical models – are likely playing important roles in death penalty case dynamics.

A final set of findings concerns the role of race in the administration of capital punishment. On the one hand, race does not appear to influence prosecutorial decisions regarding whether to seek the death penalty. In fact, the results of regression analyses indicate that neither the race of the victim(s) nor the race of the defendant significantly influenced whether prosecutors sought the death penalty. On the other hand, juries imposed a death sentence in a notably larger share of cases involving black defendants than they did in cases involving white or other defendants. Indeed, the regression results indicate that *juries were three times more likely to impose a sentence of death when the defendant was black than in cases involving similarly situated white defendants.* Although these results are based on analysis of a relatively small sample, they nonetheless indicate that the race of the defendant has had a marked impact on sentencing in aggravated murder cases in Washington State since the adoption of the existing statutory framework.

APPENDIX A. AGGRAVATING FACTORS

Under RCW 10.95.020, aggravating factors include the following: (1) The victim was a law enforcement officer, corrections officer, or a fire fighter who was performing his or her official duties at the time of the act resulting in death and the victim was known or reasonably should have been known by the person to be such at the time of the killing; (2) At the time of the act resulting in the death, the person was serving a term of imprisonment, had escaped, or was on authorized or unauthorized leave in or from a state facility or program for the incarceration or treatment of persons adjudicated guilty of crimes; (3) At the time of the act resulting in death, the person was in custody in a county or county-city jail as a consequence of having been adjudicated guilty of a felony; (4) The person committed the murder pursuant to an agreement that he or she would receive money or any other thing of value for committing the murder; (5) The person solicited another person to commit the murder and had paid or had agreed to pay money or any other thing of value for committing the murder; (6) The person committed the murder to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group; (7) The murder was committed during the course of or as a result of a shooting where the discharge of the firearm, as defined in RCW 9.41.010, is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both, to the scene of the discharge; (8) The victim was: (a) A judge; juror or former juror; prospective, current, or former witness in an adjudicative proceeding; prosecuting attorney; deputy prosecuting attorney; defense attorney; a member of the indeterminate sentence review board; or a probation or parole officer; and (b) The murder was related to the exercise of official duties performed or to be performed by the victim; (9) The person committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime, including, but specifically not limited to, any attempt to avoid prosecution as a persistent offender as defined in RCW 9.94A.030; (10) There was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the person; (11) The murder was committed in the course of, in furtherance of, or in immediate flight from one of the following crimes: (a) Robbery in the first or second degree; (b) Rape in the first or second degree; (c) Burglary in the first or second degree or residential burglary; (d) Kidnapping in the first degree; or (e) Arson in the first degree; (12) The victim was regularly employed or self-employed as a news-reporter and the murder was committed to obstruct or hinder the investigative, research, or reporting activities of the victim; (13) At the time the person committed the murder, there existed a court order, issued in this or any other state, which prohibited the person from either contacting the victim, molesting the victim, or disturbing the peace of the victim, and the person had knowledge of the existence of that order; (14) At the time the person committed the murder, the person and the victim were "family or household members" as that term is

defined in RCW 10.99.020(1), and the person had previously engaged in a pattern or practice of three or more of the following crimes committed upon the victim within a five-year period, regardless of whether a conviction resulted: (a) Harassment as defined in RCW 9A.46.020; or (b) Any criminal assault. In addition, the following conditions must be met: 1) The jury affirmatively answers whether "having in mind the crime of which the defendant has been found guilty, are convinced beyond a reasonable doubt that there are not sufficient mitigating circumstances to merit leniency" at the conclusion of the special sentencing proceeding; and 2) The Washington Supreme Court conducts a proportionality review of a death sentence to determine: (a) whether there was sufficient evidence to justify the death sentence; (b) whether the defendant was mentally retarded; (c) whether it was brought on by passion or prejudice; and (d) whether the sentence was excessive or disproportionate. See RCW 10.95.60, RCW 10.95.70, and RCW 10.95.100.

APPENDIX B. MEASUREMENT OF VARIABLES

Table B1. Variables and Measurement Included in Analysis		
	Indicators	Measures Included in the Analysis
Outcomes		
Death Penalty Sought	A Special Sentencing Proceeding was Held	Coded: 1=DP Sought; 0= DP Not Sought
Death Penalty Imposed by Jury	Sentenced entered as Death	Coded: 1= Death; 0= Not Death
Predictors – Case Characteristics		
Number of Alleged Aggravators	Total Number of Alleged Aggravators	Number
Number of Applied Aggravators	Total Number of Applied Aggravators	Number
Number of Confirmed Aggravators*	Total Number of Aggravators confirmed by Mr. Gregory's attorneys	Number
Number of Prior Convictions	Total Number of Prior Convictions	Number (logged)
Number of Defenses Offered	Total Number of Defenses	Number
Plea	Plea entered	Coded: 1=Plead Guilty; 0= Plead Not Guilty
Number of Victims	Total Number of Victims	3 Coding Categories: 1 Victim; 2-4 Victims; 5 or more Victims; Each coded as 0/1
Victim Held Hostage	If Victim was held hostage	Coded: 1=Yes; 0= No
Predictors – Social Characteristics		
Defendant Race	Defendant's Race	3 Coding Categories: White; Black; Other Race Each coded as 0/1

Victim Race	Victims' Race	4 Coding Categories: All Victims White; All Victims Black; All Victims Other Race; Victims of Multiple Races. Each coded as 0/1
Victim Sex	Victims' Sex	3 Coding Categories: All Victims Female; All Victims Male; Victims Mixed Sexes. Each coded as 0/1
Jury All White	All Jurors were White	Coded: 1=Yes; 0= No
Population Density*	Population Density of each County at the Time of Sentencing (taken from U.S. Census Bureau)	Number
Publicity	If there was extensive publicity about the trial according to the judge	Coded: 1=Yes; 0= No

Note: All indicators were taken from trial reports unless marked with an asterisk.

Appendix C. Complete Regression Results for Analysis of Death Penalty Sought

Appendix Table C1. Descriptive Statistics for Regression Analysis of Death Penalty Sought

	N	Minimum	Maximum	Mean	Std. Deviation
Death Penalty Sought	285	0	1	.31	.463
Number of Priors	272	0	68	3.82	5.959
1 Victim	285	0	1	.64	.482
2-4 Victims	285	0	1	.34	.473
5 or more Victims	285	0	1	.03	.165
Alleged Aggravators	285	1	14	2.19	1.586
Prolonged Suffering	285	0	1	.12	.321
White Defendant	284	0	1	.62	.485
Black Defendant	284	0	1	.20	.399
Other Race Defendant	284	0	1	.18	.385
Mixed Sexes Victims	285	0	1	.19	.393
Female Victim(s)	285	0	1	.40	.491
Male Victim(s)	285	0	1	.41	.492
White Victim(s)	280	0	1	.74	.440
Black Victim(s)	280	0	1	.05	.211
Other Race Victim(s)	280	0	1	.19	.390
Multiple Races Victim(s)	280	0	1	.03	.167
Publicity	269	0	1	.76	.429
Population Density	285	5.13	915.97	378.99	254.77

Appendix Table C2. MLE Logistic Regression Results: Impact of Legal Case Factors on Prosecutorial Discretion in Seeking the Death Penalty

N= 272	Death Penalty Sought			Pseudo R^2 = 0.0603
	Coef.	Std. Error	P-value	Reference Category (compared to)
Case Characteristics				
Prior convictions (logged)	0.116**	0.056	0.037	
1 Victim	-0.199	0.863	0.818	5 or more Victims
2-4 Victims	0.175	0.874	0.841	5 or more Victims
# of Alleged Aggravators	0.256***	0.095	0.007	
Prolonged Suffering	0.531	0.398	0.182	No Prolonged Suffering
Intercept	-1.347	0.861	0.118	

* significant at α = .10 ** significant at α = .05 *** significant at α = .01

^ 13 cases or 4.5% missing from the analysis

Appendix Table C3. MLE Logistic Regression Results: Impact of Case Characteristics and Social Factors on Prosecutorial Decisions to Seek the Death Penalty in Aggravated Murder Cases with Adult Defendants, 1981-2012

N= 252	Death Penalty Sought			Pseudo R^2 = 0.1174
	Coef.	Std. Error	P-value	Reference Category (compared to)
Case Characteristics				
Priors(logged)	0.141**	0.063	0.026	
1 Victim	-0.722	0.944	0.445	5 or more Victims
2-4 Victims	-0.237	0.939	0.801	5 or more Victims
Alleged Aggravators	0.213**	0.102	0.038	
Prolonged Suffering	0.424	0.438	0.333	No Prolonged Suffering
Intercept	-1.536	1.057	0.146	
Social Characteristics				
Black Defendant	-0.122	0.439	0.782	White Defendants
Other Race Defendant	-0.241	0.479	0.616	White Defendants
Black Victim(s)	-0.608	0.945	0.520	White Victims
Other Race Victim(s)	-0.763	0.494	0.122	White Victims
Multiple Race Victim(s)	-0.869	0.979	0.375	White Victims
Female Victim(s)	0.389	0.331	0.239	Males/Both Sexes
Publicity	1.025***	0.389	0.008	No Publicity

* significant at α = .10 ** significant at α = .05 *** significant at α = .01

^ 33 cases or 11.5% missing from the analysis

+ Tested 'Held Hostage' (by replacing 'Prolonged Suffering'): no change to results

++ Tested Population Density: no change to results

Appendix D. Complete Regression Results for Analysis of Imposition of Death Penalty

Appendix Table D1. Descriptive Statistics for Regression Analysis of Imposition of Death Sentences

	N	Minimum	Maximum	Mean	Std. Deviation
Death Imposed	88	0	1	.40	.492
Applied Aggravators	88	1	12	2.25	1.883
Defenses	88	0	5	.82	1.023
Pled Guilty	88	0	1	.22	.414
Victim Held Hostage	84	0	1	.27	.449
White Defendant	87	0	1	.69	.465
Black Defendant	87	0	1	.17	.380
Other Race Defendant	87	0	1	.14	.347
White Victim(s)	86	0	1	.84	.371

Appendix Table D2. MLE Logistic Regression Results: Impact of Case Characteristics on Decisions to Impose the Death Penalty in Aggravated Murder Cases with Adult Defendants, 1981-2012

N= 84	Death Penalty Imposed			Pseudo R^2 = 0.1720
	Coef.	Std. Error	P-value	Reference Category (compared to)
Case Characteristics				
1 Victim	-0.286	0.539	0.596	Multiple Victims
Applied Aggravators	0.318*	0.184	0.083	
Defenses	-0.954***	0.355	0.007	
Pled Guilty	-1.236*	0.694	0.075	Pled Not Guilty
Victim Held Hostage	1.447**	0.580	0.013	Not Held Hostage
Intercept	-0.437	0.671	0.515	

* significant at α = .10 ** significant at α = .05 *** significant at α = .01

^ 4 cases or 4.5% missing from the analysis

+ Prolonged Suffering was also tested (replacing 'Held Hostage'): not significant

Appendix Table D3. MLE Logistic Regression Results: Impact of Case Characteristics on Decisions to Impose the Death Penalty in Aggravated Murder Cases with Adult Defendants, 1981-2012

N= 83	Death Penalty Imposed			Pseudo R^2 = 0.2089
	Coef.	Std. Error	P-value	Reference Category (compared to)
Case Characteristics				
Applied Aggravators	0.411**	0.199	0.039	
Defenses	-0.921**	0.377	0.015	
Pled Guilty	-0.740	0.742	0.318	Pled Not Guilty
Victim(s) Held Hostage	1.431**	0.588	0.015	Not Held Hostage
Intercept	-0.503	0.881	0.568	
Social Characteristics				
Black Defendant	1.179*	0.709	0.096	White Defendant
Other Race Defendant	-0.039	0.811	0.961	White Defendant
White Victim(s)	-0.772	0.759	0.309	Not White Victim(s)

* significant at α = .10 ** significant at α = .05 *** significant at α = .01

^ 5 cases or 5.7% missing from the analysis

+ Also tested Population Density; Publicity; Prolonged Suffering (in place of 'Held Hostage'): no change to results