

Capital and Non-Capital Murder Prosecutions in East Baton Rouge Parish, Louisiana, 2000–2016

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Abstract

This analysis considers all first- and second-degree murder indictments with death-eligible defendants in East Baton Rouge Parish from 2000 through 2016, 550 cases. It assesses the legally relevant and legally irrelevant factors that are associated with the state's decision to seek the death penalty, which occurred in 35 cases. Results show several patterns that suggest the administration of the death penalty does not meet relevant constitutional standards. First, over 70 percent of all murders were at least potentially death-eligible, due to the broad list of crimes included in Louisiana law. This clearly indicates that the death penalty is not narrowly targeted only at the most egregious crimes and the most deserving offenders. Second, many ostensible aggravating circumstances in fact appear to reduce, rather than increase, the odds of a capital prosecution, in particular drive-by shootings and drug-related crimes. On the other hand, a few particular aggravators, such as elderly victims and child victims, have much higher rates of capital prosecution than other aggravators. Third, legally irrelevant factors, especially the race and gender of the victims of the crime, affect the state's decision to seek death. Fourth, while there are some consistent patterns, many cases appear unexplained by the underlying configuration of the case: the number of aggravators, the number of victims, or particular aggravators. These patterns appear through descriptive statistics as well as through a number of logistic regressions. The results demonstrate empirically that the use of the death penalty in East Baton Rouge Parish fails to sufficiently narrow the class of offenders eligible for the death penalty, that it harbors considerable arbitrariness, and that it is plagued by racial and gender bias, particularly with regards to the victims of crime.

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Introduction

This analysis concerns level of prosecution and sentencing of first- and second-degree murder cases in East Baton Rouge (EBR) Parish, Louisiana, based on analysis of 550 defendants indicted for murder there from 2000 through 2016, a complete list of all murders in the Parish during that time period for which the offender could have faced the death penalty.¹ The data is compiled from the EBR court connect system, law enforcement records, grand jury minutes for the period of 2000 through 2016, reported appeal decisions, the EBR Coroner's Office, the EBR District Attorney's Office, and media reports. Data was compiled by the Capital Appeals Project, and consists of a spreadsheet listing 611 cases and including 63 variables as listed in Appendix A. These show the characteristics of the defendant, the victims, the charges filed, results of the trial or plea, and whether or not various aggravators were associated with the crime. After excluding from the analysis cases where the offender was a juvenile and the crime occurred after the U.S. Supreme Court's *Roper* decision, there are 550 cases. Overall, across the 550 murder cases, the State filed a Notice of Intent to Seek the Death Penalty in 35 cases; however, only 12 were prosecuted capitally, reaching the penalty phase of a trial. Of those 12, a jury returned a death sentence in only half of these cases.² Of the remaining murder cases, 53 cases were prosecuted as non-capital first-degree murder cases and 462 faced second-degree or lower charges.³ The associated percentages are thus: sentenced to death: 1%; faced a penalty phase capital trial: 2%;

¹ Because the U.S. Supreme Court mandated in *Roper v. Simmons*, 543 U.S. 551 (2005), that offenders under age 18 at the time of the crime were not eligible for capital punishment, we have excluded 61 cases where the offender was below age 18 and the crime occurred after the date of *Roper*: March 1, 2005. The full list of cases including these ineligible defendants was 611.

² The State filed a Notice of Intent to Seek the Death Penalty in 36 cases; however, 24 of these cases did not proceed to the penalty phase and were therefore non-bifurcated, non-capital.

³ One case, Cedric Matamoros, was not prosecuted because the defendant died prior to his trial, though the state sought death in the case.

faced initial capital prosecution: 6%; faced non-capital first degree prosecution: 10%; faced second-degree or lower charges: 84%.

The Constitutional Questions

Many constitutional questions surround the use of the death penalty but this analysis will focus on two questions. First is the question of whether a state's death penalty narrow targets the punishment on the most serious crimes and the most deserving offenders.⁴ Related and connected to this question is that of whether a "substantial proportion" of such offenders are in fact sentenced to death.⁵ The Court reasoned that if unfettered discretion was the problem in the pre-*Furman* death penalty system, leading to its arbitrary and capricious application, then a solution could be to target certain crimes only, and to ensure that a large share of those convicted of those crimes, but no others, faced the punishment. This would limit discretion and ensure that caprice, arbitrariness, and potential biases would be limited, if not entirely eliminated.

The second question of interest is an empirical one of whether a state's death penalty decision is driven by legally relevant factors such as the nature of the crime, or by legally irrelevant factors such as the race, gender, or social class characteristics of a particular crime, whether these relate to the offender(s) or the victim(s). A large literature has developed assessing the statistical patterns of use of the death penalty designed to test these ideas, and this report will do so as well.

"Narrow Targeting" and "Substantial Proportion"

The Court ruled existing capital statutes unconstitutional for many reasons in its 1972 *Furman v. Georgia* decision, but a large part of the concern was the capricious and arbitrary nature

⁴ *Gregg v. Georgia* requires that the types of murders for which the death penalty may be imposed become "narrowly defined and are limited to those which are particularly serious or for which the death penalty is peculiarly appropriate." 428 U.S. 153, 222 (1976) (J. White, concurring).

⁵ *Id.* ("it becomes reasonable to expect that juries—even given discretion not to impose the death penalty—will impose the death penalty in a substantial portion of the cases so defined").

of the punishment; there appeared to be no rhyme or reason to it. *Furman v. Georgia*, 408 U.S. 238 (1972). An important element of the justice’s rulings in their 1976 *Gregg v. Georgia* decision affirming that Georgia’s revised law was narrow targeting of only a narrow class of crimes, and reduced discretion. *Gregg v. Georgia*, 428 U.S. 153 (1976). Justice White noted that Georgia had narrowly targeted its revised statute on those crimes “which are particularly serious or for which the death penalty is peculiarly appropriate”. *Id.* at 222. Further, he argued, “it becomes reasonable to expect that juries... will impose the death penalty in a substantial portion of the cases so defined. If they do so, it can no longer be said that the penalty is being imposed wantonly and freakishly or so infrequently that it loses its usefulness as a sentencing device. There is, therefore, reason to expect that Georgia’s current system would escape the infirmities which invalidated its previous system under *Furman*.” SCOTT PHILLIPS & ALENA SIMON, IS THE MODERN AMERICAN DEATH PENALTY A FATAL LOTTERY? TEXAS AS A CONSERVATIVE TEST, *Laws* 2014, 3, 1: 85–105, 87 (citing *Gregg*, 428. U.S. at 222). A reliable system would be one that targets, and imposes, the punishment. In *Furman*, the Court had rejected a statutory scheme that it found to declare many crimes death-eligible, but to impose it in only a small fraction of the eligible cases: as if “struck by lightning.” FRANK R. BAUMGARTNER ET AL, DEADLY JUSTICE: A STATISTICAL PORTRAIT OF THE DEATH PENALTY, (New York: Oxford University Press, 2018) (quoting *Furman*, U.S. 408 at 309 (J. Stewart, concurring)). (see Baumgartner et al. 2018, chapter 1). Of course, the Court gave no numeric guidance on exactly what share of murders might be death eligible while still meeting the narrow targeting standard, nor how high the share of such offenders need be sentenced to death before the state meets the “substantial proportion” bar. However, the evidence below will show that the East Baton Rouge Parish death penalty system has met no reasonable interpretation of these standards.

Legally Relevant and Legally Irrelevant Factors

In demanding a more reliable and narrowly targeted death penalty system, the Court's goal was to reduce the capricious, arbitrary, or potentially biased use of the punishment. Legally relevant factors such as killing a peace officer, killing while attempting to escape from prison, killing multiple victims, or particularly atrocious crimes such as those involving torture would guide the state's decision to seek death, as well as the jury's decision of whether to apply it. If the penalty was inflicted only in those cases where these relatively few targeted crimes had occurred, and if a substantial proportion of such offenders received the penalty, then there would be little room in the system for the impact of race, social class, or other legally irrelevant factors that might generate bias or discrimination in the system. Thus, if the death penalty is highly focused on crimes with only certain relevant characteristics, an analysis of its patterns of application should logically show that it is used in a high percentage of cases with enumerated legally relevant factors, and that there are no patterns of increased usage for certain demographic, racial, gender, social class, or other groups (either among the victims or the offenders). Such patterns would show the continued impact of legally irrelevant factors, which were part of the problem leading to the invalidation in *Furman* and which the new system was designed to avoid. (For a fuller review of these issues, see Baumgartner et al. 2018, chapter 5).

Proportionality Review

Finally, the Court mandated that every death sentenced be reviewed by state appellate courts and charged each state's higher courts with ensuring "proportionality" across the cases in its jurisdiction. That is, the state high courts were charged with ensuring that individuals were not sentenced to death in one locality for crimes that would not have led to a death penalty in another. This important mission was designed to ensure that the penalty was indeed narrowly targeted and imposed on a "substantial proportion" of offenders guilty of those crimes. If an individual was

sentenced to death in unusual circumstances, or was among the only so sentenced for a particular crime, this would fail the “substantial proportion” test, and the appellate courts are expected to reverse.

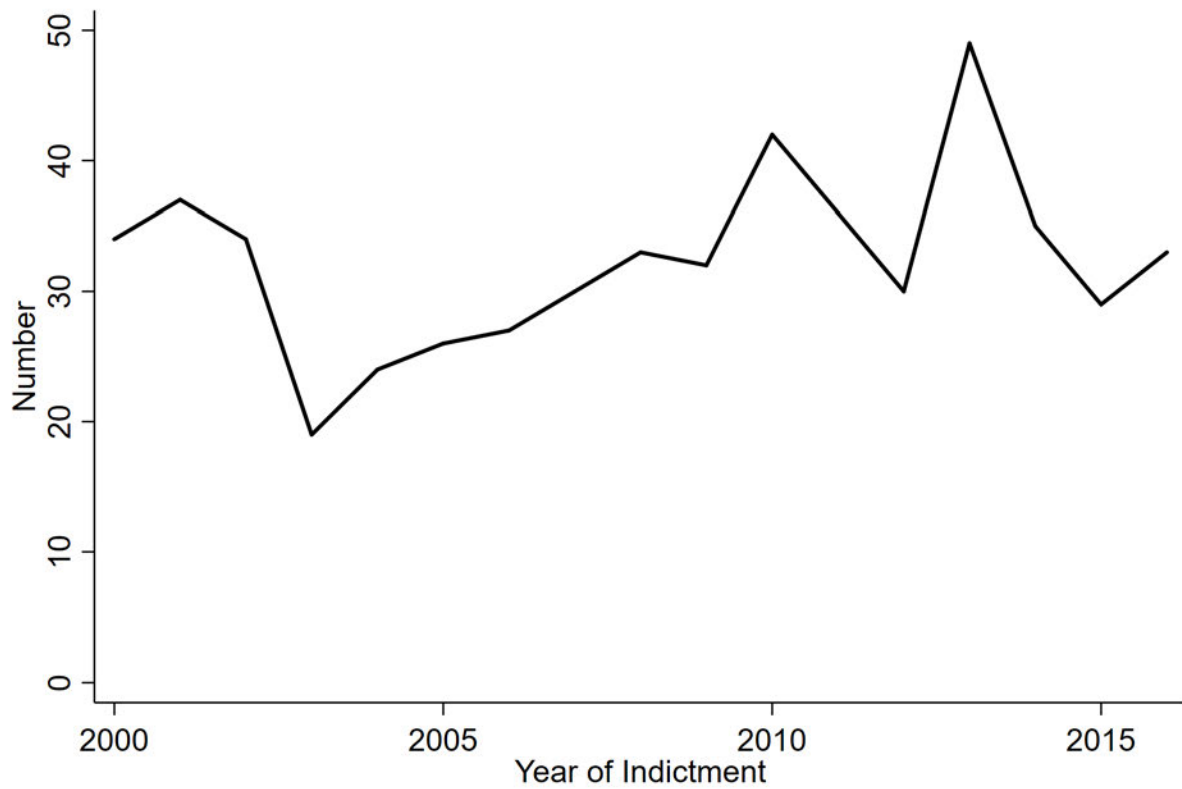
This short review makes clear that the Court was concerned with the possible capricious, arbitrary, and biased use of the death penalty, and that it accepted the proposal that narrow targeting could potentially solve the problems it saw and rejected in *Furman*. Therefore, the following analysis focuses on the empirical patterns apparent in the use of the death penalty in East Baton Rouge Parish. It provides powerful evidence that the system fails all of these tests.

Background on Murders in East Baton Rouge Parish, 2000–2016

During the period of study, East Baton Rouge Parish has seen from 19 to 49 murder indictments per year.⁶ This section presents the numbers per year and the characteristics of the offenders and victims, providing background on which the analysis is based. Figure 1 shows the number of murder indictments per year. Note that indictments typically follow closely the year of the crime (63 percent are in the same year; 28 percent in the following year, 2.4 percent two years later). Given that the database consists of all indictments during the 2000 to 2016 period, the vast bulk of the crimes come from that time as well, though a few are from the late 1990s as the note to Figure 1 explains.

⁶ Recall that we exclude juvenile offenders post-*Roper*.

Figure 1. Indictments per year



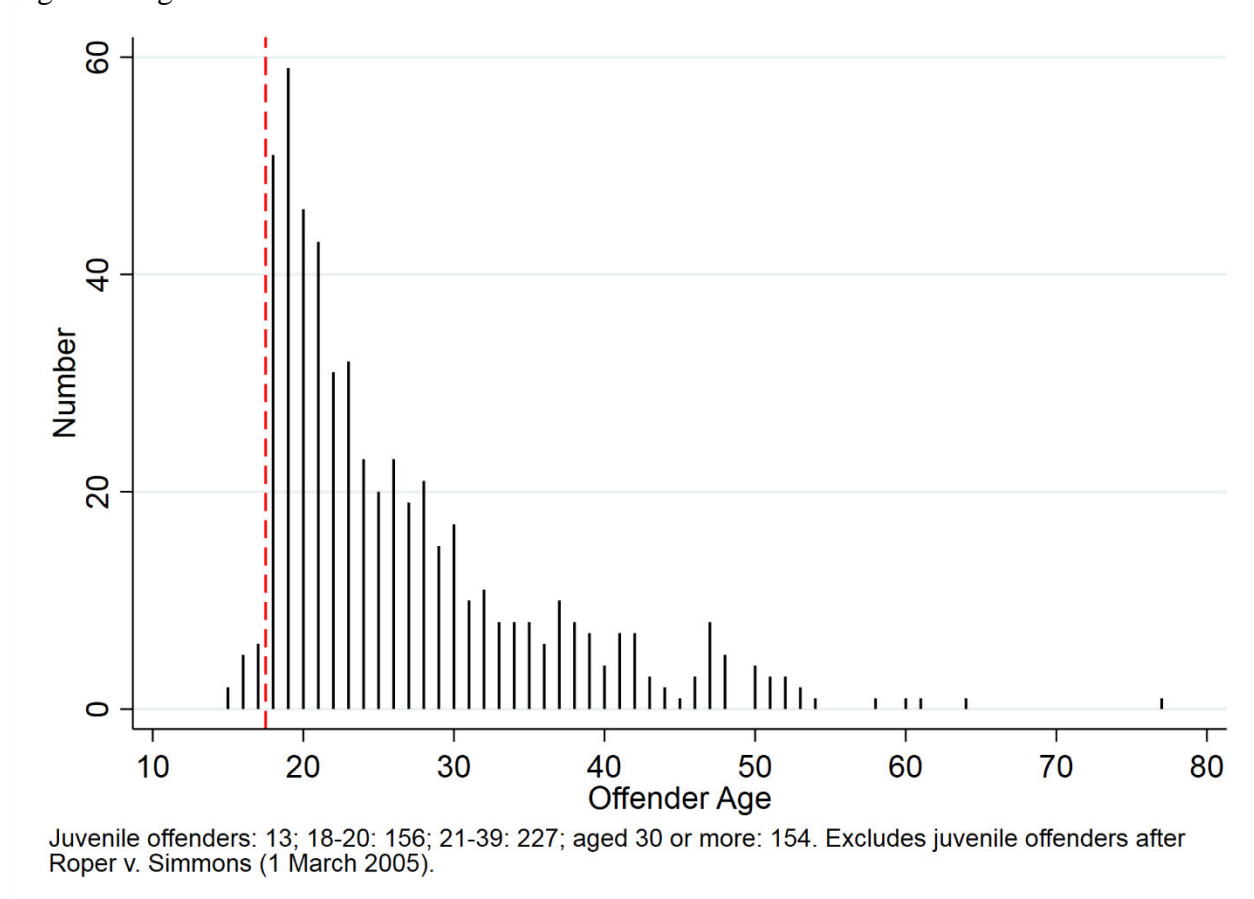
Note: N = 550. Some crimes were committed in years before the indictment: 9 in 1999, 4 in 1998, 1 in 1997, 1 in 1985, and 2 in 1984. Date of crime is missing for 3 cases.

Table 1 shows the race and gender of those charged, and Figure 2 shows their ages.

Table 1. Offender Race and Gender

	Number	Percent
Black	474	86.18
White	57	10.36
Other	8	1.45
Race unknown	11	2.00
Male	505	91.82
Female	42	7.64
Gender unknown	3	0.55
Total offenders	550	100.00

Figure 2. Age of Offenders



Offenders are overwhelmingly male, over 90 percent so, and predominantly African American. Figure 2 shows they tend to be young, with a median age of 23. The red line in Figure 2 separates juvenile offenders from others; there were 13 juvenile offenders during the period before March 1, 2005, when the U.S. Supreme Court ruled such offenders were ineligible to be

considered for death. (There were 61 juvenile offenders after that date, and they have been excluded from the analysis here.)

Table 2 shows the number, racial, and gender characteristics of the victims from the crimes connected to these offenders.

Table 2. Number and Characteristics of Victims

Number of Victims per Offender	Number	Percent
One	503	91.45
Two	40	7.27
Three	2	0.36
Four	4	0.73
Five	1	0.18
Total offenders	550	100.00
Total victims	607	

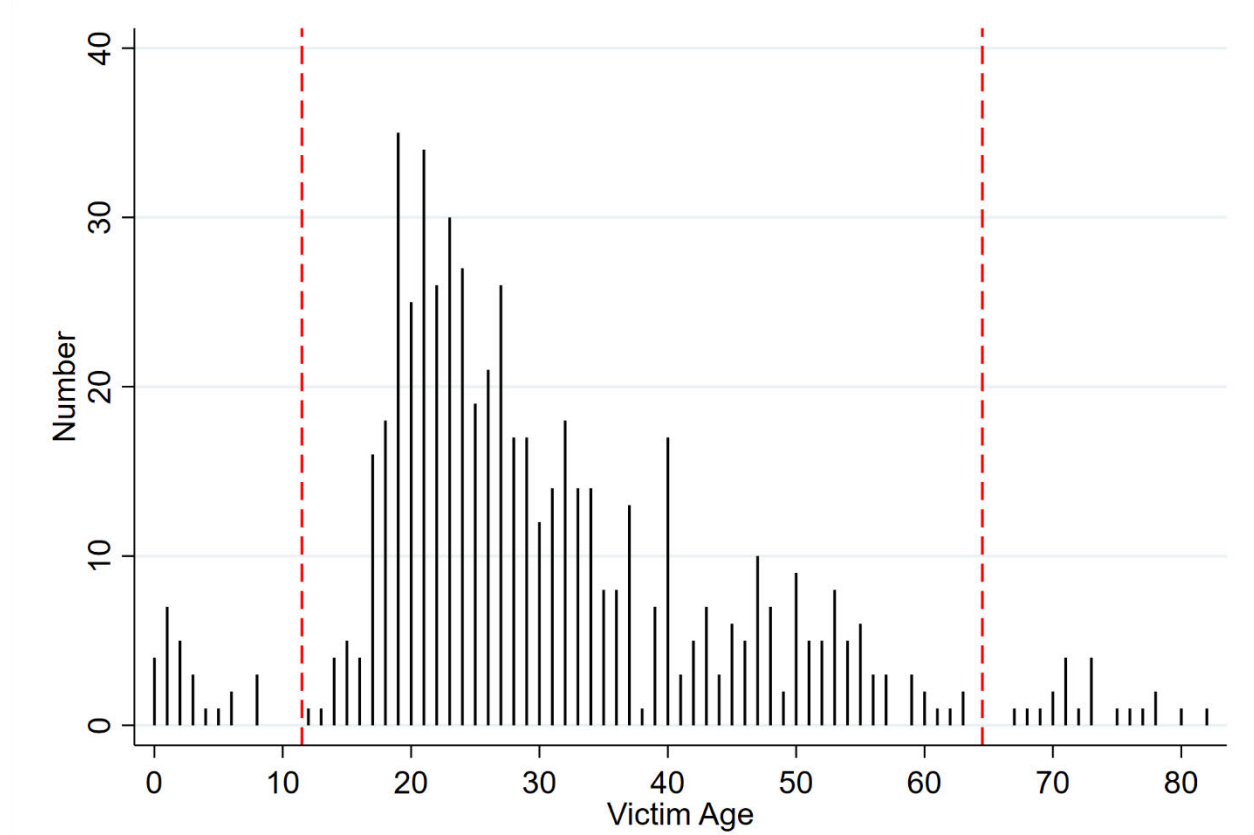
Race and Gender of Victims		
White	82	14.91
Black	406	73.82
Male	452	82.18
Female	110	20.00
White female	24	4.36
Black male	341	62.00

Note: Numbers report victims per offender. Some offenders had more than one victim. Therefore, the percent of offenders with male and female victims sums to slightly over 100 percent. We focus on Black and White victims here because there are too few victims of other races for reliable analysis.

The vast majority of crimes involve male victims (82 percent), Black victims (74 percent), and a majority involve Black male victims (62 percent). White female victims are present in only four percent of all the cases. (There were a total of 25 such victims, as one case involved two White female victims.) The vast majority of murder offenders have just one victim, but one crime involved as many as five victims.

Figure 3 shows the distribution of ages across the victims. Of the 600 victims whose ages are known, the median age is 27.

Figure 3. Age of Victims.



Victims under 12: 26; 12-17: 31; 18-29: 295; 30-64: 227; 65 and older: 21.

Like offenders, victims tend to be young. Since Louisiana defines murders involving victims under 12 or over 64 as legal aggravators rendering the offender eligible for capital punishment, the dotted red lines demarcate those age limits. There were 47 victims rendering their killers eligible for the death penalty under this aggravator; 26 youthful victims and 21 elderly ones.

Most crimes occur within racial groups, as Table 3 illustrates.

Table 3. Offender-Victim Racial Combinations

Offender Race	Victim Race	Number	Percent of Cases
Black	Black	388	70.55
White	White	33	6.00
Black	White	47	8.55
White	Black	11	2.00
Black Male	White Female	13	2.36

Note: Victim race refers to any victim from a given offender. The number of cases, excluding those of other or unknown races, is 550. So, the first row of the table shows that 390 Black offenders had at least one Black victim; they may have had White victims as well.

Fully 70 percent of all murders involve Black offenders and Black victims. Fewer than 10 percent of the cases involved “cross-racial” murders, whether Black-on-White, or White-on-Black. Table 2 showed that the vast majority of victims are male. Table 3 also indicates that among the Black-White murders, just 13 cases involved Black male offenders with a White female victim.

Table 4 shows separately how Black and White offenders tend overwhelmingly to have victims from their own racial group.

Table 4. Race of Victim for White and Black Offenders

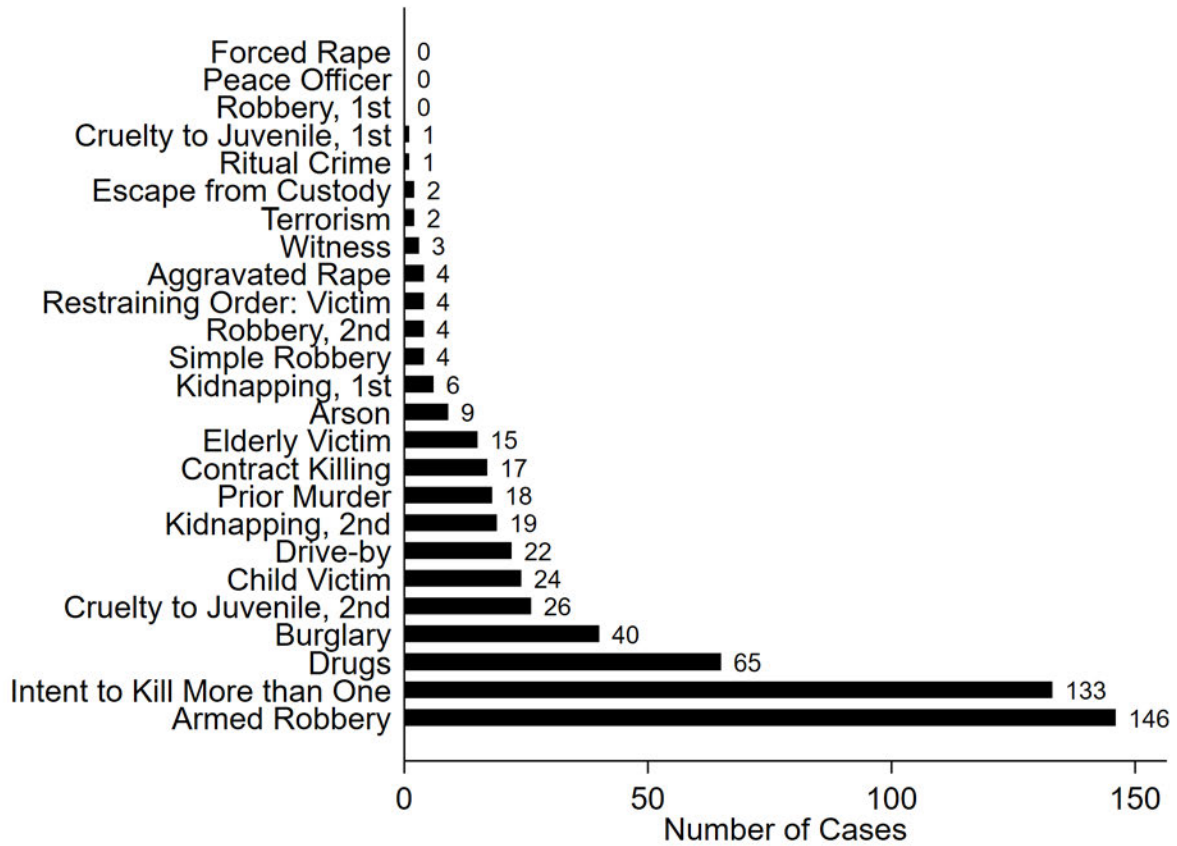
Offender Race	White Victims		Black Victim		Total Offenders
Black	47	9.92%	388	81.86%	474
White	33	57.89%	11	19.30%	57
Unknown Race	7	36.84%	2	10.53%	19
Total Victims	82		406		550

Note: Rows do not sum to 100% because of victims of other or missing races.

Among Black offenders, over 80 percent of their victims are also Black. Among White offenders, Black victims are present in less than 20 percent of the cases.

Louisiana defines a number of death-eligible crimes and aggravating circumstances, as shown in Appendix C. Figure 4 shows the distribution of aggravating factors across the cases reviewed here.

Figure 4. Frequency of Aggravating Factors



The most common aggravating factors are, by far, armed robbery and intent to kill more than one person, each present 130 times or more. Drug offenses are also very common, appearing 65 times, followed by burglary, and so on as the chart makes clear. Across the 516 defendants where we had information about aggravating circumstances, over 70 percent had at least one aggravator: 138 had none and 378 had one or more.⁷ Of these, 229 cases had one aggravating circumstance; 117 cases had two; 26 cases had three; and six offenders had four aggravators.

The broad range of aggravating factors laid out in Louisiana law creates a dual concern about capricious or arbitrary use of capital punishment. At the beginning of the criminal investigation, as at least two-thirds of murders render the offender susceptible to a capital

⁷ There was not enough data for 34 cases to determine whether an aggravating circumstance existed.

prosecution, the District Attorney is given broad discretion to seek death or not, as they see fit. After the trial of guilt, jurors are then given the task of determining whether the alleged aggravating factor has been proven beyond a reasonable doubt. These aggravators include many (such as the three most common listed in Figure 4, drug-related crimes, crimes involving danger to more than one victim, and armed robberies) which are relatively common across large percentages of murder cases. The “especially heinous, atrocious or cruel” clause adds an additional element of discretion overlooked in this analysis because it is so difficult to discern exactly which crimes would qualify.

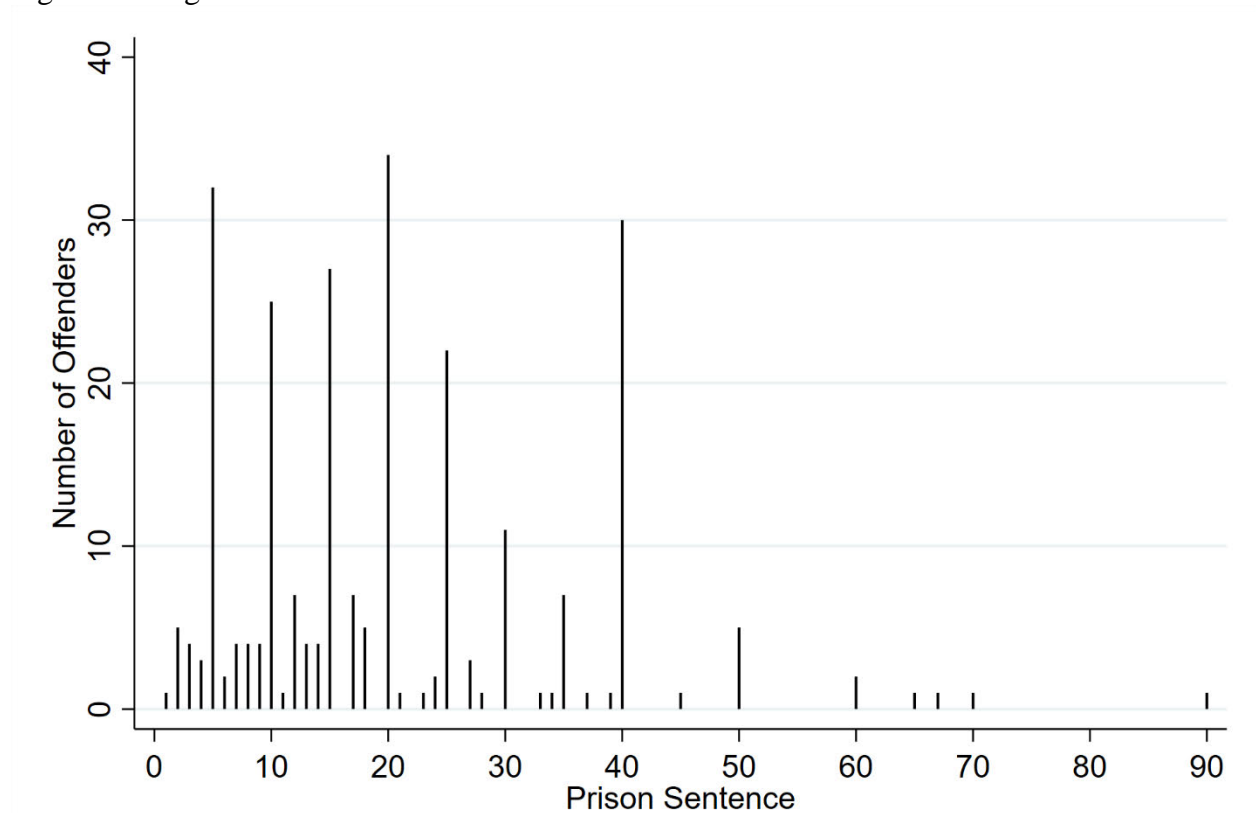
If almost three-quarters of all murders render the offender eligible for death, and jurors are given a similarly broad range of aggravating circumstances to consider, but no guidance about how to weigh these against possible mitigators, three things are clear: First, the state has not met the U.S. Supreme Court’s standard of “narrowly targeting” the death penalty only to a small share of the most deserving crimes. Second, the broad list of crimes making an offender potentially eligible for death forces the District Attorney to use broad and unchecked discretion in deciding when to seek death, and when not to do so. Third, jurors are similarly given broad and unchecked discretion to make the determination of death versus life at the sentencing phase. In *Gregg v. Georgia*, 428 U.S. 153 (1976), the U.S. Supreme Court validated Georgia’s death penalty system (as well as those of Florida and Texas), it did so with a dual expectation: the states would narrowly target the punishment on the worst crimes committed by the most deserving criminals; and they would mandate some form of “guided discretion” on sentencers, prohibiting systems where discretion is so broad that capricious and arbitrary results could occur. Louisiana’s broad lists of death-eligible crimes and aggravators meets neither of these standards.

Finally, Table 5 and Figure 5 summarize the punishments laid out across these cases.

Table 5. Punishments.

Punishments	Number of Offenders	Percent
Not guilty or no prison	67	12.18
Term sentence	267	48.55
Life in prison	146	26.55
Death	6	1.09
Unknown or not yet determined	64	11.64
Total	550	100.00

Figure 5. Length of Prison Sentence for those Given a Term Sentence.



Includes 267 offenders sentenced to term sentences; see Table 5.
 Another 146 offenders were sentenced to life without parole, and six to death.

Whereas 67 individuals, over 10 percent, were given no prison sentence at all, and 146, or 27 percent of the total charged, received sentences of life, and six individuals (one percent of those charged) received sentences of death, the most common single prison term given to offenders with fixed terms of punishment was 20 years in prison, with almost as many receiving a sentence of just five years in prison. The median among those sentenced to a term in prison was 17 years, and

the numbers range from just over one year to 90 years. We can certainly conclude that the punishment for murder can range widely.

Table 5 also makes clear that sentences of death are extremely rare: just one percent of murder cases end in a sentence of death and only two of those cases were affirmed on appeal by the Louisiana Supreme Court and still have a death sentence. Considering that at least 378 cases were death eligible, six cases represent less than two percent of those eligible cases. This movement from a large number of death-eligible crimes to just a small handful of death sentences is of particular interest. The very large scope in reduction suggests a danger of arbitrary use of discretion. Indeed, the vast bulk of decision-making in this process is in the sole authority of the District Attorney. The following section explores the decision to prosecute capitally.

Analysis of the Decision to Prosecute Capitally

Given that at least two-thirds of all EBR murders during the period of study had at least one aggravating factor, prosecutors had the option of seeking death in most of the cases. Table 6 shows the distribution of initial charges sought by the DA's office.

Table 6. Initial Charges.

Charge	Number	Percent
First-degree, capital	35	6.36
First-degree, non-capital	53	9.64
Second-degree	460	83.64
Lesser charges only	2	0.36
Total	550	100.00

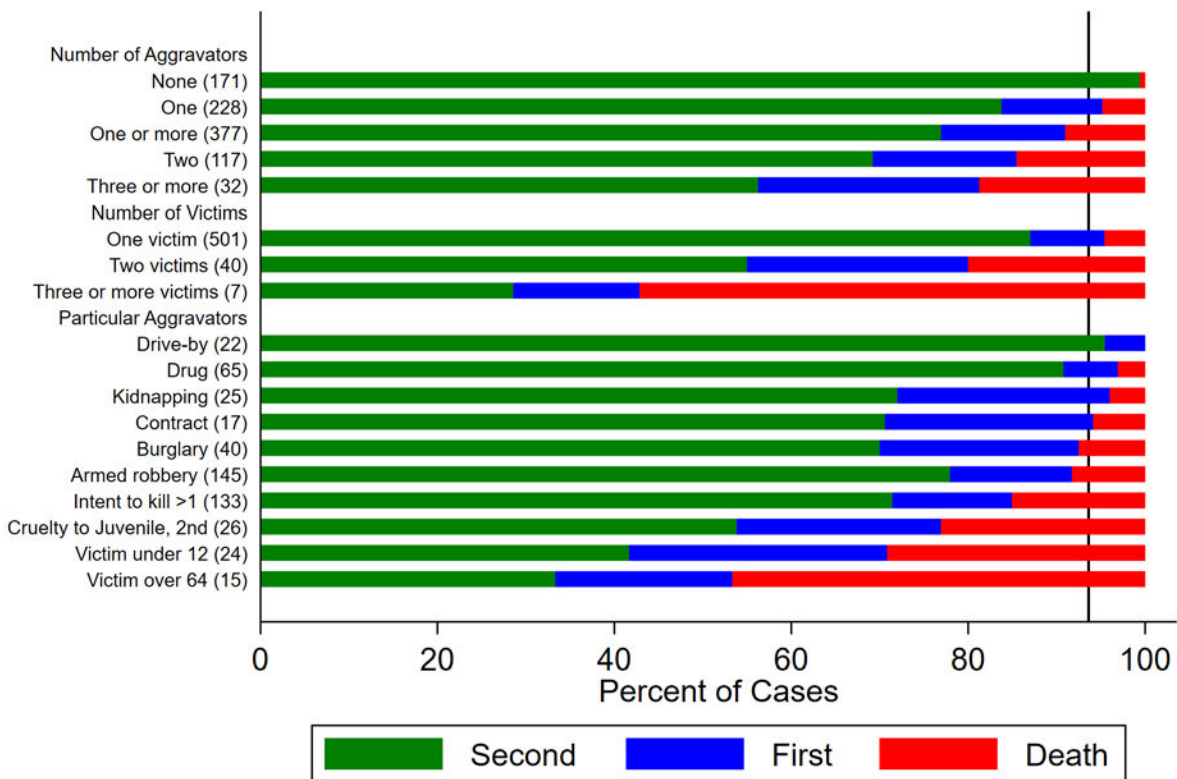
Just 35 cases saw a capital prosecution and only 12 of these lead to penalty phase proceedings in trial, about 2 percent of all murders, and roughly three percent of the 378 capital eligible cases. On the other hand, 84 percent of cases resulted in second-degree murder prosecutions. Clearly, even many cases with aggravating factors not only saw no capital prosecution, but also avoided first-degree charges. Thus, the District Attorney's discretion is

substantial. The following analysis compares the rates at which prosecutors sought: 1) death; 2) non-capital first-degree charges; and 3) second-degree or lesser charges. A following section uses multivariate techniques how various factors relate to the decision to seek capital charges.

The Impact of Legally Relevant Factors

Figure 6 shows the rates at which capital, first-degree non-capital, and second-degree or lower charges are filed in cases with different legally relevant characteristics. The number of cases is listed in parentheses at left, and the green, blue, and red portions of the horizontal bars correspond to the percent of such cases leading to each type of prosecution. This figure focuses on legally relevant factors; Figure 7 then shows a similar presentation for legally irrelevant factors such as race and gender. Appendix B gives all the numbers associated with both Figures 6 and 7.

Figure 6. Legally Relevant Factors and Capital Prosecutions.



Numbers in parentheses indicate the number of cases. Kidnapping includes 6 1st and 19 2nd degree cases. Vertical line shows the overall rate of seeking death: 6.39 percent.

The figure makes several things clear. First, as seen in Table 6, capital prosecutions are rare, occurring in just six percent of the cases. Second-degree prosecutions are by far the most common (84 percent). Among all those cases with an aggravator (377 cases, or 73 percent of the total) over 75 percent were followed by second-degree charges. The number of aggravators ranges from zero to four. The odds of capital prosecution increase with the presence of more aggravators, moving steadily from near zero to over 18 percent. Note, however, that even with three or more aggravators, the most common outcome, 56 percent, is a second-degree prosecution.

The fact that over 70 percent of all murders have an aggravator that make them at least potentially capital-eligible indicates, by itself, that the EBR capital prosecution system fails to meet the U.S. Supreme Court's mandate that the death penalty be narrowly targeted. The fact that the death penalty is sought in just nine percent of such cases, and in just 18.75 percent of cases with three or more aggravators (see Appendix B) clearly shows that the system also fails the "substantial proportion" test laid out by the Court. The fact that such cases most commonly lead to second-degree prosecutions show that the system is not even close to compliance with the Court's vision. Rather, the vast majority of cases end up with second-degree charges, even when the state has the option of capital prosecution. That is because the list of aggravators is overly broad, giving prosecutors the discretion to seek it, or not, in the vast bulk of cases. The fact that they seek it rarely, as they do, does not mean that they seek it only in the cases with the most legally relevant factors or without reference to legally irrelevant factors, as the following sections show. Such wide discretion opens the door to a variety of other influences, including those not legally relevant, such as the race and gender of the victim.

Regarding the number of victims, we see a similar pattern: capital prosecutions increase from five to 20 to 57 percent as the victims go from one to two to three or more. There were only

7 crimes in the database with 3 or more victims, and two of these cases were charged capitally—only one defendant was sentenced to death. Two were charged with second-degree murder.

The next section of the figure reviews individual aggravators, using the same list as in Figure 4 above, but including only those appearing at least ten times. The aggravators are listed in order of their likelihood of leading to a capital prosecution. Strikingly, some of the legally mandated “aggravators” appear to work more as mitigators. Reading from the top to bottom, the chart shows that drive-by killings have not once been charged capitally and that drug-related crimes are less likely than average to lead to a capital charge, as are kidnapping cases. Contract killings, burglary, and armed robbery see rates of capital prosecution near the overall average. Rates of capital charging reach 20 percent or higher only for three types of aggravators: cruelty to juveniles, victims under 12, and victims over 64 years of age. In the last group, 47 percent of cases are charged capitally. Even this figure fails to meet the “substantial proportion” test. The justices had in their minds that the numbers should be a large majority of cases, nearly all in the narrowly targeted category, so that the sentencer’s discretion could not be used arbitrarily in ways that could allow caprice or bias to enter the system in large proportions. Thus, even with an elderly victim, the fact that just half of such cases lead to a capital prosecution is powerful evidence that the system does not meet the “substantial proportion” test. We have already seen that it fails the narrow targeting test.

Regarding killings with victims under 12 years of age, death was sought in 7 of 24 such cases, or 29 percent. First-degree non-capital prosecution was equally common (7 cases), but second-degree was the most common, with ten cases, or 42 percent. Whereas Table 2 shows that 72 percent of all victims are Black, 21 of the 24 cases (88 percent) with young children victims involved Black victims. Among elderly victims, Blacks constitute a lower share: eight of 15 such

cases involved a Black victim (53 percent). Also note from these numbers and Figure 3 that there were 24 cases with young children victims, but fewer cases (15) with elderly victims. The child-victim cases are more common, and just two of 24 child victim cases involved White victims.

Child victims are themselves a statutory aggravator, but of the 24 child victim cases, 18 (75 percent) were also charged with cruelty to juveniles or second-degree cruelty to juveniles. In these cases, death was sought in eight cases (44 percent). The case of Dacarius Holliday illustrates this process. The crime involved a single Black male victim, aged two. The state also charged second-degree cruelty to juveniles, leading to two aggravating factors. With two aggravating factors, he was charged and sentenced to death. The only other such case, with a child victim and a single additional aggravator of cruelty to juveniles was that of Shelna Matamoros, similar in age to Holliday (she was 31, he was 29), with a crime less than one year before that of Holliday (hers was 30 August 2006, his was 14 May 2007), with a two-year-old Black female victim. The state sought death in both cases, but after a plea agreement, Matamoros was sentenced to only twenty years in prison, which was suspended. Ultimately, Matamoros served only five years of active supervised parole. Holliday, with a similar crime according to the statutory aggravators, was sentenced to death and remains on death row as of March 2019. He is the only person on death row in Louisiana with a second-degree cruelty to juveniles aggravator, from East Baton Rouge or any other parish. Such comparisons illustrate the capricious nature of outcomes of the process.

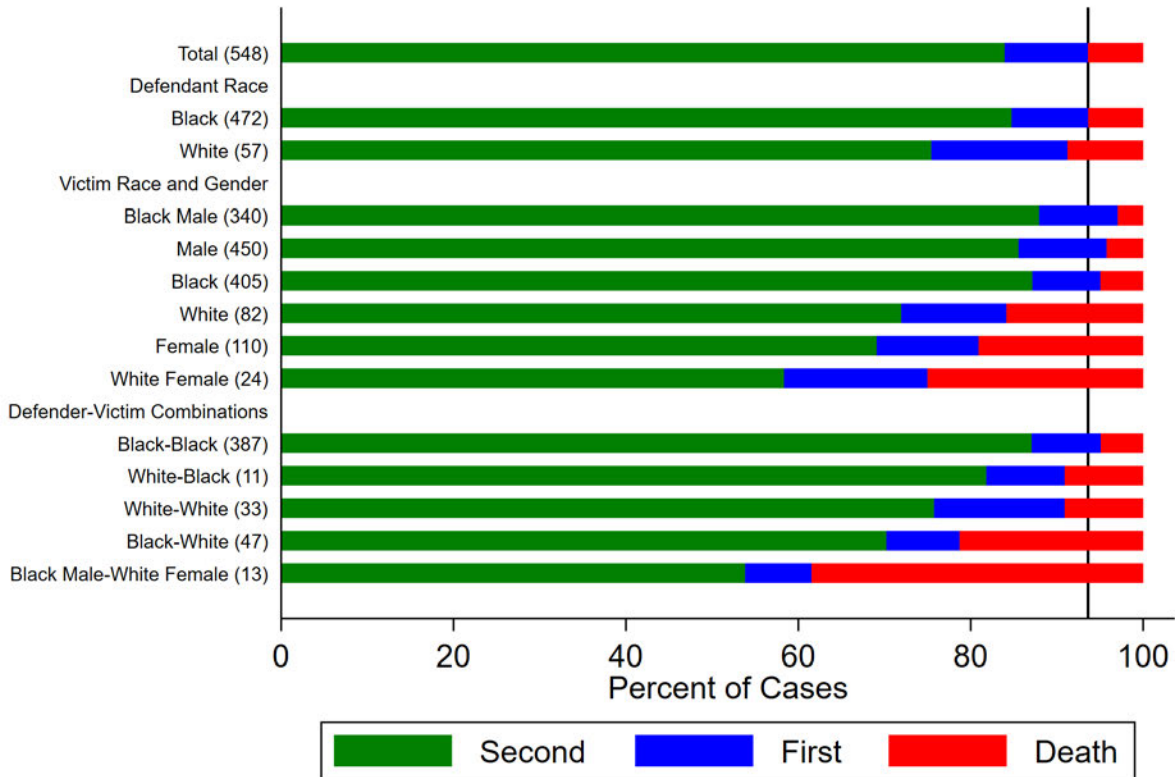
As Figure 6 made clear, the elderly victim cases are much more likely to lead to a capital prosecution, though the law makes the child victim and the elderly victim equal in their status as aggravators. This is an example of the possibly capricious nature of the decision to prosecute. Overall, from Figure 6, we can conclude that, as one would expect, legally relevant factors do indeed affect the odds of a capital prosecution. However, some legally relevant factors, such as

drive-by shootings, have never led to a single capital prosecution and some, such as drug-related crimes, appear to reduce rather than enhance the odds of a capital prosecution. Simply counting up the number of aggravators provides a poor estimate of the odds of seeking death, as it rises to only 18.75 percent in cases with three or more aggravators. This means that by reading the law, one would not know which aggravators count more than others, though all are legally prescribed in identical manner. Rather, the prosecutor retains full discretion to seek or not seek death in eligible cases, and this discretion is only loosely related to objective factors such as the number of death eligible factors associated with the crime. Finally, even in those cases where death is sought most commonly, such as with elderly victims or in cases with multiple victims the share of capital prosecutions does not meet the “substantial proportion” test that the Court envisioned in *Gregg*.

The Impact of Legally Irrelevant Factors

Figure 7 presents an identically formatted analysis of legally irrelevant factors.

Figure 7. Legally Irrelevant Factors and Capital Prosecutions.



Numbers in parentheses indicate the number of cases.
 Vertical line shows the overall rate of seeking death: 6.39 percent.

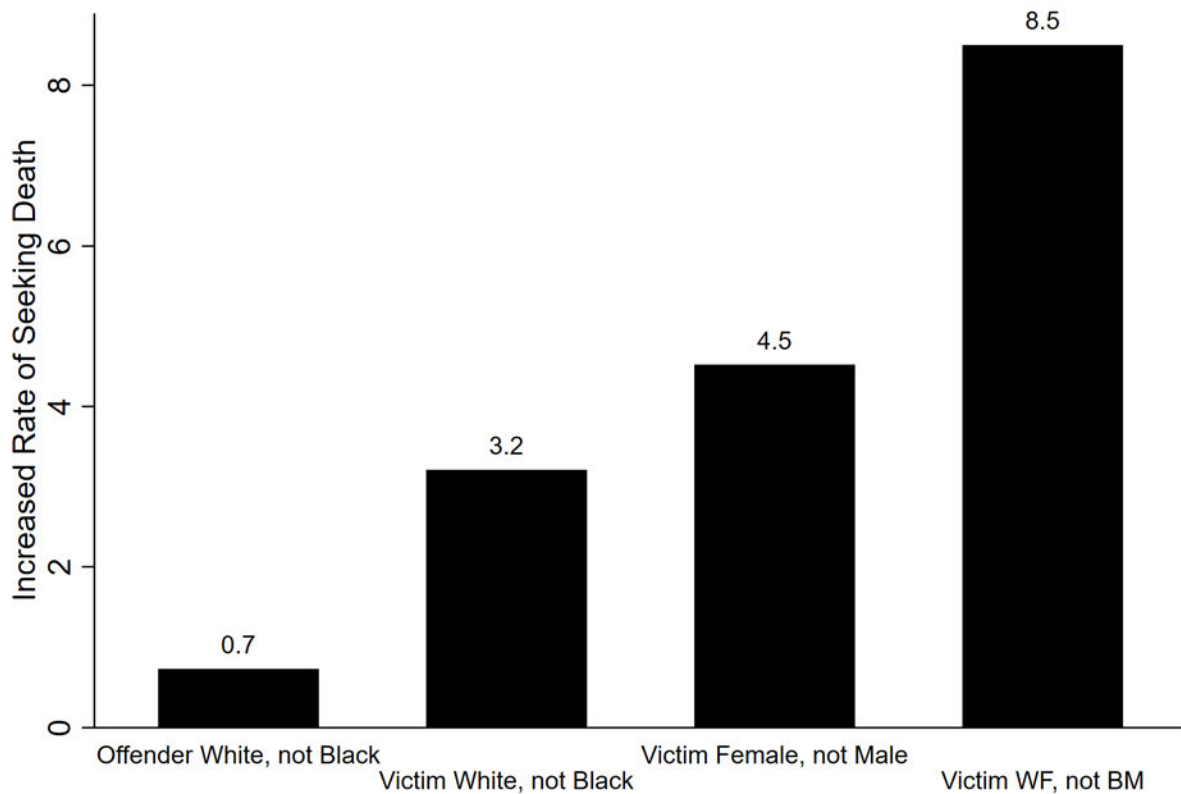
The race of the defendant has little relationship with the odds of seeking death; White defendants were so charged in seven percent of the cases and so were Black defendants. Black defendants had a slightly higher chance of being charged in the second degree: 85 percent compared to 75 percent for White defendants.

The race of the victim is a much more important predictor. Note that in this section the analysis refers to the race and/or gender of any one of the victims. Eighty-two cases involved at least one White victim, and 16 percent of these were prosecuted capitally. Over 400 cases had at least one Black victim, and just five percent proceeded capitally. Female victims similarly are more often associated with capital prosecutions: 19 percent of the crimes with at least one female victim proceeded capitally as compared to just four percent of those with a male victim.

Cross-racial crimes are more commonly associated with capital prosecutions, particularly when the victim is White: just 9 and 5 percent of the White-on-White and Black-on-Black crimes, respectively, proceeded capitally, whereas 9 percent of the White-on-Black crimes and 21 percent of the Black-on-White crimes proceeded capitally. In the 13 cases where a Black male had a White female victim, five cases, or 38 percent, proceeded capitally.

Figure 8 summarizes the differences in the rates of seeking death based on legally irrelevant factors, using the same data as in Figure 7.

Figure 8. Increased Odds of Seeking Death based on Legally Irrelevant Factors



Data from Figure 7. WF and BM refer to White Female and Black Male, respectively. Equal odds would be represented by a value of 1.0; numbers below that indicate decreased odds.

Offender race matters less, as we saw in Figure 7. But when we look at victims, it is clear that the odds of seeking death are dramatically different depending on race. It is particularly notable that the most common crimes are those with Black and male victims, but these crimes are statistically much less likely to be selected for capital prosecution. Crimes with Black male victims

have just 2.9 percent odds of capital prosecution, compared to 25 percent for crimes with White female victims (leading to the ratio of 8.5 shown in Figure 8). There were 340 crimes with Black male victims but only 24 with White female victims during the time of study. Figure 8 looks only at offenders and victims, but Figure 7 also showed dramatic differences when we look at particular combinations of offenders and victims from the same crime. The small number of Black male offender – White female victim crimes in the database were prosecuted capitally: five out of 13 times, or 38 percent of the time. By contrast, the Black offender – Black victim crimes were prosecuted capitally just 19 times out of 387, or 4.9 percent. That ratio: $38 / 4.9$ is 7.8, similar to the last bar in Figure 8.

This section has presented a number of simple comparisons of legally relevant and irrelevant factors. It clearly demonstrates that the process fails to target the system narrowly on the most egregious or otherwise deserving crimes, and that it does not ensure that a substantial proportion of those guilty of such crimes face the death penalty. Rather, prosecutors are largely unfettered in their discretion to use certain legally relevant factors and to ignore others. Legally irrelevant factors associated with the demographic characteristics of the victims of the crime, moreover, appear to play a powerful role in determining which cases see a capital prosecution. Crimes with White victims are three times more likely than crimes with Black victims to see capital charges; crimes with female victims are almost five times as likely as those with male victims; and crimes with White female victims are more than eight times as likely as crimes with Black male victims. In the particular and rare case of Black offender and a White female victim, odds of seeking death are almost eight times higher than cases where both offender and victim are Black. This data makes clear that legally irrelevant factors play an outsized role in determining when the state will seek death. Of course, simple comparisons can sometimes hide more complicated

relationships, so the next section presents multivariate regression models of the decision to seek death.

Logistic Regression Analysis of Legally Relevant and Legally Irrelevant Factors

A logistic regression shows the impact of a given predictor variable on an outcome variable, controlling for other variables in the model. The analysis below presents a series of logistic regressions predicting whether or not the prosecution seeks death. Recall from Table 6 that death was sought in 35 of 550 cases, or 6.33 percent. The results below show which variables were associated with increased or decreased odds of seeking death.

The tables in this section present the results of a series of logistic regressions where we use all the available data to estimate the odds that the “seek death” variable will have a value of one rather than zero, indicating that for that case, the state sought capital prosecution, or not. The tables report “odds ratios” with their associated standard errors and measures of statistical probability. Odds ratios of 1.00 mean that the variable has no impact at all on the likelihood of seeking death. Numbers above 1.00 indicate the increased odds associated with that predictor variable, and odds-ratios below 1.00 indicate reduced odds. Therefore, an odds ratio of 1.50 indicates that the variable is associated with a 50 percent increase (or 1.5 times) in the odds of seeking death; a ratio of 0.93 would indicate a seven percent decreased chance, or .93 times the odds. The column “ $P > |z|$ ” shows the estimate of statistical significance; typically analysts look for “p-values” less than 0.05. This represents a calculation that there is no more than a one in 20, or five percent, chance that the observed odds-ratio could be due to random fluctuations. P-values lower than that, such as 0.001, indicate high confidence that the finding is statistically significant. The final two columns show the bounds of the 95-percent confidence interval.

All of the statistical comparisons that follow begin with 550 cases where we know whether the prosecutor sought death.⁸ From that we subtract 20 offenders whose race is unknown or other than Black or White, and one additional offender whose sex was not recorded. This leaves us with 530 cases for our initial model. Small variations in the N are due to missing information for one or another variable included in that particular estimation (recall that we lack information on aggravating circumstances for 34 cases, so models including those variables have a correspondingly lower N). Note that death was sought in only one case out of 42 cases with female offenders. We replicate all the analyses presented here in Appendix D while excluding female offenders. This reduces the number of observations but has little impact on the coefficients, levels of statistical significance, or substantive interpretations of the findings. Box one gives the definition of the variables used in the regressions.

Box 1. Definition of abbreviations used in regression analysis

Abbreviation	Definition
Soughtdeath	1 = Prosecution sought death; 0 = not
VictimsTotal	Number of Victims
AggsTotal	Number of Aggravators
DRaceBW	1= Defendant is Black; 0 = Defendant is White
DSex	1 = Defendant is male; 0 = Defendant is female
VBlackAny	1 = Any victims are Black; 0 = not
VWhiteAny	1 = Any victims are White; 0 = not
OVBB	1 = Offender is Black and Victim is Black; 0 = not
OVWW	1 = Offender is White and Victim is White; 0 = not
OVWB	1 = Offender is White and Victim is Black; 0 = not
OVBW	1 = Offender is Black and Victim is White; 0 = not
OVBWTF	1 = Offender is Black male and Victim is White female; 0 = not
AR	1 = crime involved armed robbery; 0 = not
MOP	1 = crime involved intent to kill more than one; 0 = not
D	1 = crime involved drugs; 0 = not
VictimLT12	1 = crime involved a victim less than 12 years old; 0 = not
VictimGT64	1 = crime involved a victim 65 years or older; 0 = not

⁸ Recall that Lee Malvo and John Muhammad, appear in the EBR database, but they were prosecuted in Virginia, so there is no record of the state of Louisiana seeking death or not; they are the two missing cases.

VictimGT64W	1 = crime involved a White victim 65 or older; 0 = not
VictimGT64B	1 = crime involved a Black victim 65 or older; 0 = not
BA	1 = crime involved burglary; 0 = not
Cruel2	1 = crime involved 2nd degree cruelty to juveniles; 0 = not
P	1 = crime involved a defendant who committed a prior killing; 0 = not
Db	1 = crime involved a drive-by killing; 0 = not
k	1 = crime involved 2nd degree kidnapping; 0 = not
G	1 = crime involved financial gain (e.g., a contract killing); 0 = not

The first model, in Table 7, presents a simplified, or “baseline” model, including only a few factors: the number of victims, the number of aggravators, the race and gender of the offender, and whether the crime had any White or Black victims. Race comparisons include only Black and White; other races of victim or offender are not considered because there are too few such cases for reliable estimates; just seven Latino and one other-race offenders, and 11 with missing data on the race variable. Statistically significant predictors are highlighted with bold text

Table 7. Baseline Model

Logistic regression	Number of obs	=	496
	LR chi2(6)	=	52.83
	Prob > chi2	=	0.0000
Log likelihood = -100.11189	Pseudo R2	=	0.2088

Soughtdeath	Odds Ratio	Std. Err.	z	P> z	[95% Conf. Interval]
VictimsTotal	3.808	1.370	3.72	0.000	1.881 7.707
AggsTotal	2.017	0.426	3.32	0.001	1.334 3.051
DRaceBW	0.776	0.464	-0.42	0.672	0.240 2.507
DSex	2.652	2.820	0.92	0.359	0.330 21.319
VBlackAny	0.908	0.638	-0.14	0.891	0.229 3.599
VWhiteAny	4.126	2.994	1.95	0.051	0.995 17.104
_cons	0.002	0.003	-3.92	0.000	0.000 0.047

In this model, the total number of victims and the total number of aggravators are statistically significant predictors. Offender race (DRaceBW), offender sex (DSex), and victim race indicators (VBlackAny and VWhiteAny) are not statistically significant predictors (though white victims are nearly significant with a high coefficient). If this were the final model, we would

conclude that legally relevant factors (e.g., the number of victims and the number of aggravators associated with the crime) drive the process and that legally irrelevant factors (e.g., race and gender of the offender or the victims) do not.

Table 8 considers the offender and victim races separately. Rather than include simple indicators of whether the defendant was White or Black and whether the crime included any White or Black victims, this model looks at particular offender-victim combinations. It excludes offender sex, as we saw in Table 1 that over 90 percent of offenders are male.

Table 8. Baseline model with offender-victim combinations.

Logistic regression	Number of obs	=	516
	LR chi2(6)	=	51.36
	Prob > chi2	=	0.0000
Log likelihood = -102.27927	Pseudo R2	=	0.2007

Soughtdeath	Odds Ratio	Std. Err.	z	P> z	[95% Conf. Interval]
VictimsTotal	3.086	0.909	3.82	0.000	1.732 5.499
AggsTotal	2.090	0.424	3.64	0.000	1.405 3.110
OVBB	1.877	1.303	0.91	0.364	0.482 7.313
OVWW	4.633	4.217	1.68	0.092	0.778 27.585
OVWB	3.498	4.413	0.99	0.321	0.295 41.479
OVBW	9.983	7.660	3.00	0.003	2.219 44.918
_cons	0.002	0.002	-6.83	0.000	0.000 0.014

Here, we see that the numbers of victims and aggravators continue to play an important role, and that their odds ratios remain similar. However, the “OVBW” variable, indicating that the Offender-Victim combination was Black-White has a significant effect. The odds-ratio of 9.98 is large and statically significant; this means that the combination increases the odds of seeking death by approximately 10 times.

Table 9 presents the same model but includes the Black male offender-White female victim category.

Table 9. Baseline model with Black male-White female variable included.

Logistic regression	Number of obs	=	516
	LR chi2(6)	=	48.24
	Prob > chi2	=	0.0000
Log likelihood = -103.84202	Pseudo R2	=	0.1885

Soughtdeath	Odds Ratio	Std. Err.	z	P> z	[95% Conf. Interval]	
VictimsTotal	2.738	0.750	3.68	0.000	1.600	4.685
AggsTotal	2.108	0.416	3.78	0.000	1.431	3.105
OVBB	0.789	0.373	-0.50	0.616	0.313	1.992
OVWW	1.909	1.424	0.87	0.386	0.442	8.239
OVWB	1.441	1.654	0.32	0.750	0.152	13.673
OVBMWF	9.273	6.914	2.99	0.003	2.151	39.982
_cons	0.007	0.004	-7.91	0.000	0.002	0.024

Table 9 confirms the findings of Table 8 when we focus on those rare instances of Black male offenders with White female victims. Note that in all the models so far, the other estimates remain relatively consistent: the total number of victims and the total number of aggravators remain significant and of similar magnitude, and the other variables remain insignificant and of similar magnitudes as well.

Finally, Table 10 presents the final baseline model with all relevant aggravators.

Table 10. Victim-Offender Combinations and Aggravators.

Logistic regression	Number of obs	=	458
	LR chi2(14)	=	88.82
	Prob > chi2	=	0.0000
Log likelihood = -79.219316	Pseudo R2	=	0.3592

Soughtdeath	Odds Ratio	Std. Err.	z	P> z	[95% Conf. Interval]	
VictimsTotal	2.243	1.222	1.48	0.138	0.771	6.524
AggsTotal	3.363	1.908	2.14	0.033	1.106	10.228
OVBB	0.406	0.227	-1.61	0.107	0.136	1.213
OVWW	0.642	0.569	-0.50	0.617	0.113	3.651
OVWB	0.824	1.097	-0.15	0.885	0.061	11.191
OVBMWF	14.489	13.230	2.93	0.003	2.420	86.755
AR	1.766	1.243	0.81	0.419	0.445	7.015
MOP	2.241	1.575	1.15	0.251	0.565	8.884
D	0.185	0.176	-1.77	0.076	0.029	1.193
VictimLT12	6.128	6.937	1.60	0.109	0.666	56.345
VictimGT64	13.822	13.451	2.70	0.007	2.052	93.091
BA	0.362	0.413	-0.89	0.374	0.039	3.394
Cruel2	0.406	0.464	-0.79	0.430	0.043	3.821
P	1.000	(omitted)				
Db	1.000	(omitted)				
k	1.000	(omitted)				
G	0.262	0.402	-0.87	0.383	0.013	5.336
_cons	0.005	0.005	-6.11	0.000	0.001	0.029

When we list the individual aggravators, only elderly victims are significant, in addition to the total number of aggravators. It has a very large estimated effects as well: over 13, which indicates a powerful effect. Also note that with the individual aggravators included separately, the

total number of victims is no longer significant, though it retains a similar magnitude; the total number of aggravators remains significant and of a similar magnitude as in the previous model. The only other significant predictor in the model is the Black-male-White-female coefficient, which is over 14. Others have very low and insignificant estimated effects, but some are in the wrong direction; that is, even though they are aggravators, they predict a reduced likelihood of seeking death. Drive-by killings, (Db) in fact, are perfectly correlated with not seeking death and are therefore omitted from the model, as the table indicates. Drug-related crimes (D) have an odds ratio of 0.185, indicating that they predict a dramatically reduced odds of seeking death, though that coefficient is only marginally significant at the .10 level.

Table 10 allows us to see which legally relevant aggravators appear to play a significant role, and which legally irrelevant factors may play a role as well. The most important legally relevant factors is clearly elderly victim, total number of aggravators, with child victim, drive-by killings, and drug-related crimes having some possible effect as well (though for the last two, in the wrong direction; acting as effective mitigators). However, even with these legally relevant factors included, Black male-White female cases are 14 times more likely to lead to capital prosecution.

Appendix D presents three additional models that are consistent with the results shown in Table 10. One substitutes a variable identifying cases with Black offenders and White victims for the variable focused on Black male offenders and White female victims. This specification produces similar results, but the coefficient for this variable shows a lower impact on the odds of seeking death, though it remains a significant predictor. The second and third alternative models alter the “elderly victim” variable in the model, limited it to Black and White such victims. This analysis shows a much reduced impact of Black elderly victims and a substantially increased

estimate of the impact of White such victims. When the elderly victims are Black, the variable drops below statistical significance; when they are White, the size of the coefficient reaches a value higher than 20.

While this section has focused, as is traditional, on highlighting the statistically significant predictors of the dependent variable, it is also important to note the factors which do not systematically relate to the state's decision to seek death. The analysis here shows that just a few aggravators, factors that if used in a reliable and consistent manner would reliably and consistently predict the state's seeking capital punishment, in fact do so. On the other hand, and equally importantly, many factors that theoretically might be expected to lead to capital prosecutions do not. Among these are all the factors excluded from Table 10: events that are so rare that over 500 cases have revealed fewer than 10 incidents of them. But the system may potentially be well served by retaining the possibility of a capital prosecution for extremely rare events. Among the aggravators listed in Table 10, however, which do occur with some frequency, two have never led to a capital prosecution: prior murder, and "drive-by" killings. Many have no statistical correlation with the likelihood of seeking death: second-degree cruelty to juveniles; second-degree kidnapping, and gain or "murder for hire". One has a consistent effect (and sometimes statistically significant, see Appendix B): drug-related crimes. These elements are listed in the law as factors making the individual eligible for capital punishment, and also as aggravators that jurors must consider when weighing the appropriate punishment for the crime. But, empirically, these factors either have no discernable impact, or the impact is opposite to the legally prescribed direction. The fact that so many theoretically aggravating factors in fact do not contribute to the odds of the state seeking death is another factor to consider in evaluating whether the state's death penalty system is capricious and arbitrary, rather than narrowly targeted at the "worst of the worst", of which a

“substantial proportion” would then in fact be sentenced to death. Such a system was envisioned by the U.S. Supreme Court in 1976, but it has not been implemented.

The tables presented in this section produce powerful evidence that whereas legally relevant factors may or may not lead to a capital prosecution in EBR Parish, legally irrelevant factors are consistently and powerfully associated with that decision. In particular, cross-racial murders, especially those with White female victims, are particularly targeted. Black-on-Black murders are much less likely to lead to a capital prosecution, even controlling for legally relevant factors. Finally, while these are not always statistically significant at conventional levels, many factors that should lead to increased odds, since they are legal aggravators, in fact lead to decreased odds of seeking death, in particular drug-related and drive-by crimes.

Comparison of Present Findings to Others

Baumgartner and colleagues reviewed 13 published empirical studies of proportionality, and they summarized the results of a set of legally relevant and legally irrelevant factors. Baumgartner, *DEADLY JUSTICE* at 82-83. Among the legally relevant factors at either the charging or sentencing stages of the process, seven of eight that looked at the matter found heinousness to be a significant predictor of a death sentence; ten of 13 the number of victims; five of eight financial gain; nine of ten a defendant’s previous record of a violent felony; and nine of ten whether the crime included a sexual assault. Thus, it seems apparent that, as here, legally relevant factors do consistently affect the odds of seeking or imposing death.

The study also looked at legally irrelevant factors. Fourteen of 18 studies (some looking at both charging and sentencing) found that having a White victim was statistically associated with higher rates of use of the death penalty. Four found significant (negative) associations with Black victims; one found that a White defendant was less likely to face the death penalty; three of 15

found that Black defendants were more likely to face it; five of nine found that the gender of the victim(s) mattered; and every one of eight studies that looked at the question found that geography mattered.

The studies reviewed above were all designed in a similar manner to what was done here: logistic regressions with between ten and 118 control variables. So, it is apparent that empirical studies have routinely found that the death penalty is targeted at those who commit certain types of crimes and that legally relevant factors are indeed powerful predictors in most cases, but also that legally irrelevant factors remain important even after controlling for the relevant factors. Of those, geographic disparity is the most commonly found; this is not our focus here since this analysis concerns just a single parish. Findings are mixed on the issue of the race of the defendant but many studies have found strong effects for the gender and race of the victims. This is consistent with our results.

Several studies have focused specifically on Louisiana or even on East Baton Rouge Parish itself. Glenn Pierce and Michael Radelet reviewed 191 potential death cases (e.g., those charged at some point as first-degree murder) over the period of 1990 through 2008. Glenn L. Pierce & Michael L. Radelet, *Death Sentencing in East Baton Rouge Parish, 1990–2008*, 71 LOUISIANA L. REV. 2, 647–73 (2011). As in the present study, they found that the race of victim (p. 660), the combined race of offender and victim (p. 661); the number of aggravators (p. 662); and several legally relevant factors were significantly related to the death penalty. In a logistic regression (p.669), they report that victim race is significant in a model also controlling for the number of aggravators, the number of simultaneous felonies, the number of victims, and the defendant's race. Only the last variable was found to fail to reach statistical significance. This study, which overlaps some of our own but goes ten years further back, reached very similar conclusions to ours. Our

study appears to have a greater number of control variables, allowing us to assess the impact of particular aggravators in a way that Pierce and Radelet did not. However, to the extent we can compare, the findings are similar: victim race is a significant predictor, as are some legally relevant factors.

Baumgartner and Lyman (2015) reviewed aggregate statistics on murders and executions in Louisiana from 1976 through 2015 showing powerful effects for the race and gender of the victims. Frank R Baumgartner & and Tim Lyman, *Race-Of-Victim Discrepancies in Homicides and Executions, Louisiana 1976–2015*, 128–44, 17 LOYOLA UNIVERSITY OF NEW ORLEANS JOURNAL OF PUBLIC INTEREST LAW 17 (2005). Comparing the race and gender of the full set of 316 victims of those sentenced to death in the state with over 20,000 murder victims overall, they found that the rate of death sentencing per 1,000 murder deaths was dramatically different for different racial and gender groups, as seen in Table 11. The table also shows the rates of execution for the 38 victims of the 35 individuals whose executions have been carried out.

Table 11. Death Sentence and Execution Rates per 1,000 Murders, by Race and Gender of the Victim, Louisiana, 1976–2015.

Victim Characteristics	Death Sentence Rate	Execution Rate
Black Male	4.88	0.24
Black Female	17.71	2.06
White Male	28.36	3.01
White Female	56.94	11.52

Source: Baumgartner and Lyman 2015, p. 135.

Figure 8 above showed that offenders with White female victims are 8.1 times as likely to see a capital prosecution as offenders with a Black male victim. This larger study shows even more dramatic disparities. The ratio for death sentence rates is over 11 to one, and for executions, almost 50 to one. This may be because the processes that lead to these differences, whatever they may be, continue at each stage of the capital punishment system. The prosecutor’s decision to seek death generates a ratio of 8:1. After the trial, the finding of guilt, and the jury’s decision on punishment,

Baumgartner and Lyman find a ratio of 11:7. After mandatory review, appeals, and years of delay, a small number of these offenders have actually been executed. By that time, the race and gender ratio has grown to 48.

Conclusion

The state sought death in 35 cases and brought 12 of them to a penalty phase from a set of 378 potentially death-eligible murders during a period when there were 550 murders in EBR Parish. Just six cases led to a death sentence, and only two have been upheld on appeal and are still in place. These simple numbers clearly demonstrate that, with at least 70 percent of all murders being death-eligible, the state has not narrowly tailored the death penalty on a narrow class of the most deserving offenders. Rather, it has left a great deal of discretion in the hands of the district attorney. These prosecutors, in turn, have restricted their use of the punishment to less than 10 percent of the eligible cases; clearly making many more choices not to seek death than to seek it. This by itself suggests that the state fails, by any measure, the “substantial proportion” test that the U.S. Supreme Court laid out in *Gregg*. One cannot conclude that the state targets the death penalty only on those who have committed the most terrible crimes. Rather, those selected for the punishment have certain characteristics in common; certain aggravators are disproportionately applied to seek death, while others are seldom used. Further, one of the most determinant factors in who receives the death penalty and who does not is not which defendants are “the worst of the worst,” but the race of the victim; those defendants with white victims are far more likely to receive a death sentence than crimes involving a black defendant.

These factors, coupled with the prosecutor’s unfettered power to seek death in any given case, makes clear that capital sentencing is not determined by a reliable, narrowing scheme, but is arbitrarily applied and results in inconsistent and fundamentally unconstitutional sentencing. The

sentencing system is capricious, with some aggravators having out-sized importance, some theoretical aggravators actually functioning as mitigators, prosecutors endowed with unbridled decision-making power, and with compelling race-of-victim effects permeating the system, it should not stand.

A handwritten signature in black ink, appearing to read 'Frank Baumgartner', written in a cursive style.

Signed: _____ Dated: 23 March 2019
Frank Baumgartner

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Appendix A. List of Variables included in Spreadsheet Provided

Variable Name	Description
Last Name	Defendant's Last Name
Full Name	Defendant's Full Name
Docket All	Court Docket Number
DR	Defendant Race
DS	Defendant Sex
DOB	Defendant Date of Birth
Age at Time of Crime	Defendant's Age at the Time of the Crime
DOC	Date of Crime
DOC2	Date of Second Crime (if applicable)
DOI	Date of Indictment
CI	Indictment Charge
C2	Second Charge
CF	Final Charge
P/T	Whether the Defendant Reached a Plea Agreement or Went to Trial
J#	Number of Jurors Voting for the Verdict, or Hung Jury
Cv	Conviction
Sn	Sentence
Sought death?	Whether the Prosecution Sought Death
V1	Name of the First Victim
V1R	Race of the First Victim
V1age	Age of the First Victim
V1S	Sex of the First Victim
V2	Name of the Second Victim
V2R	Race of the Second Victim
V2Age	Age of the Second Victim
V2S	Sex of the Second Victim
V3	Name of the Third Victim
V3R	Race of the Third Victim
V3age	Age of the Third Victim
V3S	Sex of the Third Victim
V4	Name of the Fourth Victim
V4R	Race of the Fourth Victim
V4Age	Age of the Fourth Victim
V4S	Sex of the Fourth Victim
V5	Name of the Fifth Victim
VR5	Race of the Fifth Victim
VRAge	Age of the Fifth Victim
V5S	Sex of the Fifth Victim
AA	Whether the Crime involved Arson

Age	Whether the Crime Involved a Victim below age 12 or above age 64
BA	Whether the Crime Involved Burglary
CO	Whether the Crime Involved Killing a Peace Officer
D	Whether the Crime Involved Drugs
Db	Whether the Crime Involved a Drive-by Killing
E	Whether the Crime Involved an Attempt to Escape from Custody
G	Whether the Crime Involved Gain (e.g., a Contract Killing)
J	Whether the Crime Involved Cruelty to a Juveniles
j	Whether the Crime Involved 2nd Degree Cruelty to Juveniles
KA	Whether the Crime Involved Kidnapping
k	Whether the Crime Involved 2nd Degree Kidnapping
MOP	Whether the Crime Involved Intent to Kill More than One Person
P	Whether the Crime Involved a Defendant who Committed a Prior Killing
RA	Whether the Crime Involved Aggravated Rape
RF	Whether the Crime Involved Forced Rape
AR	Whether the Crime Involved Armed Robbery
R1	Whether the Crime Involved 1st Degree Robbery
R2	Whether the Crime Involved 2nd Degree Robbery
RO	Whether the Crime Involved a Defendant with a Restraining Order concerning the Victim
SR	Whether the Crime Involved Simple Robbery
Rit	Whether the Crime Involved a Ritual Crime
T	Whether the Crime Involved Terrorism
W	Whether the Crime Involved a Victim that was a Witness
Other Charges	Whether Other Charges were also Filed against the Defendant

Appendix B. Level of Prosecution by Category

Characteristics Of the Crime	Number			Percent			
	Total	Death	First	Second	Death	First	Second
Total	548	35	53	460	6.39	9.67	83.94
Defendant Race							
Black	472	30	42	400	6.36	8.90	84.75
White	57	5	9	43	8.77	15.79	75.44
Victim Race and Gender							
Black Male	340	10	31	299	2.94	9.12	87.94
Male	450	19	46	385	4.22	10.22	85.56
Black	405	20	32	353	4.94	7.90	87.16
White	82	13	10	59	15.85	12.20	71.95
Female	110	21	13	76	19.09	11.82	69.09
White Female	24	6	4	14	25.00	16.67	58.33
Defender-Victim Combinations							
Black-Black	387	19	31	337	4.91	8.01	87.08
White-White	33	3	5	25	9.09	15.15	75.76
White-Black	11	1	1	9	9.09	9.09	81.82
Black-White	47	10	4	33	21.28	8.51	70.21
Black Male-White Female	13	5	1	7	38.46	7.69	53.85
Number of Aggravators							
None	171	1	0	170	0.58	0.00	99.42
One	228	11	26	191	4.82	11.40	83.77
One or more	377	34	53	290	9.02	14.06	76.92
Two	117	17	19	81	14.53	16.24	69.23
Three or more	32	6	8	18	18.75	25.00	56.25
Number of Victims							
One victim	501	23	42	436	4.59	8.38	87.03
Two victims	40	8	10	22	20.00	25.00	55.00
Three or more victims	7	4	1	2	57.14	14.29	28.57
Particular Aggravators							
Victim under 12 and White	2	0	0	2	0.00	0.00	100.00
Drive-by	22	0	1	21	0.00	4.55	95.45
Drug	65	2	4	59	3.08	6.15	90.77
Kidnapping	25	1	6	18	4.00	24.00	72.00
Contract	17	1	4	12	5.88	23.53	70.59
Burglary	40	3	9	28	7.50	22.50	70.00
Armed robbery	145	12	20	113	8.28	13.79	77.93
Intent to kill >1	133	20	18	95	15.04	13.53	71.43
Cruelty to Juvenile, 2nd	26	6	6	14	23.08	23.08	53.85
Victim under 12	24	7	7	10	29.17	29.17	41.67
Victim under 12 and Black	21	7	7	7	33.33	33.33	33.33

Victim over 64	15	7	3	5	46.67	20.00	33.33
Victim over 64 and White	5	3	1	1	60.00	20.00	20.00
Victim over 64 and Black	8	5	0	3	62.50	0.00	37.50

Appendix C. Relevant Statutes from the Louisiana Code⁹

The Louisiana Code provides full discretion to the District Attorney to seek capital punishment or not in the case of first-degree murder. Second-degree murder is punishable only by life in prison without the possibility of parole. Where the prosecutor seeks capital punishment, jurors must weigh aggravating and mitigating circumstances. The relevant sections are: Revised Statutes, 14:30 (first degree murder); 14:30.1 (second degree murder); and Code of Criminal Procedure, Art. 905.3. Jury findings, Art. 905.4. Aggravating circumstances, and Art. 905.5. Mitigating circumstances. These are presented below.

§14:30. First degree murder

A. First degree murder is the killing of a human being:

(1) When the offender has specific intent to kill or to inflict great bodily harm and is engaged in the perpetration or attempted perpetration of aggravated kidnapping, second degree kidnapping, aggravated escape, aggravated arson, aggravated or first degree rape, forcible or second degree rape, aggravated burglary, armed robbery, assault by drive-by shooting, first degree robbery, second degree robbery, simple robbery, terrorism, cruelty to juveniles, or second degree cruelty to juveniles.

(2) When the offender has a specific intent to kill or to inflict great bodily harm upon a fireman, peace officer, or civilian employee of the Louisiana State Police Crime Laboratory or any other forensic laboratory engaged in the performance of his lawful duties, or when the specific intent to kill or to inflict great bodily harm is directly related to the victim's status as a fireman, peace officer, or civilian employee.

(3) When the offender has a specific intent to kill or to inflict great bodily harm upon more than one person.

(4) When the offender has specific intent to kill or inflict great bodily harm and has offered, has been offered, has given, or has received anything of value for the killing.

(5) When the offender has the specific intent to kill or to inflict great bodily harm upon a victim who is under the age of twelve or sixty-five years of age or older.

(6) When the offender has the specific intent to kill or to inflict great bodily harm while engaged in the distribution, exchange, sale, or purchase, or any attempt thereof, of a controlled dangerous substance listed in Schedules I, II, III, IV, or V of the Uniform Controlled Dangerous Substances Law.

(7) When the offender has specific intent to kill or to inflict great bodily harm and is engaged in the activities prohibited by R.S. 14:107.1(C)(1).

(8) When the offender has specific intent to kill or to inflict great bodily harm and there has been issued by a judge or magistrate any lawful order prohibiting contact between the offender and the victim in response to threats of physical violence or harm which was served on the offender and is in effect at the time of the homicide.

(9) When the offender has specific intent to kill or to inflict great bodily harm upon a victim who was a witness to a crime or was a member of the immediate family of a witness to a crime committed on a prior occasion and:

⁹ The Louisiana Code of Criminal Procedure and Revised Statutes are available at: <https://legis.la.gov/Legis/LawsContents.aspx>.

(a) The killing was committed for the purpose of preventing or influencing the victim's testimony in any criminal action or proceeding whether or not such action or proceeding had been commenced; or

(b) The killing was committed for the purpose of exacting retribution for the victim's prior testimony.

(10) When the offender has a specific intent to kill or to inflict great bodily harm upon a taxicab driver who is in the course and scope of his employment. For purposes of this Paragraph, "taxicab" means a motor vehicle for hire, carrying six passengers or less, including the driver thereof, that is subject to call from a garage, office, taxi stand, or otherwise.

(11) When the offender has a specific intent to kill or inflict great bodily harm and the offender has previously acted with a specific intent to kill or inflict great bodily harm that resulted in the killing of one or more persons.

(12) When the offender has a specific intent to kill or to inflict great bodily harm upon a correctional facility employee who is in the course and scope of his employment.

B.(1) For the purposes of Paragraph (A)(2) of this Section, the term "peace officer" means any peace officer, as defined in R.S. 40:2402, and includes any constable, marshal, deputy marshal, sheriff, deputy sheriff, local or state policeman, commissioned wildlife enforcement agent, federal law enforcement officer, jail or prison guard, parole officer, probation officer, judge, attorney general, assistant attorney general, attorney general's investigator, district attorney, assistant district attorney, or district attorney's investigator, coroner, deputy coroner, or coroner investigator.

(2) For the purposes of Paragraph (A)(9) of this Section, the term "member of the immediate family" means a husband, wife, father, mother, daughter, son, brother, sister, stepparent, grandparent, stepchild, or grandchild.

(3) For the purposes of Paragraph (A)(9) of this Section, the term "witness" means any person who has testified or is expected to testify for the prosecution, or who, by reason of having relevant information, is subject to call or likely to be called as a witness for the prosecution, whether or not any action or proceeding has yet commenced.

(4) For purposes of Paragraph (A)(12) of this Section, the term "correctional facility employee" means any employee of any jail, prison, or correctional facility who is not a peace officer as defined by the provisions of Paragraph (1) of this Subsection.

C. (1) If the district attorney seeks a capital verdict, the offender shall be punished by death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, in accordance with the determination of the jury. The provisions of Code of Criminal Procedure Article 782 relative to cases in which punishment may be capital shall apply.

(2) If the district attorney does not seek a capital verdict, the offender shall be punished by life imprisonment at hard labor without benefit of parole, probation or suspension of sentence. The provisions of Code of Criminal Procedure Article 782 relative to cases in which punishment is necessarily confinement at hard labor shall apply.

§14:30.1. Second degree murder

A. Second degree murder is the killing of a human being:

(1) When the offender has a specific intent to kill or to inflict great bodily harm; or

(2) When the offender is engaged in the perpetration or attempted perpetration of aggravated or first degree rape, forcible or second degree rape, aggravated arson, aggravated burglary, aggravated kidnapping, second degree kidnapping, aggravated escape, assault by drive-

by shooting, armed robbery, first degree robbery, second degree robbery, simple robbery, cruelty to juveniles, second degree cruelty to juveniles, or terrorism, even though he has no intent to kill or to inflict great bodily harm.

(3) When the offender unlawfully distributes or dispenses a controlled dangerous substance listed in Schedules I through V of the Uniform Controlled Dangerous Substances Law, or any combination thereof, which is the direct cause of the death of the recipient who ingested or consumed the controlled dangerous substance.

(4) When the offender unlawfully distributes or dispenses a controlled dangerous substance listed in Schedules I through V of the Uniform Controlled Dangerous Substances Law, or any combination thereof, to another who subsequently distributes or dispenses such controlled dangerous substance which is the direct cause of the death of the person who ingested or consumed the controlled dangerous substance.

B. Whoever commits the crime of second degree murder shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

Art. 905.3. Sentence of death; jury findings

A sentence of death shall not be imposed unless the jury finds beyond a reasonable doubt that at least one statutory aggravating circumstance exists and, after consideration of any mitigating circumstances, determines that the sentence of death should be imposed. The court shall instruct the jury concerning all of the statutory mitigating circumstances. The court shall also instruct the jury concerning the statutory aggravating circumstances but may decline to instruct the jury on any aggravating circumstance not supported by evidence. The court may provide the jury with a list of the mitigating and aggravating circumstances upon which the jury was instructed.

Art. 905.4. Aggravating circumstances

A. The following shall be considered aggravating circumstances:

(1) The offender was engaged in the perpetration or attempted perpetration of aggravated or first degree rape, forcible or second degree rape, aggravated kidnapping, second degree kidnapping, aggravated burglary, aggravated arson, aggravated escape, assault by drive-by shooting, armed robbery, first degree robbery, second degree robbery, simple robbery, cruelty to juveniles, second degree cruelty to juveniles, or terrorism.

(2) The victim was a fireman or peace officer engaged in his lawful duties.

(3) The offender has been previously convicted of an unrelated murder, aggravated or first degree rape, aggravated burglary, aggravated arson, aggravated escape, armed robbery, or aggravated kidnapping.

(4) The offender knowingly created a risk of death or great bodily harm to more than one person.

(5) The offender offered or has been offered or has given or received anything of value for the commission of the offense.

(6) The offender at the time of the commission of the offense was imprisoned after sentence for the commission of an unrelated forcible felony.

(7) The offense was committed in an especially heinous, atrocious or cruel manner.

(8) The victim was a witness in a prosecution against the defendant, gave material assistance to the state in any investigation or prosecution of the defendant, or was an eye witness to a crime alleged to have been committed by the defendant or possessed other material evidence against the defendant.

(9) The victim was a correctional officer or any employee of the Department of Public Safety and Corrections who, in the normal course of his employment was required to come in close contact with persons incarcerated in a state prison facility, and the victim was engaged in his lawful duties at the time of the offense.

(10) The victim was under the age of twelve years or sixty-five years of age or older.

(11) The offender was engaged in the distribution, exchange, sale, or purchase, or any attempt thereof, of a controlled dangerous substance listed in Schedule I, II, III, IV, or V of the Uniform Controlled Dangerous Substances Law.

(12) The offender was engaged in the activities prohibited by R.S. 14:107.1(C)(1).¹⁰

(13) The offender has knowingly killed two or more persons in a series of separate incidents.

B. For the purposes of Paragraph (A)(2) herein, the term “peace officer” is defined to include any constable, marshal, deputy marshal, sheriff, deputy sheriff, local or state policeman, commissioned wildlife enforcement agent, federal law enforcement officer, jail or prison guard, parole officer, probation officer, judge, attorney general, assistant attorney general, attorney general’s investigator, district attorney, assistant district attorney, or district attorney’s investigator.

Art. 905.5. Mitigating circumstances

The following shall be considered mitigating circumstances:

- (a) The offender has no significant prior history of criminal activity;
- (b) The offense was committed while the offender was under the influence of extreme mental or emotional disturbance;
- (c) The offense was committed while the offender was under the influence or under the domination of another person;
- (d) The offense was committed under circumstances which the offender reasonably believed to provide a moral justification or extenuation for his conduct;
- (e) At the time of the offense the capacity of the offender to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication;
- (f) The youth of the offender at the time of the offense;
- (g) The offender was a principal whose participation was relatively minor;
- (h) Any other relevant mitigating circumstance.

¹⁰ This section of the code refers to “ritualistic” killings.

Appendix D. Alternative Specifications of the Logistic Regression Models Predicting a Capital Prosecution

Alternative specifications using the same dataset

Table D1. Alternative to Table 10 with Offender-Victim Changed

Logistic regression	Number of obs	=	458
	LR chi2(14)	=	85.57
	Prob > chi2	=	0.0000
Log likelihood = -80.846954	Pseudo R2	=	0.3461

Soughtdeath	Odds Ratio	Std. Err.	z	P> z	[95% Conf. Interval]	
VictimsTotal	2.534	1.386	1.70	0.089	0.868	7.401
AggsTotal	3.515	1.993	2.22	0.027	1.157	10.678
OVBB	0.569	0.413	-0.78	0.437	0.137	2.363
OVWW	0.882	0.886	-0.12	0.901	0.123	6.322
OVWB	1.483	2.079	0.28	0.779	0.095	23.136
OVBW	4.847	3.714	2.06	0.039	1.080	21.761
AR	1.116	0.768	0.16	0.873	0.290	4.297
MOP	1.786	1.248	0.83	0.406	0.454	7.025
D	0.163	0.154	-1.92	0.055	0.026	1.040
VictimLT12	4.548	5.049	1.36	0.172	0.516	40.057
VictimGT64	9.864	9.560	2.36	0.018	1.476	65.918
BA	0.610	0.642	-0.47	0.639	0.077	4.807
Cruel2	0.457	0.510	-0.70	0.483	0.051	4.075
P	1.000	(omitted)				
Db	1.000	(omitted)				
k	1.000	(omitted)				
G	0.082	0.142	-1.44	0.149	0.003	2.458
_cons	0.004	0.004	-5.72	0.000	0.001	0.027

The model in Table D1 substitutes “OVBW” for “OVBMWF” in Table 10. That is, it uses the Black offender-White victim comparison rather than the Black male offender and White female victim. Compared to Table 10, this offender-victim variable has a weaker impact, but remains significant.

Tables D2 and D3 present models identical to that presented in Table 10 but clarify the “elderly victim” variable by including it separately for Black and White such victims. Table D2 presents a model where the elderly victim variable considers Black victims only, and it shows that the coefficient is reduced to such an extent that it is no longer statistically significant. This model also finds statistically significant results for the total number of aggravators, Black-Black crimes (at the .10 level), Black male-White female crimes, and Drug-related crimes. Black-Black and Drug-related crimes are found to reduce the odds of seeking death, sometimes dramatically.

Replication of all regressions with male offenders only

The following tables provide the same analyses as presented in Table 7 through 10 and Tables D1 through D3 while excluding female offenders. Death was sought only once across the 42 cases with female offenders. Therefore, we cannot test a statistical model of that decision. The results here, however, show that the results in the text above are robust to the decision to exclude female offenders from the analysis.

Table D4. Replication of Table 7, males only.

Logistic regression	Number of obs	=	456
	LR chi2(5)	=	51.36
	Prob > chi2	=	0.0000
Log likelihood = -95.290284	Pseudo R2	=	0.2123

Soughtdeath	Odds Ratio	Std. Err.	z	P> z	[95% Conf. Interval]
VictimsTotal	4.034	1.495	3.76	0.000	1.951 8.342
AggsTotal	1.972	0.425	3.15	0.002	1.292 3.010
DRaceBW	0.860	0.513	-0.25	0.800	0.267 2.771
VBlackAny	0.850	0.604	-0.23	0.819	0.211 3.422
VWhiteAny	4.074	2.983	1.92	0.055	0.970 17.107
_cons	0.005	0.006	-4.76	0.000	0.001 0.045

Table D5. Replication of Table 8, males only.

Logistic regression	Number of obs	=	473
	LR chi2(6)	=	50.03
	Prob > chi2	=	0.0000
Log likelihood = -97.247134	Pseudo R2	=	0.2046

Soughtdeath	Odds Ratio	Std. Err.	z	P> z	[95% Conf. Interval]
VictimsTotal	3.118	0.930	3.81	0.000	1.737 5.596
AggsTotal	2.074	0.428	3.54	0.000	1.385 3.108
OVBB	1.781	1.258	0.82	0.414	0.446 7.113
OVWW	5.519	5.134	1.84	0.066	0.892 34.170
OVWB	3.252	4.124	0.93	0.352	0.271 39.042
OVBW	9.278	7.220	2.86	0.004	2.019 42.643
_cons	0.003	0.002	-6.57	0.000	0.000 0.016

Table D6. Replication of Table 9, males only.

Logistic regression

Number of obs = 473
 LR chi2(6) = 47.40
 Prob > chi2 = 0.0000
 Pseudo R2 = 0.1938

Log likelihood = -98.562137

Soughtdeath	Odds Ratio	Std. Err.	z	P> z	[95% Conf. Interval]
VictimsTotal	2.747	0.760	3.65	0.000	1.597 4.725
AggsTotal	2.087	0.420	3.66	0.000	1.407 3.095
OVBB	0.751	0.361	-0.60	0.551	0.293 1.925
OVWW	2.263	1.720	1.07	0.283	0.510 10.038
OVWB	1.340	1.541	0.25	0.799	0.141 12.756
OVBMWF	8.602	6.428	2.88	0.004	1.989 37.207
_cons	0.007	0.005	-7.64	0.000	0.002 0.026

Table D7. Replication of Table 10, males only.

Logistic regression

Number of obs = 418
 LR chi2(14) = 89.22
 Prob > chi2 = 0.0000
 Pseudo R2 = 0.3784

Log likelihood = -73.27793

Soughtdeath	Odds Ratio	Std. Err.	z	P> z	[95% Conf. Interval]
VictimsTotal	2.380	1.387	1.49	0.137	0.760 7.459
AggsTotal	3.720	2.203	2.22	0.027	1.165 11.873
OVBB	0.365	0.214	-1.72	0.086	0.116 1.154
OVWW	0.500	0.492	-0.70	0.481	0.073 3.439
OVWB	0.723	0.965	-0.24	0.808	0.053 9.895
OVBMWF	12.871	11.887	2.77	0.006	2.106 78.658
AR	1.510	1.091	0.57	0.568	0.366 6.225
MOP	2.195	1.563	1.10	0.270	0.543 8.866
D	0.185	0.178	-1.75	0.080	0.028 1.224
VictimLT12	7.521	9.741	1.56	0.119	0.594 95.213
VictimGT64	21.405	21.795	3.01	0.003	2.909 157.482
BA	0.336	0.397	-0.92	0.356	0.033 3.410
Cruel2	0.299	0.382	-0.95	0.344	0.025 3.647
P	1.000	(omitted)			
Db	1.000	(omitted)			
k	1.000	(omitted)			
G	0.197	0.322	-0.99	0.320	0.008 4.844
_cons	0.006	0.005	-5.62	0.000	0.001 0.034

Table D8. Replication of Table 10, males only with OVBWW instead of OVBMWF.

Logistic regression
 Number of obs = 418
 LR chi2(14) = 85.40
 Prob > chi2 = 0.0000
 Pseudo R2 = 0.3622

Log likelihood = -75.186688

Soughtdeath	Odds Ratio	Std. Err.	z	P> z	[95% Conf. Interval]	
VictimsTotal	2.710	1.570	1.72	0.085	0.871	8.434
AggsTotal	3.914	2.306	2.32	0.021	1.234	12.421
OVBB	0.462	0.347	-1.03	0.304	0.106	2.013
OVWW	0.624	0.689	-0.43	0.670	0.072	5.433
OVWB	1.155	1.625	0.10	0.919	0.073	18.218
OVBW	3.893	3.017	1.75	0.079	0.852	17.778
AR	0.966	0.680	-0.05	0.961	0.243	3.839
MOP	1.773	1.253	0.81	0.417	0.444	7.082
D	0.155	0.149	-1.94	0.052	0.024	1.016
VictimLT12	5.186	6.442	1.32	0.185	0.454	59.194
VictimGT64	14.878	15.175	2.65	0.008	2.015	109.842
BA	0.559	0.610	-0.53	0.594	0.066	4.739
Cruel2	0.363	0.443	-0.83	0.406	0.033	3.968
P	1.000	(omitted)				
Db	1.000	(omitted)				
k	1.000	(omitted)				
G	0.062	0.111	-1.55	0.122	0.002	2.110
_cons	0.005	0.005	-5.25	0.000	0.001	0.035

O65	Over 65	X	X	X	X	X	X	X	X	X	X
MOP	Specific intent to kill more than one person	X	X	X	X	X	X	X	X	X	X
P	Prior murder							X	X	X	X
RA	Rape, Aggravated	X	X	X	X	X	X	X	X	X	X
RF	Rape, Forced	X	X	X	X	X	X	X	X	X	X
RAP1	1st degree rape										X
RAP2	2nd degree rape										X
AR	Robbery, Armed	X	X	X	X	X	X	X	X	X	X
R1	Robbery 1st	X	X	X	X	X	X	X	X	X	X
R2	Robbery 2nd						X	X	X	X	X
RO	Restraining Order				X	X	X	X	X	X	X
SR	Robbery Simple	X	X	X	X	X	X	X	X	X	X
Rit	Ritual	X	X	X	X	X	X	X	X	X	X
T	Terrorism			X	X	X	X	X	X	X	X
TD	Taxi driver								X	X	X
U12	Under 12	X	X	X	X	X	X	X	X	X	X
W	Witness					X	X	X	X	X	X