

Race and Gender Disparities in Capitally-Charged Louisiana Homicide Cases, 1976-2014

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EXECUTIVE SUMMARY

Out of 6,512 homicides from 1976 through 2014, we review the outcomes of 1,822 capital-charged homicide cases across eight judicial districts in Louisiana. In most cases, capital charges were reduced; but in 385 cases, the state sought death to the final stage of the prosecution. In 107 cases, a death sentence was imposed. We analyze these outcomes, looking at legally relevant factors, as well as legally irrelevant ones, in determining final capital charges and death sentences. Legally relevant factors include the number of victims as well as various statutory aggravating circumstances (e.g., victims under 12 or over 64, simultaneous felony circumstances, the type of weapon, the relationship between the victim and offender). Legally irrelevant factors include the judicial district and the race and gender of the offenders and victims, respectively. Many legally relevant factors have powerful impacts: the number of victims, certain felony circumstances, child victims, elderly victims are all associated with higher rates of final capital charging or death sentencing. But we also show that factors which appear legally irrelevant in theory have powerful effects; rates of capital prosecution and death sentencing are substantially different based on the race of victim and the combined races of the offenders and the victims, for example. We found only modest differences across the eight judicial districts we studied, but especially significant differences in rates of final capital charges and death sentences in cases that involved white victims, particularly white females. No demographic combination was as likely to see a final capital charge or a death sentence as those cases with a black male offender and a white female victim, which were more than five times as likely to lead to a final capital charge or a death sentence, compared to the much more frequent crimes involving black offenders and black victims. These findings come after a review of the bivariate relations as well as a series of multivariate logistic regressions. The Louisiana death penalty system is heavily weighted by a tendency to seek the harshest penalties in those cases with white female victims. Our powerful and consistent findings of racial and gender-based disparities hold in a multivariate analysis and are inconsistent with the equal protection of the law or any common understanding of equality or justice.

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⁴ All the data and computer code for replication of the analysis in this Article are available here:
<http://fbaum.unc.edu/articles/SULR2022-CapitalCharging/Index.htm>.

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I. INTRODUCTION

Between 1972 and the end of 2020, 28 male prisoners were put to death in Louisiana.⁵ Only one of these executions took place after 2002.⁶ Gerald Bordelon was executed on January 7, 2010 after dropping his appeals, thereby allowing the state to carry out the execution without legal opposition.⁷ One of the 28, Leslie Lowenfield, was a foreign national from Guyana,⁸ while the remaining 27 death-row inmates were American citizens.⁹ All of the defendants and their victims in the 28 cases were either white or black.¹⁰ No Hispanics, Asians, or Native Americans were offenders or victims in the cases that resulted in an execution.¹¹

The U.S. Census Bureau estimates that in mid-2019, Louisiana's 4.6 million residents were 62.4% white, 32.8% black, and 4.4% "other."¹² Table 1 displays the races of the defendants and victims among the 28 whose cases that ended with an execution.

⁵*Execution Database* DEATH PENALTY INFORMATION CENTER, available at <https://deathpenaltyinfo.org/executions/execution-database> (last visited Dec. 14, 2021). 1972 marks the beginning of the modern era of the death penalty in the United States. In that year, the Supreme Court (in effect) invalidated all existing death penalty statutes, forcing jurisdictions that decided to retain the death penalty to enact revised death penalty statutes. See *Furman v. Georgia*, 408 U.S. 238 (1972).

⁶*Id.* Restated, it has been twenty years since Louisiana executed a prisoner who exhausted his appellate avenues. The Associated Press, *Why Louisiana Executions Have Stalled for a Decade With 68 Remaining on Death Row*, THE ADVOCATE (Feb. 3, 2020), available at https://www.theadvocate.com/baton_rouge/news/politics/legislature/article_a802a5f6-46d1-11ea-9f51-eff2fa808090.html (last visited Oct. 4, 2021).

⁷ See *Execution Database*, *supra* note 5.

⁸*Louisiana Man Dies in Electric Chair*, NEW YORK TIMES (Apr. 14, 1988), available at <https://www.nytimes.com/1988/04/14/us/louisiana-man-dies-in-electric-chair.html> (last visited Oct. 4, 2021). Lowenfield was black.

⁹ See *Execution Database*, *supra* note 5.

¹⁰ *Id.*

¹¹ *Id.*

¹²*Quick Facts: Louisiana*, UNITED STATES CENSUS BUREAU, available at <https://www.census.gov/quickfacts/LA> (last visited Oct. 4, 2021).

Table 1
Races of Defendants and Victims in Louisiana Cases in which Defendant Executed,
1972 through 2020 (n=28)

| <u>Race of Defendant*</u> | <u>Race/Gender of Victim/s</u> | <u>Cases</u> |
|---------------------------|--------------------------------|--------------|
| B | WF | 5 |
| B | WM | 4 |
| B | BM | 2 |
| B | BM & 4BF | 1 |
| B | BF | 1 |
| W | WF | 8 |
| W | WM & WF | 3 |
| W | WM | 3 |
| W | 2 WM & 2 WF | 1 |

* W=White, B=Black, M=Male, F=Female

Overall, the data in Table 1 show that among those executed, there were 13 black defendants (46.4%) and 15 white defendants. Much more striking, however, is the fact that, regardless of the race of the defendant, 24 of the 28 cases resulting in execution involved white victims (85.7%). Therefore, while whites composed 62.4% of the state's population in 2019, those convicted of killing whites make up nearly 86% of the prisoners executed since 1972.¹³ Nine blacks were put to death for killing white victims and no whites were executed for killing black victims.¹⁴ In 20 of the 28 cases (71.4%), the executed prisoner was convicted of killing at least one female.¹⁵ Women or girls constituted only 19% of homicide victims in Louisiana from 1976 through 2011,¹⁶ so the fact that 71.4% of those executed had female victims shows that such crimes are

¹³ *Id.*

¹⁴ In fact, the most recent execution in Louisiana of a white offender for a crime against a black victim was in 1752; see Michael L. Radelet, *Executions of Whites for Crimes Against Blacks: Exceptions to the Rule?*, 30 SOCIOLOGICAL QUARTERLY 529 (1989).

¹⁵ See Table 1.

¹⁶ Frank R. Baumgartner & Tim Lyman, *Race-of-Victim Discrepancies in Homicides and Executions, Louisiana 1976-2015*, 17 LOYOLA JOURNAL OF PUBLIC INTEREST LAW 129, 133 (2015).

substantially over-represented in execution cases.¹⁷ This is further accentuated when examining the killers of white women, and among killings where the suspect is a black male.¹⁸

Louisiana has a poor record for sentencing defendants to death who were likely innocent—11 men sentenced to death in Louisiana since 1972 were later vindicated when new evidence emerged that supported their innocence claims.¹⁹ Eight of these defendants (72.7%) were black.²⁰ Louisiana ranks fourth among all states, behind Florida, Illinois, and Texas, in the number of people sentenced to death since 1972 who were later released because of doubts about guilt.²¹

As of July 1, 2020, 69 prisoners awaited execution in Louisiana, including one woman.²² Of these, 46 were black, 20 white, and three were Latinx.²³ Note that while 32.8% of the state's population identifies as black,²⁴ 46% of those executed in Louisiana since 1972 were black, as are 66.7% of those awaiting execution today.²⁵ These stark racial disparities invite scrutiny to ascertain if supposedly legally-irrelevant factors, such as race, actually do correlate with death sentences. Perhaps significant racial differences are themselves correlated with non-racial factors, such as the particular characteristics of the crime, the type of weapon used, or differences in the presence of particular aggravating circumstances across racial categories. Understanding these racial differences amid particular aggravating circumstances in final capital charging and death sentencing is our objective in the analysis below.

¹⁷ Cf. Census data just cited to numbers in Table 1.

¹⁸ See Figure 3, Table 23, *infra*, showing higher rates of final capital charging or death sentencing for such cases.

¹⁹ *Innocence by the Numbers*, DEATH PENALTY INFORMATION CENTER, available at <https://deathpenaltyinfo.org/policy-issues/innocence/innocence-by-the-numbers> (last visited Oct. 4, 2021). See also THE NATIONAL REGISTRY OF Exonerations, available at <https://www.law.umich.edu/special/exoneration/Pages/about.aspx> (last visited Oct. 4, 2021).

²⁰ *Id.*

²¹ *Id.*

²² Deborah Fins, *Death Row USA: Summer 2020*, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. 1, 49 (Jul. 1, 2020), available at <https://www.naacpldf.org/wp-content/uploads/DRUSASummer2020.pdf> (last visited Oct. 4, 2021).

²³ *Id.*

²⁴ See *Quick Facts: Louisiana*, *supra* note 10.

²⁵ See Fins, *supra* note 20, at 36.

We conduct this analysis by examining Louisiana homicide cases from 1976-2014 across multiple judicial districts and analyzing the correlates of capital prosecution gathered from our study. We start with a list of over 6,000 Louisiana homicides reported to the FBI and look at the 1,822 capital-charged cases coming from them. We examine how these 1,822 cases differ from the larger group of homicides from which they are drawn. Then we conduct an in-depth analysis of which individuals had their capital charges against them dropped or reduced before final disposition.²⁶ Over 1,800 individuals in our study faced capital charges, but almost 80% of these individuals had charges which were later reduced or dismissed. Only about 20% of those individuals facing capital charges at any point in the pretrial stages actually saw the prosecution seek capital charges in the final stage.²⁷ Just 107 individuals were sentenced to death.²⁸ By exploring prosecutors' decisions to retain capital charges through to the end of the prosecution in some cases but not others, we shed light on both the legally relevant and irrelevant correlates of the decision to pursue the death penalty. Especially noteworthy in our findings are the effects of legally irrelevant factors, including racial and gender effects, particularly associated with victim characteristics.

II. RECENT STUDIES OF THE PROCESSING OF HOMICIDE CASES IN LOUISIANA

Over the past twenty years, four projects have studied the processing of homicide cases in potential death penalty cases in Louisiana, all of which were conducted by one or more of the present authors.²⁹ The first focused on all homicide cases that were committed over a 19-year

²⁶ See Table 3, *infra*.

²⁷ *Id.*

²⁸ *Id.*

²⁹ See Glenn L. Pierce & Michael L. Radelet, *Death Sentencing in East Baton Rouge Parish, 1990-2008*, 71 LOUISIANA LAW REVIEW 647 (2011); Glenn L. Pierce, Michael L. Radelet, Chad Posick, & Tim Lyman, *Race and The Construction of Evidence in Homicide Cases*, 39 AMERICAN JOURNAL OF CRIMINAL JUSTICE 771 (2014); Baumgartner & Lyman, *supra* note 14; Frank R. Baumgartner & Tim Lyman, *Louisiana Death-Sentenced Cases and Their Reversals, 1976-2015*, 7 J. RACE, GENDER & POVERTY 58 (2016).

period from January 1, 1990 through December 31, 2008 and contained a formal charge for first-degree murder in East Baton Rouge Parish.³⁰ There were 406 relevant cases.³¹ Of those 406 cases, charges were reduced to a non-homicide offense in half the cases and 12 others resulted in a non-guilty verdict or were still pending at the time of the study.³² Of the remaining group of 191 homicide convictions, 23 resulted in death sentences.³³

While the defendant's race was not by itself a statistically significant predictor of who was sentenced to death, the victim's race was; 21.4% of the cases with white victims resulted in death, compared to 8.1% of those with black victims.³⁴ When both the race of the defendant and the victim were examined, the data showed that 30% of the cases with a black defendant and white victim (B-W) resulted in a death sentence, compared to 12% of cases with a white defendant and white victim (W-W) and 8.3% of cases with a black defendant and black victim (B-B).³⁵ Further, "even in homicides where aggravating factors are present, those who kill whites are still more than twice as likely to be sentenced to death as those who kill blacks."³⁶ Similarly, among cases where one or more felonies, in addition to homicide, were present, 27.5% of the cases with white victims resulted in death sentences, compared to 13.2% of the cases with black victims.³⁷ The authors added these racially disparate variables and variables measuring the actual severity of the homicide (e.g., number of simultaneous felonies, number of aggravating factors, number of victims) to a multivariate predictive model.³⁸ As a result, the authors found that "the odds of receiving a death

³⁰See Pierce & Radelet, *supra* note 27.

³¹ *Id.* at 657.

³² *Id.* at 657-58.

³³ *Id.* at 658.

³⁴ *Id.* at 659-60.

³⁵ There were too few cases with white defendants and black victims to allow for reliable statistical analysis.

³⁶ Pierce & Radelet, *supra* note 27, at 663.

³⁷ *Id.* at 665.

³⁸ A multivariate predictive model is a statistical technique that allows the researcher simultaneously to consider multiple factors that may be associated with a given outcome, rather than consider them one at a time. It allows the

sentence in a black victim case are on average 97.3% lower than are the odds of a death sentence in a white victim case ... controlling for the other variables in the analysis.”³⁹ Similar to the analysis below, then, this study combined attention to racial factors with legally relevant factors such as numbers of victims and additional aggravators and found that racial factors had a significant impact even while controlling for, or in addition to, the legally relevant factors.⁴⁰

Pierce and his colleagues followed with a study that examined possible racial disparities at earlier stages of the cases following arrest.⁴¹ More specifically, they were interested in whether prosecutors compiled a longer case file, possibly reflecting greater investigative effort, in homicide cases with white victims than in homicides with black victims.⁴² Here, they looked at 431 cases with initial charges of first-degree murder, second-degree murder, or manslaughter that occurred in Louisiana’s Caddo Parish between January 1, 1988 and December 31, 2008.⁴³ They simply counted the number of pages in the prosecutor’s files for each case.⁴⁴ Pierce and his colleagues found that the case files were more expansive in cases with black defendants, cases with white victims, cases with more aggravating circumstances present, and in homicides in which the victim and defendant were strangers.⁴⁵ When all these variables were entered into a multivariate model predicting the length of the case file, the researchers found the strongest predictor of the size of the file was having a white female victim.⁴⁶ The authors concluded that “even among cases with

researcher to control for various factors that could explain an apparent bi-variate relationship, to see if the relationship of interest remains when those other factors are simultaneously included. For more information on predictive models such as those used in Pierce’s work or in this Article, see see ANDREW GELMAN & JENNIFER HILL, DATA ANALYSIS USING REGRESSION AND MULTILEVEL / HIERARCHICAL MODELS 79-108 (Cambridge University Press 2007), or DAVID W. HOSMER & STANLEY LEMESHOW, APPLIED LOGISTIC REGRESSION 2ND ED. (John Wiley & Sons, Inc. 2000).

³⁹ Pierce & Radelet, *supra* note 27 at 670.

⁴⁰ *Id.*

⁴¹ Pierce, Radelet, Posick, & Lyman, *supra* note 27, at 771.

⁴² *Id.*

⁴³ *Id.* at 773.

⁴⁴ *Id.* at 773-74

⁴⁵ *Id.* at 779.

⁴⁶ Pierce, Radelet, Posick, & Lyman, *supra* note 27, at 785.

similar levels of aggravation, the time and energy expended on the case significantly varies with the demographic characteristics of the victim.”⁴⁷

A third recent study looked at a comprehensive sample of almost 13,000 homicide cases in Louisiana from 1976 through 2015.⁴⁸ A death sentence was imposed in 241 of these cases.⁴⁹ Baumgartner and Lyman found that while “black males constitute 61% of the victims of homicides, they are just 8% of the victims of those who were later executed. White females, by contrast, represent 7% of overall homicide victims, but 47% of those for whom the offender was later put to death.”⁵⁰ Further, “although whites constitute only around a quarter (26%) of modern-era homicide victims, they are close to two-thirds (64%) of the victims in death sentence cases, and nearly four-fifths (79%) of the victims in cases that have ended in execution.”⁵¹ These aggregate statistics suggest that the death penalty may be focused on cases with white victims, particularly white female victims. This simple comparison of aggregate homicide statistics with aggregate statistics from execution cases does not, however, allow for statistical controls. We conduct such tests in the pages to follow.

Finally, using the same dataset, Baumgartner and Lyman extended their analysis to study which of the 241 death sentences imposed between 1972 through 2015 were later vacated by appellate courts.⁵² Among the 155 cases that had completed the appellate process, there were 127 appellate reversals and 28 executions.⁵³ Notwithstanding the race of the defendant, those convicted of killing whites were more than six times more likely to receive a death sentence than those

⁴⁷*Id.*

⁴⁸Baumgartner & Lyman, *supra* note 14, at 130.

⁴⁹ *Id.*

⁵⁰*Id.* at 134.

⁵¹*Id.* at 141.

⁵²Baumgartner & Lyman, *supra* note 27, at 58.

⁵³ *Id.*

convicted of killing blacks, and 14 times more likely to be executed.⁵⁴ Further, cases involving a white victim were less likely to be reversed on appeal.⁵⁵

The above four articles show a strong and persistent pattern of disparities in the administration of the death penalty in Louisiana. These disparities are strongly correlated with the race and the gender of the victim, as the previous paragraphs have described. Left unanswered by the above studies, however, is the question of *where* the racial disparities enter into the chain of decisions that might culminate with a death sentence. Therefore, we decided to examine thousands of Louisiana homicide cases from many judicial districts across the state involving charges of first-degree murder—and therefore the defendant was eligible for a death sentence—to see which cases were most likely to remain first-degree murder cases until the end of the prosecution and which cases were more likely to see a final sentence of death. The following section explains the methodology we employed to shed light on this question.

III. DATA COLLECTION

Data for this study comes from 1,822 capital-charged homicide cases in eight Louisiana judicial districts⁵⁶ ranging from 1976–2014.⁵⁷ In Louisiana, individuals charged with first-degree murders are eligible for the death penalty.⁵⁸ Therefore, in this Article we use “first-degree murder” and “capital murder” as synonymous. We refer to our universe of cases as having been “capitally charged” because, in each case, there is evidence from the case file that the prosecution included

⁵⁴ *Id.*

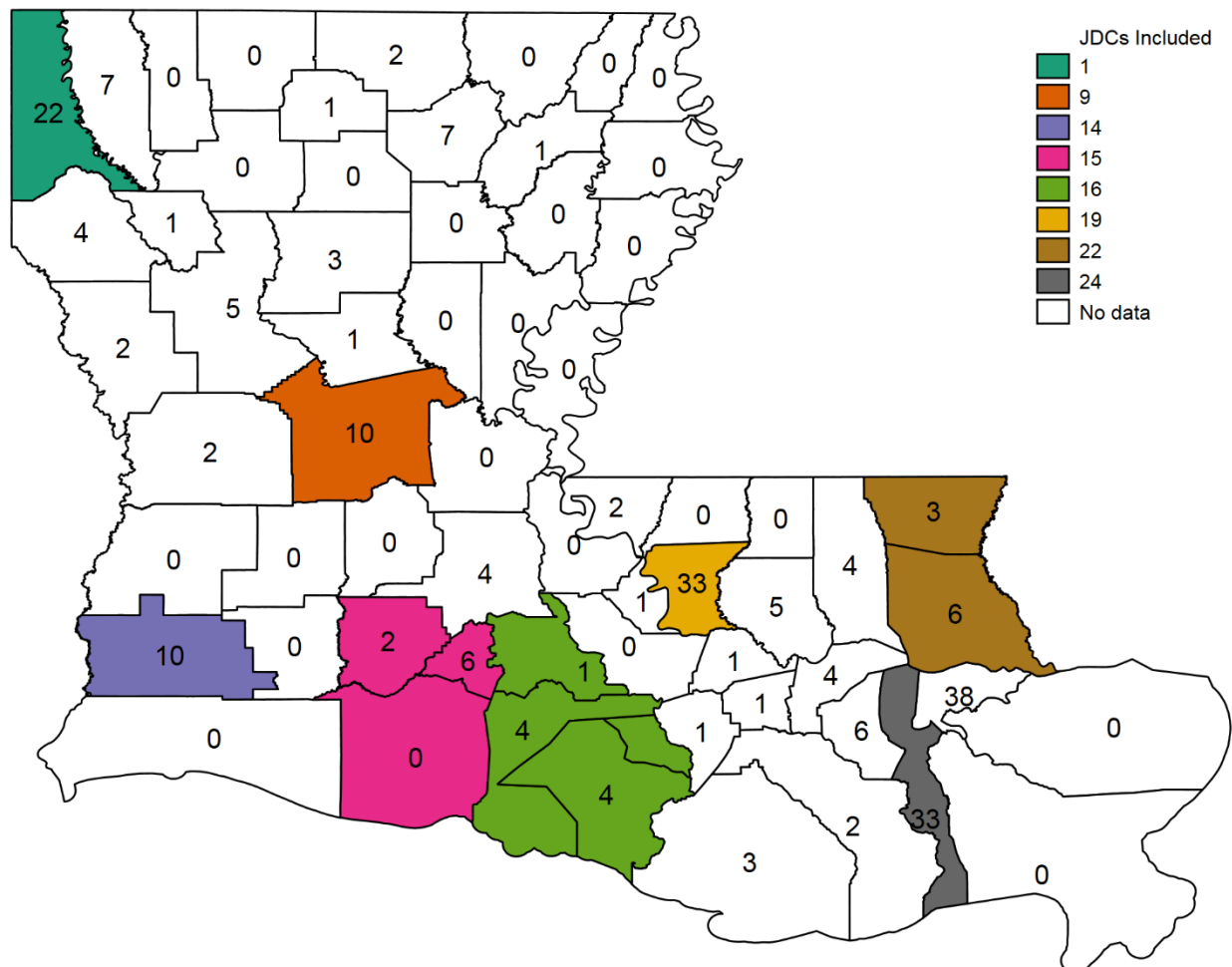
⁵⁵ *Id.*

⁵⁶ Judicial districts (and associated parishes) included in the study include: 1 (Caddo), 9 (Rapides), 14 (Calcasieu), 15 (Lafayette, Acadia, Vermilion), 16 (Iberia, St. Martin, St. Mary), 19 (East Baton Rouge), 22 (St. Tammany, Washington), and 24 (Jefferson). See Table 2, *infra*, for more information.

⁵⁷ See *supra* note 4 for the underlying database as well as Stata replication files for all the analysis presented in this Article.

⁵⁸ La. R.S. 14:30 (C)(1).

Figure 1
Map of Louisiana Showing Cumulative Death Sentences Imposed by Parish (with the eight JDCs included in this study highlighted), 1977-2016



The parishes included in the study are from all regions of the state and account for 41% of the non-negligent and non-justified homicides in Louisiana during the period from 1976 to 2014.⁵⁹ The data comes from every parish in the state that had eight or more death sentences imposed during the study period, with the exception of Orleans Parish (with 38 death sentences) and JDC 21 (St. Helena, Livingston, and Tangipahoa parishes, with 9 death sentences collectively).⁶⁰

Table 2 lists the parishes included in this study and the years our data covers in each. The first column indicates the rank of the JDC with regards to the cumulative number of homicides from 1976 to 2014. Orleans Parish, first in rank,⁶¹ is not included, but the JDCs listed include those ranked 2-5, 7-9, and 12, among the 42 JDCs.

Table 2
State-wide Rank of the JDC Homicide Counts, and Study Years

| <u>Rank</u> ⁶² | <u>JDC</u> | <u>Main City</u> | <u>Parishes Included</u> | <u>Years</u> |
|---------------------------|------------|------------------|--------------------------------|--------------|
| 2 | 19 | Baton Rouge | East Baton Rouge | 1990-2014 |
| 3 | 24 | Gretna | Jefferson | 1976-2011 |
| 4 | 1 | Shreveport | Caddo | 1988-2014 |
| 5 | 15 | Lafayette | Lafayette, Acadia, & Vermilion | 1976-2014 |
| 7 | 14 | Lake Charles | Calcasieu | 1976-2013 |
| 8 | 22 | Covington | St. Tammany & Washington | 1976-2013 |
| 9 | 9 | Alexandria | Rapides | 1982-2014 |
| 12 | 16 | New Iberia | Iberia, St. Martin, & St. Mary | 1976-2011 |

In some JDCs, physical case files from earlier years were not available.⁶³ For example, the case files from the Orleans JDC, covering the city of New Orleans, were destroyed by Hurricane

⁵⁹ A combined record of all FBI Supplemental Homicide Reports from 1976 through 2019 is available here: Ann Arbor, *Jacob Kaplan's Concatenated Files: Uniform Crime Reporting (UCR) Program Data: Supplementary Homicide Reports, 1976-2019*, MI: INTER-UNIVERSITY CONSORTIUM FOR POLITICAL AND SOCIAL RESEARCH (2021-01-16), available at <https://doi.org/10.3886/E100699V10> (last visited Nov. 7, 2021).

⁶⁰ *Id.*

⁶¹ "Rank" refers to the JDC's place on the ordered list of raw homicide numbers 1976-2014.

⁶² *Id.*

⁶³ For details on the research and data collection that underlies the analysis here, including years of coming through court records in the eight JDCs of our study, please see the various reports by Lyman at this page: <http://ssrn.com/author=1603675>. Also, for a comparison of race of victim and gender combinations of homicides and

Katrina in 2005.⁶⁴ Others had early case files unavailable for a variety of other reasons.⁶⁵ In addition, some data was gathered before the homicide prosecutions had reached their final dispositions; thus, all case files were not yet readily available.⁶⁶

In 98% of the cases, the capital charge was brought at the initial stage of the prosecution. In 2% of the cases, charges were upgraded to first-degree murder at a later stage of the prosecution.⁶⁷ Whereas by construction of our dataset, each of the 1,822 individuals included faced first-degree charges, 79% of these charges were reduced to lower charges before the end of the prosecution.

As shown in Table 4, only a small subset of these cases saw the first-degree charge carried to the last stage of the prosecution. Many more saw the initial first-degree charges reduced or dropped. In fact, when considering the final charges faced by each defendant, 21% were first-degree; 29% second-degree; 26% manslaughter or negligent homicide; 9% non-homicide; and 15% were dropped.⁶⁸ The analytical question of interest in this Article is to distinguish the 21% who faced final charges of first-degree murder from those who saw a lesser final charge.

A. The Master Case Data Set

The Master Case Data Set was compiled from the eight individual JDC studies listed in Table 2 by Lyman for use in various criminal cases, both trials and appeals.⁶⁹ Since each of the eight studies used the same underlying methodology, this Article reports the combined results.⁷⁰

death-sentence cases across the 8 JDCs included in this study and the rest of the state, see LA-Homicides-by-Race-by-JDC.xlsx, a spreadsheet available at <http://fbaum.unc.edu/articles/SULR2022-CapitalCharging/Index.htm>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Of the cases that were upgraded, 18 were moved from from a second-degree murder charge, 3 from a manslaughter charge, and 10 from non-homicide charges.

⁶⁸ See Table 4, *infra*.

⁶⁹ See all the JDC studies on his SSRN author page: <http://ssrn.com/author=1603675>.

⁷⁰ More information about our data collection procedures can be found in the single JDC studies conducted by Lyman. See all the JDC studies on his SSRN author page: <http://ssrn.com/author=1603675>.

Working with the clerk of court in each JDC, Lyman first assembled lists of first- and second-degree indictments. The second-degree cases were reviewed for evidence of previous charges of first-degree murder, a process that led to the discovery of such charges in approximately 15% of the second-degree cases reviewed.

In order for a case to qualify for inclusion in the Master Case Data Set, four criteria had to be met: 1) documentation of a first-degree murder charge; 2) presence of a black or white suspect and victim; 3) known age and gender of the defendant and victim; and 4) a record of the highest final charge sought by the prosecution at plea or trial. For example, if a case ended in a plea agreement for second-degree murder, this was the highest final charge, since the prosecutor's office agreed to it. Final charges of first-degree murder are defined in this Article as those cases where a plea agreement ended in such a conviction or where the suspect went to trial on first-degree charges. This qualification process was followed in each of the eight JDCs studied. Because Louisiana has a low population of Asians, Native Americans, and people of other races,⁷¹ none of whom were involved in any post-1972 executions, 94 cases with victims of other races were excluded from this study so that it could better pinpoint differences between black and white suspects and victims.

Finding evidence of a capital charge entailed searching for "first-degree" or "14:30" (its statutory code⁷²) in the case file documents, whether physical or virtual, including affidavits, appeals, autopsies, bond documents, investigative reports, lab requests, minutes, motions, police reports, preliminary hearings and examinations, probable cause documents, requests for appointment of counsel, sheriff's documents, statements of fact, transcripts, warrants, and writs.

⁷¹ In 2020, only 4.4% of Louisiana's population identified as neither black nor white. See *Quick Facts: Louisiana*, *supra* note 10.

⁷² La. R.S. 14:30.

Supplementary data also came from newspaper reporting, including information on arrests with names, ages, and charges; pre-trial and case development news; trial and plea news; and appeal news.

B. Data from Supplemental Homicide Reports

Next, Lyman made a data set out of Louisiana's "Supplemental Homicide Reports," (SHR)⁷³ compiled by the Federal Bureau of Investigation, corresponding to the parishes and time periods included in the Master Case Data Set.⁷⁴ Data reported in the SHRs include the parish; investigating police department; month and year of the homicide; the gender, race, and ethnicity of both suspect(s)⁷⁵ and victim(s); description of the weapon used; the number of suspect(s) and victim(s) in the homicide event; a circumstance code indicating whether or not the investigating police department concluded that the homicide event included an accompanying felony; and the relationship between the suspect(s) and victim(s).⁷⁶

The FBI's SHRs for Louisiana include 7,908 homicides occurring in the same parishes and years as the entries in the Master Case Data Set.⁷⁷ Of these homicides, 1,569 cases were initially excluded because the race of suspect was listed as "unknown" in the SHR record. An additional 261 cases were excluded because they did not fit our criteria for inclusion described earlier:

⁷³ Bureau of Justice Statistics, *The Nation's Two Measures of Homicide*, U.S. DEPARTMENT OF JUSTICE (Jul. 2014), available at <https://bjs.ojp.gov/content/pub/pdf/ntmh.pdf> (last visited Oct. 5, 2021).

⁷⁴ Though a rich source of homicide data, researchers are well aware of the weaknesses associated with the UCR, inattention to which may lead to serious errors and misleading results. Colin Loftin & David McDowell, *The Use of Official Records to Measure Crime and Delinquency*, 26 J. QUANT. CRIMINOL. 527, 529 (2010). Perhaps the biggest of these weaknesses is the level of missing information for the homicide incident in the UCR. Official sources like the Bureau of Justice Statistics have found that the SHRs are over 90% complete, but there are still a number of homicides that go unaccounted for. Some agencies do not even submit their forms at all, due to the fact that participation by police agencies with the UCR program is completely voluntary." Karen F. Parker & Richard Stansfield, *Homicide*, in J. MITCHELL MILLER, *ENCYCLOPEDIA OF THEORETICAL CRIMINOLOGY* 436 (John Wiley & Sons 2014).

⁷⁵ Since these data are gathered by investigating police departments from homicide cases soon after their occurrence, we use the term "suspects" or "potential defendants" to refer to the demographic group of the people initially suspected by the local authorities of the homicide.

⁷⁶ See *supra* note 4.

⁷⁷ *Id.*

presence of a black or white suspect and victim. This left SHR data on 6,078 homicide suspects and victims listed as black or white.⁷⁸

C. Matching Cases from the Master Case Data Set to Corresponding SHR Incidents

Lyman matched the cases from the Master Case Data Set to the relevant incident reported in the SHRs. That is, for each of the 1,822 individuals identified who faced first-degree murder charges in the years and JDCs of this study, Lyman searched through the 7,908 FBI SHR records to find the FBI record for the corresponding homicide incident.⁷⁹ Matches were made for 1,601 of the 1,822 cases in the Master Case Data Set (87.9%).⁸⁰ This included 213 matches to suspects of an originally unknown race.⁸¹ For the remaining 221 capital-charged defendants in the Master Case Data Set whose homicide incidents did not appear in the SHRs, information from court records was used to fill out the relevant circumstance and other information otherwise taken from the SHRs. Adding these 434 cases to the 6,078 SHR suspect cases led to a total of 6,512 cases with identified suspects (see Table 3). The analysis below is based on all 1,822 cases, not only the 1,601 matched to the SHR.⁸²

IV. FINDINGS

A. Race, Decision Outcomes, and the Stages of the Capital Prosecution Process

As described above, our Master Case Data Set includes only defendants charged at some point with first-degree murder; and therefore suspects who, at least at one point before the

⁷⁸ *Id.*

⁷⁹ Matching was done using information in the FBI SHR records about the investigating police department, year, month, sequence number within the month, and demographics of the victim(s) and suspect(s). In the Master Case File, all this information was also available, allowing matches to be identified.

⁸⁰ This level of matching is not unexpected. The Bureau of Justice Statistics (2014) reports that “Historically, between 85% and 90% of all homicides reported in the UCR summary data also have a corresponding SHR form.” Bureau of Justice Statistics, *supra* note 71, at 2.

⁸¹ See *supra* note 4.

⁸² Our Appendix replicates our main findings using only the 1,601 cases where there was a match to the SHR. Findings are similar regardless of whether we use 1,601 cases or 1,822 cases.

conclusion of their case, were under the threat of a death sentence. The data set includes information on homicide suspects and victims, the level of charge that the defendant faced pretrial (e.g., approaching trial, at time of a plea agreement, or at the time of a case dismissal), and on the final disposition of the case. Figure 2 and Table 3 show several stages of a capital prosecution, each a subset of the previous one. Beginning with 6,512 homicides, there were 1,822 homicides with capital charges, 904 cases where the final charge was either first- or second-degree, 385 with final charges of first-degree murder, and 107 death sentences.⁸³ A single glance at Figure 2 makes clear that as the cases move through the successive filters of the capital prosecution process, the racial characteristics change dramatically.⁸⁴ Cases with white victims, are much more likely to have harsher outcomes, particularly Black-on-White crimes.⁸⁵ Black-on-Black crimes, by contrast, represent a smaller share at each stage of the process.

⁸³ See the numbers in Figure 2 or the last row of values in Table 3.

⁸⁴ See the trends illustrated graphically in Figure 2 or the cell entries in Table 3.

⁸⁵ All the numbers referred to in this and the two following paragraphs come from Table 3 and are graphically illustrated in Figure 2.

Figure 2
Racial Differences in the Capital Charging Process

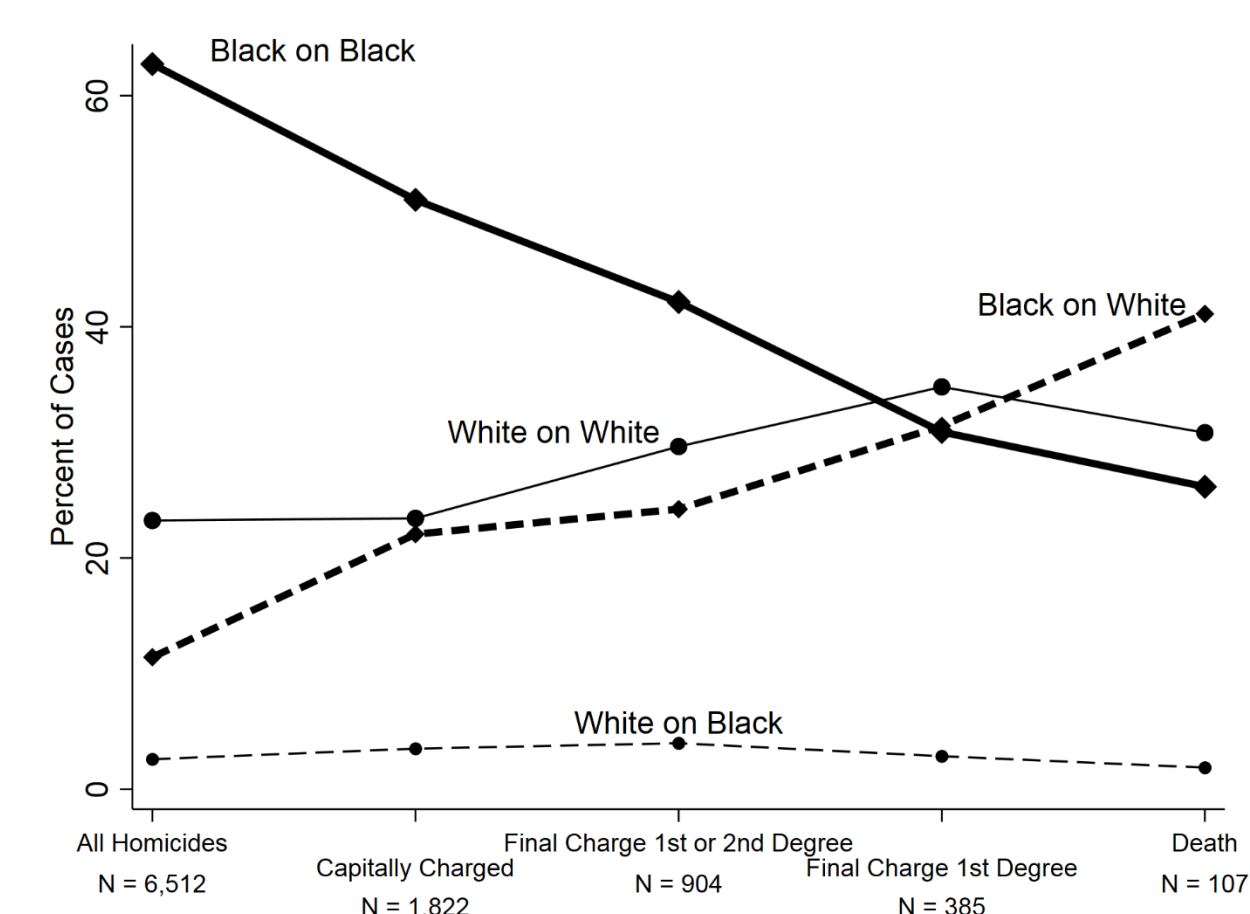


Table 3
Race of Suspect and Victim by State of Capital Charging Process

| Race of Suspect And Victim | Homicide Suspects | Faced Capital Charges | Final 1 st or 2 nd Charges | Final 1 st Deg. Charges | Death Sent. |
|----------------------------|-------------------|-----------------------|--|------------------------------------|-------------|
| B-B | 4,085 | 929 | 381 | 119 | 28 |
| Col % | 62.7 | 51.0 | 42.1 | 30.9 | 26.2 |
| Row % | 100.0 | 22.7 | 9.3 | 2.9 | 0.7 |
| B-W | 744 | 402 | 219 | 121 | 44 |
| Col % | 11.4 | 22.1 | 24.3 | 31.4 | 41.1 |
| Row % | 100.0 | 54.0 | 29.4 | 16.3 | 5.9 |

| | | | | | |
|-------|-------|-------|-------|-------|-------|
| W-W | 1,514 | 427 | 268 | 134 | 33 |
| Col % | 23.2 | 23.4 | 29.6 | 34.8 | 30.8 |
| Row % | 100.0 | 28.2 | 17.7 | 8.9 | 2.2 |
| W-B | 169 | 64 | 36 | 11 | 2 |
| Col % | 2.6 | 3.5 | 4.0 | 2.9 | 1.9 |
| Row % | 100.0 | 37.9 | 21.3 | 6.5 | 1.2 |
| N | 6,512 | 1,822 | 904 | 385 | 107 |
| Col % | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Row % | 100.0 | 28.0 | 13.9 | 5.9 | 1.6 |

62.7% of the 6,512 homicide suspects had black suspects and black victims (these are abbreviated “B-B” in Table 3). Among those capitally charged at any time before trial, the share of B-B homicides suspects compared to the total number of homicides suspects dropped to 51%. The B-B share declined further to 42% among those facing final charges of first or second-degree murder, to 31% among those facing final charges of first-degree murder, and to 26% among those ultimately sentenced to death. By contrast, B-W homicides were relatively rare, as they were just 11.4% of all homicides; however these cases represented 41% of all death sentences. The B-B cases are increasingly under-represented and the B-W cases are increasingly over-represented as they go through the stages of the capital prosecution process. For example, B-W cases represent 11.4% of all homicides, but this number almost doubles to 22.1% of those with capital charges, and nearly doubles again, to 41.1% of those receiving a death sentence. The B-B cases, on the other hand, decline in relative shares from 62.7% of the homicides to 26.2% of the death sentences. These numbers are illustrated in Figure 2 and can be verified in the column percentages reported in Table 3.

For both black and white suspects, having a black victim dramatically reduces the probability of a final charge of first-degree murder or of ultimately receiving a death sentence.⁸⁶ As evidenced by Table 3, W-B cases are less likely to face capital charges or to result in a death sentence than W-W cases.⁸⁷ In fact, just two W-B cases ended with a death sentence. Among W-W cases, only 2.2% received a death sentence.⁸⁸ Thus, among cases with white suspects, the probability of a death sentence was shown to be 1.83 times higher in cases with white victims than in cases with black victims.⁸⁹ Having a white victim doubled the probability of a death sentence for a white suspect. By contrast, among black suspects, the impact was much greater: just 0.69% of the B-B homicides (28 of 4,085) resulted in a sentence of death,⁹⁰ compared to 5.9% of B-W cases (44 of 744).⁹¹ Thus, for black suspects, those with white victims were 8.6 times more likely to be sentenced to death than those suspected of killing blacks.⁹² Both black and white suspects were more likely to be sentenced to death when the victim was white, but the B-W cases were almost three times more likely than W-W cases to end with a death sentence.⁹³

Given the strong association between the cases' racial composition and the filtering effects of capital prosecution decisions that often lead to some cases having either harsher or more lenient final outcomes, the next question is to what extent these patterns taint the capital-charging process. The following section turns to that question using a broad range of predictor variables across the 1,822 cases in the Master Case Data Set. It focuses on the distinction laid out in Table 3 and Figure

⁸⁶ See Table 3, comparing the share of B-B cases with a death sentence to the share of B-W cases, or the share of W-W cases to the share of W-B cases.

⁸⁷ See Table 3, comparing the share of W-B cases with a death sentence (1.2%) to the share of W-W cases (2.2%).

⁸⁸ Table 3.

⁸⁹ 2.2% of the W-W cases received death and 1.2% of the W-B cases. $2.2 / 1.2 = 1.833$.

⁹⁰ Table 3.

⁹¹ *Id.*

⁹² B-B homicides led to a death sentence 0.69% of the time, but B-W cases led to death 5.9% of the time. $5.9 / 0.69 = 8.6$.

⁹³ W-W cases ended in death 2.2% of the time; B-W cases, 5.9%. $5.9 / 2.2 = 2.7$.

2. Of the 1,822 cases charged capitally, what differentiates the 385 cases that included a capital charge as the final stance by the prosecution? Similarly, what distinguishes the 107 individuals who were finally sentenced to death?

B. Factors Associated with Final First-Degree Charges

Table 4
Capitally Charged Cases Among Total Homicide SHR Suspects
by Race of Suspect and Victim

| Cases Charged | Race of Victim and Suspect | | | | Total |
|-------------------|----------------------------|-------|-------|-------|-------|
| | B-B | B-W | W-B | W-W | |
| Cap charged # | 929 | 402 | 64 | 427 | 1,822 |
| % | 22.7 | 54.0 | 37.9 | 28.2 | 28.0 |
| Not cap charged # | 3,156 | 342 | 105 | 1,087 | 4,690 |
| % | 77.3 | 46.0 | 62.1 | 71.8 | 72.0 |
| Total suspects # | 4,085 | 744 | 169 | 1,514 | 6,512 |
| % | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |

Chi-Square=314.46; df=3; p <.001

We first examine how race correlates with the likelihood of homicide suspects being charged with first-degree murder at some point prior to sentencing. Table 4 focuses on the first column from Table 3. Here, the data shows that among the B-W homicides, 54.0% became a first-degree murder case, followed by 37.9% of the W-B homicides, 28.2% of the W-W homicides, and 22.7% of the B-B homicides.⁹⁴ Thus, the B-W cases were 2.4 times more likely to have charges of first-degree murder than the B-B cases, and were twice as likely to have a charge of first-degree murder as W-W cases. Table 4 makes clear that the decision to bring capital charges, even if they are later reduced or dropped, is subject to strong disparities based on racial factors.⁹⁵

⁹⁴ In this and following sections where we are presenting the data shown in the tables, the numbers referred to in the text come from the corresponding table and we do not provide a footnote for each factual reference. These are in the tables.

⁹⁵ We present the results from Table 4 broken down by JDC in Appendix Table A-2, where it can be seen that the same pattern of racial disparities *occurs in each of the JDCs individually*, with the minor exception of JDC 24 (Jefferson Parish). The first-degree murder charge disparities by suspect-victim race are statistically significant for each of the JDCs and for the overall sample of cases.

The remaining analyses examine the final charging decisions among the 1,822 cases in the court records that had first-degree murder charges at least at one point before disposition. Table 5 displays the distribution of the final charges in each case. This data represents the position of the prosecution at the last stage of the prosecution (before a trial or acceptance of a plea agreement). The table shows that charges were dropped in 15.1% of the cases, reduced to a non-homicide in 8.9% of the cases, reduced to manslaughter or negligent homicide in 26.4% of the cases, reduced to second degree murder in 28.5% of the cases, and retained with a final charge of first-degree murder in 21.1% of the cases. In the end, over half (50.4%) of all capitally charged cases were reduced to manslaughter or less.

Table 5
Final Charges Sought by the State in All Capitally-Charged Cases

| | | |
|----------------------------------|-------|-------|
| First-Degree Murder | 385 | 21.1% |
| Second Degree Murder | 519 | 28.5% |
| Manslaughter, Negligent Homicide | 481 | 26.4% |
| Non-Homicide | 162 | 8.9% |
| Charges Dropped | 275 | 15.1% |
| N | 1,822 | |

Table 5 presents a puzzle central to this analysis: How do the 385 cases in which the final charge was first-degree murder differ from the other cases?

Table 6
Final Charge of First-Degree Murder, by Race of Suspect

| | | Race of Suspect | | |
|---------------------------------|--|-----------------|-------|-------|
| | | Black | White | N |
| Final Charge: 1st Degree Murder | | | | |
| Yes | | 240 | 145 | 385 |
| | | 18.0% | 29.5% | 21.1% |
| No | | 1091 | 346 | 1437 |
| | | 82.0% | 70.5% | 78.9% |

| | | | |
|---|------|-----|-------|
| N | 1331 | 491 | 1,822 |
|---|------|-----|-------|

Chi-Square=28.463; df=1; p < .001

Table 7
Final Charge of First-Degree Murder, by Race of Victim

| | | Race of Victim | | |
|---------------------------------|--|---------------------|---------------------|-------|
| | | Black ⁹⁶ | White ⁹⁷ | N |
| Final Charge: 1st Degree Murder | | | | |
| Yes | | 129 | 256 | 385 |
| | | 13.0% | 30.9% | 21.1% |
| No | | 864 | 573 | 1437 |
| | | 87.0% | 69.1% | 78.9% |
| N | | 993 | 829 | 1,822 |

Chi-Square=86.764; df=1; p < .001

Table 6 shows that cases with white suspects are more likely (29.5%) than cases with black suspects (18.0%) to be prosecuted as first-degree murder cases at the time of final charge. However, this pattern is reversed when we look at the race of the victim. Table 7 shows that 30.9% of the cases with white victims were prosecuted at the end as first-degree murder cases, compared to only 13% of the cases with black victims.

Table 8
Final Charge of First-Degree Murder, by Gender of Victim

| | Gender of Victim | | |
|---------------------------------|--------------------|----------------------|-----|
| | Male ⁹⁸ | Female ⁹⁹ | N |
| Final Charge: 1st Degree Murder | | | |
| Yes | 201 | 184 | 385 |

⁹⁶ At least one black victim but no white victims.

⁹⁷ At least one white victim.

⁹⁸ No female victims.

⁹⁹ At least one female victim.

| | | | |
|----|---------------|--------------|---------------|
| | 15.1% | 37.6% | 21.1% |
| No | 1132 84.9% | 305 62.4% | 1437 78.9% |
| N | 1333 | 489 | 1,822 |

Chi-Square=109.151; df=1; $p < .001$

Similarly, cases with female victims were more likely to be prosecuted as first-degree murder cases through the final charge, with 15.1% of the cases with male victims having a final charge of first-degree murder, compared to 37.6% of the cases with female victims having a final charge of first-degree murder (see Table 8).¹⁰⁰

Table 9
Final Charge of First-Degree Murder, by Race of Suspect and Victim

| | Race of Suspect and Victim | | | | |
|---------------------------------|----------------------------|--------------|-------------|--------------|---------------|
| | B-B | B-W | W-B | W-W | N |
| Final Charge: 1st Degree Murder | | | | | |
| Yes | 118 12.7% | 122 30.3% | 11 17.2% | 134 31.4% | 385 21.1% |
| No | 811 87.3% | 280 69.7% | 53 82.8% | 293 68.6% | 1437 78.9% |
| N | 929 | 402 | 64 | 427 | 1,822 |

Chi-Square=87.619; df=3; $p < .001$

Table 9 combines both suspect(s) and victim(s) races. About 30% of cases with white victims saw a final capital charge (30.3% for the B-W cases and 31.4% for the W-W cases), but only about half of that rate occurred in cases with black victims (12.7% for B-B cases, and 17.2% for W-B cases). Thus, the differences correlate with the race of the victim, not the defendant.¹⁰¹

¹⁰⁰ There are significant differences in rates of capital outcomes for offenders with black female v. white female victims. We explore these findings in the multivariate analysis below; see Table 23.

¹⁰¹ Later analysis in this Article (see Table 23) explore this further and confirm these findings.

Table 10
Final Charge of First-Degree Murder, by Multiple Victims Aggravator

| | Number of Victims | | |
|---------------------------------|-------------------|---------------|---------------|
| | ≥ 2 | One | N |
| Final Charge: 1st Degree Murder | | | |
| Yes | 97 41.8% | 288 18.1% | 385 21.1% |
| No | 135 58.2% | 1302 81.9% | 1437 78.9% |
| N | 232 | 1590 | 1,822 |

Chi-Square=68.219; df=1; $p < .001$

Table 10 shows that cases with multiple victims are more likely than single-victim homicides to see a final charge of first-degree murder. Here, we see that 41.8% of the multiple-victim cases were so charged at the end, compared to 18.1% of the cases with a single victim. This is an example of a legally relevant factor, as the number of victims in a crime may be part of the calculation of how serious or aggravated the crime was. In a system with proportionality, one might expect those with multiple victims to see higher odds of capital prosecution. Of course, a fully proportionate system would see higher odds of capital outcomes for those with legally relevant factors (such as in Table 10), but not with legally irrelevant factors (such as those in Tables 6–9).

Table 11
Final Charge of First-Degree Murder, by Number of Suspects

| | Number of Suspects | | | | | | | | | |
|------------------------------------|--------------------|-------------|-------------|------------|--------|-----------|--------|--------|------------|--------------|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | N |
| Final Charge: 1st Degree Murder | | | | | | | | | | |
| Yes | 234 27.7% | 91 18.3% | 43 16.7% | 12 8.3% | 0 - | 1 5.6% | 0 - | 0 - | 4 44.4% | 385 21.1% |

| | | | | | | | | | | |
|----|--------------|--------------|--------------|--------------|------------|-------------|--------|-----------|------------|---------------|
| No | 610 72.3% | 405 81.7% | 215 83.3% | 132 91.7% | 45 100% | 17 94.4% | 0 - | 8 100% | 5 55.6% | 1437 78.9% |
| N | 844 | 496 | 258 | 144 | 45 | 18 | 0 | 8 | 9 | 1,822 |

Chi-Square=61.321; df=7; $p < .001$

Table 11 shows that the probabilities of final first-degree murder charges also vary with the number of defendants charged in the same case. This data illustrates that as the number of defendants increased from one to four, the proportion of cases that had first-degree murder as a final charge were reduced.¹⁰² Cases with more co-defendants were less likely to be prosecuted as first-degree murder cases at the end.¹⁰³ The indictment of multiple suspects under capital charges may be a powerful tool for the prosecution to induce guilty pleas or other forms of cooperation.¹⁰⁴ Table 11 shows that, in general, as more indictments are given, there is a greater chance that at least some of these will later be reduced or dropped. We control for this factor, as all the others explored in this section of our analysis, in the multivariate analysis below.

Table 12
Final Charge of First-Degree Murder, by Victim's Age <12 Aggravator

| | Any Victims Under 12 | | |
|---------------------------------|----------------------|-----|-----|
| | Yes | No | N |
| Final Charge: 1st Degree Murder | | | |
| Yes | 44 | 341 | 385 |

¹⁰² See Table 11.

¹⁰³ Note that this does not necessarily imply that no defendant faced final capital charges, but that if there were multiple defendants, such charges were more likely to be reduced for at least some of them. Our unit of analysis here is the defendant.

¹⁰⁴ To give a single well-known example, the multiple indictments in the "Central Park Five" case in New York generated false confessions as well as testimony against other defendants in the case; see Kate Storey, Truth About How False Confessions Happen, *Esquire.com*, Jun 1, 2019, <https://www.esquire.com/entertainment/a27574472/when-they-see-us-central-park-5-false-confessions/>. Prosecutors may drop or reduce charges against some defendants if their cooperation in the prosecution of another is helpful to that case, and pending capital charges can be a strong inducement for that cooperation. See also Melba V. Pearson, ed., CAN THEY DO THAT? UNDERSTANDING PROSECUTORIAL DISCRETION (Chicago: American Bar Association, 2020).

| | | | |
|----|-------------|---------------|---------------|
| | 32.6% | 20.2% | 21.1% |
| No | 91 67.4% | 1346 79.8% | 1437 78.9% |
| N | 135 | 1687 | 1,822 |

Chi-Square=11.494; df=1; p < .001

Table 13
Final Charge of First-Degree Murder, by Victim's Age >64 Aggravator

| | Any Victims over 64 | | |
|---------------------------------|---------------------|---------------|---------------|
| | Yes | No | N |
| Final Charge: 1st Degree Murder | | | |
| Yes | 60 34.3% | 325 19.7% | 385 21.1% |
| No | 115 65.7% | 1322 80.3% | 1437 78.9% |
| N | 175 | 1647 | 1,822 |

Chi-Square=20.103; df=1; p < .001

The age of the victim is another circumstance that correlates with prosecutorial decisions, which is expected given Louisiana's law that makes the killing of children under the age of 12 or persons over the age of 64 statutory aggravators.¹⁰⁵ Table 12 shows that when at least one victim in the homicide event is aged 11 or lower, 32.6% of defendants face final charges of first-degree murder, compared to 20.2% defendants of the remaining cases. Similarly, Table 13 shows that if the homicide includes a victim aged 65 or older, the proportion of cases with a final charge of first-degree murder (34.3%) is higher than in the other homicide cases (19.7%).

Table 14

¹⁰⁵ La. R.S. 14:30 (A)(5).

Final Charge of First-Degree Murder, by Rape Felony Aggravator

| | Presence of Rape Circumstance ¹⁰⁶ | | |
|---------------------------------|--|---------------|---------------|
| | Yes | No | N |
| Final Charge: 1st Degree Murder | | | |
| Yes | 23 67.6% | 362 20.2% | 385 21.1% |
| No | 11 32.4% | 1426 79.8% | 1437 78.9% |
| N | 34 | 1788 | 1,822 |

Chi-Square=44.983; df=1; p < .001

¹⁰⁶ Includes 32 cases of rape and 2 of CIR 17, Other Sex Offense.

Table 15
Final Charge of First-Degree Murder, by Burglary Felony Aggravator

| | Presence of Burglary Circumstance | | |
|---------------------------------|-----------------------------------|---------------|---------------|
| | Yes | No | N |
| Final Charge: 1st Degree Murder | | | |
| Yes | 22 43.1% | 363 20.5% | 385 21.1% |
| No | 29 56.9% | 1408 79.5% | 1437 78.9% |
| N | 51 | 1771 | 1,822 |

Chi-Square=15.247; df=1; p < .001

Table 16
Final Charge of First-Degree Murder, by Robbery Felony Circumstance

| | Presence of Robbery Circumstance | | |
|---------------------------------|----------------------------------|---------------|---------------|
| | Yes | No | N |
| Final Charge: 1st Degree Murder | | | |
| Yes | 112 24.4% | 273 20.0% | 385 21.1% |
| No | 347 75.6% | 1090 80.0% | 1437 78.9% |
| N | 459 | 1363 | 1,822 |

Chi-Square=3.937; df=1; p < .05

Table 17
Final Charge of First-Degree Murder, by Drug Felony Aggravator

| | Presence of Drug Circumstance ¹⁰⁷ | | |
|---------------------------------|--|---------------|---------------|
| | Yes | No | N |
| Final Charge: 1st Degree Murder | | | |
| Yes | 18 9.1% | 367 22.6% | 385 21.1% |
| No | 179 90.9% | 1258 77.4% | 1437 78.9% |
| N | 197 | 1625 | 1,822 |

Chi-Square=19.065; df=1; p < .001

Table 18
Final Charge of First-Degree Murder, by Other Felony Aggravators

| | Presence of Other Felonies ¹⁰⁸ | | |
|---------------------------------|---|---------------|---------------|
| | Yes | No | N |
| Final Charge: 1st Degree Murder | | | |
| Yes | 37 29.6% | 348 20.5% | 385 21.1% |
| No | 88 70.4% | 1349 79.5% | 1437 78.9% |
| N | 125 | 1697 | 1,822 |

Chi-Square=5.776; df=1; p < .05

Table 19

¹⁰⁷ Often, drugs were involved in murders with other felonies, such as robbery; in these cases, the other felony was usually chosen as the SHR circumstance.

¹⁰⁸ Includes CIR codes 26 (Other Felony), 70 (Suspected Felony), 6 (Larceny), 7 (Vehicle Theft), 9 (Arson), 10 (Vice), and 19 (Gambling).

Final Charge of First-Degree Murder, by Circumstance Unable to Determine
Presence of Unknown Circumstance

| | Yes | No | N |
|---------------------------------|--------------|---------------|---------------|
| Final Charge: 1st Degree Murder | | | |
| Yes | 81 17.1% | 304 22.5% | 385 21.1% |
| No | 392 82.9% | 1045 77.5% | 1437 78.9% |
| N | 473 | 1349 | 1,822 |

Chi-Square=6.151; df=1; $p < .05$

The next several tables present data on whether final first-degree charges are associated with aggravating factors, such as rape (Table 14), burglary (Table 15), robbery (Table 16), illegal drugs (Table 17), another additional felony (Table 18), or the presence of an unknown aggravator (Table 19). The data shows that the presence of each of these additional criminal circumstances is positively associated with the probability that the case will include first-degree murder charges among the final charges.¹⁰⁹ Rape and burglary aggravators are relatively rare (just 34 cases indicated the presence of a rape circumstance¹¹⁰ and 51 cases indicated burglary¹¹¹), but they substantially increase the probability of first-degree final charges; 67.6% of the cases with rape¹¹² and 43.1% of those with robbery¹¹³ had this outcome. The odds that the rape circumstance will be associated with final capital charges is strongly connected to the presence of a white victim: just

¹⁰⁹ See Tables 14–19, each showing a significant Chi-Sq. value.

¹¹⁰ Table 14.

¹¹¹ Table 15.

¹¹² Table 14.

¹¹³ Table 15.

five out of 12 B-B cases and zero of two W-B cases saw such final charges, but nine out of ten W-W cases, and nine out of ten B-W cases did.¹¹⁴

Table 20
Final Charge of First-Degree Murder, by Suspect-Victim Relation

| | | Suspect-Victim Relation | | | | |
|---------------------------------|--------------|-------------------------|--------------|--------------|---------------|---|
| | | Family | Known | Stranger | Unknown | N |
| Final Charge: 1st Degree Murder | | | | | | |
| Yes | 57 29.2% | 141 19.9% | 116 25.5% | 71 15.4% | 385 21.1% | |
| No | 138 70.8% | 569 80.1% | 339 74.5% | 391 84.6% | 1437 78.9% | |
| N | 195 | 710 | 455 | 462 | 1,822 | |

Chi-Square=22.771; df=3; p < .001

Similarly, Table 20 presents data on the question of whether the relationship between the suspect and the victim is related to final first-degree murder charges. There is a tendency for homicides between family members to more likely result in final capital charges compared to homicides between strangers; homicides between family members (29.2%) and among strangers (25.5%) are more likely to contain first-degree charges at the final stage, compared to crimes where the suspect is known to the victim (19.9%), or where the relationship is unknown, according to the SHR reports (15.4%).¹¹⁵

Table 21
Final Charge of First-Degree Murder, by Weapon

| | Type of Weapon | | | N |
|--|----------------|-----------|--------------------|---|
| | Handgun | Other gun | Other / Unknown | |

¹¹⁴ This relationship is highly significant despite the small number of cases: chi-sq (3 df) = 12.45; prob. = 0.006.

¹¹⁵ Table 20.

Final Charge: 1st Degree Murder

| | | | | | |
|-----|--------------|--------------|--------------|--------------|---------------|
| Yes | 152 16.4% | 55 21.4% | 81 36.2% | 97 23.5% | 385 21.1% |
| No | 777 83.6% | 202 78.6% | 143 63.8% | 315 76.5% | 1437 78.9% |
| N | 929 | 257 | 224 | 412 | 1,822 |

Chi-Square=44.492; df=3; p < .001

Table 21 looks at the type of weapon. Killings by handgun are the most common but least likely to lead to final capital charges (16.4%). Knife-related killings (36.2%), killings involving other or unknown types of weapons (23.5%), and those involving rifles or other kinds of firearms (21.4%) see higher rates of final capital charging. Different types of weapons may be associated with different types of crimes, or different degrees of victim suffering. If offenders of different races tend to use different types of weapons, or if victims of different races and genders are more often the victims of crimes with different types of weapons, then this factor could affect apparent findings. Table 23 presents a model that controls for multiple factors simultaneously.

Table 22
Final Charge of First-Degree Murder by JDC

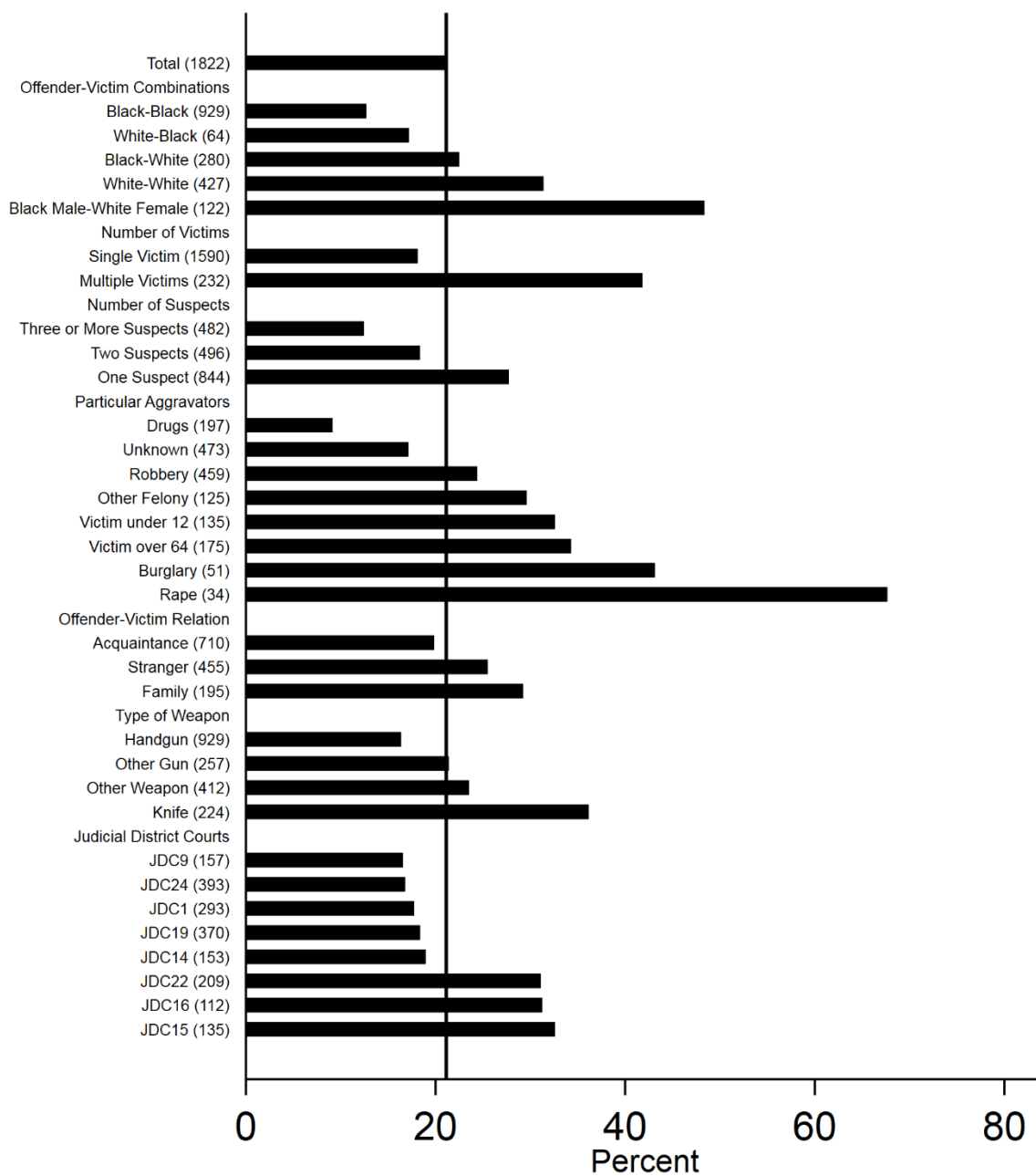
| | JDC | | | | | | | | N |
|---------------------------------|--------------|--------------|--------------|-------------|-------------|--------------|--------------|--------------|---------------|
| | 1 | 9 | 14 | 15 | 16 | 19 | 22 | 24 | |
| Final Charge: 1st Degree Murder | | | | | | | | | |
| Yes | 52 17.7% | 26 16.6% | 29 19.0% | 44 32.6% | 35 31.3% | 68 18.4% | 65 31.1% | 66 16.8% | 385 21.1% |
| No | 241 82.3% | 131 83.4% | 124 81.0% | 91 67.4% | 77 68.8% | 302 81.6% | 144 68.9% | 327 83.2% | 1437 78.9% |
| N | 293 | 157 | 153 | 135 | 112 | 370 | 209 | 393 | 1,822 |

Chi-Square=40.521; df=7; p < .001

JDC numbers correspond to Parishes as follows: 1=Caddo; 9=Rapides; 14=Calcasieu; 15=Lafayette, Acadia, Vermillion; 16=Iberia, St. Martin, St. Mary; 19=East Baton Rouge; 22=St. Tammany, Washington; 24=Jefferson.

Finally, Table 22 looks at the different judicial district courts. There is some variability in the likelihood that cases proceed to the final capital charge across the eight districts included in the present study. Rates were between 16.6% and 19% in five of the eight JDCs, but higher in three: 31.1% in JDC 22; 31.3% in JDC 16; and 32.6% in JDC 15.

Figure 3
Summary of Bivariate Relations with Final First-Degree Charges



Numbers in parentheses indicate the number of cases.
Vertical line shows the overall rate: 21.13 percent.

Figure 3 summarizes the different bivariate relations with final first-degree charges.¹¹⁶ Looking simultaneously at suspect-victim race combinations, number of victims, number of suspects, various particular aggravators, suspect-victim relationship, type of weapon, and across the 8 JDCs included in our study, Figure 3 shows the number of cases included in each category, and the percentage of those cases that faced a first-degree charge at the final stage of the prosecution.

The first row in Figure 3 shows the overall outcome: 21% of the cases faced first-degree charges at the end. The suspect-victim racial combinations show a powerful effect: B-B and W-B have lower rates of final capital prosecution compared to the overall average of 21%, while B-W and W-W have higher rates. No matter the race of the offender, homicides with black victims are less likely to see final capital charges. Furthermore, the 122 cases with black male suspects and white female victims have a 48% rate of final capital prosecution. Other B-W cases have a rate of final capital charging similar to the overall average.¹¹⁷ In fact, the W-W cases see a higher rate than the B-W cases, as the relevant bars in Figure 3 show. This finding appears to be related to the combined importance of both the race and gender of victims. For B-W crimes in particular, distinguishing between male and female victims shows different levels of final capital prosecution. The 122 cases with black male offenders and white female victims are associated with significantly higher rates of final capital prosecution compared to the 260 other B-W cases.¹¹⁸

Figure 3 also shows that multiple victim cases are more likely to see final capital charges, but that cases with multiple suspects are less likely to do so, compared to the overall average rate

¹¹⁶ Note that the data underlying Figure 3 are the same as those in the preceding tables; Figure 3 simply summarizes an abundance of information.

¹¹⁷ See Figure 3, bar labeled “Black-White (280)”, showing a rate close to the overall average of 21%.

¹¹⁸ See Figure 3, comparing the bars for Black-White and Black Male-White female.

of 21%. Further, Figure 3 illustrates the effects of various aggravators, including the perhaps counter-intuitive finding that drug-related crimes are dramatically less likely to see final capital charges.¹¹⁹ Certain particular aggravators, particularly rape, show much higher rates of final capital prosecution. In fact, 68% of cases with presence of rape circumstances saw a final first-degree prosecution.

Finally, Figure 3 summarizes the tables above, illustrating the same modest effects of victim-suspect relations, the disparities across weapon types, and the differing rates of final first-degree charges across the eight covered JDCs.

Given these bivariate relationships, the final analysis is to consider all these predictor variables together in a multivariate analysis. Clearly, the bi-variate results presented in the tables and figures above have shown important correlations between final capital charges and both legally relevant and legally irrelevant factors. Race and gender characteristics of the offenders and victims are clearly important aspects of the findings presented above. It is important to verify that their impacts are not spurious. The next section considers exactly this question.

C. Multivariate Analysis

We now assess the potential impact of each variable we presented above, measuring their unique explanatory effects net of the other variables in the predictive modes. This allows examination of the effects of legally irrelevant factors on death sentencing, while statistically controlling for the legally relevant factors in our data. To do this, we employ logistic regression analysis.¹²⁰ Logistic regression models estimate each independent variable's effect, while

¹¹⁹ The lower odds of final capital prosecution in drug-related cases may relate to an idea that those 197 cases involved some shared guilt on the part of the victim.

¹²⁰ For an explanation of logistic regression, including how to interpret coefficients, see Gelman & Hill or Hosmer & Lemeshow, *supra* note 36.

controlling the effects of all other independent variables.¹²¹ We present four models. Models 1–3 relate to the outcome variable of whether or not a suspect receives a final charge of first-degree murder. We present three similar models but vary how we treat the race of offender and race of victim variables. All the models show similar results, demonstrating that these differences in specification are not important. Model 4 then replicates the third model, but with the outcome variable being whether or not the suspect was sentenced to death. Table 3 showed that 385 individuals (out of 1,822) saw a final charge of first-degree murder (the outcome variable predicted in Models 1–3), and 107 were sentenced to death (predicted in Model 4). None of the main findings from the previous section, which focused on bi-variate relations, are shown to be spurious. The multivariate analysis, in other words, confirms the bi-variate relationships already demonstrated. These robust findings and highlight the continued and pervasive influence of race in the Louisiana death penalty system.

Table 23. Logistic Regression Analysis of First-Degree Final Charges, and Death Sentencing

| Model number | | (1) | (2) | (3) | (4) |
|----------------------|----------------------------|----------------------|-------------------------|---------------------------------------|----------------------|
| Predictor variables: | | Baseline | Suspect- Victim Race | BM Suspect / WF Victim Included | Death Sentence |
| 1 | More than one victim | 3.709*** (0.678) | 4.591*** (0.803) | 4.337*** (0.765) | 2.805*** (0.734) |
| 2 | Number Indicted | 0.698*** (0.0448) | 0.693*** (0.0449) | 0.681*** (0.0442) | 0.634*** (0.0731) |
| 3 | Any Victim Less than 12 | 2.573*** (0.665) | 2.799*** (0.717) | 2.811*** (0.720) | 3.394** (1.468) |
| 4 | Any Victim Over 64 | 1.370 (0.286) | 1.439 (0.299) | 1.368 (0.287) | 2.411** (0.736) |
| 5 | Rape | 6.870*** (3.026) | 10.08*** (4.371) | 8.706*** (3.863) | 6.221** (3.506) |

¹²¹ *Id.*

| | | | | | |
|----|----------------------------------|---------------------|---------------------|---------------------|--------------------|
| 6 | Burglary | 5.719*** (2.272) | 5.088*** (1.993) | 4.915*** (1.949) | 3.334* (2.042) |
| 7 | Robbery | 1.664* (0.345) | 1.536* (0.314) | 1.604* (0.329) | 2.459* (0.870) |
| 8 | Drugs | 0.653 (0.201) | 0.588 (0.179) | 0.622 (0.190) | 0.469 (0.312) |
| 9 | Other Felony | 3.278*** (0.890) | 3.112*** (0.840) | 3.265*** (0.884) | 3.586** (1.533) |
| 10 | Unknown Aggravator | 0.997 (0.203) | 0.987 (0.200) | 0.977 (0.199) | 0.813 (0.321) |
| 11 | Weapon: Handgun | Reference Category | | | |
| 12 | Weapon: Other Firearm | 1.301 (0.261) | 1.320 (0.262) | 1.280 (0.256) | 2.144** (0.621) |
| 13 | Weapon: Knife | 1.637* (0.318) | 1.855** (0.355) | 1.833** (0.351) | 1.503 (0.479) |
| 14 | Weapon: Other / Unk. | 0.890 (0.172) | 0.947 (0.181) | 0.928 (0.179) | 0.569 (0.203) |
| 15 | Relation: Fam. / Int. Partner | Reference Category | | | |
| 16 | Relation: Acquaintance | 1.141 (0.253) | 0.939 (0.205) | 0.931 (0.203) | 0.932 (0.362) |
| 17 | Relation: Stranger | 1.325 (0.340) | 1.065 (0.272) | 1.079 (0.276) | 1.308 (0.564) |
| 18 | Relation: Unknown | 0.723 (0.186) | 0.604* (0.154) | 0.603* (0.154) | 0.736 (0.333) |
| 19 | JDC 1 | Reference Category | | | |
| 20 | JDC 9 | 0.711 (0.213) | 0.754 (0.224) | 0.719 (0.216) | 0.686 (0.343) |
| 21 | JDC 14 | 0.930 | 0.942 | 0.961 | 1.253 |

| | | | | | |
|----|--|---------------------|---------------------|---------------------|--------------------|
| | | (0.272) | (0.274) | (0.281) | (0.574) |
| 22 | JDC 15 | 1.652 (0.453) | 1.639 (0.446) | 1.616 (0.442) | 0.415 (0.231) |
| 23 | JDC 16 | 1.603 (0.461) | 1.643 (0.472) | 1.646 (0.477) | 0.849 (0.431) |
| 24 | JDC 19 | 1.044 (0.240) | 1.005 (0.230) | 1.004 (0.231) | 1.215 (0.434) |
| 25 | JDC 22 | 1.892* (0.473) | 1.891** (0.467) | 1.858* (0.462) | 0.547 (0.262) |
| 26 | JDC 24 | 0.830 (0.194) | 0.829 (0.191) | 0.820 (0.191) | 1.245 (0.442) |
| 27 | Victim Black Male | | Reference Category | | |
| 28 | Victim Black Female | 2.960*** (0.571) | | | |
| 29 | Victim White Male | 2.425*** (0.553) | | | |
| 30 | Victim White Female | 4.777*** (1.042) | | | |
| 31 | Suspect Black | 1.133 (0.193) | | | |
| 32 | Black Suspect Black Victim | | Reference Category | | |
| 33 | White Suspect Black Victim | | 1.241 (0.489) | 1.224 (0.481) | 0.974 (0.769) |
| 34 | White Suspect White Victim | | 2.240*** (0.380) | 2.241*** (0.380) | 2.340** (0.704) |
| 35 | Black Suspect ¹²² White Victim | | 2.989*** (0.540) | 2.212*** (0.458) | 2.397* (0.823) |

¹²² In models 3 and 4, this category excludes cases included in the category below. It is made up of black male suspects with white male victims and a small number of black female suspects with white victims of either gender.

| | | | | |
|----|---------------------|-------|----------|----------|
| 36 | Black Male Suspect | | 5.227*** | 5.482*** |
| | White Female Victim | | (1.299) | (1.983) |
| | <i>N</i> | 1,822 | 1,822 | 1,822 |

Exponentiated coefficients; Standard errors in parentheses. * prob. < .05; ** prob. < .01; *** prob. < .001.

Table 23¹²³ presents four logistic regression models. Each includes 26 legally relevant “predictors,” and then includes alternative ways of measuring the victim and suspect racial and gender categories. The first 26 indicators are common to each of the models tested and include dichotomous indicators for multiple victim homicides (variable 1); the number of suspects in the homicide case (variable 2); homicides with victims either below 12 years of age or greater than 65 years of age (variables 3 and 4); homicides with potentially aggravating circumstances (i.e., rape, burglary, robbery, drug involvement, other felonies, and unknown circumstances—variables 5 - 10); type of weapon used (variables 11 – 14); victim -suspect relationship (variables 15 – 18); and the eight JDCs where each homicide case was prosecuted (variables 19-26).

Table 23 presents three models for final capital charging decisions which vary in how additional legal factors are incorporated in the analyses, and then a single model for death sentences. The baseline model (Model 1) examines the race and gender of homicide victims and the race of the suspect as separate variables. The race and gender of homicide victims is measured with four dichotomous variables: black male victim, black female victim, white male victim and white female victim (variables 27 – 30), and a dichotomous measure for the race of the homicide suspect (variable 31 – black or white). Model 2 examines the combinations of the race of suspects and of victims, with four dichotomous measures: B-B, W-B, B-W, and W-W (variables 32 – 35). Model 3 adds one additional variable to those used in Model 2: an indicator for cases with a black

¹²³ The entries in Table 23 are odds ratios with standard errors in parentheses. Odds ratios show the change in the likelihood of the event in question (e.g., facing final charges of first-degree murder for Models 1-3, or receiving a death sentence, in Model 4), based on the value of the predictor variable. For example, the first entry in the table shows that the odds of facing first-degree murder as a final charge in cases with multiple victims are 3.709 times higher than the odds of first-degree murder as the final charge in cases with a single victim, net of the effects of all other variables in the model. The effect is 4.591 in the second model, 4.337 in the third model, and 2.805 in the fourth model (calculating the odds of receiving a death sentence). Odds ratios below 1.00 indicate the variable reduces the odds of the outcome variable. Therefore, in the second row, cases with multiple suspects reduce the odds of the outcome variable in question. A value of 0.698 means that it reduces the odds of the outcome by about 30% (e.g., the odds are about 70% of what they would be if only a single person were prosecuted for the crime). Asterisks indicate whether or not the estimates are statistically significant at the .05, .01, and .001 levels.

male suspect and a white female victim. Finally, Model 4 presents the same analysis as in Model 3, but the dependent variable is whether the defendant was sentenced to death.

In order to interpret the numerous results summarized in Table 23, a first step is to look at the consistency of findings across Models 1 to 3 for the legally relevant variables. Table 23 illustrates that rape, burglary, multiple victims, victims aged less than 12, other felonies, and crimes involving a knife are much more likely to lead to final charges of first-degree murder, even when controlling for the simultaneous effects of all other variables in the equation. Further, this is consistent across the three models, which vary in how the race and gender of the offender and victim are specified. In addition, having multiple suspects in the same case significantly reduces the odds that any given suspect from such a case will see a final charge of capital murder.¹²⁴ Looking at Model 4, it can be seen that these same factors predict who will be sentenced to death.¹²⁵ The table also shows that several of the variables included are statutory aggravators in Louisiana law, so an impact is expected.¹²⁶ However, recall that all 1,822 cases included here were, at some point, capital- charged. Therefore they all had some aggravating circumstance, by definition.¹²⁷ However, Table 23 illustrates which of the 1,822 capital defendants saw the state seek the death penalty through to the last stage of the prosecution (Models 1-3), or received a sentence of death (Model 4).

¹²⁴ See the consistent pattern of odds-ratios of .698, .693, .681, and .634 for Variable 2, Number Indicted, in Table 23. These values show a consistent pattern of reduction in odds of the outcome variable of approximately 30 to 37 percent.

¹²⁵ In Table 23, compare the odds-ratios in Model 4 with those in Model 3. They are broadly consistent, showing that the same factors predict both outcomes relatively consistently.

¹²⁶ For example, in Table 23, see the consistently high odds-ratios for Variable 1, 3, 4, 5, 6, 7, and 9. These are consistent with expectations drawn from the law; aggravating factors would be expected to increase the odds of final capital charges or death sentences. By contrast, Variable 8 (Drugs) has consistently low odds-ratios, though these are generally not statistically significant.

¹²⁷ See Section III, *supra*.

The different JDCs are, for the most part, consistent (though JDC 22 has increased odds of capital charges).¹²⁸ The relation between the suspect and the victim¹²⁹ is, for the most part, unrelated to the probability of final capital charges, net of the effects of the other variables.¹³⁰ In Table 20 crimes involving family members and those among strangers were slightly more likely to involve final capital charges than crimes involving acquaintances or crimes where the relationship was unknown.¹³¹ Here, these modest differences are not significant.¹³² Similarly, the type of weapon¹³³ is not a strong predictor, though stabbings appear to be more likely to lead to final capital charges, compared to handgun killings.¹³⁴ None of this is particularly surprising, and if the story ended there one might conclude that the system is operating in a reasonable manner. In other words, the models do a good job of identifying several legally relevant factors that indeed predict increased odds of a first-degree final charge (Models 1-3) or a death sentence (Model 4). It shows that some things do not matter much at all, such as which JDC handles the case¹³⁵, or the relations between the victim and the suspect.¹³⁶

The bottom rows of Table 23, referring to Variables 27 to 36, allow us to look at the effects of race and gender after statistically controlling for all other factors in the model. Model 1 looks at the race and gender of the victims,¹³⁷ with black male victims as the baseline. Compared to that group, the odds of final capital charges are 2.96 times higher in cases with black female victims;

¹²⁸ See Table 23, Variable 25.

¹²⁹ See Table 23, Variables 15–18.

¹³⁰ See Gelman & Hill or Hosmer & Lemeshow, *supra* note 36.

¹³¹ See Table 20.

¹³² See Table 23.

¹³³ See Table 23, Variables 11–14.

¹³⁴ See Table 23, Variable 13. Such small differences between the bi-variate and multi-variate presentations are not surprising, but they indicate that suspect-victim relation, and type of weapon may be correlated with some of the other factors included in the model, showing the value of considering them simultaneously as in Table 23. See Gelman & Hill or Hosmer & Lemeshow, *supra* note 36.

¹³⁵ See Table 23, Variables 19–26.

¹³⁶ See Table 23, Variables 15–18.

¹³⁷ See Table 23, Variables 27–30.

2.425 times higher in cases with white male victims; and 4.777 times higher in cases with white female victims. In this model, black suspects have slightly higher odds (13%), of final capital charges than the baseline of white suspects, but this finding is not statistically significant.¹³⁸ This shows that the race and gender of the victims have a strong effect, with cases involving black male victims (the reference category) least likely to correlate with final capital charges than any other group. Coefficients of 2.96, 2.425, and 4.777 indicate that the predicted odds of final capital charging are more than twice as great, and perhaps as much as 4.777 times as great, for the other race-gender categories, compared to black male victims. Considering that the model also includes many legally relevant factors, these findings suggest that the legally irrelevant factor of victim gender and race remain highly important predictors.

Model 2 displays the impact of the suspect-victim race combinations.¹³⁹ In this analysis, cases with B-B are the baseline category for the other odds ratios. The model shows no significant effect when comparing the B-B reference group to the W-B cases.¹⁴⁰ But when the victim is white, results are more powerful and consistent with Model 1. The odds of a final charge of capital murder are 2.24 times higher among the W-W cases compared to the B-B cases, and 2.99 times higher among the B-W cases.¹⁴¹ These findings again show the impact of legally irrelevant factors of the combined offender-victim races doubling, or almost tripling the odds of a final capital prosecution.¹⁴²

¹³⁸ See Table 23, Variable 31.

¹³⁹ See Table 23, Variables 32–35.

¹⁴⁰ See Table 23, Variable 33, showing an odds-ratio of 1.241, not statistically significant.

¹⁴¹ See Table 23, Variables 34–35.

¹⁴² *Id.*

Model 3 introduces victims' gender in addition to the race of suspect(s) and victim(s). This model examines five suspect-victim combinations.¹⁴³ The first four are the same as those used in Model 2 (e.g., the baseline case of B-B as well as W-B (Variable 33), W-W (Variable 34), and B-W (Variable 35)).¹⁴⁴ The fifth is the special case of black male suspects with white female victims (BM-WF), which is a subset of the B-W category. But the results shown in the last row of the table, Variable 36, indicate that it is quite a significant independent predictor. Controlling for other factors in the model, the odds that such a crime would have final charges of first-degree murder are more than five times higher than the odds of that outcome in an otherwise similar B-B homicide case.

Finally, Model 4 predicts who is sentenced to death.¹⁴⁵ We present the results in the same format and with the same specification as Model 3. This model shifts from explaining the behavior of the prosecutor's office to looking at the criminal justice system as a whole: in which cases is death imposed? The results are similar to what we found in Model 3. Recall from Table 3 that 385 individuals saw a final capital charge, but only 107 death sentences were imposed. Therefore, coefficients in Model 4 tend to be lower than those in Models 1-3 in Table 23. The most prominent positive predictors of a death sentence include: Variable 5 (rape circumstance), with the odds of a death sentence higher by a factor of 6.22 compared to the baseline; Variable 36 (black male offender and white female victim) with the odds ratio of 5.5 compared to the baseline; Variable 9 (other felony), with the odds ratio of 3.6 compared to the baseline; Variable 3 (child victim), with the odds ratio of 3.4 compared to the baseline; Variable 6 (burglary), with the odds ratio of 3.3

¹⁴³ See Table 23, Variables 32–36.

¹⁴⁴ Note that in Model 3, Variable 35 differs from how it was measured in Model 2. Because Model 3 also includes the BM-WF category (Variable 36), which is a subset of the B-W category, this category is limited to that group of B-W homicides not included in Variable 36..

¹⁴⁵ Note that we replicate Models 3 and 4 in Appendix Table A-1 and compare the results presented here with the results from identical models that exclude the 221 cases that did not match to the SHR. These models, with 1,601 observations, are highly consistent with the ones presented here.

compared to the baseline; Variable 1 (multiple victims), with the odds ratio of 2.8 compared to the baseline; Variable 7 (robbery), with the odds ratio of 2.5 compared to the baseline; Variable 4 (elderly victim) with the odds ratio of 2.4 compared to the baseline; Variable 35 (black offender with –white male victim), with the odds ratio of 2.4 compared to the baseline; Variable 34 (white offender with white victim), with the odds ratio of 2.3 compared to the baseline; and Variable 12 (weapon a firearm other than a handgun), with the odds ratio of 2.1 compared to the baseline. These factors all increase the odds of death, compared to the baseline, by a factor of 2 or greater.¹⁴⁶

Every category with a white victim(s) in this list, including when the offender is white and when the victim is a white male, have much higher odds of resulting in a death sentence, especially in BM-WF cases. In Model 4, the B-B case is the reference category,¹⁴⁷ and the W-B category shows a statistically insignificant difference from this baseline.¹⁴⁸ Variables 34, 35, and 36 in the model specify the W-W, B-W (not including BM-WF), and BM-WF cases, and the odds-ratios in these cases are 2.340, 2.397, and 5.482, respectively.¹⁴⁹ That is, compared to the baseline, all three categories with white victims have at least twice the odds of death sentence, and in one case more than five times the odds.¹⁵⁰ These odds-ratios are the result of our multivariate test controlling for the impact of other factors at the same time. In the model, the only factor that dramatically reduces the odds of a death sentence is if the offender is one of multiple suspects: Variable 2 (number indicted), which shows an odds-ratio of 0.634, indicating a 37% reduction in the likelihood of a death sentence.

¹⁴⁶ See Table 23, Model 4.

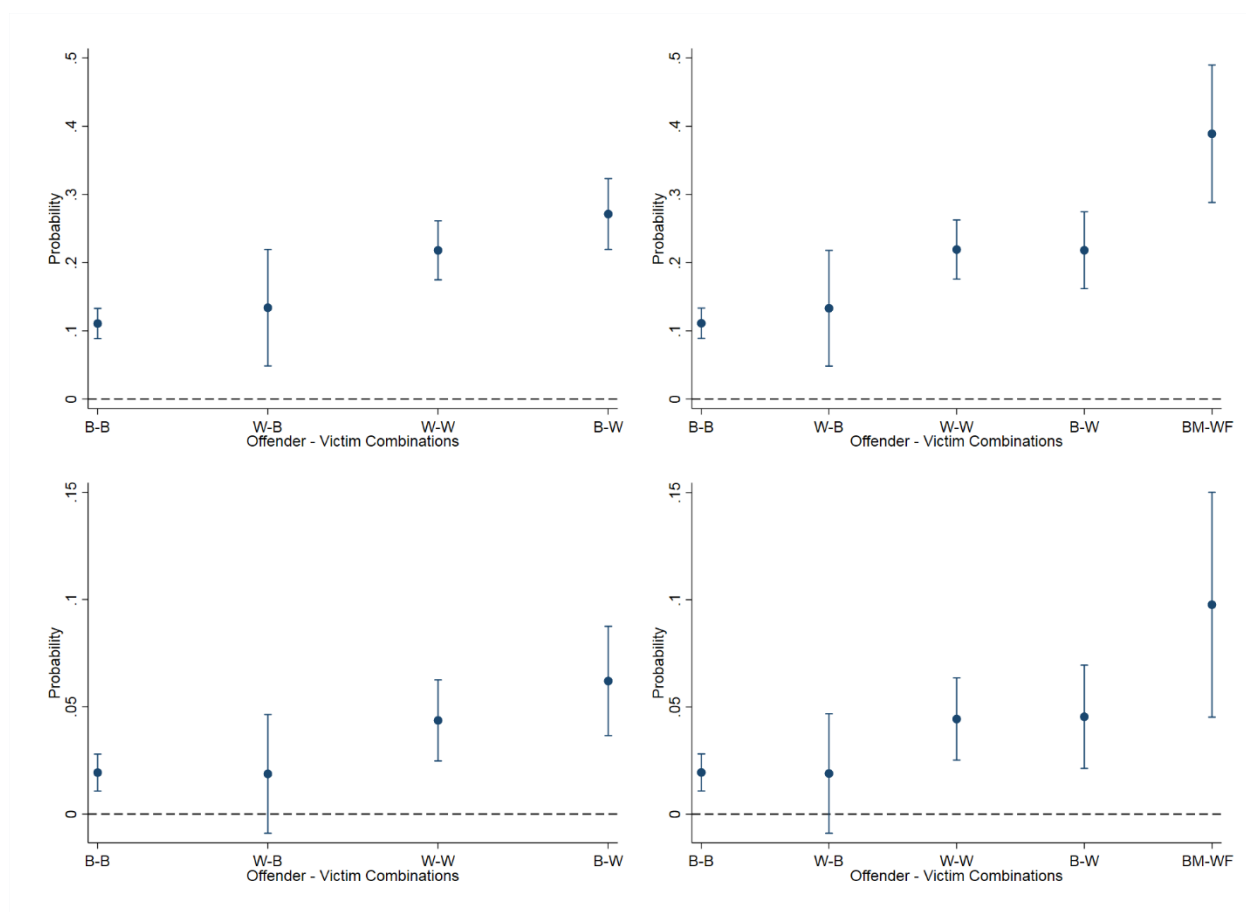
¹⁴⁷ See Table 23, Model 4, Variable 32.

¹⁴⁸ See Table 23, Model 4, Variable 33.

¹⁴⁹ See Table 23, Model 4, Variables 34–36.

¹⁵⁰ *Id.*

Figure 4
Predicted Probabilities of Final First-Degree Charges (top), and Death Sentences (bottom)
by Race of Suspect and Victim



Note: In the top row, the predicted value is a final charge of first-degree murder; in the bottom, a death sentence. In the left column, 4 suspect-victim categories are compared. In the right column, the Black-on-White category is divided into two groups, with the group labeled “BM-WF” being limited to Black male suspects with white female victims and the other category, labeled “B-W” consisting of the remaining observations.

In Figure 4, we present the findings from Models 3 and 4 across the suspect-victim categories in a slightly different way. In Figure 4, all other variables are held at their mean or median values. The results can therefore be interpreted as the odds of a given outcome, with all other variables in the model held constant.¹⁵¹

¹⁵¹ Note that the figures presented here are predicted probabilities, not odds-ratios. They simply refer to the predicted likelihood (as a percentage) that a given case will see the outcome of interest.

Starting at the left, Figure 4 shows that a B-B homicide would be predicted to have about a 10% chance of proceeding to final capital charges. A similar pattern is found for a W-B crime, but the probabilities rise significantly for crimes with white victims. In the final category, BM-WF, the predicted probability of final capital charges, all other factors held constant, increases to approximately 40%. The bottom panel shows the same analysis for death sentence outcomes. These predicted probabilities are much lower, since death sentences are much rarer than final capital charges, but the patterns are similar. The predicted probability of a death sentence, with the effects of other variables held constant, goes from 1.9% (for the B-B cases) to 9.8% (for the BM-WF cases). Other things held constant, Figure 4 shows that crimes with white victims have much higher rates of final capital charging than crimes with black victims. It is also noteworthy that the most common racial combination of homicides in our study, B-B crimes, have the lowest rate of final capital charging and death sentencing. By contrast, the least common crimes, those with white female victims, have the highest rates of both. Because the many legally relevant factors included in the logistic regression models are held at their typical values here, Figure 4 affords an illustration of the effect of race over and above the effects of other factors. These effects clearly demonstrate the power of race and gender in driving prosecutorial decisions to seek death at the final stages of a capital prosecution and of sentencers to impose it.

V. CONCLUSIONS

This Article has examined thousands of Louisiana homicide cases in an effort to shed light on how the cases are processed at various stages of the pretrial process, in order to identify factors that lead to a final charge of first-degree murder and to see which cases end with the pronouncement of a death sentence. We began with 1,822 cases ranging from the years 1976-2014, across eight judicial districts and that, at least at one point, included a charge for first-degree

murder. By the time of trial or plea bargaining, only 385 respective cases remained that included allegations of first-degree murder.¹⁵²

This comprehensive analysis shows clearly that cases involving white victims are least likely to see the charges reduced during the course of the case, much more likely to end with a first-degree murder charge, and much more likely to result in a death sentence.¹⁵³ This difference is not explained by factors such as geography or aggravating elements of the offense.¹⁵⁴ Instead, this powerful racial disparity must be seen as a consistent feature of Louisiana's use of capital charges and the death penalty. Considering the large empirical scope of this study (thousands of homicides across the bulk of the time of the operation of the modern death penalty in eight separate JDCs), it is clear that the state of Louisiana has not applied capital punishment in a racially neutral manner. Even controlling for the circumstances of the crime, the Louisiana death penalty system targets crimes with white female victims for the harshest punishment and treats those with black male victims the lightest.¹⁵⁵ This cannot be consistent with legal precepts of equal protection of the law or common notions of equality and justice. If the state cannot do so, it should abandon the punishment.

¹⁵² See Table 3, *infra*.

¹⁵³ See Table 23, *infra*.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

VI. APPENDIX

This Appendix replicates selected analyses from the main text while excluding cases where there was no match to the FBI Supplemental Homicide Reports (SHR). As described in the main Article, the overall N for our analysis was 1,822. This Appendix reports results for those 1,601 cases with a clear match to the SHR. The 221 cases where no match was found to the SHR data are generally listed as “unknown” or “missing” in the various tables in the main Article that make use of information derived from the SHR (for example, aggravators, characteristics of the victims, weapon type, relation between victim and suspect). Rather than recreate each table in the Article, this Appendix replicates Models 3 and 4 of the logistic regression presented in Table 23 of the main Article. For each of the two models, it first replicates the results with the original N of 1,822 and then displays the equivalent analysis with the restricted N of 1,601. Comparing the “Original” with the “Restricted” results for the two models clearly shows their comparability, and therefore the robustness of the findings presented in the main Article. Table A-1 presents these results.

Table A-2 presents the break-down by JDC of the findings from Table 4 concerning the proportion of suspects with a capital charge out of all homicides, by race of suspect and victim.

Finally, Figure A-1 replicates Figure 2 from the Article, comparing it to a version based only on the 1,601 cases with an SHR match.

Table A-1. Replication of Models 3 and 4 from Table 23 in the Main Text, comparing original N of 1,822 with Restricted N of 1,601 excluding cases not matched to the SHR.

| | Original Model 3, N = 1,822 | Restricted Model 3, N = 1,601 | Original Model 4, N = 1,822 | Restricted Model 4, N = 1,601 |
|----------------------------|-----------------------------------|-------------------------------------|-----------------------------------|-------------------------------------|
| More than one victim | 4.337*** (0.765) | 4.471*** (0.850) | 2.805*** (0.734) | 3.122*** (0.851) |
| Number Indicted | 0.681*** (0.0442) | 0.665*** (0.0472) | 0.634*** (0.0731) | 0.628*** (0.0737) |
| Any Victim Less than 12 | 2.811*** (0.720) | 3.148*** (0.866) | 3.394** (1.468) | 3.069* (1.414) |
| Any Victim Over 64 | 1.368 (0.287) | 1.317 (0.300) | 2.411** (0.736) | 2.393** (0.782) |
| Rape | 8.706*** (3.863) | 7.517*** (3.780) | 6.221** (3.506) | 6.277** (3.979) |
| Burglary | 4.915*** (1.949) | 4.459*** (1.913) | 3.334* (2.042) | 2.277 (1.612) |
| Robbery | 1.604* (0.329) | 1.680* (0.363) | 2.459* (0.870) | 2.500* (0.917) |
| Drugs | 0.622 (0.190) | 0.610 (0.198) | 0.469 (0.312) | 0.507 (0.340) |
| Other Felony | 3.265*** (0.884) | 2.448** (0.762) | 3.586** (1.533) | 4.988*** (2.198) |
| Unknown Aggravator | 0.977 (0.199) | 1.125 (0.245) | 0.813 (0.321) | 1.103 (0.445) |
| Weapon: Handgun | Reference Category | | | |
| Weapon: Other Firearm | 1.280 (0.256) | 1.133 (0.247) | 2.144** (0.621) | 2.312** (0.684) |
| Weapon: Knife | 1.833** (0.351) | 1.858** (0.371) | 1.503 (0.479) | 1.656 (0.540) |
| Weapon: Other / Unk. | 0.928 (0.179) | 0.986 (0.213) | 0.569 (0.203) | 0.431* (0.180) |

| Relation: Fam. / Int. Partner | | Reference Category | | | |
|----------------------------------|----------|--------------------|---------|---------|--|
| Relation: | 0.931 | 0.856 | 0.932 | 0.732 | |
| Acquaintance | (0.203) | (0.201) | (0.362) | (0.294) | |
| Relation: | 1.079 | 1.031 | 1.308 | 1.166 | |
| Stranger | (0.276) | (0.285) | (0.564) | (0.521) | |
| Relation: | 0.603* | 0.603 | 0.736 | 0.471 | |
| | (0.154) | (0.171) | (0.333) | (0.230) | |
| JDC 1 | | Reference Category | | | |
| JDC 9 | 0.719 | 0.612 | 0.686 | 0.975 | |
| | (0.216) | (0.213) | (0.343) | (0.528) | |
| JDC 14 | 0.961 | 0.774 | 1.253 | 1.008 | |
| | (0.281) | (0.257) | (0.574) | (0.532) | |
| JDC 15 | 1.616 | 1.499 | 0.415 | 0.486 | |
| | (0.442) | (0.430) | (0.231) | (0.276) | |
| JDC 16 | 1.646 | 1.524 | 0.849 | 0.946 | |
| | (0.477) | (0.482) | (0.431) | (0.504) | |
| JDC 19 | 1.004 | 0.989 | 1.215 | 1.306 | |
| | (0.231) | (0.237) | (0.434) | (0.486) | |
| JDC 22 | 1.858* | 1.519 | 0.547 | 0.572 | |
| | (0.462) | (0.409) | (0.262) | (0.296) | |
| JDC 24 | 0.820 | 0.732 | 1.245 | 1.296 | |
| JDC 1 | (0.191) | (0.178) | (0.442) | (0.481) | |
| Black Suspect Black Victim | | Reference Category | | | |
| White Suspect Black Victim | 1.224 | 1.024 | 0.974 | 0.986 | |
| | (0.481) | (0.481) | (0.769) | (0.792) | |
| White Suspect White Victim | 2.241*** | 2.609*** | 2.340** | 2.399** | |
| | (0.380) | (0.482) | (0.704) | (0.754) | |

| | | | | |
|---------------|----------|----------|----------|----------|
| Black Suspect | 2.212*** | 2.354*** | 2.397* | 2.069* |
| White Victim | (0.458) | (0.518) | (0.823) | (0.748) |
| B M Suspect | 5.227*** | 5.894*** | 5.482*** | 5.822*** |
| W F Victim | (1.299) | (1.566) | (1.983) | (2.197) |
| <i>N</i> | 1,822 | 1,601 | 1,822 | 1,601 |

Exponentiated coefficients; Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table A-2
Total Suspects and Total with a Charge of
First-Degree Murder by JDC and Race of Suspect and Victim

| JDC | | B-B | B-W | W-B | W-W | Total |
|-----|--------------------------------|------|------|------|------|-------|
| 1 | Total 1 st Degree | 183 | 63 | 5 | 42 | 293 |
| | Not 1 st Degree | 601 | 34 | 15 | 76 | 726 |
| | Total Suspects | 784 | 97 | 20 | 118 | 1019 |
| | Proportion | .233 | .649 | .250 | .356 | .288 |
| | Chi-Square=76.07; df=3; p<.001 | | | | | |
| 9 | Total 1 st Degree | 76 | 32 | 3 | 46 | 157 |
| | Not 1 st Degree | 189 | 7 | 5 | 50 | 251 |
| | Total Suspects | 265 | 39 | 8 | 96 | 408 |
| | Proportion | .287 | .821 | .375 | .479 | .385 |
| | Chi-Square=45.64; df=3; p<.001 | | | | | |
| 14 | Total 1 st Degree | 79 | 27 | 2 | 45 | 153 |
| | Not 1 st Degree | 224 | 20 | 15 | 119 | 378 |
| | Total Suspects | 303 | 47 | 17 | 164 | 531 |
| | Proportion | .261 | .643 | .118 | .274 | .288 |
| | Chi-Square=22.46; df=3; p<.001 | | | | | |
| 15 | Total 1 st Degree | 50 | 41 | 7 | 37 | 135 |
| | Not 1 st Degree | 298 | 41 | 21 | 166 | 526 |
| | Total Suspects | 348 | 82 | 28 | 203 | 661 |
| | Proportion | .144 | .500 | .250 | .182 | .204 |
| | Chi-Square=52.95; df=3; p<.001 | | | | | |
| 16 | Total 1 st Degree | 41 | 24 | 4 | 43 | 112 |
| | Not 1 st Degree | 151 | 20 | 6 | 66 | 243 |
| | Total Suspects | 192 | 44 | 10 | 109 | 355 |
| | Proportion | .214 | .545 | .400 | .394 | .315 |
| | Chi-Square=23.50; df=3; p<.001 | | | | | |
| 19 | Total 1 st Degree | 260 | 68 | 7 | 35 | 370 |
| | Not 1 st Degree | 859 | 63 | 14 | 87 | 1022 |
| | Total Suspects | 1118 | 131 | 21 | 122 | 1392 |
| | Proportion | .233 | .519 | .333 | .287 | .266 |
| | Chi-Square=50.16; df=3; p<.001 | | | | | |
| 22 | Total 1 st Degree | 62 | 42 | 12 | 93 | 209 |
| | Not 1 st Degree | 155 | 15 | 7 | 132 | 309 |
| | Total Suspects | 217 | 57 | 19 | 225 | 518 |
| | Proportion | .286 | .737 | .632 | .413 | .403 |
| | | | | | | |

Chi-Square=43.02; df=3; p<.001

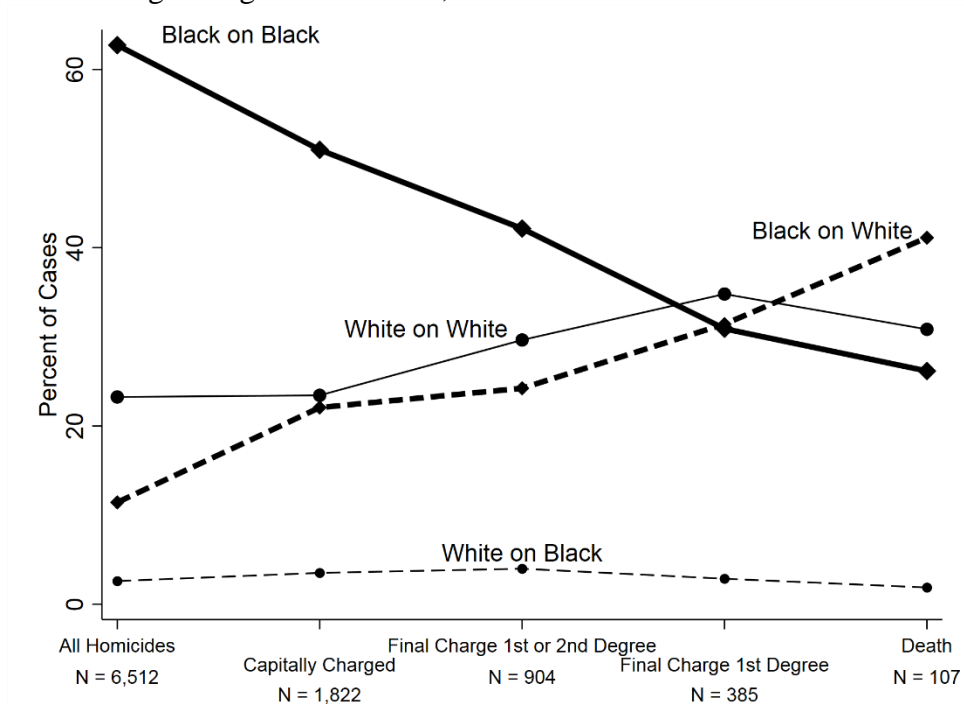
| | | | | | | |
|----|--------------------------------|------|------|------|------|------|
| 24 | Total 1 st Degree | 178 | 105 | 24 | 86 | 393 |
| | Not 1 st Degree | 680 | 142 | 22 | 391 | 1235 |
| | Total Suspects | 858 | 247 | 46 | 477 | 1628 |
| | Proportion | .207 | .425 | .522 | .180 | .241 |
| | Chi-Square=80.38; df=3; p<.001 | | | | | |

| | | | | | |
|------------------------------|------|------|------|------|------|
| Total 1 st Degree | 929 | 402 | 64 | 427 | 1822 |
| Not 1 st Degree | 3156 | 342 | 105 | 1087 | 4690 |
| Total Suspects in SHRs | 4085 | 744 | 169 | 1514 | 6512 |
| Proportion | .227 | .540 | .379 | .282 | .280 |

Chi-Square=314.46; df=3; p<.001

Note: The final set of data, with 1,822 cases charged capitally out of 6,512 total suspects, corresponds to Table 4 in the main Article. JDC numbers correspond to Parishes as follows: 1=Caddo; 9=Rapides; 14=Calcasieu; 15=Lafayette, Acadia, Vermillion; 16=Iberia, St. Martin, St. Mary; 19=East Baton Rouge; 22=St. Tammany, Washington; 24=Jefferson.

Figure A-1
 Racial Differences in the Capital Charging Process
 Part A. Original figure based on 1,822 observations:



Part B. Revised figure based on 1,601 observations with an SHR match:

