

In the United States District Court  
Northern District of Georgia  
Atlanta Division

*Draft*

WARREN McCLESKY,	)	
	)	
Petitioner	)	
	)	
- Against -	)	CIVIL ACTION
	)	
WALTER D. ZANT, Superintendent,	)	NO. C81-2434A
Georgia Diagnostic &	)	
Classification Center,	)	
	)	
Respondent	)	

Affidavit of David C. Baldus  
on behalf of Petitioner

The undersigned, being duly sworn, deposes and says as follows. On or about August 18, 1983, the Court in this proceeding delivered to George Woodworth and me a specification of variables from the Charging and Sentencing Study styled the "Lawyers' Model," a copy of which is attached hereto as Appendix A. The Lawyers' Model includes three sets of variables -- aggravating factors (items 1-4), mitigating factors (item 5), and strength of the evidence measures (item 6). The Lawyers' Model specified that a case be included in the analysis if it (a) possessed a specified combination of the aggravating factors in items 1-4, and (b) showed the strength of the evidence as measured by the variables in item 6; the instructions further stated that cases with the mitigating factors in item 5 were to be excluded from the analysis.

Pursuant to this request, we created a series of variables to identify the cases specified for inclusion in the Lawyers' Model. A screen of the cases with these variables produced a sample of 29 cases,

which, when weighted in the manner of our other analyses, constituted 44 of the cases in the universe of the Charging and Sentencing Study. The overall death sentencing rate among these cases was .30 (13/44). Although the pool of selected cases was too small for regression analysis, we conducted crosstabulation analyses which showed the following association between selection rates at three stages in the Charging and Sentencing System and the defendant/victim racial combinations represented in the data:

Outcome Variable	All Cases	Black Def. White Vic.	White Def. White Vic.	Black Def. Black Vic.
A. Death Sentence Given A Murder Indictment	.30 (13/44)	.53 (12/23)	.07 (1/14)	.0 (0/7)
B. Prosecutor Seeks A Penalty Trial After Murder Guilt Trial Conviction	.68 (19/28)	1.0 (14/14)	.56 (5/9)	.0 (0/5)
C. Jury Death Sentencing Decision	.62 <sup>a/</sup> (13/21)	.80 (12/15)	.20 (1/5)	.0 (0/1)

a/ This decision point includes 2d and 3d penalty trials for defendants whose original death sentences were reversed on appeal, as well as guilty plea cases that resulted in a penalty trial.

An analysis of separate frequency distributions for the variables used to select the cases for the Lawyers' Model indicated that the small sample resulted from the exclusion of cases with the mitigating circumstances specified in item 5 of Appendix A. In a second analyses, the requirements of item 5 were partially relaxed by deleting item 5B and deleting the last item variables in item 5D (281-303). This

modification increased the sample of cases to 61 which when weighted represent 92 cases in the universe. The overall death sentencing rate for these cases was .28 (25/92) and they showed the following association between the three defendant/victim racial combinations represented in the data and selection rates at three steps in the process:

Outcome Variable	All Cases	Black Def. White Vic.	White Def. White Vic.	Black Def. Black Vic.
A. Death Sentence Given A Murder Indictment	.28 (25/92)	.55 (21/39)	.14 (4/30)	.0 (0/24)
B. Prosecutor Seeks A Penalty Trial After A Murder Guilt Trial Conviction	.57 (37/66)	.87 (26/30)	.14 (9/17)	.11 (2/19)
C. Jury Death Sentencing Decision	.64 (25/39)	.78 (21/27)	.46 (4/9)	.0 (0/3)

To enlarge the pool of selected cases to a number which would allow us to conduct multiple regression analysis, we dropped all of the constraints imposed by the mitigating factors in item 5 of Appendix A. This resulted in a pool of 237 cases which when weighted represent 435 of the cases in the universe of the Charging and Sentencing Study. The overall death sentencing rate among those cases was .15 and they showed the following association with the defendant victim racial combinations represented in the data.

Outcome Variable	All Cases	Black Def. White Vic.	White Def. White Vic.	Black Def. Black Vic.	White Def. Black Vic.
A. Death Sentence Given A Murder Indictment	.15 (64/435)	.43 (27/63)	.16 (27/167)	.04 (8/195)	.10 (1/10)
B. Prosecutor Seeks A Penalty Trial After A Murder Guilt Trial Conviction	.46 (102/219)	.77 (37/48)	.46 (45/99)	.25 (17/67)	.40 (2/5)
C. Jury Death Sentencing	.60 (64/107)	.71 (27/38)	.57 (27/48)	.44 (8/18)	.50 (1/2)

We next conducted weighted least squares multiple regression analyses which controlled for the 39 background variables in Schedule 4 of the Technical Appendix (Petitioner's Exhibit DB96A). For each of the stages in the process analyzed, we controlled first for all 39 background variables simultaneously and then controlled for those that showed a relationship with the outcome variable that was statistically significant at the .10 level. The following tabulation shows the results:

Weighted Least Squares Regression Coefficient for Race of Victim  
And Race of Defendant Controlling for 39 Non-Racial Background Variables

A. Outcome Variable & Background Variables Included	B. Race of Victim Regression Coefficient (with level of Statistical Significance)	C. Race of Victim Regression Coefficient (with level of Statistical Significance)
<b>I. Death Sentence Given a Murder Indictment (DPMURIDT) (n=237)</b>		
A. 39 Non-Racial Background Variables	.13 (.04)	.06 (.29)
B. 14 Statistically Significant Background Variables	.15 (.01)	.10 (.07)
<b>II. Prosecutor Seeks A Penalty Trial After A Guilt Trial Murder Conviction (PSEEKNGP) (n=157)</b>		
A. 39 Non-Racial Background Variables	.18 (.09)	.06 (.54)
B. 14 Statistically Significant Background Variables	.20 (.03)	.03 (.70)
<b>III. Jury Death Sentencing Decision At Penalty Trial (DEATHSNT) (n=108)</b>		
A. 39 Non-Racial Background Variables	.18 (.23)	.08 (.58)
B. 9 Statistically Significant Background Variables	.13 (.23)	.001 (.99)

We also repeated these regression analyses with a variable for the defendant's socio-economic status (LSTATDEF) included in each analysis. The inclusion of this variable in the analyses enhanced slightly the racial effects observed for the combined effects of the entire Charging and Sentencing process (Part I above) and the prosecutorial decision to advance a case to a penalty trial (Part II above). The analysis of the jury death sentencing decision, however, was not affected by the addition of the variable for the defendant's socio-economic status.

The results of the analyses of all three samples selected with the Lawyers' Model, are consistent with the analyses presented earlier i.e., when the analysis focuses on the more aggravated cases where there is a substantial risk of a death sentence the race of victim effects increase substantially.

Finally, the Court suggested in the Lawyers' Model that we conduct separate analyses among cases with appointed private counsel on the one hand and either retained counsel or appointed counsel with an institutional affiliation such as a public defender, or Team Defense lawyer. Among the 237 cases selected for the overall analyses 43 had missing data on the status of defense counsel. Among the 194 cases where status of counsel was known 119 had private appointed counsel and 75 had either retained counsel or appointed counsel with an institutional affiliation. We then conducted regression analyses on the two subsets of data defined by the status of defense counsel. The results presented below showed much stronger race of victim effects among the cases with private appointed defense counsel.

Race of Victim Regression Coefficients (with level of Statistical Significance) After Controlling for 39 Non-Racial Background Variables & the Race of Defendant

Outcome Variable	All Cases	Counsel Private Appointed (n = 194)	Counsel Retained Or Appointed With Institutional Affiliation (n = 119)
A. Death Sentence Given A Murder Indictment	.13 (.04)	.32 (.01)	.04 (.82)
B. Penalty Trial Held After Murder Guilt Conviction	.18 (.09)	.33 (.05)	.15 (.78)
C. Jury Death Sentencing Decision	.18 (.23)	.18 (.45)	<u>1/</u>

1/ Too few cases for analysis.

A similar analysis also show stronger race of defendant effects among cases with appointed private counsel.

Race of Defendant Regression Coefficient (with level of Statistical Significance)  
 Controlling for 39 Non-Racial Background Variables and the Race of Victim

Outcome Variable	A. All Cases (n = 237)	B. Counsel Private Appointed (n = 194)	C. Counsel Retained or Appointed with Institutional Affiliation (n = 119)
Death Sentence Given A Murder Indictment	.06 (.29)	.25 (.02)	.03 (.82)
Penalty Trial Held After Murder Guilt Conviction	.06 (.54)	.11 (.38)	.07 (.90)
Jury Death Sentencing Decision	.08 (.54)	.07 (.72)	<u>a/</u>

a/ Too few cases for the analysis.

These results show a strong interaction effect between the status of defense counsel and the degree of racial disparity observed in prosecutorial decisionmaking; with substantially stronger effects, particularly the race of victim effect, apparent in cases with private retained counsel. The interaction effect does not appear in the jury decisions however. This evidence suggests that private retained counsel are less likely to be independent in their representation and less likely to represent their client in a fashion that will incline a prosecutor to plead the case out or otherwise waive a penalty trial.



LAWYERS' MODEL

Include if:

1. Indicted for murder, and if
2. Defendant age greater than 18 and less than 65, and if
3. One or more statutory aggravating circumstances present, and if
4. Any of the following present:

(A) Two or more statutory aggravating but not b(3) where b(2) present and not b(9) or b(10) where b(8) present.

OR

(B) One or more statutory aggravating circumstance and any one positive response in foils

161, 163, 164, 168, 170, 176, 176A, 177, 178A, 180, 181, 184,

OR

(C) Foil 82, 86, 90, 94, 98, or 102 is coded 1, 5 or 6,

OR

(D) Responses in each foil numbered 82, 86, 90, 94, 98 if that response is 12 or less,

OR

(E) Any response in foils 172-175B if the response is numbered 1, 3, 4, 9, 9A, 13, 14, 16,

OR

(F) Any response in foils 131-134A if the response is numbered 3, 5, 6, 6A, and if

5. None of the following are present:

(A) A response in foil 121 carrying any of the following numbers: 1, 2, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20.

OR

(B) A positive response in foils 135, 136, 137, 138, 139, 144A, 145, 147, 148, 150, 151, 152, 153, 154, 155, 156,

OR

(C) Foil 237, 242, or 247 coded two and that co-perpetrator is equally culpable (i.e., foil under 48C, code A or B is coded one or two) and his treatment is lenient (i.e., his sentence foil is not coded 99, 98, or greater than 19 years).

OR

(D) Positive Response in foils 261, 264, 265, 266, 268A, 269, 270, 281, 282, 283, 288, 289, 294, 298, 299, 302, 303,

OR

(E) There are a total of 4 or more positive responses in foils 259-321D excluding foils listed in 5.D., and if

6. Any one of the following is present:

(A) Foil 385 not coded 5 and 390 not coded 1, and positive response in foils 323, 324, 327, 328, and where any three of the following foils also have a positive response: 364, 365, 366, 367, 368, 369, 385, (if coded 1-4), 389, 394-401, 446, 452, 453, 454, 466, 467,

OR

(B) Positive Response in 394, 395, 395A, 396, 397 and if 430 not coded 2 and three or more positive responses in foils 322, 389, 446, 452, 453, 454, 466, 467,

OR

(C) Foil 237, 242, or 247 coded 2 and positive response in foil 405, 406, 406A, 407, 408, 409, or 410 and at least six positive responses in the following foils: 389, 394-401, 446, 451-457, 460, 461, 462, 466-469, 471, 472,

OR

(D) At least six positive responses in the following foils: 322, 389, 428, 446, 451, 466, 467.

Run this Group of Cases once where foil ten is coded two or eight and once where foil ten is coded either 1, 3, 4, 5, 6, or 7.

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WALTER D. ZANT, Superintendent,	)	NO. C81-2434A
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The undersigned, being duly sworn, deposes and says as follows. On or about August 18, 1983, the Court in this proceeding delivered to George Woodworth and me a specification of variables from the Charging and Sentencing Study styled the "Lawyers' Model," a copy of which is attached hereto as Appendix A. The Lawyers' Model includes three sets of variables -- aggravating factors (items 1-4), mitigating factors (item 5), and strength of the evidence measures (item 6). The Lawyers' Model specified that a case be included in the analysis if it (a) possessed a specified combination of the aggravating factors in items 1-4, and (b) showed the strength of the evidence measured by the variables in item 6; the instructions further stated that cases with the mitigating factors in item 5 were to be excluded from the analysis.

Part I of this affidavit presents the results of analyses conducted with four subsets of cases identified with variables in the Lawyers' Model.

An alternative method for estimating racial effects while controlling for the non-racial background variables specified in the Lawyers' Model is to enter them into a multiple regression analysis as independent variables. Part II of this affidavit presents the results of four analyses using this approach.

Finally, the Lawyers' Model requested that we account for the status of defense counsel in the case, specifically whether the defendant's counsel was (a) a private attorney appointed by the court, or (b) either a privately retained attorney or a court appointed attorney with an institutional affiliation (e.g., a public defender). Part III of this affidavit presents the results of the analyses addressing this issue.

I. Analyses Using Cases Selected With Variables Specified in the Lawyers' Model.

a. The Samples

The first three variables in the Lawyers' Model (items 1-3) were already included in the file of the Charging and Sentencing Study.<sup>1/</sup> However, to identify the cases with the characteristics specified in items 4-6, it was necessary to create a series of new variables. The coding for these variables, (V4A-V6D), whose names correspond to the paragraphs in the Lawyers' Model at Appendix A, is listed in Appendix B of this Affidavit.

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<sup>1/</sup> Item 1 (INDICT); Item 2 (DEFAGE); Item 3 (DEATHELG).

The variables specified in the Lawyers' Model for selecting cases sharply limited the cases available for analysis, specifically, they identified only 31 of the 1066 cases in the sample and only 15 of the 128 death sentence cases. In order to obtain samples of sufficient size both to conduct multiple regression analyses and to obtain a substantial representation of death sentence cases, we relaxed the requirements of the Lawyers' Model in three successive stages with the results presented below. For Example, row 2

Table 1

<u>A</u> Sample Number and Characteristics <sup>1/</sup>	<u>B</u> Total Sample of Cases	<u>C</u> Cases in the Universe Represented by the Sample	<u>D</u> Proportion and Number of Death Sentence Cases
1. Original Lawyers' Model.	31	46	.12 (15/128)
2. Lawyers' Model with a Relaxation of the Exclusions Based on the Presense of Mitigating Factors.	66	104	.21 (27/104)
3. Lawyers' Model with No Exclusion of Cases Because of Mitigating Factors.	238	441	.51 (65/128)
4. Lawyers' Model with No Exclusion of Cases Because of Mitigating Factors and a Relaxation of the Required Level of Evidence Strength for Inclusion.	354	647	.76 (97/128)

<sup>1/</sup> For Sample 2 the requirements of Item 5 were relaxed by deleting Item 5B and the last 10 variables in Item 5D. Sample 3 was produced by deleting entirely the requirement that a case be dropped from the analysis because of the presence of one of the variables listed in Items 5A-5E. For Sample 4 we relaxed the strength of evidence requirements by changing Item 6D from "at least six" to "at least three" positive responses.

indicates that when the limitations of the original Lawyers' Model were relaxed with respect to the mitigating factors used to exclude cases from the analysis, the sample included 66 cases representing 104 cases in the universe and 21% of the death sentence cases. The fourth and largest sample included 354 cases with 76% (97/128) of the death sentence cases.

b. Crosstabulation Analysis

For each sample, we calculated overall death sentencing rates and the rates among the four groups of cases produced by the "Defendant/victim racial combination" variable. The results were as follows:

Table 2

<u>A</u> Sample Number	<u>B</u> Average <sup>1/</sup> Rate	<u>Death Sentencing Rates</u>			
		<u>C</u> Black Def. White Vic.	<u>D</u> White Def. White Vic.	<u>E</u> Black Def. Black Vic.	<u>F</u> White Def. Black Vic.
1	.33 (15/46)	.55 (13/24)	.13 (2/15)	.0 (0/7)	-----a/
2	.26 (27/104)	.54 (22/41)	.17 (5/31)	.0 (0/32)	-----a/
3	.15 (65/441)	.42 (27/65)	.17 (28/170)	.04 (8/192)	.07 (1/14)
4	.15 (97/647)	.35 (34/98)	.18 (50/271)	.05 (12/262)	.06 (1/16)

These analyses indicate that as the samples of cases are expanded beyond the original Lawyers' Model, the average death sentencing rate declines, but the race of victim and race of defendant effects persist in each analysis.

<sup>1/</sup> The denominators are weighted figures.

<sup>a/</sup> No cases in this category.

An analysis of the prosecutorial decision to seek a death sentence after a murder conviction was obtained at trial shows the same pattern. The results are as follows:

Table 3

Rates at Which Prosecutors Seek a Death Sentence After a Guilt Trial

<u>A</u> Sample Number	<u>B</u> Average <sup>1/</sup> Rate	<u>C</u> Black Def. White Vic.	<u>D</u> White Def. White Vic.	<u>E</u> Black Def. Black Vic.	<u>F</u> White Def. Black Vic.
1	.70 (21/30)	1.0 (15/15)	.61 (6/10)	.0 (0/5)	-----a/
2	.56 (38/68)	.87 (27/31)	.57 (10/18)	.05 (1/19)	-----a/
3	.47 (102/214)	.78 (38/49)	.46 (46/101)	.25 (15/60)	.40 (2/5)
4	.47 (161/345)	.78 (58/75)	.44 (79/177)	.25 (22/89)	.44 (2/5)

<sup>1/</sup> The denominators are weighted figures.

<sup>a/</sup> No cases in this category.

In contrast, an analysis of death sentencing rates at penalty trial shows substantially weaker race of victim and race of defendant effects. Those results were as follows:

Table 4

Death Sentencing Rates at a Penalty Trial

<u>A</u> Sample Number	<u>B</u> Average Rate	<u>C</u> Black Def. White Vic.	<u>D</u> White Def. White Vic.	<u>E</u> Black Def. Black Vic.	<u>F</u> White Def. Black Vic.
1	.68 (15/22)	.81 (13/16)	.33 (2/6)	-----a/	-----a/
2	.68 (27/40)	.79 (22/28)	.51 (5/10)	.0 (0/2)	-----a/
3	.61 (65/107)	.69 (27/39)	.57 (28/49)	.50 (8/16)	.50 (1/2)
4	.57 (97/169)	.58 (34/59)	.59 (50/84)	.50 (12/24)	.50 (1/2)

<sup>a/</sup> No cases in this category.

c. Multiple Regression Analysis

We next conducted weighted least squares multiple regression analyses which controlled for the 39 background variables in Schedule 4 of the Technical Appendix (Petitioner's Exhibit DB 96A). Analyses were conducted for Samples 3 and 4 with 238 and 354 cases respectively. For each analysis, we first controlled simultaneously for the 39 background variables and then in a second analysis, for the background variables from the list of 39 that showed a statistically significant relationship with the outcome variable at the .10 level. The results are presented in Table 5 and Appendix C presents the complete regression results from which the Sample 4 race of victim and race of defendant coefficients reported in rows IB, IIB and IIIB were taken:



Table 5

Weighted Least Squares Regression Coefficients for Race of Victim  
And Race of Defendant Controlling for 39 Non-Racial Background Variables

A. Outcome Variable & Background Variables Simultaneously Controlled for in the Analysis	B. Race of Victim Regression Coefficients (with level of Statistical Significance)		C. Race of Defendant Regression Coefficients (with level of Statistical Significance)	
	Sample 3 (n=238)	Sample 4 (n=354)	Sample 3 (n=238)	Sample 4 (n=354)
<b>I. Death Sentence Given a Murder Indictment (DPMURIDT)</b>				
A. 39 Non-Racial Background Variables	.13 (.05)	.11 (.05)	.04 (.49)	.01 (.90)
B. 13/16 Statistically Significant Back <sub>1/</sub> ground Variables	.17 (.01)	.15 (.01)	.09 (.10)	.05 (.29)
<b>II. Prosecutor Seeks A Penalty Trial After A Guilt Trial Murder Conviction (PSEEKNGP)</b>				
A. 39 Non-Racial Background Variables	.24 (.04)	.23 (.02)	.07 (.50)	.06 (.49)
B. 11/9 Statistically Significant Back <sub>2/</sub> ground Variables	.23 (.02)	.26 (.01)	.03 (.75)	.08 (.27)
<b>III. Jury Death Sentencing Decision At Penalty Trial (DEATHSNT)</b>				
A. 39 Non-Racial Background Variables	.13 (.40)	.11 (.34)	.03 (.80)	-.08 (.39)
B. 10 Statistically Significant Background Variables	.13 (.27)	.07 (.45)	.01 (.92)	-.08 (.28)

1/ The Sample 3 analysis included 13 background variables while the Sample 4 analysis included 16 variables.

2/ The Sample 3 analysis included 11 background variables while the Sample 4 analysis included 9 variables.

We also conducted weighted logistic regression analysis using Sample 4 (n=354). The racial coefficients estimated in two analyses with "Death Sentence Given a Murder Indictment" as the dependent variable were as follows:

Table 6

	<u>Race of Victim</u>		<u>Race of Defendant</u>	
	Death Odds Multiplier	Regression Coefficient (with level of Statistical Significance)	Death Odds Multiplier	Regression Coefficient (with level of Statistical Significance)
<u>Background Variables Simultaneously Controlled For</u>				
a) 39 variables in Schedule 4 of Petitioner's Exhibit DB 96A	4.0	1.39 (.03)	.57	-.56 (.15)
b) 19 of the 39 variables in a) above with a statistically significant relationship (.10 level) with the dependent variable	6.5	1.87 (.001)	.71	-.39 (.40)

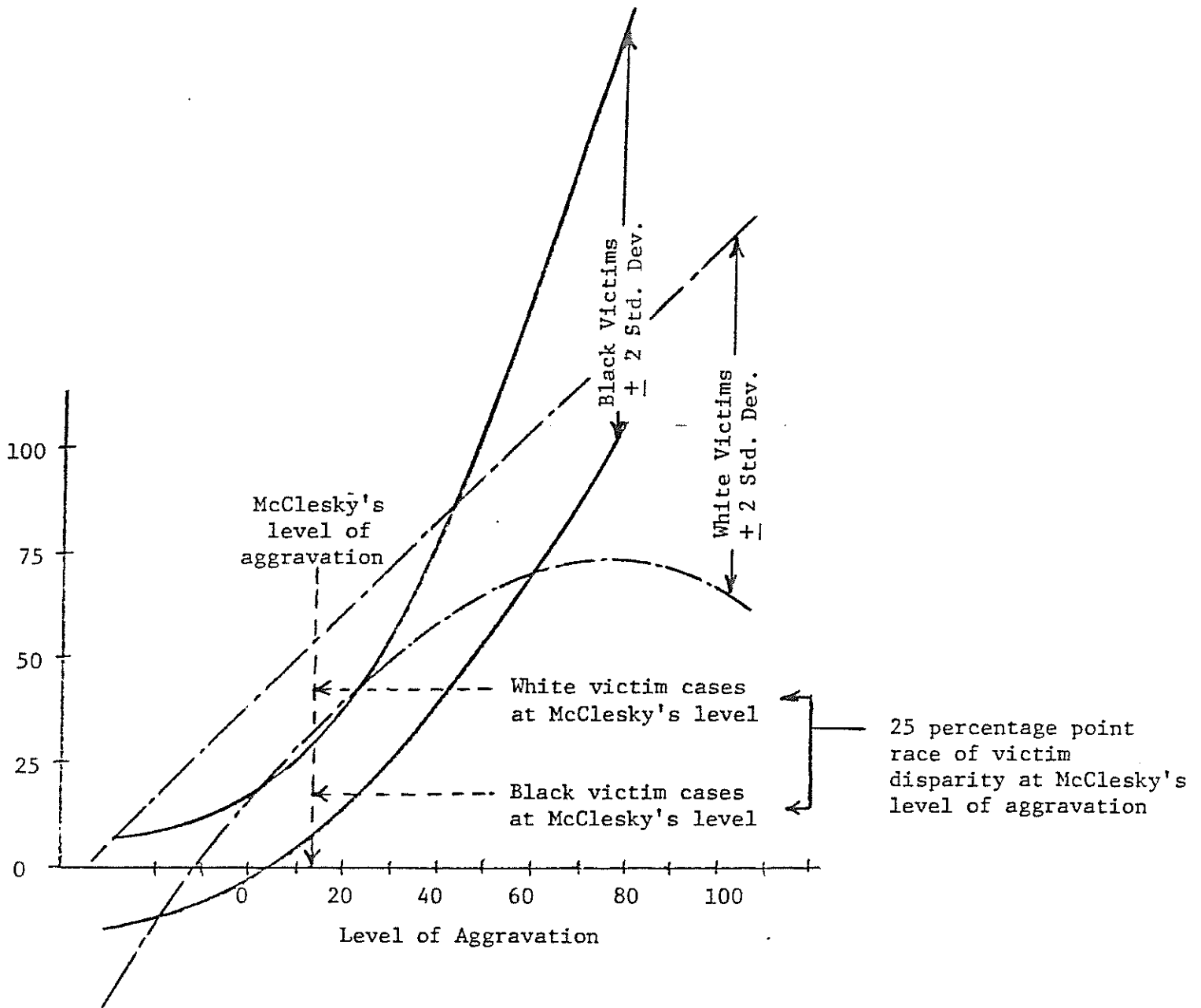
Finally we used the 354 cases in Sample 4 to produce two figures which contrast the rise in death sentencing rates in white and black victim cases, ~~after controlling for the~~ <sup>as the</sup> ~~aggravation level of the~~ <sup>of the</sup> cases. For this purpose, the aggravation level of each case was estimated from the results of a weighted least square regression which controlled for the 39 non-racial background variables included in Schedule 4 of Petitioner's Exhibit DB 96A. The results are presented in figures 1 and 2. They provide additional support for the hypothesis

(Figures 1 & 2 go here)

that the State of Georgia operates a dual system for processing homicide cases in which white cases victim cases are in fact considered more

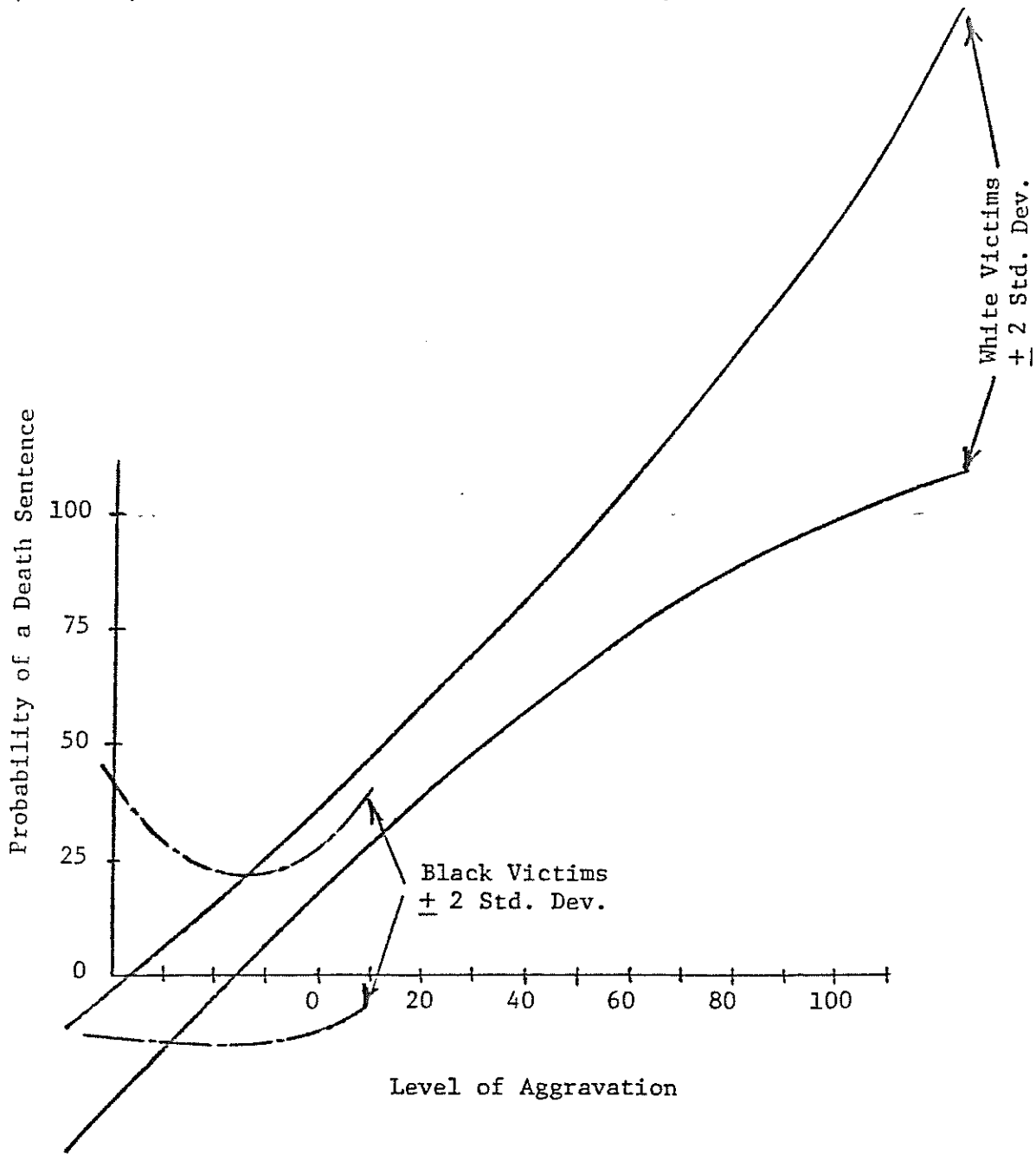
*among similarly situated cases*

Figure 1 Midrange second order model for 354 death elibible cases.  
 (Black Defendants)



NOTES: Level of aggravation is the linear WLS Model leaving out the racial effects. The second order model includes race of victim, race of defendant, level of aggravation, all two-way interactions and the square of the level of aggravation. The model includes white defendants, but they are not graphed here.

Figure 2 Midrange second order model for 354 death elible cases.  
(White Defendants)



aggravated than similarly situated black victim cases. Figures 1 also indicates that among cases with an aggravation level comparable to Warren McClesky; there is a 25 percentage point race of victim disparity.

The results of the analysis shown in the first section of this affidavit are consistent with the results presented in the hearing on this matter. There are persistent race of victim effects and when the analysis focuses on the more aggravated cases, where there is a substantial risk of a death sentence, those effects increase substantially.

#### II. Racial Coefficients Estimated in Analyses Using Variables Created for the Lawyers' Model as Background Controls

The 18 variables created to select cases for the analyses reported in Part I provide an alternative means of controlling for the non-racial background case characteristics identified as important in the Lawyers' Model. We estimated racial coefficients in regression analyses while controlling simultaneously for these 18 non-racial background factors. We also estimated racial effects in analyses using the variables from the Lawyers' Model and the 39 variables which we believe to be most important in the system. The results of weighted least squares analyses using the 354 cases in Sample 4 were as follows:

Table 7

Background Variables Simultaneously Controlled For	Adjusted R <sup>2</sup>	Race of Victim Coefficient (with level of Statistical Significance	Race of Defendant Coefficient (with level of Statistical Significance
1. 18 variables in the Lawyers' Model	.31	.10 <sup>a/</sup> (.04)	.06 <sup>b/</sup> (.27)
2. 18 variables in the Lawyers' Model and the 39 variables in Schedule 4 of Petitioner's Exhibit DB 96A	.43	.11 (.04)	.05 (.34)
3. 39 variables in Exhibit DB 96A	.39	.11 (.05)	.01 (.90)

a/ The logistic regression coefficient and death odds multiplier for race of victim were 1.45 and 4.3 respectively (significant at the .003 level).

b/ The logistic regression coefficient and death odds multiplier for race of defendant were .34 and 1.4 respectively (significant at the .42 level).

These data show the same pattern of racial effects observed in our earlier analyses.

III. Racial Effects Estimated After Adjustment For Status of Counsel and Defendant's Socio-Economic Status

Finally, the Court suggested in the Lawyers' Model separate analyses for defendants (a) with appointed private counsel, on the one hand, and (b) with retained counsel or appointed counsel with an institutional affiliation, such as a public defender, on the other.

The status of defense counsel was known in 72% of the cases in the sample. Among the cases in the universe, the death sentencing rate is an estimated .10 (78/795) for defendants with appointed private counsel and .05 (48/1002) for defendants with retained counsel or appointed counsel with an institutional affiliation. Multiple regression analysis indicate, however, that the inclusion of a variable for the status of defense counsel does not explain the race of victim effects observed in the data. The race of victim and race of defendant regression coefficients in weighted least squares analyses which controlled for the 39 background variables in Schedule 4 of Petitioner's Exhibit DB 96A and the status of defense counsel were as follows:

Table 8

Dependent Variable and Unweighted Sample Size	Race of Victim Coefficients (with level of Statistical Significance)	Race of Defendant Coefficients (with level of Statistical Significance)
Death Sentence Given a Murder Indictment. (n = 773)	.09 (.01)	.05 (.08)
Prosecutor Seeks a Penalty Trial after Murder Guilt Trial. (n = 366)	.13 (.02)	.04 (.47)
Jury Death Sentencing Result. (n=232)	.15 (.11)	-.03 (.67)

1/ These analyses are based on the entire sample and also included an interaction term between race of victim and status of defense counsel which is discussed below.

1) The correlation coefficient between the status of counsel and the death sentencing result is .10 (statistically significant at the .01 level) (r = .10)

We also conducted a series of regression analyses in which racial effects were estimated while controlling for the 39 variables mentioned above and a variable for the defendant's socio-economic status (LSTATDEF);<sup>2/</sup> the racial coefficients estimated in these analyses were virtually identical to those reported in Table 8, confirming that the race of victim and race of defendant effects observed in the data are not spuriously caused by the status of defense counsel or the defendants' socio-economic status.

We next conducted separate regression analyses for the cases in Sample 4, first for defendants with private appointed counsel and then for defendants whose counsel was privately retained or appointed with an institutional affiliation. The status of defense counsel was known in 84% of the cases in Sample 4 and the results were as follows:

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<sup>2/</sup> These analyses were also based on the entire universe included an interaction term between the defendant's socio-economic status and the race of victim. An analysis limited to the cases in Sample 3 without an interaction showed slightly enhanced race of victim and race of defendant effects when the status of defense counsel is included in the analysis.



Table 9

## I. RACE OF VICTIM EFFECTS

Race of Victim Regression Coefficients (with level of statistical significance) After Controlling for 39 Non-Racial Background Variables & the Race of Defendant

Outcome Variable	All Cases (n=354)	Private Appointed Counsel (n=169)	Counsel Retained Or Appointed With an Institutional Affiliation (n = 127)
A. Death Sentence Given A Murder Indictment	.11 (.05)	.23 (.02)	.05 (.68)
B. Penalty Trial Held After Murder Guilt Conviction	.23 (.02)	.31 (.01)	.04 (.85)
C. Jury Death Sentencing Decision	.11 (.34)	.07 (.72)	.35 (.43)

## II. RACE OF DEFENDANT EFFECTS

Race of Defendant Regression Coefficient (with level of statistical significance) Controlling for 39 Non-Racial Background Variables and the Race of Victim

Outcome Variable	A. All Cases (n = 354)	B. Private Appointed Counsel (n = 169)	C. Counsel Retained or Appointed with an Institutional Affiliation (n = 127)
Death Sentence Given A Murder Indictment	.01 (.90)	.10 (.25)	-.07 (.51)
Penalty Trial Held After Murder Guilt Conviction	.06 (.49)	.03 (.73)	.02 (.89)
Jury Death Sentencing Decision	-.08 (.39)	-.13 (.27)	-.10 (.72)

These data show a strong interaction between the status of defense counsel and the race of victim, i.e. the race of victim effect is much stronger in cases with private appointed counsel than in cases where defendant's counsel is retained or appointed with an institutional affiliation. These results tell us that prosecutors are more inclined to be punitive in cases involving white victims (and to a lesser degree black defendants) if the defense attorney is in private practice and court appointed. A possible explanation for this pattern is that private appointed attorneys put up less of a fight and otherwise develop less pressure on the prosecutor to accept a plea or unilaterally waive the death penalty. Under such circumstances, the system is more likely to respond to the pressures for a death sentence that are generated when the victim is white. These data have particular significance since over 75% (98/128) of death sentences are imposed in cases in which defendant was represented by private appointed counsel.

The status of defense counsel is also a proxy for the defendant's socio-economic status since counsel are appointed only for indigent defendants; the strong race of victim effect in appointed counsel cases therefore may also reflect a greater perception of culpability when the defendant is poor and a greater willingness of prosecutors and juries to respond to the pressures for a death sentence that arise when the victim is white. To test the extent to which the latter hypothesis is supported by the data, we conducted separate multiple regression analyses which included variables ("interaction terms") reflecting (a) the interaction between the race of victim and the status of counsel, and (b) the race of victim and the defendant's

socio-economic status.<sup>1/</sup> The results of these separate analyses were as follows:

Table 10

A.	B. Race of Victim Interaction Term With	C.	D. Race of Victim Main Effect	E.
Outcome Measure	Status of Defense Counsel	Defendant's Socio-Economic Status	Status of Counsel Analysis	Defendant's Socio-Economic Status Analysis
1. Death Sentence Given a Murder Indictment	.04 (.26)	.04 (.15)	.09 (.01)	.07 (.001)
2. Prosecutor Seeks a Death Sentence After a Murder Trial Conviction	.13 (.10)	.14 (.09)	.13 (.03)	.17 (.01)
3. Penalty Trial Death Sentencing Decision	.04 (.81)	.05 (.78)	.15 (.11)	.13 (.19)

---

The coefficients in columns B and C are for the interaction terms which reflect how much larger on average the race of victim effect is when counsel is appointed (Col. B), or when the defendant's socio-economic status is low (Col. C). Columns D and E show the magnitude of the race of victim "main effect," which indicates the average race of victim

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<sup>1/</sup> The first analysis included variables for status of defense counsel, the race of victim/status of defense counsel interaction effect and the 39 non-racial background factors in Petitioner's Exhibit DB 96A. The racial coefficients from these analyses are reported in columns B & D. The second analysis included variables for defendant's socio-economic status, the race of victim/defendant's socio-economic status interaction effect and the 39 non-racial background factors. The racial coefficients from this analysis are reported in columns C & E.

effect across all cases. Thus for the outcome measure "Death Sentence Given a Murder Indictment" (row 1), column D indicates that in the analysis including the status of defense counsel variable an average race of victim effect of 9 percentage points and column B indicates a 4 point interaction effect with the status of counsel. These results indicate that the overall race of victim effect is 13 points in the cases with appointed counsel and 5 points overall in the cases in which counsel is retained or appointed with an institutional affiliation.

The results of the analysis in Table 10 indicate that the race of victim interaction effects are comparable with both the "status of defense counsel" and the "low socio-economic status" variables. One is left therefore with the impression that both the competence, independence and energy of defense counsel and the defendant's status as an indigent affect the extent to which the system will respond to the pressures for a punitive response that arise when the victim is white.

#### IV. Summary

Our analysis of the questions <sup>posed: BM</sup> ~~probably~~ the Lawyers' Model indicate that race of victim and race of defendant disparities in death sentencing rates persist among the most death worthy cases, both before and after adjustment for the leading non-racial background factors operating in the system (pp. 4-9). Similar disparities were also observed when the mitigating, aggravating and strength of evidence variables suggested by Lawyers' Model were introduced as background controls (pp. 9-10). The third phase of our analysis focused on the

status of defense counsel and the defendant's socio-economic status. Our analysis clearly demonstrated that the racial disparities in death sentencing rates observed in the system are explained by neither the status (and competence) of defense counsel nor the defendant's socio-economic status. Our analysis of these two variables indicate, however, that these racial disparities, particularly the race of victim effect, are most pronounced among cases in which the defendant is indigent or has a private appointed counsel, a category of cases accounting for over 75% of the death sentences imposed. The system therefore ~~not only appears~~ <sup>to</sup> ~~racially~~ <sup>racially</sup> discriminatory ~~in operation~~ but also to ~~operate in a manner that~~ <sup>e</sup> allocates the principal burden of that discrimination on the poor and underprivileged.

The results reported in this affidavit reinforce the opinions I expressed at the August 8-19, 1983 hearing about the role of racial factors in Georgia's capital Charging and Sentencing System. ~~Our~~ <sup>The</sup> testimony in that hearing indicates that as the cases became more death worthy, according to both statutory and non-statutory criteria, the observed racial disparities in death sentencing rates would also increase. For example, Petitioner's Exhibit DB 83 showed an average race of victim disparity (as measured in least squares analysis) of approximately 6 points, ~~while~~ <sup>and</sup> that disparity increased to 10 points (Petitioner's Exhibit DB 85) when the analysis was limited to death eligible cases under the two leading statutory aggravating factors (B-2 & B-7). The Lawyers' Model considered in this Affidavit limited the analysis to an even narrower <sup>more</sup> death worthy set of cases, and the race of victim disparities were <sup>even larger</sup> ~~almost identical, whether measured with~~

~~with~~ <sup>least squares analysis</sup>

*of these observed coming to B.2 to B.3.1*  
least-squares or logistic regression coefficients (compare Table 5 Part I and Table 6 of this Affidavit with Petitioner's Exhibit 85).

*eligible case*

In the United States District Court  
Northern District of Georgia  
Atlanta Division

WARREN McCLESKY,	)	
	)	
Petitioner	)	
	)	
- Against -	)	CIVIL ACTION
	)	
WALTER D. ZANT, Superintendent,	)	NO. C81-2434A
Georgia Diagnostic &	)	
Classification Center,	)	
	)	
Respondent	)	

Affidavit of David C. Baldus  
on behalf of Petitioner

The undersigned, being duly sworn, deposes and says as follows. On or about August 18, 1983, the Court in this proceeding delivered to George Woodworth and me a specification of variables from the Charging and Sentencing Study styled the "Lawyers' Model," a copy of which is attached hereto as Appendix A. The Lawyers' Model includes three sets of variables -- aggravating factors (items 1-4), mitigating factors (item 5), and strength of the evidence measures (item 6). The Lawyers' Model specified that a case be included in the analysis if it (a) possessed a specified combination of the aggravating factors in items 1-4, and (b) showed the strength of the evidence measured by the variables in item 6; the instructions further stated that cases with the mitigating factors in item 5 were to be excluded from the analysis.

Part I of this affidavit presents the results of analyses conducted with four subsets of cases identified with variables in the Lawyers' Model.

An alternative method for estimating racial effects while controlling for the non-racial background variables specified in the Lawyers' Model is to enter them into a multiple regression analysis as independent variables. Part II of this affidavit presents the results of four analyses using this approach.

Finally, the Lawyers' Model requested that we account in an analysis for the status of defense counsel in the case, specifically whether defendant's counsel was (a) a private attorney who had been appointed by the court, or (b) either a privately retained attorney or a court appointed attorney with an institutional affiliation (e.g., a public defender). Part III of this affidavit presents the results of analyses addressing this issue.

I. Analyses Using Cases Selected With Variables Specified in the Lawyers' Model.

a. The Samples

The first three variables in the Lawyers' Model (items 1-3) were already included in the file of the Charging and Sentencing Study.<sup>1/</sup> However, to identify the cases which had the characteristics specified in items 4-6, it was necessary to create a series of new variables. The coding for these variables, (V4A-V6D), or whose names correspond to the paragraphs in the Lawyers' Model at Appendix A, is listed in Appendix B of this Affidavit.

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<sup>1/</sup> Item 1 (INDICT); Item 2 (DEFAGE); Item 3 (DEATHELG).



The variables specified in the Lawyers' Model for selecting cases sharply limited the cases available for analysis, i.e., they identified only 31 of the 1066 cases in the sample for inclusion in the analysis and only 15 of the 128 death sentence cases. In order to obtain samples of sufficient size both to conduct multiple regression analyses and to obtain a sufficient representation of death sentence cases, we relaxed the requirements of the Lawyers' Model in three successive stages with the results presented below. For Example, row 2

Table 1

<u>A</u> Sample Number and Characteristics <sup>1/</sup>	<u>B</u> Total Sample of Cases	<u>C</u> Cases in the Universe Represented by the Sample	<u>D</u> Proportion and Number of Death Sentence Cases
1. Original Lawyers' Model.	31	46	.12 (15/128)
2. Lawyers' Model with a Relaxation of the Exclusion Based on the Presense of Mitigating Factors.	66	104	.21 (27/104)
3. Lawyers' Model with No Exclusion of Cases Because of Mitigating Factors.	238	441	.51 (65/128)
4. Lawyers' Model with No Exclusion of Cases Because of Mitigating Factors and a Relaxation of the Required Level of Evidence Strength for Inclusion.	354	647	.76 (97/128)

<sup>1/</sup> For Sample 2 the requirements of Item 5 were relaxed by deleting Item 5B and the last 10 variables in Item 5D. Sample 3 was produced by deleting entirely the requirement that a case be dropped from the analysis because of the presence of one of the variables listed in Items 5A-5E. For Sample 4 we relaxed the strength of evidence requirements by changing Item 6D from "at least six" to "at least three" positive responses.

of the tabulation on page 3, indicates that when the limitation of the original Lawyers' Model were relaxed with respect to the mitigating factors used to exclude cases from the analysis, the sample included 66 cases which represented 104 cases in the universe and 21% of the death sentence cases. The fourth and largest sample included 354 cases with 76% (97/128) of the death sentence cases.

b. Crosstabulation Analysis

For each sample, we calculated overall death sentencing rates and the rates among the four groups of cases produced by the "Defendant/victim racial combination" variable. The results were as follows:

Table 2

<u>A</u> Sample Number	<u>Death Sentencing Rates</u>				
	<u>B</u> Average <sup>1/</sup> Rate	<u>C</u> Black Def. White Vic.	<u>D</u> White Def. White Vic.	<u>E</u> Black Def. Black Vic.	<u>F</u> White Def. Black Vic.
1	.33 (15/46)	.55 (13/24)	.13 (2/15)	.0 (0/7)	-----a/
2	.26 (27/104)	.54 (22/41)	.17 (5/31)	.0 (0/32)	-----a/
3	.15 (65/441)	.42 (27/65)	.17 (28/170)	.04 (8/192)	.07 (1/14)
4	.15 (97/647)	.35 (34/98)	.18 (50/271)	.05 (12/262)	.06 (1/16)

These analyses indicate that as the samples of cases are expanded beyond the original Lawyers' Model, the average death sentencing rate declines, but the race of victim and race of defendant effects persist in each analysis.

<sup>1/</sup> The denominators are weighted figures.  
<sup>a/</sup> No cases in this category.

An analysis of the prosecutorial decision to seek a death sentence after a murder conviction was obtained at trial shows the same pattern. The results are as follows:

Table 3

Rates at Which Prosecutor Seeks a Death Sentence After a Guilt Trial

<u>A</u> Sample Number	<u>B</u> Average <sup>1/</sup> Rate	<u>C</u> Black Def. White Vic.	<u>D</u> White Def. White Vic.	<u>E</u> Black Def. Black Vic.	<u>F</u> White Def. Black Vic.
1	.70 (21/30)	1.0 (15/15)	.61 (6/10)	.0 (0/5)	----- <sup>a/</sup>
2	.56 (38/68)	.87 (27/31)	.57 (10/18)	.05 (1/19)	----- <sup>a/</sup>
3	.47 (102/214)	.78 (38/49)	.46 (46/101)	.25 (15/60)	.40 (2/5)
4	.47 (161/345)	.78 (58/75)	.44 (79/177)	.25 (22/89)	.44 (2/5)

<sup>1/</sup> The denominators are weighted figures.

<sup>a/</sup> ----- means no cases.

In contrast, an analysis of death sentencing rates at penalty trial shows substantially weaker race of victim and race of defendant effects.

Those results were as follows:

Table 4

Death Sentencing Rates at a Penalty Trial

<u>A</u> Sample Number	<u>B</u> Average Rate	<u>C</u> Black Def. White Vic.	<u>D</u> White Def. White Vic.	<u>E</u> Black Def. Black Vic.	<u>F</u> White Def. Black Vic.
1	.68 (15/22)	.81 (13/16)	.33 (2/6)	----- <sup>a/</sup>	----- <sup>a/</sup>
2	.68 (27/40)	.79 (22/28)	.51 (5/10)	.0 (0/2)	----- <sup>a/</sup>
3	.61 (65/107)	.69 (27/39)	.57 (28/49)	.50 (8/16)	.50 (1/2)
4	.57 (97/169)	.58 (34/59)	.59 (50/84)	.50 (12/24)	.50 (1/2)

<sup>a/</sup> ----- means no cases.

c. Multiple Regression Analysis

We next conducted weighted least squares multiple regression analyses which controlled for the 39 background variables in Schedule 4 of the Technical Appendix (Petitioner's Exhibit DB 96A). Analyses were conducted for samples 3 and 4 with 238 and 354 cases respectively. For each analysis, we controlled simultaneously in one regression for the 39 background variables and then in a second analysis for the background variables that showed a statistically significant relationship with the outcome variable that was at the .10 level. The results are presented in Table 5. Also Appendix C presents the actual regression results for the Sample 4 analysis reported in row IA:

Table 5

Weighted Least Squares Regression Coefficient for Race of Victim  
And Race of Defendant Controlling for 39 Non-Racial Background Variables

A. Outcome Variable & Background Variables Simultaneously Controlled for in the Analysis	B. Race of Victim Regression Coefficient (with level of Statistical Significance)		C. Race of Defendant Regression Coefficients (with level of Statistical Significance)	
	Sample 3 (n=238)	Sample 4 (n=354)	Sample 3 (n=238)	Sample 4 (n=354)
<b>I. Death Sentence Given a Murder Indictment (DPMURIDT)</b>				
A. 39 Non-Racial Background Variables	.14 (.03)	.15 (.01)	.05 (.46)	.05 (.28)
B. 13/16 Statistically Significant Background Variables <sup>1/</sup>	.17 (.01)	.12 (.01)	.09 (.10)	.05 (.31)
<b>II. Prosecutor Seeks A Penalty Trial After A Guilt Trial Murder Conviction (PSEKNGP)</b>				
A. 39 Non-Racial Background Variables	.26 (.03)	.23 (.02)	.07 (.50)	.06 (.49)
B. 11/9 Statistically Significant Background Variables <sup>2/</sup>	.28 (.01)	.26 (.01)	.07 (.43)	.08 (.27)
<b>III. Jury Death Sentencing Decision At Penalty Trial (DEATHSNT)</b>				
A. 39 Non-Racial Background Variables	.13 (.40)	.11 (.34)	.04 (.79)	-.08 (.39)
B. 10 Statistically Significant Background Variables	.13 (.27)	.07 (.44)	.01 (.92)	-.08 (.28)

<sup>1/</sup> The Sample 3 analysis included 13 background variables while the Sample 4 analysis included 16 variables.

<sup>2/</sup> The Sample 3 analysis included 11 background variables while the Sample 4 analysis included 9 variables.

We also conducted weighted logistic regression analysis using Sample 4 (n=354). The racial coefficients estimated in an analysis with "Death Sentence Given a Murder Indictment" as the dependent variable were as follows:

Table 6

	<u>Race of Victim</u>		<u>Race of Defendant</u>	
	Death Odds Multiplier	Regression Coefficient (with level of Statistical Significance)	Death Odds Multiplier	Regression Coefficient (with level of Statistical Significance)
<u>Background Variables Simultaneously Controlled For</u>				
a) 39 variables in Schedule 4 of Petitioner's Exhibit DB 96A	4.0	1.39 (.03)	.57	-.56 (.15)
b) 19 of the 39 variables in a) above with a statistically significant relationship (.10 level) with the dependent variable	6.5	1.87 (.001)	.71	-.39 (.40)

Finally we used the 354 cases in Sample 4 to produce two figures which contrast the rise in death sentencing in white and black victim cases after controlling for the aggravation level of the cases. For this purpose the aggravation level of each case was estimated from the results of a weighted least square regression which controlled for the 39 non-racial background variables included in Schedule 4 of Petitioner's Exhibit DB 96A. The results are presented in figures 1 and 2. They provide additional support for the hypothesis that the State of Georgia operates a dual system for processing homicide cases in which white cases victim cases are in fact considered more aggravated than similarly situated black victim cases. Figures 1 also indicates that

among cases with an aggravation level comparable to Warren McClesky;

(Figures 1 & 2 go here)

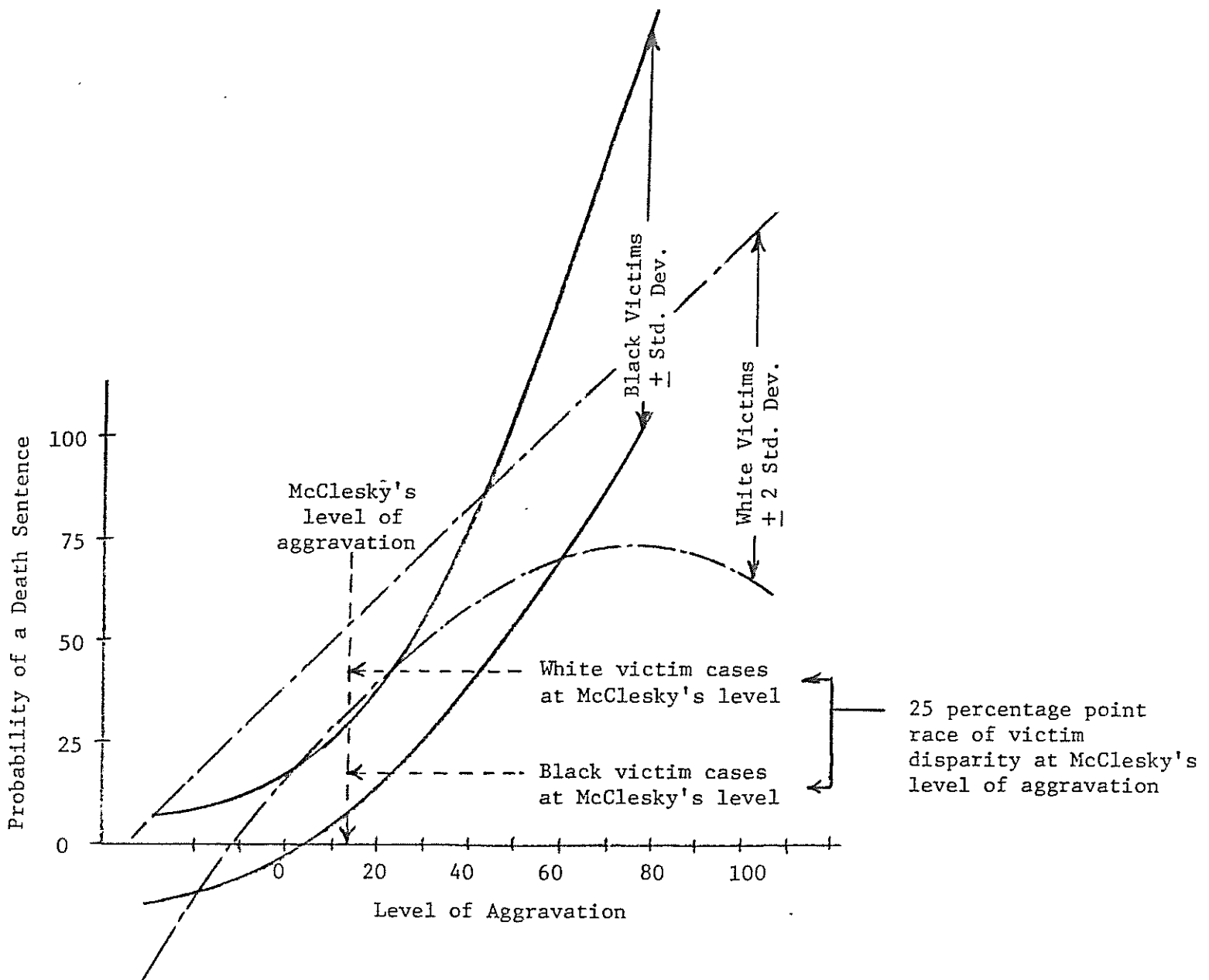
there is a 25 percentage point race of victim disparity.

The results of the analysis shown in the first section of this affidavit are consistent with the results presented in the hearing on this matter. There are persistent race of victim effects and when the analysis focuses on the more aggravated cases, where there is a substantial risk of a death sentence, those effects increase substantially.

## II. Racial Coefficients Estimated in Analyses Using Variables Created for the Lawyers' Model as Background Controls

The 18 variables created to select cases for the analyses reported in Part I provide an alternative means of controlling for the non-racial background case characteristics identified as important in the Lawyers' Model. We estimated racial coefficients in regression analyses while controlling simultaneously for these 18 non-racial background factors. We also estimated racial effects in analyses using the variables from the Lawyers' Model and the 39 variables which we believe to be most important in the system. The results of weighted least squares analyses using the 354 cases in Sample 4 were as follows:

Figure 1 Midrange second order model for 354 death elibible cases.  
(Black Defendants)



NOTES: Level of aggravation is the linear WLS Model leaving out the racial effects. The second order model includes race of victim, race of defendant, level of aggravation, all two-way interactions and the square of the level of aggravation. The model includes white defendants, but they are not graphed here.



Figure 2 Midrange second order model for 354 death elibible cases.  
(White Defendants)

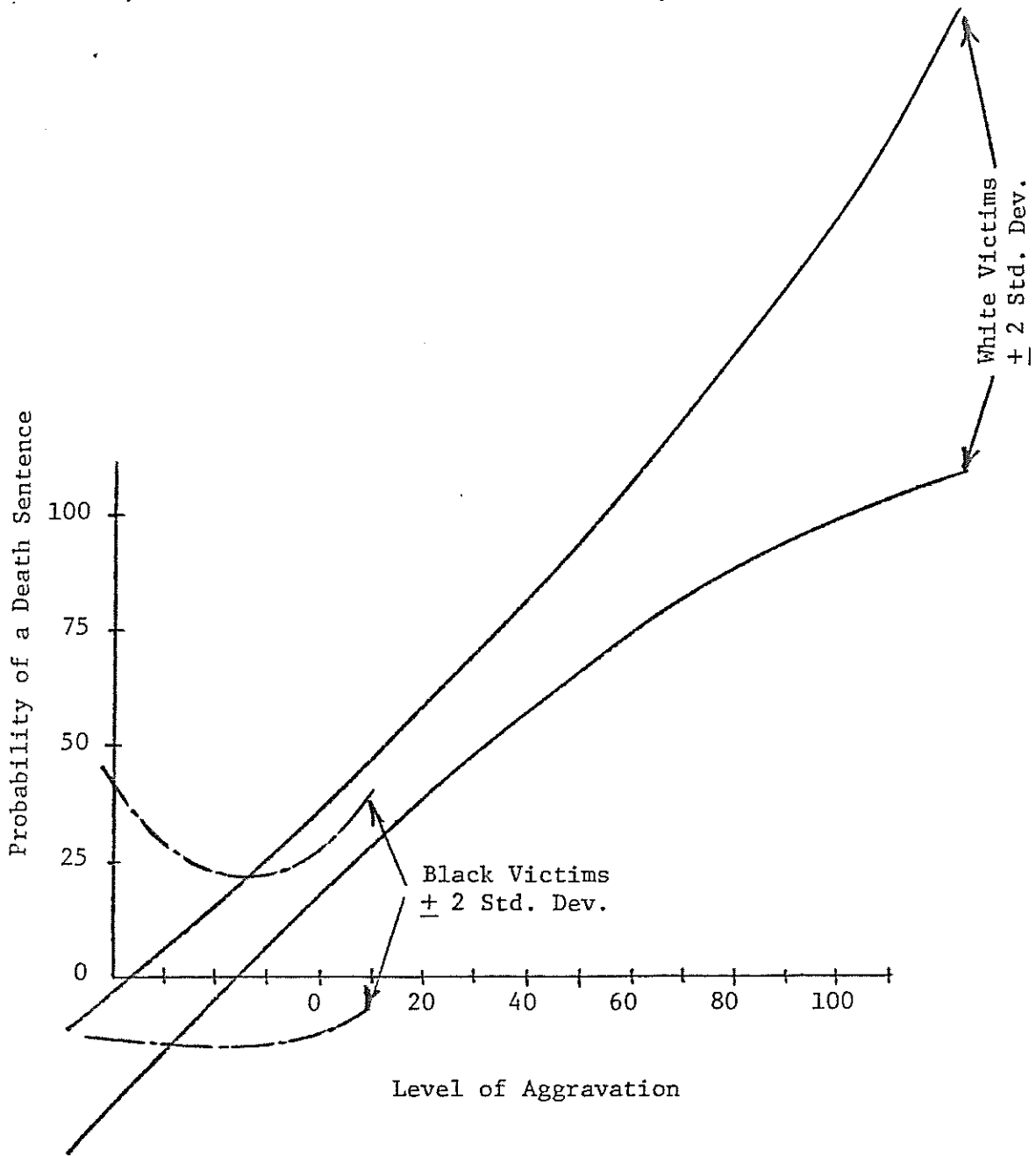


Table 7

	Race of Victim		Race of Defendant	
	Adjusted R <sup>2</sup>	Coefficient (with level of Statistical Significance)	Coefficient (with level of Statistical Significance)	Coefficient (with level of Statistical Significance)
<u>Background Variables Simultaneously Controlled For</u>				
1. 18 variables in the Lawyers' Model	.31	.10 <sup>a/</sup> (.04)	.06 <sup>b/</sup> (.27)	
2. 18 variables in the Lawyers' Model and the 39 variables in Schedule 4 of Petitioner's Exhibit DB 96A	.43	.11 (.04)	.05 (.34)	
3. 39 variables in Exhibit DB 96A	.39	.11 (.05)	.01 (.90)	

a/ The logistic regression coefficient and death odds multiplier for race of victim were 1.45 and 4.3 respectively (significant at the .003 level).

b/ The logistic regression coefficient and death odds multiplier for race of defendant were .34 and 1.4 respectively (significant at the .42 level).

These data show the same pattern of racial effects observed in our earlier analyses.

### III. Racial Effects Estimated After Adjustment For Status of Counsel and Defendant's Socio-Economic Status

Finally, the Court suggested in the Lawyers' Model that we conduct separate analyses both for defendants with appointed private counsel, on the one hand, and for defendants with retained counsel or appointed counsel with an institutional affiliation, such as a public defender on the other.

The status of defense counsel was known in an estimated 72% of the cases in the entire universe. Among the cases with appointed private counsel, the death sentencing rate is an estimated .10 (78/795) and .05 (48/1002) for defendants with retained counsel or appointed counsel with an institutional affiliation. Multiple regression analysis indicate, however, that the inclusion of a variable for the status of defense counsel does not explain the race of victim effects observed in the data. The race of victim and race of defendant regression coefficients in weighted least squares analyses which controlled for the 39 background variables in Schedule 4 of Petitioner Exhibit DB 96A and the status of defense counsel<sup>1/</sup> were as follows:

Table 8

Dependent Variable and Unweighted Sample Size <sup>1/</sup>	Race of Victim Coefficient (with level of Statistical Significance)	Race of Defendant Coefficient (with level of Statistical Significance)
Death Sentence Given a Murder Indictment. (n = 773)	.09 (.01)	.05 (.08)
Prosecutor Seeks a Penalty Trial after Murder Guilt Trial. (n = 366)	.13 (.02)	.04 (.47)
Jury Death Sentencing Result. (n=232)	.15 (.11)	-.03 (.67)

<sup>1/</sup> These analyses also included an interaction term between race of victim and status of defense counsel which is discussed below.

We also conducted a series of regression analyses in which racial effects were estimated while controlling for the 39 variables mentioned above and a variable for the defendant's socio-economic status (LSTATDEF);<sup>2/</sup> the racial coefficients estimated in these analyses were virtually identical with those reported in Table 8.

We next conducted separate regression analyses for the cases in Sample 4, first for defendants with private appointed counsel and then for defendants whose counsel was private appointed or appointed counsel with an institutional affiliation. The status of defense counsel was known in 84% of the cases in Sample 4 and the results were as follows:

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<sup>2/</sup> This analysis also included an interaction term between the defendant's socio-economic status and the race of victim.

Table 9

I. RACE OF VICTIM EFFECTS

Race of Victim Regression Coefficients (with level of statistical significance) After Controlling for 39 Non-Racial Background Variables & the Race of Defendant

Outcome Variable	All Cases (n=354)	Private Appointed Counsel (n=169)	Counsel Retained Or Appointed With Institutional Affiliation (n = 127)
A. Death Sentence Given A Murder Indictment	.11 (.05)	.23 (.02)	.05 (.68)
B. Penalty Trial Held After Murder Guilt Conviction	.23 (.02)	.31 (.01)	.04 (.85)
C. Jury Death Sentencing Decision	.11 (.34)	.07 (.72)	.35 (.43)

II. RACE OF DEFENDANT EFFECTS

Race of Defendant Regression Coefficient (with level of statistical significance) Controlling for 39 Non-Racial Background Variables and the Race of Victim

Outcome Variable	A. All Cases (n = 354)	B. Private Appointed Counsel (n = 169)	C. Counsel Retained or Appointed with Institutional Affiliation (n = 127)
Death Sentence Given A Murder Indictment	.01 (.90)	.10 (.25)	-.07 (.51)
Penalty Trial Held After Murder Guilt Conviction	.06 (.49)	.03 (.73)	.02 (.89)
Jury Death Sentencing Decision	-.08 (.39)	-.13 (.27)	-.10 (.72)

These data show a strong interaction effect between the status of defense counsel and the race of victim, i.e. the race of victim effects are much stronger in cases with private appointed counsel than they are in cases where defendant's counsel is retained or appointed with an institutional affiliation. These results tell us that prosecutors are more inclined to be punitive in cases involving white victims (and to a lesser degree black defendants) if the defense attorney is in private practice and court appointed. A possible explanation for this pattern is that private appointed attorneys put up less of a fight and otherwise develop less pressure on the prosecutor to accept a plea or unilaterally waive the death penalty. Under such circumstances the system is more likely to respond to the pressures for a death sentence that are generated when the victim is white. These data have particular significance since over 75% (98/128) of death sentences are imposed in cases in which defendant was represented by private appointed counsel.

The status of defense counsel is also a proxy for the defendant's socio-economic status since counsel are appointed only for indigent defendants; the strong race of victim effect in appointed counsel cases therefore may also reflect a greater perception of culpability when the defendant is poor of prosecutors and juries in a greater willingness to respond to the pressures for a death sentence that arise when the victim is white. To test the extent to which the latter hypothesis is supported by the data, we conducted separate multiple regression analyses with variables ("interaction terms") which reflect the interaction between the race of victim and (a) the status of

counsel, and (b) the defendant's socio-economic status. The results of these separate analyses were as follows:

Table 10

A.	B. Race of Victim Interaction <u>Term With</u>	C. Defendant's Socio-Economic Status	D. Race of Victim Interaction <u>Main Effect</u>	E. Defendant's Socio-Economic Status Analysis
Decision Point	Status of Defense Counsel	Defendant's Socio-Economic Status	Status of Counsel Analysis	Defendant's Socio-Economic Status Analysis
1. Death Sentence Given a Murder Indictment	.04 (.26)	.04 (.15)	.09 (.01)	.07 (.001)
2. Prosecutor Seeks a Death Sentence After a Murder Trial Conviction	.13 (.10)	.14 (.09)	.13 (.03)	.17 (.01)
3. Penalty Trial Death Sentencing Decision	.04 (.81)	.05 (.78)	.15 (.11)	.13 (.19)

The coefficients in columns B and C are for the interaction terms which reflect how much larger on average the race of victim effect is when counsel is appointed (Col. B) or when the defendant's socio-economic is low (Col. C). Columns D and E show the magnitude of the race of victim "main effect" which indicates the average with the race of victim effect across all cases. Thus for the outcome measure "Death Sentence Given a Murder Indictment" (row 1), column D indicates in the analysis of the status of defense counsel variable an average race of victim effect of 9 percentage points and column B indicates a 4 point interaction effect with the status of counsel. These results indicate that the race of victim effect is 13 points in the cases with appointed

counsel and 5 points in the cases with counsel retained or appointed with an institutional affiliation.

The results of the analysis in Table 10 show that the race of victim interaction effects are comparable for the "status of defense counsel" and the "low socio-economic status" variables. One is therefore left with the impression that both the competence, independence and energy of counsel and the indigence of the defendant affect the likelihood that the system will make the system more likely to respond to the pressures for a punitive response that arise when the victim is white.