Race and the Death Penalty

In North Carolina

An Empirical Analysis: 1993-1997

Initial Findings – April 16, 2001

Principal Investigator
Dr. Isaac Unah
Principal Collaborator
Professor John Charles Boger

PRELIMINARY REPORT ON THE FINDINGS OF THE NORTH CAROLINA DEATH PENALTY STUDY 2001

By Dr. Isaac Unah and Professor John Charles Boger

April 16, 2001

1. The NC Death Penalty Study 2001

This is a preliminary report concerning a new study of capital punishment in the State of North Carolina that has been undertaken during the past nine months – the North Carolina Death Penalty Study 2001. It is the first major social scientific study of the death penalty conducted in North Carolina in over 20 years, and the first systematic look for patterns of racial discrimination in capital sentencing in the South employing data more recent than 1984. The report has been prepared by Dr. Robert Unah of the Department of Political Science of the University of North Carolina at Chapel Hill ("UNC"), with the assistance of Professor John Charles Boger of the UNC School of Law.

As we will elaborate below, the preliminary findings present clear and disturbing evidence that North Carolina's capital system in the 1990s continues to exhibit patterns of racial discrimination that cannot be explained by any of the legitimate sentencing considerations that have been sanctioned by North Carolina's legislative and judicial branches.

2. The Preliminary Findings of the New Study

Our principal finding to date is that racial disparities continues to plague North Carolina's capital punishment system in the 1990s—especially discrimination against defendants (of whatever race) whose murder victims are white. This finding is confirmed by numerous individual analyses we have conducted, employing different methods, and looking at various decision points throughout the capital charging and sentencing system.

Race matters in the initial decision whether to charge a defendant with first degree murder, second degree murder, or manslaughter; it matters in the decision whether to go forward to trial; it matters in the decision whether to seek a death sentence; it matters in the jury's life-or-death decision at the penalty phase of a capital trial.

Our first analysis looks at the frequency at which death sentences were imposed among all of the homicide cases that occurred in North Carolina during the 1993-1997 period. The overall death-sentencing rate in these cases is quite low—only 2.8%. Yet the death-sentencing rate among white-victim cases is nearly twice as high as among non-white victim cases (3.7% versus 1.9%). Moreover, looking beyond the race of the victim to that of the defendant, further racial disparities appear. When non-whites defendants murder white victims, the death sentencing rate is 6.4%; however, when white defendants murder white victims, the death sentencing rate falls by half, to 2.6%. When non-whites are both the defendant and the victim, death sentences dips even more, to only 1.7% of the cases.

Even when we refined our analysis, looking only at those cases that are "death eligible"— that is, those containing one or more factors designated by North Carolina law as "statutory aggravating circumstances that warrant imposition of a sentence of death, if the jury so chooses" (for example, the murder of a police officer, or a murder during an escape from prison)—we find that race continues to make a substantial difference in whether capital punishment is actually imposed. Capital punishment is imposed in 8% of all "death-eligible" white-victim cases, but the capital rate plummets to 4.7% in non-white victim cases. Moreover, just as in our earlier analysis, a wide disparity appears

when comparing the sentencing rate for non-white defendants who murder whites (11.6%) with that of white defendants who murder whites (6.1%).

These findings, however, do not constitute the heart of our analysis, since they do not take into consideration other legitimate considerations that might possibly work in these cases to explain the apparent racial outcomes. For example, it is possible that more defendants in white-victim cases have serious criminal records than do defendants in non-white-victim cases, or that homicides committed against white victims are more frequently accompanied by rape, armed robbery, torture, or other serious crimes. To consider these factors, we turned to multiple regression analysis—a widely accepted statistical technique regularly employed in research in a variety of scientific fields. We conduct a series of regression analyses, using the "logistic regression" method that the research literature recommends for such studies. The advantage of such analyses is that their ability to detect whether a particular factor—such as race—is having an independent effect on a decision—such as a death sentence—*even when other factors*, such as the presence of a prior criminal record, or an accompanying rape or robbery, *are simultaneously taken into account*.

Our regression analyses confirm that the race of the homicide victim is indeed playing a real, substantial, and statistically significant role in North Carolina's capital sentencing system, one that simply cannot be attributed to any legitimate sentencing factors. For example, our analysis of "death-eligible" cases reveals that the race of the victim was statistically significant in predicting who will receive a death sentence, and that the "death odds multiplier" is 3.5, indicating that, on average, the odds of receiving a death sentence are increased by a factor of 3.5 when the murder victim is white. Similar

analyses at different stages of the system—whether among all cases, only those cases that proceed to trial, cases where the prosecutor actively seeks a death sentence, or cases in which a jury must decide whether to impose a death sentence—all reaffirm this basic finding.

In sum, no matter what analyses we have performed, and no matter what stage of the process we have examined, the fact that the homicide victim is a white person turns out to operate as a "silent aggravating circumstance" that makes death significantly more likely to be imposed. While our study is not yet complete, we have confidence that these results do not represent a statistical construct or a fluke. Instead, they demonstrate that racial bias is a real and deeply troubling feature of North Carolina's capital punishment system in the 1993-1997 period.

3. The Design and Focus of the New Study

The NC Death Penalty Study examined homicides that occurred in the State of North Carolina during the five-year period between 1993 and 1997.[1]. We included within our study: (1) every case prosecuted by the State for a homicide committed during this period that eventually led to a death sentence; (2) every case that led to a life sentence after a penalty trial on the issue of life vs. death; (3) cases that led to a life sentence without a life-or-death penalty trial; and (4) a random sample of intentional homicide cases that were not prosecuted as first degree or capital murder cases. This comprehensive look at the universe of potentially capital cases allows us to make highly accurate analyses of exactly what patterns exist in these cases.

[1] We chose this period to obtain the most recent information available about North Carolina's sentencing patterns. Had we extended the study past the year 1997, the trials of many defendants would still have been incomplete at the time we began our data collection effort.

Working in consultation with Dr. David Baldus of the University of Iowa College of Law (the nation's leading expert on capital sentencing systems) during the spring and summer of 2000, we created an elaborate data collection instrument ("DCI"), for every case examined. The DCI is designed to collect data on over one hundred and thirteen (113) separate factors about each crime, including the charges brought by the State, the defendant's background and character, the circumstances of the crime (including whether it occurred during the commission of another felony or misdemeanor), the presence or absence of statutory aggravating factors or mitigating factors specified as important by the General Assembly, the presence or absence of *non*-statutory factors, the motives of the crime, the background and character of the victim, and the strength of the evidence. The DCI also includes a section for a narrative description of each case, permitting our data collectors to include unique factors about each case that could not by captured by the specific questions included in the DCI.

The data was collected in the fall and winter of 2000-2001 by UNC Law School graduates working under the direct supervision of a full-time project manager, a licensed attorney and member of the North Carolina bar. All of the data collectors underwent extensive training to assure that uniform methods were followed, and all questions about coding were relayed to the project manager, who consulted frequently with Unah and Boger to assure a consistent, conservative approach in data collection. The project manager regularly reviewed the DCI entries to ensure that data collectors were making impartial, uniform decisions as they entered the data.

Most of the data entered in the DCI's came directly from public records on file with the State of North Carolina –court records found in the Supreme Court of North

Carolina, the North Carolina Court of Appeals, or the state's trial courts, as well as the Office of the Chief Medical Examiner and the Department of Corrections. Advice and guidance on the use of these data sources came from public officials connected with North Carolina's Institute of Government, the Administrative Office of the Courts, the Department of Corrections, and other state criminal justice agencies.

4. The Historical Context of The New Study

Research conducted in North Carolina during the era of Jim Crow segregation in the 1940s indicated that racial discrimination was playing a regular, illegitimate role in two different respects: black defendants were more likely to receive death sentences for similar crimes than were white defendants, and those defendants (of whatever race) who murdered white victims were also more likely to receive death sentences.[2] Similar racial disparities were identified by careful researchers in other states,[3] and these features become one of the features condemned by several Justices who joined in striking all capital punishment statutes in 1972 in the *Furman v. Georgia* decision.[4]

After *Furman*, states such as North Carolina that reenacted capital sentencing statutes were on clear notice that it was unconstitutional for race to play any role in determining the appropriate punishment. Those who defended the new statutes assured the federal courts that the combined effects of the desegregation of formerly segregated

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[2] See Guy Johnson, *The Negro and Crime*, 217 **Annals** 92 (1941) (finding that, among 330 murder cases in five North Carolina counties between 1930 and 1940, 32 percent of all black defendants, but only 13 percent of white defendants, received death sentences when the victims were white; moreover, death sentences were imposed in 17.5 percent of all white victim cases, but only four-tenths of one percent of black victim cases); Harold Garfinkel, *Research Notes on Inter- and Intra-racial Homicides*, 27 **Social Forces** 369 (1949) (finding similar disparities among 821 cases in ten North Carolina counties between 1930 and 1941).

[3] *See, e.g.*, Marvin Wolfgang and Mark Riedel, *Race, Judicial Discretion, and the Death Penalty*, 407 **Annals** 119 (1973) (reporting on racial disparities observed in a study of over three thousand rape cases in eleven Southern jurisdictions from 1945 to 1965).

courtrooms, the coming of African Americans to capital juries, and the gradual desegregation of police, prosecutorial, and judicial ranks would lead to an end of racial bias in capital sentencing. The Supreme Court, in upholding several of the new, post-*Furman* capital statues in 1976, accepted these state assurances. It declined to conclude that the state's new, post-*Furman* sentencing procedures—including separate guilt and penalty phases to death penalty trials and lists of statutory "aggravating" and "mitigating" circumstances to guide the jurors' deliberations on the question of the appropriate punishment—would be insufficient to curb racial discrimination and other forms of arbitrariness that had characterized earlier capital punishment statutes.[5]

Soon thereafter, social scientists began to examine the actual operation of death sentences in the post-*Gregg* era to see whether the new statutes had successfully eliminated racial bias. Many reported that racial factors, especially discrimination based upon the race of the homicide victim, continued to play an impermissible role. Perhaps the most prominent of these research efforts involved two overlapping studies conducted by Professor David Baldus and his colleagues on the capital system of the State of Georgia from 1973 through 1979.[6] The results of these studies were introduced as part of a constitutional challenge, brought by Georgia death row inmate Warren McCleskey, an African American prisoner who alleged that his own race and that of his homicide victim (a white police officer) had been factors in his receipt of a death sentence, in violation of

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[4] 408 U.S. 238 (1972)(per curiam); *see, e.g., id.* at 249-57 (Douglas, J., concurring) (expressing concern that race may be playing an impermissible role in capital sentencing); *id*. at 293-95 (Brennan, J., concurring) (same); *id*. at 364-66, 388 (Marshall, J., concurring) (same).

[5] *See* Gregg v. Georgia, 428 U.S. 123, 255 (White, J., concurring).

[6] **David C. Baldus, George G. Woodworth, & Charles A. Pulaski, Jr., Equal Justice and the Death Penalty: A Legal and Empirical Analysis** (Boston: Northeastern University Press, 1990).

the Eighth Amendment's bar against "cruel and unusual punishment" and the Fourteenth Amendment's promise of the "equal protection of the laws."

After an extensive hearings in the lower federal courts, McCleskey's claims were reviewed by the Supreme Court of the United States, which rejected them in a sharply divided, 5-to-4 decision.[7] Justice Lewis Powell, writing for a majority of the Court, held that purposeful discrimination in capital sentencing—whether on the basis of the defendant's race or the victim's race—would violate the Equal Protection Clause, and likely the Eighth Amendment as well.[8] However, Justice Powell found that the Baldus study relied upon by Warren McCleskey did not offer sufficiently clear evidence that *his* capital jury had been influenced by racial considerations, and the Court suggested that statistical arguments about patterns of capital sentencing "are best presented to the legislative bodies" that "are better qualified to weigh and 'evaluate the results of statistical studies in terms of their own local conditions and with a flexibility of approach that is not available to the courts.'"[9] Since the *McCleskey* decision in 1987, federal courts have been closed to virtually all systemwide claims of racial discrimination.

During the post-*McCleskey* period, however, a substantial body of empirical social scientific studies has emerged to examine death sentencing patterns in several dozen states. In 1990, at the request of the United States Congress, the General Accounting Office, after evaluating this body of studies,[10] concluded:

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[7] McCleskey v. Kemp, 481 U.S. 279 (1987).
[8] *Id*. at 292; *id*. at 306-13.
[9] *Id*. at 319 (quoting *Gregg v. Georgia*, 428 U.S. 153, 186 (1976)).
[10] **United States General Accounting Office, Report to Senate and House Committees on the Judiciary: Death Penalty Sentencing** (February 1990).

> Our synthesis of the 28 studies shows a pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty after the *Furman* decision.
>
> In 82 percent of the studies, race of victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e., those who murdered whites were found to be more likely to be sentenced to death than those who murdered blacks. This finding was remarkably consistent across data sets, states, data collection methods, and analytic techniques. The finding held for high, medium, and low quality studies.[11]

5. The Unique Look Afforded by the New North Carolina Study

As Professor David Baldus has recently noted, most of the earlier studies focused on sentencing patterns either in the immediate post-*Furman v. Georgia* period after 1972 or in the early-to-middle 1980s.[12] The two leading modern studies of North Carolina's capital system that pattern. The first was an exemplary look at the first year (1977-78) of North Carolina's experience under its current statute, conducted by Professors Barry Nakell and Kenneth Hardy of UNC-Chapel Hill. That study found both race-of-defendant and race-of-victim effects at various stages of the capital charging and sentencing system during the new law's first year of implementation.[13]

A later study that relied upon data submitted by North Carolina law enforcement personnel to the Federal Bureau of Investigation in the years 1976 through 1980, found that "the race of the victim had sizable and statistically significant effects on the likelihood that a defendant would receive the death penalty." However, because only a

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[11] *Id*. at 5-6.

[12] *See* David Baldus et al., *Racial Discrimination and the Death Penalty in the Post*-Furman *Era: An Empirical and Legal Overview, With Recent Findings from Philadelphia*, 83 **Cornell Law Review** 1638, 1742-44 (listing all such studies by state and by dates of study).

[13] **Barry Nakell & Kenneth A. Hardy, The Arbitrariness of the Death Penalty** 158-59 (Philadelphia: Temple University Press, 1987) (finding that the race of the homicide defendant in North Carolina "had a significant effect when the seriousness of the case was controlled for" in determining the likelihood that a case would be charged and submitted to the jury as a death-eligible case, and that "[a]t the verdict stage,"

small number of defendants had received capital sentences at that time, "the race-of-victim effect became smaller and statistically insignificant" when the race of the defendant was added to the analysis.[14]

Since 1980, no thorough examination of North Carolina's capital sentencing system has been undertaken at all. Indeed, only five substantial studies have examined data in *any* state that includes sentencing decisions in the 1990s, and all five are from non-Southern states: California (1990-1994); Connecticut (1973-1994); Kentucky (1976-1991); New Jersey (1982-1996); and Pennsylvania (1983-1993).[15] None have examined data from cases as recent as those covered by the three latter years of the new North Carolina study (which spans the years from 1993-1997).

In September of 2000, the Charlotte *Observer* released an important, suggestive analysis noting that North Carolina's death row population varied substantially, in its racial composition, from what one might expect had the race of defendants and their homicide victims played no part in the capital sentencing determinations.[16] Yet the *Observer* study had no systematic access to crucial information about other, legitimate factors in North Carolina cases. Therefore, its analysis could ask, but could not fully answer, the critical question: whether it is racial bias, or other, legitimate sentencing considerations, that explain the apparent racial disparities on North Carolina's Death Row.

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the race of the victim emerged as a serious factor, since "a defendant charged with murder of a white was six times more likely to be convicted than a defendant charged with murdering a nonwhite").

[14] **Samuel R. Gross & Robert Mauro, Death & Discrimination: Racial Disparities in Capital Sentencing** 91 (Boston: Northeastern University Press, 1989).

[15] *Id*.

[16] *See* Ames Alexander & Liz Chandler, *Errors, inequities often cloud capital cases in the Carolinas*, Charlotte *Observer*, Sept. 9, 2000 (http://www.charlotte.com/observer/special/deathpenalty/day1/death.htm) (visited March 3, 2001).

The new North Carolina study gives us, at last, tools to answer specific questions about the racial justice of North Carolina's capital sentencing system, and more broadly, to reflect on whether Southern states, during the 1990s—many now boasting multi-racial juries and prosecution teams, and some significant fraction of African American judges—have finally shed their age-old tendency to employ racial considerations in imposing the penalty of death. The regrettable answer that emerges from this new study, as we noted in Part 2 above, appears to be that race remains important. Though condemned by federal and state constitutions and widely acknowledged to be illegitimate and shameful, racial considerations seem alive and well in recent capital sentencing decisions made in the Old North State.

Research Design and Analytical Methodology (Dr. Isaac Unah)

In this section of the report, we give details about the methodology used in generating the data and the analytical techniques on which we derived our research findings and conclusions. From the outset, it is important to emphasize that we were careful to employ sound methodological techniques; the use of sound techniques is the hallmark of a good social scientific study, especially one that tries to tease out various complex influences that contribute to the application of an important legal and political issue such as capital punishment. Our study is detailed and wide-ranging, with data covering most of the 100 counties of North Carolina. The methodological account given here is sufficiently detailed so that individuals interested in replicating or extending our study can do so.[17] We shall skip the unnecessary micro details and focus instead on providing information that will facilitate replication.

1. Developing A Data Collection Instrument (DCI)

The first major task was to develop a detailed data collection instrument (DCI) that contains information about various aspects of the homicide and about the individuals directly involved in or affected by the homicide. In doing so, we sought the advice of death penalty experts from the Institute of Government, and from defense counsel and prosecuting attorneys in North Carolina and around the country. We obtained the most extensive assistance from Professor David Baldus of the University of Iowa, the premiere national expert on the scientific analysis of the death penalty in the United States. With

[17] After our analysis is accepted for publication in a refereed journal, we will make the data available to interested parties. We also plan to deposit the data with the Inter-University Consortium for Political and Social Research (ICPSR) for full public access.

Professor Baldus' sage counsel, we generated questions that would allow us to obtain identifying and procedural information about each case, including the date of the offense, the charges brought, the status of the defense counsel and the judge, and whether the prosecutor sought the death penalty in the case. We also generated questions on the personal background characteristics of the defendant, including race, gender, age, employment status, and educational level, as well as the defendant's criminal history. Due to some institutional barriers, we were unable to obtain exhaustive information on the criminal background of most defendants. Two primary reasons accounted for this difficulty. First, many of the defendants had criminal records in other states to which we have no access. Second, many of the defendants had juvenile criminal records which are sealed and therefore not introduced at the criminal trial.

The DCI also contains extensive information about the victim(s). In addition to data on the demographic characteristics of the victim such as race, gender, employment status, and educational level, we obtained information about the relationship the victims had with the defendants that may inform the nature and circumstance of the homicide. For example, were the defendant and victim friends, acquaintances, intimates, family members, or strangers? The North Carolina Office of the Medical Examiner provided records that were particularly useful in obtaining information about homicide victims.

In order to analyze the impact of race in the imposition of the death penalty, we needed to examine the characteristics of the homicide itself. Therefore, we sought descriptive information about the crime scene and the manner of death. We were also interested in taking note of the extent to which special non-statutory circumstances surrounding the victim may aggravate the offense and thus make it more likely to receive a death

sentence. For example, was the victim defenseless due to advanced age or pregnancy or handicap? In addition to these non-statutory aggravating circumstances of the victim, we were also interested in accounting for the non-statutory aggravating features of the offense itself, including whether the offense involved multiple gunshot wounds, multiple victims, sniper killing etc. We also added questions to allow us to assess whether the offense was especially heinous, atrocious or cruel. Under North Carolina law, there are eleven statutory aggravating factors, one or more of which must be found before an individual may be given the death penalty. An example would be the murder of a police officer. Moreover, there are several mitigating factors that, when found, might render the crime less aggravated and thus less likely to merit a death sentence. An example would be that the defendant had no significant history of prior criminal activity. These statutory aggravating and mitigating factors played a prominent role in our analysis.

We were also interested in investigating the perceived role of ideology and electoral politics in the prosecution of criminal homicides. Therefore, we sought to obtain information on the temporal proximity of the criminal trial or plea to the district attorney's next reelection. Finally, the DCI contains hand-written descriptions of the facts of the case. These descriptions are particularly useful in forming opinion about various dimensions of the crime.

2. Universe of Cases and Inclusive Years of Coverage

Once the data collection instrument was constructed, the second important task was to decide upon a universe of cases to examine. Because of financial constraints, we decided to focus solely on homicides that resulted in a charge of murder, first degree murder, or second degree murder. We examined only homicides that occurred from January 1, 1993

to December 31, 1997. We chose this time period for three simple reasons. First, we wanted to provide reasonable continuity to studies conducted during the 1970s and 1980s on North Carolina capital sentencing system, by examining whether, in light of reforms undertaken by State officials to enhance racial inclusiveness (e.g., the individual efforts of prosecutors to be impartial and the inclusion of nonwhites in juries), the impact of race in death penalty prosecutions is but a memory. Secondly, we wanted a period of at least five years to allow us to capture any inter-temporal trends in the incidence of homicides in the state. Secondly, we chose a period five-year period as near to the present as possible so that all homicides that occurred during this period would have reached final trial resolution.

3. Criminal Justice Data from the Administrative Office of the Courts

We obtained our list of homicide cases from the North Carolina Administrative Office of the Courts (AOC) in Raleigh. One of the most methodologically challenging aspects of the project was working with AOC data. Due to problems associated with software incompatibility and AOC data archiving system, we needed to convert the AOC data into usable format. The AOC sent us a CD-ROM containing eleven data files. Working with the assistance of technicians at the Odom Institute for Research in the Social Sciences at UNC-Chapel Hill, we converted and merged these data files. From these we generated our statistical data.

4. Case Selection

We employed a multistage sampling technique to generate a portion of the cases analyzed. We were interested in examining the treatment of those cases that received the death penalty as well as those that did not. In short, we are interested in homicide case

outcomes. But in this report, we focus primarily on cases that have the potential to receive the death penalty.

We included the entire population of first degree homicide cases in which the defendant received a sentence of either life or death in North Carolina between 1993 and 1997 in the analysis. We relied upon multi-stage sampling technique to select the rest of the cases, including second degree murder cases that received a life sentence and all other cases that received a term of years.

What is the logic of multi-stage sampling and how was it implemented? Under multistage statistical sampling, cases are selected in stages to arrive at an overall nonzero probability that any given case in a predefined population or sub-population will be selected for analysis. We want to be very clear about our case selection method. As already noted, all cases that received a death sentence and all those that received a life sentence based upon a charge of murder or first-degree murder were included in the analysis. The rest were generated through multi-stage sampling. First, we selected a random sample of judicial districts based upon the suggestion of Professor David Baldus (the reason for sampling judicial districts will become clear shortly). Second, from the judicial districts thus selected, we randomly selected the remaining cases included in the study. We now discuss these two stages.

Stage 1. There are 44 judicial districts in North Carolina representing a total of 100 counties. Each judicial district is headed by a single district attorney who oversees the prosecution of cases and the exercise of prosecutorial discretion within the counties that comprise the judicial district. This is why we selected counties via judicial districts. While most judicial districts contain only one or two counties, several districts contain

five or more counties. For example, the second judicial district is composed of five counties: Beaufort, Hyde, Martin, Tyrell, and Washington counties. Similarly, the 24th judicial district is composed of Avery, Madison, Mitchell, Watauga and Yancey counties. Only the first judicial district contains seven counties, the highest number on record: Camden, Chowan, Currituck, Dare, Gates, Pasquotank, and Perquimans.

Because we aimed to obtain a broad geographic representation of the state, we randomly selected 26 judicial districts. These contained a total of 57 counties. The original AOC data contained several hundred duplicated records. While we were mostly interested in the final outcome of the case, the AOC inputs its data on each defendant at several stages of the criminal trial process, not necessarily the final disposition of the case alone. For example, decisions made at the district and superior court levels are recorded separately into the AOC data archive, thus creating the duplicates. These duplicates were expunged so that only a single record (i.e., case) remains for each defendant.

Stage 2. Overall, there were 3990 homicides charged during the study period. Our sample was based upon 1921 cases after separating all cases where the defendant was acquitted and all term of years cases from the unselected counties (n=1486). There were 99 cases where a defendant was sentenced to death and 303 cases were the defendant received a life sentence (based upon a first-degree murder charge). There were 181 second-degree murder cases that also received a life sentence. Using the internal random sampling procedure in SPSS (Statistical Package for Social Sciences), we selected an additional 100 cases (5.2%) from the 1921 cases and added these to the murder or first-degree murder cases that received a death and life sentence. We also randomly sampled 10% of the 181 second-degree murder cases that received a sentence of life; we are

finalizing data-gathering on these 18 cases and they will be included in subsequent analyses. Our current core analysis is therefore based upon 502 cases, representing 502 individual defendants. We created sample weights to reflect the differing sampling probabilities in the two sampling stages. Generally speaking, when the geographic source of each cases is considered, our individual cases came from 80 out of 100 counties of North Carolina. The distribution of the cases is given below.

Distribution of Cases (Unweighted)

Sentenced to death	=	99 (all cases included in analysis)
Sentenced to life	=	303 (first-degree murder charge only; all cases included)
Sentenced to life	=	181 (second-degree murder charge; 10% will be included)
Term of years & acquittals	=	1921 (100 cases randomly selected for analysis, 5.2%)
Other	=	1486 (removed through random selection of districts)
TOTAL	**=**	**3990**

5. Training Coders (UNC Law School Graduates)

We were fortunate to have the assistance of several bright and highly motivated recent graduates of the UNC-Law School. The principal investigator (Dr. Unah) has extensive experience in training coders in other projects he has undertaken. This, along with Professor Boger's extensive experience in capital punishment cases and the coders' own educational background and interest in the project greatly facilitated the training. We hired another UNC Law School graduate as project manager and devoted one to two weeks to training the coders and evaluating the data collection instrument. Following the training sessions, the coders were dispatched across the state to code cases and, where necessary, to speak with district attorneys and defense counsel that had handled death penalty cases to gather additional information. Coders were also instructed to keep inter-coder communication about coding protocols to a minimum but instead to direct questions to the project manager who in turn consulted regularly with the principal investigator.

6. Data Sources

The information gathered for this project came from numerous sources. We list those sources here:

1) Office of the Chief Medical Examiner in Chapel Hill and Charlotte NC. Files from these offices contain considerable initial information about the victim, including demographic factors such as race, sex, age and information about the probable cause of death, and a narrative summary of the circumstances surrounding the death and the nature of the wounds sustained by the victim. Each

victim has an OCME case number, which makes it relatively easy to track the information.

2) County court records. We examined court records, including indictments sheets; records on appeal; superior court files; jury instructions and verdict sheets for both guilt and penalty phases; defendants' briefs; State's briefs; issues and recommendations forms; and opinions from the North Carolina Court of Appeals and the North Carolina Supreme Court.

3) Police reports and arrest warrants

4) Police information network records of previous arrests and convictions

5) Interviews with prosecuting and defense attorneys

6) Newspaper/journalistic accounts of the homicide

7) Department of Corrections website. Used for verifying defendant's demographic characteristics and prior criminal record data.

7. Data Analysis

The analysis was performed in SPSS. The dependent variable, i.e., what we are interested in explaining is whether a defendant got the death penalty or not. Therefore, we want to account for the factors that might explain the imposition of capital punishment. Given the dichotomous nature of the dependent variable, we used maximum likelihood estimation technique (logistic regression) to derive our estimates of what is happening in the real world of murder prosecutions.

The selection of variables included in the models was guided by legal theory, common sense, and the empirical literature on the death penalty. For example, legal theory suggests that homicides that contain any one of the eleven aggravating factors listed on

the North Carolina death penalty statute can result in the application of that ultimate sentence. Therefore, we included in our analysis disaggregated measures that capture the presence of these statutory aggravating factors. Legal theory would also suggest that mitigating conditions listed in the North Carolina statute that make an offense less aggravated and thus less likely to result in a death sentence should be included in the analysis as well. In theory, only these aggravating and mitigating factors as well as other legally sanctioned conditions would explain or help us to predict whether a defendant accused of a homicide will receive the death penalty.

Unfortunately, this is not what is happening in the practical world of death penalty prosecutions. We have noticed in our study that beyond the legal factors discussed above, several other influences that should not play a role in the application of the death penalty ***do*** indeed influence the decision to apply the death penalty. These illegitimate factors include the race of the victim. A defendant is significantly more likely to get the death penalty if the victim is white rather than non-white, even after taking into account the statutory aggravating and mitigating factors approved by the North Carolina General Assembly for determining death worthiness.

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TABLE 1
DEATH-SENTENCING RATE AMONG ALL CASES
(North Carolina – Defendants in Offenses Committed from 1993 through 1997)

Defendant-Victim Comb.	**Death Sentences**		**All Cases**		**Percentage**
Non-White Def./White Vic	33	,	515	=	6.41%
White Def./White Vic.	33	,	1291	=	2.56%
Non-White Def./Non-White Vic.	29	,	1670	=	1.74%
White Def./Non-White Vic.	4	,	116	=	3.45%
Total	99	÷	3592	**Overall Rate:**	2.76%

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Victim Combinations	**Death Sentences**		**All Cases**		**Percentage**
White Victims	66	,	1806	=	3.65%
Non-White Victims	33	,	1786	=	1.85%
Total	99	÷	3592	**Overall Rate:**	2.58%

Difference	(White Victim – Non-White Victim)	1.80
Ratio	(White Victim ÷Non-White Victim)	1.97

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Defendant Combinations	**Death Sentences**		**All Cases**		**Percentage**
White Defendants	37	,	1407	=	2.63%
Non-White Defendants	62	,	2185	=	2.84%
Total	99	÷	3592	**Overall Rate:**	2.76%

Difference	(White Defendant – Non-White Defendant)	-0.21
Ratio	**(**White Defendant ÷ Non-White Defendant)	0.93

04/16/01

TABLE 2
DEATH-SENTENCING RATE AMONG DEATH-ELIGIBLE CASES
(North Carolina – Defendants in Offenses Committed from 1993 through 1997)

Defendant-Victim Comb.	**Death Sentences**		**Death-Eligible Cases**	**Percentage**
Non-White Def./White Vic	33	,	284	=11.62 %
White Def./White Vic.	33	,	541	= 6.10 %
Non-White Def./Non-White Vic.	29	,	616	= 4.71 %
White Def./Non-White Vic.	4	,	80	= 5.00 %
Total	99	÷	1521	**Overall Rate:** 6.51 %

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Victim Combinations	**Death Sentences**		**Death-Eligible Cases**	**Percentage**
White Victims	66	,	825	= 8.00 %
Non-White Victims	33	,	696	= 4.74 %
Total	99	÷	1521	**Overall Rate:** 6.51 %

Difference	(White Victim – Non-White Victim)	3.26
Ratio	(White Victim ÷ Non-White Victim)	1.69

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Defendant Combinations	**Death Sentences**		**Death-Eligible Cases**	**Percentage**
White Defendants	37	,	621	= 5.96 %
Non-White Defendants	62	,	900	= 6.89 %
Total	99	÷	1521	**Overall Rate:** 6.51 %

Difference	(White Defendant – Non-White Defendant)	-0.93
Ratio	(White Defendant ÷ Non-White Defendant)	0.87

TABLE 3

Thirty Six Variable Model Explaining the Application of Capital Punishment in North Carolina (*All Cases,* 1993–1997)			
	Description of Independent Variable	Coefficient	Death Odds Multiplier
	Race of defendant (nonwhite)	.706	2.027
	Race of victim (white)	1.215**	3.371
	Chronological age of defendant	.048**	1.049
	Hate as motive for homicide	.137	1.147
	Money as motive for homicide	.102	1.107
	Rage as motive for homicide	.226	1.254
	Multiple victims	.753**	2.123
	Chronological Age of victim	-.007	.993
	Female victim	.315	1.370
	Percent white in county of conviction	-2.178	.113
	Nonstatutory mitigating factors	-.049	.953
	Nonstatutory agg. circumstance of victim	-.868	.420
	Defendant and victim are family members/intimates	-.316	.729
	Prior homicide conviction record	2.963***	19.349
	Poisoning, lying in wait, imprisonment, torture, starvation	1.660**	5.260
	Willful, deliberate, and premeditated killing	1.622***	5.062
	Felony Murder	.499	1.646
	Time from trial to district attorney's next reelection	-.015	.985
	District attorney party affiliation	.336	1.399
	Statutory Aggravating Factors		
	Felony committed by a lawfully incarcerated person	1.713	5.546
	Defendant previously convicted of another capital felony	-1.683	.186
	Previously convicted of violent felony	2.473***	11.854
	Capital felony to avoid arrest	1.139	3.124
	Contemporary felony homicide	1.655***	5.231
	Pecuniary gain	.718	2.051
	Killing of law enforcement/judicial /fire official	2.692**	14.764

	Heinous, atrocious, or cruel	2.789***	16.260
	Great risk of death to more than one person	1.613**	5.017
	Violence against another victim	1.020**	2.772
	Statutory Mitigating Factors		
	No prior history of criminal activity	.558	1.747
	Under the influence of emotional disturbance	1.231**	3.426
	Accomplice to felony committed by another person	-9.668	.000
	Under domination of another person	-.638	.528
	Capacity to appreciate criminality impaired	-1.735***	.176
	Assessment of defendant's age at time of homicide	-1.004	.367
	Defendant aided in apprehension of another capital felon	.976	2.655
	Constant	-7.926***	.000

Number of cases = 451
-2xLog Likelihood = 198.02***
Predicted correctly = 90.5%
Reduction in error = 88%

** p < .05; *** p<.01 (Levels of statistical significance; all two-tailed tests)

TABLE 4

Thirty-Six Variable Model Explaining the Application of Capital Punishment in North Carolina (*Death Eligible Cases only*, 1993–1997)		
Description of Independent Variables	Coefficient	Death Odds Multiplier
Race of defendant (nonwhite)	.697	2.008
Race of victim (white)	1.243**	3.465
Chronological Age of defendant	.054**	1.055
Hate as motive for homicide	.242	1.274
Money as motive for homicide	.036	1.037
Rage as motive for homicide	.251	1.285
Multiple victims	.665*	1.944
Chronological Age of victim	-.006	.995
Female victim	370	1.448
Percent white in county of conviction	-1.752	.252
Nonstatutory mitigating factors	-.048	.954
Nonstatutory aggravating circumstance of victim	-.913	.401
Defendant and victim are family members/intimates	-.378	.685
Prior homicide conviction record	2.965***	19.404
Poisoning, lying in wait, imprisonment, torture, starvation	1.961***	7.104
Willful, deliberate, and premeditated killing	1.685***	5.394
Felony murder	.527	1.694
Time from trial to district attorney's next reelection	-.052	.949
District attorney's party affiliation	.234	1.264
Statutory Aggravating Factors		
Felony committed by a lawfully incarcerated person	1.715	.441
Defendant previously convicted of another capital felony	-1.828	.161
Previously convicted of violent felony	2.098***	8.153
Capital felony to avoid arrest	1.069	2.913
Contemporary felony homicide	1.413***	4.110
Pecuniary gain	.558	1.746

	Killing of law enforcement/judicial officer/fireman	2.229**	9.286
	Heinous, atrocious, or cruel	2.534***	12.604
	Great risk of death to more than one person	1.469*	4.345
	Violence against another victim	.981**	2.668
Statutory Mitigating Factors			
	No prior history of criminal activity	.348	1.417
	Under the influence of emotional disturbance	.988**	2.686
	Accomplice to felony committed by another person	-9.806	.000
	Under domination of another person	-.511	.600
	Capacity to appreciate criminality impaired	-1.723***	.179
	Consideration of defendant's at time of homicide	-1.023	.360
	Aided in apprehension of another capital felon	.724	2.062
	Constant	-7.668***	.000
Number of cases = 294 -2xLog Likelihood = 187.31*** Predicted correctly = 86% Reduction in error = 79% * p <.10; ** p <.05; ***p<.01 (Levels of statistical significance; all two-tailed tests)			

TABLE 5

Thirty Six Variable Model Explaining the Application of Capital Punishment in North Carolina (*Cases where prosecutor sought death penalty*, 1993–1997)		
Description of Independent Variables	Coefficient	Death Odds Multiplier
Race of defendant (nonwhite)	.578	1.783
Race of victim (white)	1.104**	3.016
Chronological Age of defendant	.035	1.036
Hate as motive for homicide	.267	1.307
Money as motive for homicide	.078	1.081
Rage as motive for homicide	.340*	1.405
Multiple victims	.564	1.758
Age of victim	-.005	.995
Female victim	.358	1.431
Percent white in county of conviction	-1.346	.260
Nonstatutory mitigating factors	-.057	.945
Nonstatutory agg. circumstance of victim	-1.784	.168
Defendant and victim are family members/intimates	-.152	.859
Prior homicide conviction record	2.996***	20.001
Poisoning, lying in wait, imprisonment, torture, starvation	2.037**	7.671
Willful, deliberate, and premeditated killing	1.427**	4.168
Felony Murder	.237	1.268
Time from trial to district attorney's next reelection	-.001	.999
District attorney party affiliation	.020	1.021
Statutory Aggravating Factors		
Felony committed by a lawfully incarcerated person	2.091	8.090
Defendant previously convicted of another capital felony	-2.218	.109
Previously convicted of violent felony	1.811***	6.116
Capital felony to avoid arrest	1.069	2.911
Contemporary felony homicide	1.425**	4.159
Pecuniary gain	.779	2.178
Killing of law enforcement/judicial /fire official	4.341**	76.781

	Heinous, atrocious, or cruel	2.567***	13.028
	Great risk of death to more than one person	1.692**	5.432
	Violence against another victim	.996*	2.707
Statutory Mitigating Factors			
	No prior history of criminal activity	.107	1.113
	Under the influence of emotional disturbance	.630	1.877
	Accomplice to felony committed by another person	-9.882	.000
	Under domination of another person	-.920	.399
	Capacity to appreciate criminality impaired	-1.654**	.191
	Consideration of defendant age at time of homicide	-1.339	.262
	Defendant aided in apprehension of another capital felon	.457	1.579
	Constant	-6.239***	.002

Number of cases = 262
-2xLog Likelihood = 169.36***
Predicted correctly = 85.5%
Reduction in error = 77%

* p < .10; ** p < .05; *** p<.01 (Levels of statistical significance; all two-tailed tests)

TABLE 6

Thirty Six Variable Model Explaining the Application of Capital Punishment in North Carolina (*Cases at penalty phase,* 1993–1997)		
Description of Independent Variables	Coefficient	Death Odds Multiplier
Race of defendant (nonwhite)	.360	1.434
Race of victim (white)	1.025*	2.787
Chronological Age of defendant	.037	1.038
Hate as motive for homicide	.317	1.372
Money as motive for homicide	.007	1.007
Rage as motive for homicide	.326	1.385
Multiple victims	.525	1.690
Chronological Age of victim	-.004	.997
Female victim	.374	1.454
Percent white in county of conviction	-1.401	.246
Nonstatutory mitigating factors	-.061**	.941
Nonstatutory agg. circumstance of victim	-1.835*	.160
Defendant and victim are family members/intimates	-.440	.644
Prior homicide conviction record	2.971***	19.510
Poisoning, lying in wait, imprisonment, torture, starvation	1.711	5.536
Willful, deliberate, and premeditated killing	.669	1.952
Felony Murder	-.268	.765
Time from trial to district attorney's next reelection	-.044	.957
District attorney party affiliation	-.048	.953
Statutory Aggravating Factors		
Felony committed by a lawfully incarcerated person	1.776	5.907
Defendant previously convicted of another capital felony	-2.169	.114
Previously convicted of violent felony	1.427***	4.167
Capital felony to avoid arrest	1.024	2.783
Contemporary felony homicide	1.528***	4.607
Pecuniary gain	.742	2.100
Killing of law enforcement/judicial /fire official	4.175**	65.066

	Heinous, atrocious, or cruel	2.364***	10.630
	Great risk of death to more than one person	1.547*	4.696
	Violence against another victim	.872*	2.393
Statutory Mitigating Factors			
	No prior history of criminal activity	-.066	.936
	Under the influence of emotional disturbance	.445	1.560
	Accomplice to felony committed by another person	-9.272	.000
	Under domination of another person	-.889	.411
	Capacity to appreciate criminality impaired	-1.753***	.173
	Consideration of defendant's age at time of homicide	-1.400*	.246
	Defendant aided in apprehension of another capital felon	.412	1.510
	Constant	-4.278**	.014

Number of cases = 226
-2xLog Likelihood = 160.92***
Predicted correctly = 83%
Reduction in error = 71%

*p<.10; ** p < .05; *** p<.01 (Levels of statistical significance; all two-tailed tests)

TABLE 7

Table 7. Summary of Findings with Regard to the Importance of the Race of the Victim, Based upon a Thirty Six Variable Model Explaining the Application of Capital Punishment in North Carolina (1993-1997)

Stage of Prosecutorial Process	*Description*	*Number of Cases*	*Odds of Receiving Death Sentence**	*Level of Statistical Significance*
All homicide cases	Race of victim (white)	451	3.4	.02
All homicide cases that came to trial	Race of victim (white)	338	4.3	.01
All homicide cases in which defendant was eligible for death penalty	Race of victim (white)	294	3.5	.02
All homicide cases in which prosecutor asked for the death penalty	Race of victim (white)	262	3.0	.05
All homicide cases that came to trial and reached penalty phase	Race of victim (white)	226	2.8	.07

* These numbers represent the odds of receiving a sentence of death if the victim was white as compared with the odds of receiving a death sentence if the victim was nonwhite. Thus in the all homicide category the odds are, on average, 3.4 times greater that a defendant would receive the death sentence if the homicide victim was white rather than nonwhite, even after controlling for 35 other factors.