

Appendix A: Empirical Legal Studies of Race-of-Victim Effects¹

The table below shows the degree of racial bias found in published studies of race-of-victim effect. Unless otherwise noted the data refer to the ratio between Black and White victims; “size” refers to the number of homicide cases included in the study, unless otherwise noted. All available studies published since 1972 are included, thus reflecting the “modern era” of the death penalty. Note, however, that different studies have different geographic scope and time coverage. Footnotes at the bottom of the table explain the particulars of each comparison made.

Methodology: Our starting point was the foundational 1983 article “Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience” by David C. Baldus, Charles Pulaski, and George Woodworth. A Google Scholar search identified 394 works that cite Baldus’ 1983 journal article. We reviewed the sources and retained those articles whose titles and abstracts mentioned “race,” “discrimination,” “arbitrariness,” “gender,” “injustice,” “bias” or “disproportionality.” We also conducted searches in relevant academic journals for works referencing “death penalty,” “death sentencing,” or “capital sentencing.” We conducted a second round of review using Google Scholars “Cited by” function to find articles citing our initial selection of articles. Finally, we reviewed the references of these works to find additional sources, including legal journals with volumes or issues devoted to examination of discrimination in the death penalty. We also used reference databases including ProQuest and JSTOR to search for articles with keywords and phrases such as “death penalty race” and “discrimination and the death penalty,” taking note of articles that cited relevant articles. Lastly, the review included books relating to death penalty and discrimination found in a major university library. *Capital Punishment in America: Race and the Death Penalty Over Time* by Martin Guevara Urbina (2012) was especially valuable because the author includes a comprehensive review of prior research from which we were able to find works we had not previously included.

#	Study	Geographic Scope	Time Range	Size	Ratio
Panel A. Studies examining capital prosecution					
1	Wilson, Marcia J (2008).	New Mexico	7/1979-12/2007	211 [~]	14.93
2	Baldus, David C., Catherine M. Grosso, George Woodworth, and Richard Newell (2012).	U.S. Armed Forces	7/16/1984-10/13/2005	105 [^]	6.17 ^o
3	Songer, Michael J. and Isaac Unah (2006-2007).	South Carolina	1993-97	2,319	5.85
4	Bohm, Robert M (1994).	GA: Chattahoochee and Ocmulgee judicial circuits	3/28/1973-7/1990	274 [~]	5.3
5	Hindson, Stephanie, Hillary Potter, and Michael L. Radelet (2006).	Colorado	1972-2005	110 [~]	4.22
6	Baldus, David C., Charles Pulaski and George Woodworth (Autumn 1983).	Georgia	1970-78	724 ^o	3.68
7	Jacoby, Joseph E. and Raymond Paternoster.	South Carolina	6/8/1977-	205	3.2

¹ The studies included in these tables were all published after 1972, which was the year the Supreme Court of the United States decided *Furman v. Georgia*.

	(Spring 1982).		11/30/1979		
8	Paternoster, Raymond (Autumn 1983).	South Carolina	6/8/1977- 12/31/1981	1,686 [^]	2.69
9	Barnes, Katherine, David Sloss and Stephen Thaman (2009).	Missouri	1997-2001	247	2.64
10	Paternoster, Raymond, Robert Brame, Sarah Bacon, and Andrew Ditchfield (2004).	Maryland	7/1/1978- 12/31/1999	1,311 [^]	2.55 [†]
11	Paternoster, Raymond (1984).	South Carolina	6/8/1977- 12/31/1981	1,686 [^]	2.51 ^{^^}
12	Paternoster, Raymond, Robert Braeme, Sarah Bacon and Andrew Ditchfield (2003).	Maryland	7/1978- 9/1999	1,311 [^]	2.38 [†]
13	Paternoster, Raymond and Ann Marie Kazyaka (Winter 1988).	South Carolina	6/8/1977- 12/31/1981	302 ^{^^}	2.31
14	Unah, Isaac (February 2009).	NC: Durham County	2002-07	149 [^]	2.31
15	Keil, Thomas J. and Gennaro F. Vito (March 1990).	Kentucky	12/22/1976 - 10/1/1986	401	2.16
16	Rohrlich, Ted and Federic N. Tulsy (December 3, 1996).	CA: Los Angeles County	1990-94	9,442	2.14
17	Bienen, Leigh B., Neil Alan Weiner, Deborah W. Denno, Paul D. Allison, and Douglas Lane Mills (1988-1989).	New Jersey	8/6/1982- 8/18/1988	703	2.04
18	Sorensen, Jonathan R. and Donald H. Wallace (1995).	Missouri	1977-91	3,873 [~]	1.91
19	Wagers, Kristin Amber (2010).	Tennessee	1976- 2007	1,068 ^Δ	1.71
	Scheb II, John M. and Kristin A. Wagers (2008-2009).				
20	Phillips, Scott (2008-2009).	TX: Harris County	1992-99	504 [~]	1.69 [‡]
21	Phillips, Scott (December 2009).	TX: Harris County	1992-99	504 [~]	1.57 [‡]
22	Bortner, Peg and Andy Hall (June 2002).	Arizona	1995-99	971 [~]	1.49 [†]
23	McNally, Kevin (2003-2004).	US	1988-2000	381 [~]	1.42 [†]
24	Klein, Stephen P. and John E. Rolph (1991-1992).	California	9/10/1977- 3/1/1984	496 [◊]	1.4 [†]
25	Brock, Deon E., Jon Sorensen, and James W. Marquart (1999).	Texas	9/1991- 9/1993	179 [◊]	1.33
26	Baldus, David C., Charles Pulaski and George Woodworth (1984-1985).	Georgia	3/28/1973- 6/30/1978	606	1.3
	Baldus, David C., Charles A. Pulaski, Jr. and George Woodworth (Spring 1986).				
27	Klein, Stephen P., Richard A. Berk, and Laura J. Hickman (June 2006).	US	1/1/1995- 7/31/2000	312 [^]	1.3 [†]
28	Donohue, John (October 2011).	Connecticut	1973-2007	205 [^]	1.2 [†]
29	Baldus, David C., George Woodworth, Catherine M. Grosso, and Aaron M. Christ. (2002-2003).	Nebraska	4/30/1973- 12/31/1999	185 [^]	1.13 [‡]
30	Baldus, David C., Julie Brain, Neil A. Weiner, George Woodworth (2008-2009).	Arkansas Judicial Circuits 8 and 8S: Lafayette, Miller, Nevada, and Hempstead	1990-2005	63 [^]	1.1 [◊]

		counties			
Panel B. Studies examining capital sentencing					
1	Baldus, David C., Julie Brain, Neil A. Weiner, George Woodworth (2008-2009).	Arkansas Judicial Circuits 8 and 8S: Lafayette, Miller, Nevada, and Hempstead counties	1990-2005	63 [^]	∞
2	Zeisel, Hans (December 1981).	Florida	1972-77	378 ^{^^}	34.1
3	Gross, Samuel R. and Robert Mauro (1989).	Mississippi	1976-80	852	10.45
	Gross, Samuel R., and Robert Mauro (November 1984).	Georgia		2,126	9.7
		Florida		3,501	7.6
		Arkansas		798	6.53
		North Carolina		1,871	5.97
		Oklahoma		898	5.78
		Illinois		3,115	5.38
		Virginia		1,389	4.31
4	Keil, Thomas J. and Gennaro F. Vito (March 1990).	Kentucky	12/22/1976 - 10/1/1986	401	9.56
5	Radelet, Michael L. and Glenn L. Pierce (January 1991).	Florida	1976-87	10,142	5.9
6	Paternoster, Raymond, Robert Brame, Sarah Bacon, and Andrew Ditchfield (2004).	Maryland	7/1/1978- 12/31/1999	1,311 [^]	4.82 [†]
7	Brock, Deon, Nigel Cohen, and Jonathan Sorensen (2000-2001).	TX: Dallas, Tarrant, Harris, Bexar counties	1980-96	28,286	4.64
8	Paternoster, Raymond, Robert Braeme, Sarah Bacon and Andrew Ditchfield (2003).	Maryland	7/1978- 9/1999	1,311 [^]	4.6 [†]
9	Radelet, Michael L. (December 1981).	Florida	1976-77	637 [~]	4.48
10	Baldus, David C., Charles Pulaski and George Woodworth (Autumn 1983).	Georgia	1970-78	724 [◊]	4
11	Baldus, David C., Charles Pulaski and George Woodworth (1984-1985).	Georgia	3/28/1973- 6/30/1978	606	3.9
	Baldus, David C., Charles A. Pulaski, Jr. and George Woodworth (Spring 1986).				
12	Pierce, Glenn L. and Michael L. Radelet (2005-2006).	California	1990-99	263 [≈]	3.7
13	Smith, M. Dwayne (1987).	Louisiana	10/1/1976- 12/31/1982	504 [^]	3.5
14	Pierce, Glenn L. and Michael L. Radelet (2002).	Illinois	1988-97	4,182	3.45
15	Donohue, John (October 2011).	Connecticut	1973-2007	205 [^]	3.14 [†]
16	Thompson, Ernie (Spring 1997).	Arizona	1982-91	2,028	3.06
17	Baldus, David C., Catherine M. Grosso, George Woodworth, and Richard Newell (2012).	U.S. Armed Forces	7/16/1984- 10/13/2005	105 [^]	2.98 [◊]
18	Barnett, Arnold (1984-1985).	Georgia	1973-78	606	2.9
19	Phillips, Scott (2012).	TX: Harris County	1/1/2001- 2/15/2008	488 [^]	2.86
20	Williams, Marian R. and Jefferson E. Holcomb (2001).	Ohio	1981-94	5,319	2.66
21	Pierce, Glenn L. and Michael L. Radelet (2010-2011).	LA: East Baton Rouge Parish	1990-2008	191 [^]	2.64

22	American Civil Liberties Union of Virginia (December 2000).	Virginia	1978-97	78 ⁺ 1,038 [±]	2.2 3.4
23	Unah, Issac (February 4, 2003).	North Carolina	1993-97	520 [◊]	2.13 [‡]
	Unah, Isaac (2011).				
24	Bienen, Leigh B., Neil Alan Weiner, Deborah W. Denno, Paul D. Allison, and Douglas Lane Mills (1988-1989).	New Jersey	8/6/1982- 8/18/1988	703	2.07
25	Bortner, Peg and Andy Hall (June 2002).	Arizona	1995-99	971 [~]	2.02 [‡]
26	Phillips, Scott (December 2009).	TX: Harris County	1992-99	504 [~]	1.89 [‡]
27	Wagers, Kristin Amber (2010).	Tennessee	1976- 2007	1,068 ^Δ	1.85
	Scheb II, John M. and Kristin A. Wagers (2008-2009).				
28	Unah, Isaac (April 16, 2001).	North Carolina	1993-97	502 [◊]	1.69 [‡]
29	Baldus, David C, George Woodworth, Gary L. Young, and Aaron M. Christ (July 25, 2001).	Nebraska	4/20/1973- 12/31/1999	177 [^]	1.54 [‡]
30	Sorensen, Jonathan R. and Donald H. Wallace (1995).	Missouri	1977-91	3,873 [~]	1.5
31	Phillips, Scott (2008-2009).	TX: Harris County	1992-99	504 [~]	1.5 [‡]
32	Barnes, Katherine, David Sloss and Stephen Thaman (2009).	Missouri	1997-2001	247	1.2
33	Baldus, David C., George Woodworth, Catherine M. Grosso, and Aaron M. Christ. (2002-2003).	Nebraska	4/30/1973- 12/31/1999	185 [^]	1.19 [‡]
34	Aguirre, Jr., Adalberto, Richard P. Davin, David V. Baker, and Konrad Lee (1999).	California	1/1989- 3/1994	151 [◊]	1.09
35	Reckdenwald, Amy (June 2004).	North Carolina	1979-2000	640 [◊]	1.03
36	Brock, Deon E., Jon Sorensen, and James W. Marquart (1999).	Texas	9/1991- 9/1993	179 [◊]	1.03
37	Paternoster, Raymond and Ann Marie Kazyaka (Winter 1988).	South Carolina	6/8/1977- 12/31/1981	302 ^{^^}	.54
38	Radelet, Michael L. and Glenn L. Pierce (2011)	North Carolina	1/1/1980- 12/31/2007	368	2.96
39	Baldus, David C., Charles A. Pulaski, Jr. and George Woodworth (Spring 1986).	Georgia	1977-84	606	1.3
	(Ratios beyond first Georgia ratio are computed from data in Henderson and Taylor, "Racist Justice: Discrimination Even in Death," <i>Dallas Times Herald</i> , November 18, 1985)	New Jersey		722 ^{^^}	1.05
		Maryland		451 ^{^^}	7.57
		Arkansas		205 ^{^^}	6.28
		Texas		1,890 ^{^^}	4.61
		Kentucky		277 ^{^^}	4.47
		Georgia		377 ^{^^}	4.30
		Mississippi		179 ^{^^}	3.99
		Missouri		480 ^{^^}	3.97
		Virginia		331 ^{^^}	3.89
		Illinois		1,459 ^{^^}	2.96
		Arizona		197 ^{^^}	2.51
		Florida		1,128 ^{^^}	2.49
		Tennessee		388 ^{^^}	2.44
		California		3,392 ^{^^}	2.38
		Louisiana		510 ^{^^}	2.19
		Alabama		342 ^{^^}	2.04
		South Carolina		448 ^{^^}	1.87
		Indiana		360 ^{^^}	1.84
		Oklahoma		242 ^{^^}	1.79

Nebraska	55 ^{^^}	1.75
Ohio	664 ^{^^}	1.19
North Carolina	480 ^{^^}	.99
Pennsylvania	970 ^{^^}	.98
Nevada	110 ^{^^}	.93
Delaware	49 ^{^^}	.49
Idaho	37 ^{^^}	∞
New Mexico	50 ^{^^}	∞
Montana	25 ^{^^}	∞
Wyoming	45 ^{^^}	∞
Utah	54 ^{^^}	∞
Washington	131 ^{^^}	∞
Colorado	125 ^{^^}	∞

Notes

[^] Death-eligible cases

^{^^} Felony homicides

^Δ First-degree murder convictions

[~] Defendants indicted for murder

[◇] Defendants sentenced for murder (life or death sentences)

[≈] Death penalty cases (death penalty sought)

^{***} Combination of death-sentenced, life-sentenced, and non-penalty-trial cases

⁺ Rape convictions

[±] Robbery-murders

[∞] Ratio could not be calculated because there were no death-sentenced cases in one of the reference categories to compare to the other reference category

Race-of-Victim

[∅] White victim and other cases

[†] White victim and nonWhite/minority victim

[‡] White or Hispanic victim and other cases

^{††} NonBlack victim and Black victim

Race-of-Inmate

[§] Black defendants and other cases

[#] Defendant of color/minority/nonWhite and White defendant

[%] Black and nonBlack defendants

Combined Race-of-Inmate and Race-of-Victim

^{##} Minority-inmate/White-victim and other cases

[√] Black-inmate/White-victim and other cases

^{<<} Minority/defendant of color/nonWhite-inmate/White-victim and White-inmate/White-victim

^{and} Black-inmate/nonBlack-victim and other cases

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Appendix B: White-On-Black Homicides Resulting in Execution 1975-2013²

So few occurrences of White-on-Black homicides have led to an execution in the modern history of the death penalty that we can list each of them here. Even for those accustomed to reading of the often horrific crimes associated with many death penalty cases, these crimes or the criminals involved are particularly noteworthy, gruesome, or overtly racially motivated.

As it happens, South Carolina has seen more White-on-Black homicide executions than any other state since 1975. Their cases include William Downs, a two-time child rapist and murderer who requested the death penalty and waived his appeals, and Richard Johnson, also a double murderer, who fatally shot the Black South Carolina state trooper who pulled him over following his first murder. Joseph Atkins murdered his Black adopted father and the thirteen-year-old neighbor girl just five years after being paroled for the murder of his brother. He shot the girl at close range with a shotgun while she slept (*Atkins v. Moore* Fourth Circuit, 1998). By the time police began to suspect Donald “Pee Wee” Gaskins, often described as the state’s most infamous and prolific serial killer, he had killed at least 13 people. Though these were initially thought to be Gaskins’ only victims he would later claim to have killed 181 people (Gaskins & Earle, 1992). Gaskins’ initial death sentence was vacated, but he was sentenced to death a second time after conducting a paid hit using a bomb disguised as a homemade radio, killing a Black inmate in the adjacent prison cell (AP, 1999; O’Boyle, 1988). Therefore, while his execution was a result of the killing of a Black man, his previous crimes had already qualified him as one of the most prolific murderers in state history. Here we present a list and short description of each Black-on-White homicide that has led to an execution.

² Facts for these cases were found through a review of rulings on subsequent appeals and LexisNexis searches of news coverage of the cases.

The first 10 cases listed had only Black male victims. Edwin Turner had 2 such victims but all the others had only a single Black male victim. Six additional cases are listed below, where the killer had multiple victims some of whom were Black males but others were of other races. In all, just 10 Whites have been executed for the crime of killing a Black male, and, as this list makes clear, many of them had previously killed others, though they eventually were sentenced to death and executed for the killing of a Black male. Others had explicit racial motivations.

Donald Gaskins, SC, September 6, 1991: Donald (Pee Wee) Gaskins is described as South Carolina's most infamous and prolific serial killer. By the time police began to suspect Gaskin of the murder of a local woman, he had killed at least 13 people. He would later claim to have had 181 victims. After having his first death sentence vacated due to the Supreme Court initiated moratorium, Gaskins was eventually executed for his 14th known murder, a paid hit on Rudolph Tyner, a fellow inmate, using a bomb disguised as a radio.

Robert O'Neal, MO, December 6, 1995: In 1984, Robert O'Neal was a member of a White supremacist prison gang and had been incarcerated since the age of 18 for murdering a 78-year-old man during the commission of a burglary (Bell, 1995). On February 3, 1984, O'Neal, Rodnie Stewart, and Lloyd E. Schlup, approached Black inmate Arthur Dade. Stewart threw hot liquid in Dade's eyes and Schlup restrained the victim while O'Neal stabbed him to death with a 12 inch long homemade knife (O'Neil, 1993). Prosecutors called the murder an "Aryan hit."

Henry Francis Hays, AL, June 6, 1997: In 1981 the Alabama KKK ordered a lynching to "show Klan strength." On March 20, 1981 Henry Francis Hays and fellow Klansman James "Tiger" Knowles, abducted 19-year-old Michael Donald and drove him to a secluded area where they struck him with a tree limb over 100 times. When Donald stopped moving they slit his throat and placed a rope around his neck. Before hanging Donald's body from a tree, they took him to the home of Henry's father, a Klan leader, to show other Klan members.

Norman Lee Newsted, OK, July 8, 1999: On February 20, 1984 Norman Lee Newsted fatally shot cab driver Larry Donnell Buckley after the men stopped to ask for directions to the home of Newsted's sister. Newsted had hailed the cab after arriving at the airport having fled Utah, where he and an accomplice had each shot three people during the commission of a robbery. All three victims died.

William Downs, SC, July 14, 2006: After being arrested in the 1999 kidnapping, rape and murder of 6 year old Keenan O'Mailia, William Downs admitted to having raped and killed another boy, James Porter in Savannah Georgia eight years earlier. Before being sentenced for the murder of O'Mailia Downs told the court that he deserved the death penalty saying, "I think

it would be disrespectful to the family and...to the whole world if you did not give me the death penalty.”

John Yancey Schmitt, VA, November 9, 2006: In 1999 John Yancey Schmitt robbed the Bon Air NationsBank armed with a semi-automatic handgun. According to prosecutors, the bank’s security guard Earl Dunning placed himself between Schmitt and the bank tellers during the holdup. Witnesses reported that Schmitt shot Dunning twice. Security cameras captured a “vivid” photo of Schmitt, who was identified as the same man who had robbed the bank a month earlier.

Lee Andrew Taylor, TX, June 16, 2011: In 1999 Lee Andrew Taylor was serving a life sentence for an aggravated robbery in which an elderly couple were beaten in their home. The elderly man died as a result of the attack and his wife required extensive reconstructive surgery. On April 1, 1999 Taylor attacked Donta Greene, who was unarmed, fatally stabbing him in the chest thirteen times with a prison-made stabbing device that resembled an ice pick.

Lawrence Brewer, TX, September 20, 2011: On June 7, 1998, in an area of Texas known for Klan activity, Larry Byrd accepted a ride from White supremacists Lawrence Brewer, John King and Shawn Berry. The men took Byrd to a secluded area where they beat him, urinated on him and chained him to their truck before dragging his body behind the vehicle for two miles. Byrd remained conscious throughout the attack, dying only when his right arm and head were severed. The men dumped Byrd’s remains in front of an African-American church.

Edwin Turner, MS, February 8, 2012: In December of 1995, Edwin Turner and Paul M. Stewart drank beer and smoked marijuana before setting out to rob convenience stores in Carroll County Mississippi. Armed with rifles, the men approached the first convenience store, where Turner shot attendant Eddie Brooks. At the next store he shot Everett Curry while he pumped gas. The men returned home with \$400 in cash.

Frederick Treesh, OH, March 6, 2013: On August 27, 1994 Frederick Treesh and Benjamin Brooks entered an adult bookstore store armed with a nine-millimeter handgun and a sawed-off shotgun. Treesh fatally shot the store’s security guard and while fleeing shot the store’s clerk twice. According to prosecutors, in the days preceding the murder Treesh and Brooks had robbed banks and businesses, stolen and carjacked cars, committed sexual assaults and fatally video store owner Ghassan Danno in a series of crimes that crossed five states.

The six inmates listed below had at least one Black male victims, but also had other types of victims:

Roger Stafford, OK, July 1, 1995: In 1975 Stafford, along with his wife Verna and brother Harold, killed a family of three in a robbery, after tricking them into stopping to come to the aid of Verna alongside a highway. Three weeks later they killed six restaurant employees while robbing a steakhouse in Oklahoma City. Stafford ordered all of the employees into the walk in freezer and killed the only Black employee, janitor Isaac Freeman, before opening fire on the others.

Joseph Atkins, SC, January 22, 1999: After being paroled for the murder of his brother in 1985, Joseph Atkins cut the phone lines to his neighbors' home, entered armed with a machete and shotgun, and shot the 13-year old neighbor girl while she slept. He then returned to his own home where he fatally shot his father.

Timothy McVeigh, FE, June 11, 2001: On April 19, 1995 Timothy McVeigh detonated a rental truck filled with explosives in front of the Alfred P. Murrah Federal Building in Oklahoma City. The explosion damaged or destroyed 324 buildings within a 16-block radius, injured over 600 people and killed 168 including 19 children. It remains the deadliest act of domestic terrorism in U.S. history.

Richard Johnson, SC, May 3, 2002: In September of 1985, Dan Swanson, who was driving his RV to Florida, picked up, Richard Johnson along with two other hitchhikers. During the trip, Johnson shot Swanson and hid his body in the RV. He then fatally shot the Black state trooper who pulled the RV over for reckless driving six times, at least once after he had already fallen to the ground.

Frank G. Spisak Jr., OH, February 17, 2011: In February of 1982 neo-Nazi Frank Spisak began shooting Black and Jewish individuals at Cleveland State University as part of a "war" for the "survival" of the "Aryan race." Spisak killed Horace Rickerson, Brian Warford and Timothy Sheehan and shot two others, John Hardaway and Coletta Dartt, who survived.

Harry Mitts, OH, September 25, 2013: In August 14, 1994, Harry Mitts Jr., severely inebriated, threatened several people in his apartment complex with a gun armed with a laser site. Mitts shouted racial epithets at his White neighbor and her Black boyfriend, John Bryant before fatally shooting Bryant. When police arrived at the scene Mitts fatally shot Sgt. Dennis Glivar and wounded two other responding officers.