

RACIAL CHARACTERISTICS AND THE IMPOSITION OF THE DEATH PENALTY*

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*This paper explores the question of whether death penalty statutes passed after the 1972 Supreme Court decision in *Furman v. Georgia* successfully eliminate racial disparities in capital cases. Over 600 homicide indictments in twenty Florida counties in 1976 and 1977 were examined, focusing on homicides between strangers (nonprimary homicides). Those accused of murdering whites are more likely to be sentenced to death than those accused of murdering blacks. This trend is due primarily to the higher probability for those accused of murdering whites to be indicted for first degree murder. When controlling for race of the victim, the data do not clearly support the hypothesis that race of the defendant is strongly associated with the probability of a first degree murder indictment or the imposition of the death penalty.*

Few aspects of the American criminal justice system have generated as much controversy as the reemergence of the threat and use of capital punishment. Central to this debate is the assertion that the death penalty is disproportionately applied to black offenders. Faced with evidence supporting this claim, when *Furman v. Georgia* (408 U.S. 238 [1972]) came before the U.S. Supreme Court in 1972, the Court ruled (5 to 4) that the application of all death penalty statutes then in existence was arbitrary and capricious, hence constituting "cruel and unusual punishment" in violation of the Eighth Amendment (Bowers, 1974; Bowers and Pierce, 1980; Riedel, 1976). Since that ruling, 37 states and the federal government have enacted new capital punishment statutes that have not been invalidated by the courts (*Gregg v. Geor-*

gia, 428 U.S. 153 [1976]; U.S. Department of Justice, 1980). The purpose of this paper is to ascertain whether or not race remains a significant factor in the processing and outcome of post-Furman homicide cases. Data to be examined are based on 637 homicide indictments in twenty Florida counties in the years 1976 and 1977.

There is little doubt that the history of capital punishment in the United States prior to the *Furman* decision is marked by inequality and discrimination (Bowers, 1974; Garfinkle, 1949; Sellin, 1980). Of the 3,859 civil (i.e., nonmilitary) executions that took place from 1930 through 1967, 2,108, or 54%, involved nonwhite offenders (U.S. Department of Justice, 1980). Blacks were especially overrepresented among those executed for rape: 405 of the 455 executions for this crime, or 89%, were of blacks (U.S. Department of Justice, 1980). One possible explanation for this differential is that although the percentage of blacks executed is higher than their representation in the nation's population, the percentage executed might approximate their conviction rates. However, in an analysis of 1,265 rape convictions in seven southern states between 1945 and 1965, Wolfgang and Riedel (1973) found that 13% of the 823 blacks convicted of rape were sentenced to death, whereas only 2% of the 442 convicted whites confronted a similar fate. Signifi-

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I would like to thank Ronald L. Akers, Ronald A. Farrell, Pamela Richards, Charles W. Thomas, and especially Alan Agresti and John C. Henretta for their helpful comments on earlier drafts, and Jack Geckler for his assistance in coding the data. The data were collected and analyzed with funds provided by the Edna McConnell Clark Foundation, the North Shore Unitarian Veatch Program, and the NAACP Legal Defense and Educational Fund, Inc. This paper was presented at the 1981 Annual Meeting of the American Sociological Association in Toronto.

cant racial differences remained even after controlling for a variety of nonracial aggravating circumstances, such as the defendant's prior record and the commission of additional felonies concurrently with the rape.

The relationship between race and the imposition of the death penalty is only part of the larger issue of the extent to which racial disparities are evident in the selection, processing, and sentencing decisions of the criminal justice system. Several authors have asserted that violations of the existing criminal law by lower class and minority offenders result in more severe charges and sentences (Black, 1976; Chambliss and Seidman, 1971; Quinney, 1979). Yet, others have failed to find substantial racial differences (Burke and Turk, 1975; Hindelang, 1969, 1978). In a review of seventeen studies that investigated the effects of race on sentencing, Hagen found that most relationships explained little of the sentencing variation. Chiricos and Waldo (1975), in an analysis of 10,488 felony sentences in three southeastern states between 1969 and 1973, found that the socioeconomic status of convicted felons was unrelated to the severity of prison sentences. Similarly, in a sample of 1,213 males arraigned on a felony charge in New York state in the four years preceding March, 1975, Bernstein et al. (1977) found only minor effects of race on the severity of imposed sentences. Clearly, any current tendency for the criminal justice system to treat blacks more harshly than whites is not as apparent or widespread as has been alleged.

Three limitations of these studies are addressed in this paper. First, each focuses only on the characteristics of the defendant, leaving open the possibility that processing decisions might vary in part with such characteristics as the race of the victim. Second, all cases of a crime are uniformly categorized, thus ignoring qualitative differences within the crime category itself that may be associated with sentencing variations (e.g., Garfinkle, 1949; Swigert and Farrell, 1977). Third, with some exceptions (Bernstein et al., 1977; LaFree, 1980; Swigert and Farrell, 1977), many studies of racial disparities in

the criminal justice system have focused primarily on sentencing decisions made by judges (Chiricos and Waldo, 1975; Hagen, 1974; Unnever et al., 1980). Racial disparities may also be evident in decisions made at other points in the criminal justice process (Thomson and Zingraff, 1981).

Several studies have suggested that the general lack of data on victim characteristics is a crucial omission if the effects of race on case outcome are to be understood (Myers, 1979). LaFree (1980), for example, in a study of 881 sexual assault suspects in a large midwestern city for the years 1970 through 1975, found strong evidence that black men accused of assaulting white women received more severe sentences than other sexual assault defendants. Similarly, in a study of the records of 821 persons indicted for homicide in ten North Carolina counties during the 1930s, Garfinkle (1949) found that blacks accused of killing whites were significantly more likely to be indicted for first degree murder than were whites accused of killing blacks. In the rape study by Wolfgang and Riedel (1973), 113 of the 317 black defendants with white victims were sentenced to death (36%), whereas only 19 of the 921 defendants (2%) with all other victim-defendant racial combinations were sentenced to death.

A second issue relevant to the study of racial disparities in legal processing is the existence of qualitative differences in the nature of homicides. For example, if homicides with white victims tend to be premeditated, done by strangers, or committed in the course of another felony, whereas homicides with black victims are found more often to be crimes of passion among friends or relatives, then any demonstrated relationship between race of the victim and the imposition of the death penalty could be explained by differential circumstances of the crimes. Such a qualitative distinction among homicides, based on the victim-offender relationship, has recently been elaborated (Parker and Smith, 1979; Smith and Parker, 1980). "Primary homicides" involve family, friends, or acquaintances and are usually acts of passion; "nonprimary homicides" are most often instrumental, usually occur in the course of another felony, and typi-

cally involve strangers. While intent can be a factor in both types of offenses, this distinction approximates the FBI's legally based classification of "felony" and "non-felony" homicide (FBI, 1974:10; Smith and Parker, 1980). Parker and Smith (1979) have found that variations between states in primary homicide rates are related to poverty and the percentage of the population aged 20-34, while non-primary rates are related only to the percentage of the population living in urban areas. Because rates of each are associated with a different set of predictors, they argue that the failure to classify homicides in this manner results in incorrect assessment of any correlates of homicide rates.

A third issue of concern is that studies of processing disparities frequently include only a portion of the decisions by the criminal justice system in which racial biases may be found. Most studies have focused their attention on only one decision point, and samples drawn at the later stages of the criminal justice process may be more homogeneous than samples at the entry point (LaFree, 1980; Thomson and Zingraff, 1981). If, for example, white defendants are more likely than blacks to be indicted for a lesser included offense given similar circumstances, such as second versus first degree murder, studies of sentencing severity that do not consider racial differences in indictments can not ask if earlier biases are corrected, and might require highly detailed information about the offender, victim, and circumstances of the crime before any possible sentencing biases are detected (Baldus et al., 1980).

In the present study, data on homicide indictments allow us to assess if race of the defendant, race of the victim, and/or the combination of defendant's and victim's race exert any significant predictive influence on the decision to indict homicide defendants for first versus second or third degree murder and the subsequent decision to impose a death sentence. Associations between these variables will be examined among two groups: among those indicted for any homicide and among only those indicted for first degree murder. In addition, by adopting the distinction between primary and non-

primary homicides, it will be possible to determine if the imposition of the death penalty varies with the nature of the victim-defendant relationship, and if any racial correlates of the death penalty can be explained by the primary/nonprimary distinction.

METHOD

Data were collected in 20 of Florida's 67 counties on all indictments for Murder I, II, and III that occurred in 1976 and 1977. Only defendants found guilty of Murder I, a premeditated homicide or homicide committed in the perpetration of certain felonies, are punishable by death in Florida. Murder II is generally defined as a nonpremeditated homicide resulting from disregard of human life; Murder III is a homicide resulting from certain felonious behavior not designed to effect death (Florida Penal Code, 1979:Chapter 782.04). The counties were selected with the probability of inclusion of each county in the sample proportional to its population size.¹ This procedure led to inclusion of sixteen of Florida's twenty most populous counties—including the eleven largest counties in the state—and four smaller counties. Law students and lawyers visited the courthouse in each county and gathered the case data. To obtain a master list of all homicide indictments, the field investigators reviewed the entire criminal docket in each county for 1976, 1977, and early 1978. Court files for each identified homicide case were then examined, and the researchers completed a standardized information sheet for each. In cases where some of the needed information was missing, the defendant's attorney was contacted and asked to provide relevant details. Local newspapers were also perused for the dates immediately following the offense and trial to obtain any missing data.

Using this procedure, 788 homicide indictments were identified. Because of the salience of the variables measuring race, three cases with an Oriental victim were

¹ These counties were sampled by Professor Hans Zeisel of the University of Chicago.

eliminated. In addition, four cases in which the defendant died before sentencing and six cases in which the defendant was never arrested or jumped bond were also eliminated, reducing the final sample to 775 cases.

For the present analysis, 138 additional cases were deleted because of incomplete information about defendant's race, victim's race, and the relationship between victim and defendant. This reduced the final sample to 637 cases. Most of the deleted cases ($n=110$) were removed because of an absence of information about the victim-defendant relationship; none was removed in which the death penalty was imposed. A comparison of the deleted cases with those retained reveals that the court records tended to be more complete in cases involving first degree murder indictments or convictions. Whereas 58% of the retained cases involved a first degree murder indictment, only 34% of the deleted cases did so. Similarly, cases with black defendants or victims were slightly more likely to be deleted. However, among the groups indicted for or found guilty of first degree murder in the original sample of 775 cases, neither race of the defendant nor race of the victim was significantly associated with the probability of deletion. Thus, the final sample of 637 cases is representative of the original 775 cases on the variables examined in the analysis.

The variables measuring defendant's and victim's race were dichotomized into white and black categories. Following Parker and Smith (1979), homicides were dichotomized into primary and nonprimary categories on the basis of the victim-defendant relationship. Those classified as primary homicides included those occurring between relatives, friends, ex-lovers, and other primary group members; nonprimary homicides included homicides involving strangers, those who knew each other vaguely but had no friendship or family relationship, and those whose only relationship was through a codefendant (i.e., defendant and codefendant are accused of killing a relative or friend of codefendant). Imposition of the death penalty was measured by coding yes or no, while the severity of indictment was

divided into first degree versus second or third degree indictment.

RESULTS

The analysis was designed to address several issues. First, among those indicted for any homicide, we are interested in who is placed in jeopardy of receiving the death penalty by being indicted for first degree murder. Second, for those indicted for any homicide, the analysis will identify those groups having the highest probability of receiving the death penalty. Third, this same analysis will be repeated using only those cases involving a first degree murder indictment. Three possibilities will be assessed in each step. Following Chambliss and Seidman (1971), it is possible that the severity of indictments and sentences are related to the race of the defendant, with a greater proportion of first degree indictments and death sentences imposed on black defendants. Second, race of the victim might be a significant correlate of the severity of charges and sanctions (Bowers and Pierce, 1980; Garfinkle, 1949). Finally, as suggested by Wolfgang and Riedel (1973), the severity of the two legal decisions will be examined to see if they are associated with the joint combination of defendant's and victim's race. This will indicate whether effects of race of the defendant on the severity of indictments or sentences vary between white and black victims, or equivalently whether effects of race of the victim vary between white and black defendants.

Table 1 shows that the probability of being indicted for first degree murder and the probability of receiving the death penalty, once indicted for any homicide, varies with race of the defendant, race of the victim, and the relationship between the defendant and victim. Of the 637 cases, 554 (87%) are intraracial. Looking simply at two-way relationships, there is no significant association between race of the defendant and imposition of the death penalty, as 17/335 (5.1%) of the indicted blacks and 22/302 (7.3%) of the indicted whites were eventually sentenced to death ($\chi^2 = 1.35$). Among black victims, 6/286 were death penalty cases (2.1%), whereas 33/351 (9.4%) of the cases with a white

Table 1. Relationship and Racial Characteristics of Victims and Defendants for All Homicide Indictments

	Number of Cases	First Degree Indictments	Probability of First Degree Indictment	Sentenced to Death	Probability of Death Penalty (all cases)	Probability of Death Penalty (first degree indictments)
<i>Nonprimary</i>						
White victim						
Black defendant	63	58	.921	11	.175	.190
White defendant	151	124	.821	19	.126	.153
Black victim						
Black defendant	103	56	.544	6	.058	.107
White defendant	9	4	.444	0	.000	.000
<i>Primary</i>						
White victim						
Black defendant	3	1	.333	0	.000	.000
White defendant	134	73	.545	3	.022	.041
Black victim						
Black defendant	166	51	.307	0	.000	.000
White defendant	8	4	.500	0	.000	.000
N	637	371	.582	39	.061	.105
<i>Nonprimary</i>						
Black defendant	166	114	.687	17	.102	.149
White defendant	160	128	.800	19	.119	.148
White victim	214	182	.850	30	.140	.165
Black victim	112	60	.536	6	.054	.100

victim resulted in a death sentence ($\chi^2 = 14.63$; $p < .001$). Thus, among all homicide indictments, cases with white victims are more likely to result in a death sentence than are cases with black victims. Furthermore, a greater proportion of black than white victims are involved in primary homicides, as 174/286 cases (60.8%) with black victims involved friends or relatives, as opposed to 137 of the 351 cases (39%) with white victims ($\chi^2 = 30.0$; $p < .001$). Nonetheless, the relationship between race of the victim and death penalty remains when only nonprimary homicides are examined: among this group 5.4% of the cases with a black victim resulted in a death penalty, compared to 14% of the cases with a white victim ($\chi^2 = 5.61$; $p < .05$).

It is also apparent that the death penalty is rarely imposed in cases where the victim and defendant are friends or relatives. Of the primary homicides, only 1% resulted in a death penalty. Because the death penalty is rarely imposed in cases where the victim and defendant had a prior relationship, questions surrounding the imposition of the death penalty are almost solely relevant to cases of nonprimary homicide. Therefore, to avoid obscuring possible correlates and because

examining the death penalty among primary homicides produces many zero cells, all further analyses will examine only the 326 cases of nonprimary homicide.

Indictments for First Degree Murder

Despite the disproportionate number of black victims among primary homicide cases and the lower probability of primary homicide cases to result in a first degree murder indictment, there is still a relationship between race of the victim and the decision to indict for first degree murder among nonprimary homicide cases. As presented in Table 1, 53.6% of the nonprimary homicides with a black victim resulted in a first degree murder indictment, whereas 85% of the nonprimary homicides with a white victim involved a first degree indictment. White defendants in nonprimary cases are slightly more likely than black defendants to be indicted for first degree murder (80 vs. 68.7%). However, in both the group with black victims and the group with white victims, the probability of a black defendant being indicted for first degree murder is 10% higher than for a white defendant (92.1 vs. 82.1% among white victims and 54.4 vs. 44.4%

among black victims). This reversal is attributable to two associations: between race of the victim and race of the defendant and between race of the victim and indictment for first degree murder. That is, the overall higher probability for white defendants to be indicted for first degree murder is a function of the tendency of whites to kill other whites. Similarly, a black accused of killing a white has a 37.7% higher probability of being indicted for first degree murder than a black suspected of killing a black (92.1 minus 54.4%).

The analysis of the data on nonprimary homicides presented in Table 1 can be simplified by use of log-linear techniques (Burke and Turk, 1975; Fienberg, 1980; Swafford, 1980). This procedure, which assumes multiplicative effects (linear effects on a log scale) of variables on cell probabilities, compares expected or hypothesized frequencies representing a particular model to those frequencies actually observed in the data in terms of a likelihood-ratio χ^2 test. Its goal is to build a model that fits the data so that cell frequencies can be reproduced (within limits of sampling error). Interaction terms between variables can be added or deleted until the most parsimonious model fitting the data is discovered. The three variables in Table 1 are referred to as D (defendant's race), V (victim's race), and F (first degree murder indictment). Thus, the F,V,D Model hypothesizes that each variable is independent of the other two; the FV,VD Model postulates that a first degree indictment is correlated with victim's race and victim's race is correlated with race of the defendant, but that first degree indictment and defendant's race are independent when controlling for victim's race (see Swafford, 1980 for further elaboration of model notation).

Table 2 presents 8 models that were fit to the three variables in Table 1.² The first model, as described above, postulates that the three variables are mutually indepen-

Table 2. Models Fit to the Three-Variable Contingency Table Examining All Indictments and First Degree Murder Indictment as Outcome Variable

Model	Fitted Marginals	Likelihood Ratio χ^2	D.F.	Probability
M1	F,V,D	167.32	4	.0
M2	FV,D	130.84	3	.0
M3	FD,V	161.93	3	.0
M4	VD,F	40.24	3	.0
M5	FV,FD	125.45	2	.0
M6	FV,VD	3.76	2	.1525
M7	FD,VD	34.85	2	.0
M8	FV,FD,VD	.34	1	.5616

NOTE: F = First Degree Murder Indictment; V = Victim's Race; D = Defendant's Race.

dent. This model is rejected because the probability of obtaining a $\chi^2 \geq 167.32$ if this model were indeed correct is $< .0001$. The eighth model, postulating associations between each pair of variables (FV,FD, VD) does describe the observed data nicely, with a χ^2 of .34 ($p = .5616$). The only possible effect omitted from this model is a three-factor interaction among the variables; the lack of significance of this omission indicates that the relationship between defendant's race and magnitude of indictment does not significantly vary with race of the victim. If the FD term is eliminated from Model 8, as done in Model 6, χ^2 increases 3.42 and 1 degree of freedom, which does not attain statistical significance at the .05 level. If Model 6 were indeed the true model, the probability of obtaining a $\chi^2 \geq 3.76$ is .15. Thus, Model 6 appears to be the most parsimonious model having an adequate fit. This indicates that the race of victims and defendants is intercorrelated (VD), that nonprimary homicides with white victims are more likely than nonprimary homicides with black victims to result in an indictment for first degree murder (FV), and that, controlling for victim's race, severity of indictment and defendant's race are independent. In short, there is a tendency to indict defendants accused of killing whites for first degree murder and to indict defendants accused of killing blacks for a less severe homicide charge. However, the defendant's race does not have any statistically significant effects.

² Before undertaking the log-linear analysis, .5 was added to each cell in the contingency table, which slightly reduces the strength of the partial associations.

The Imposition of the Death Penalty

Returning to Table 1, both race of the defendant and race of the victim appear to be related to the imposition of the death penalty among nonprimary homicides. Overall, white defendants are slightly more likely to be sentenced to death (11.9 vs. 10.2%; not significant), although among both cases with a white victim and cases with a black victim the probability of receiving the death penalty is approximately 5% higher for black defendants (17.5 vs. 12.6% for white victims and 5.8 vs. 0% for black victims). Both white and black defendants have a 12% higher probability of receiving the death penalty if they are accused of killing a white instead of a black (12.6 vs. 0% for white defendants and 17.5 vs. 5.8% for black defendants). Again, because of different cell sizes and the intercorrelation between victim's and defendant's race, log-linear analysis is used to identify the most salient relationships.

Table 3 presents 8 models that were fit to the contingency table, where Y = death penalty, V = victim's race, and D = defendant's race. All cases of nonprimary homicide are included. The eighth model, postulating associations between each pair of variables, describes the data very well, with a χ^2 of .01 ($p = .9194$).³ Because the three-factor interaction is omitted from this model, it can be concluded that any relationship between the death penalty and race of the victim does not significantly vary with race of the defendant. This model, however, can be further simplified. Model 6 eliminates the YD term from Model 8, hypothesizing that the death penalty, given race of the victim, is conditionally independent of race of the defendant. Because χ^2 increases by only .95 and one degree of freedom, this YD

³ This model, with all two-factor effects present, can be used to compare the probabilities of receiving the death penalty while controlling for one variable. Using the procedure described by Fienberg (1980:16-9), and controlling for race of the victim, the estimated odds of a white receiving a death sentence are .68 the odds of a black. Controlling for race of the defendant, the estimated odds of receiving the death penalty are 3.22 times higher if the victim is white than if the victim is black.

Table 3. Models Fit to the Three-Variable Contingency Table Examining All Indictments and Death Penalty as Outcome Variable

Model	Fitted Marginals	Likelihood Ratio χ^2	D.F.	Probability
M1	Y,V,D	133.45	4	.0
M2	YV,D	128.04	3	.0
M3	YD,V	133.24	3	.0
M4	VD,Y	6.37	3	.0947
M5	YV,YD	127.82	2	.0
M6	YV,VD	.96	2	.6186
M7	YD,VD	6.16	2	.0460
M8	YV,YD,VD	.01	1	.9194

NOTE: Y = Death Penalty; V = Victim's Race; D = Defendant's Race.

term can be safely dropped. χ^2 increases by an additional 5.41 and one degree of freedom when the YV term is also dropped, so Model 4 is significantly poorer than Model 6. The other models also give inadequate fits, thus indicating that the most useful model in describing the data is Model 6. This model indicates that there are two significant partial relationships, YV and VD, neither of which significantly varies by levels of the third variable. Thus, the imposition of the death penalty is related to race of the victim controlling for race of the defendant, and an intercorrelation exists between race of the defendant and race of the victim. Any possible effects of race of the defendant on the imposition of the death penalty (controlling for victim's race) or the possibility that the effects of race of the victim vary with race of the defendant do not add any significant descriptive power to the model.

This same analysis was repeated for the 242 cases which involved nonprimary homicides and first degree murder indictments.⁴ Because of the reduction in sample size, stronger relationships are necessary in this step to attain statistical significance. As displayed in Table 4, the model postulating all three partial associ-

⁴ This step would not be necessary if a 4-dimensional table with F, Y, V, and D was originally analyzed. This is not done because of the impossibility of receiving the death penalty if not indicted for first degree murder, thereby producing an incomplete table with numerous zero cells.

ations again fits well, indicating no significant three-factor interaction. The YD term can be deleted from this model with no significant loss of fit, as done in Model 6, thus resembling the model selected when all nonprimary homicide indictments were examined. However, this model can be further simplified by deleting the YV term, as done in Model 4. Because χ^2 increases by only 1.16 and one degree of freedom over that observed in Model 6, which is not significant, Model 4 appears to be the best fitting model. This indicates that among those indicted for first degree murder, the only significant relationship is between race of the defendant and race of the victim, and neither of these two variables nor their interaction is a significant correlate of the imposition of a death sentence.⁵

Among this group of those indicted for first degree murder, the lack of statistical significance of the tendency to impose the death penalty on those with white victims more frequently than on those with black victims must be interpreted with caution. As shown in Table 1, 16.5% of the 182 cases with a white victim in this group and 10% of the 60 cases with a black victim resulted in a death sentence. These trends continue the patterns observed when the type of indictment was treated as the dependent variable, and are consistent with patterns observed in other death-penalty studies (Bowers and Pierce, 1980; Garfinkle, 1949). A 95% confidence interval placed on this 6.5% observed difference indicates that actual differences in the population of all those indicted for first degree murder fall between -2.8% to 15.8% (Agresti and Agresti, 1979:172). This interval is wide because of relatively small sample sizes, and its inclusion of zero prohibits rejection of the possibility that no racial differences actually exist. Thus, insufficient evidence of an association does not necessarily mean that there is no association between the variables in the population. Evidence from other studies, taken together with the range of this confidence interval, suggests that an

Table 4. Models Fit to the Three-Variable Contingency Table Examining First Degree Murder Indictments Only and Death Penalty as Outcome Variable

Model	Fitted Marginals	Likelihood Ratio χ^2	D.F.	Probability
M1	Y,V,D	76.19	4	.0
M2	YV,D	75.03	3	.0
M3	YD,V	76.19	3	.0
M4	VD,Y	1.59	3	.6607
M5	YV,YD	75.03	2	.0
M6	YV,VD	.43	2	.8049
M7	YD,VD	1.59	2	.4508
M8	YV,YD,VD	.01	1	.9402

NOTE: Y = Death Penalty; V = Victim's Race; D = Defendant's Race.

association between race of the victim and a sentence of death, given an indictment for first degree murder, could be found if the sample size was increased.

SUMMARY AND CONCLUSIONS

Among primary homicides in twenty Florida counties in 1976 and 1977, the data indicate that those accused of murdering whites have a significantly higher probability of being placed in jeopardy of receiving the death penalty by being indicted for first degree murder than those accused of murdering blacks. Similarly, those accused of murdering whites are significantly more likely to eventually receive the death penalty than those accused of murdering blacks. However, once indicted for first degree murder, neither race of the defendant, race of the victim, nor the interaction between these two variables are significantly related to the probability of receiving the death penalty. Thus, the higher probability of being sentenced to death for those accused of killing whites among the group indicted for any nonprimary homicide can be seen primarily as a function of the higher probability of those accused of killing whites being indicted for first degree murder. Once indicted for first degree murder, the evidence from this sample is not strong enough to conclude that those accused of killing whites are significantly more likely to be sentenced to death. It can therefore be concluded that given a homicide, deci-

⁵ A similar model is found when only those cases (n = 94) involving a conviction for first degree murder are examined.

sions made by the prosecutor and grand jury place those accused of murdering whites in greater jeopardy of receiving the death penalty through a higher probability of being indicted for first degree murder.

Contrary to the theoretical arguments of Black (1976), Chambliss and Seidman (1971), and Quinney (1979), and consistent with the findings of Hagen (1974), there are no strong differences in this sample between white and black defendants in either the probability of being indicted for first degree murder or in the overall probability of being sentenced to death. However, when broken down by race of the victim, black defendants are more likely to be indicted for first degree murder and sentenced to death among both categories of victim's race. Nevertheless, there is not enough evidence to conclude that the interaction between victim's race and defendant's race is a significant correlate of receiving a death sentence. Although these trends might have substantive importance, the only statistically significant correlate of the death penalty among the 326 cases is race of the victim.

The major finding that remains unexplained is why nonprimary homicides with white victims are more likely to result in an indictment for first degree murder than are nonprimary homicides with black victims. This trend has the effect of disproportionately channelling cases with white victims toward the death penalty. Despite this apparent discrepancy, such prosecutorial discretion tends to be less visible and more immune to judicial review than are racial disparities in sentencing severity.

It is clear that studies examining only sentencing severity or only defendant characteristics (e.g., Chiricos and Waldo, 1975) risk missing significant racial biases in legal processing. The strength of the racial disparities observed in this study will fluctuate as other potentially relevant variables are introduced, such as the sex, age, and criminal histories of the victim and defendant or region of the state. Some research has suggested that racial factors may operate through social class (Green, 1970; Farrell and Swigert, 1978), since the higher representation of blacks in the lower class makes them disproportion-

ately susceptible to any class-based inequalities. Finally, the division of nonprimary homicides into additional subcategories will allow more precise specification of the relationship between racial characteristics and legal processing (Baldus et al., 1980).

In conclusion, relative equality in the imposition of the death penalty appears mythical as long as prosecutors are more likely to obtain first degree murder indictments for those accused of murdering white strangers than for those accused of murdering black strangers. Racial differences in the processing of those indicted for nonprimary homicides in Florida appears to place a lower value on the lives of blacks than on the lives of whites.

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