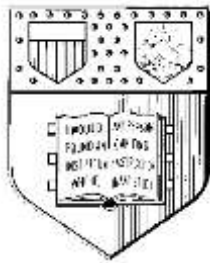


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Victim Gender and the Death Penalty

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VICTIM GENDER AND THE DEATH PENALTY

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I. INTRODUCTION

Do the characteristics of the victim determine a murderer's punishment? Theory and research both suggest that they do. This Article focuses on the gender of the murder victim, in particular, how victim gender influences death seeking and death penalty sentencing decisions. First, the Article reviews the existing evidence supporting a "female victim effect" which theorizes that crimes involving female victims are punished more harshly than crimes with male victims. It also presents and assesses various theoretical explanations for the female victim effect. Second, the Article analyzes cases from a comprehensive dataset of Delaware capital trials, exploring how cases with male and female victims differ. It then considers which of the theoretical explanations for a female victim effect best explain death penalty decisions in this sample of cases.

II. THE FEMALE VICTIM EFFECT

A number of investigators have explored whether defendants are more likely to receive severe punishments, including death sentences, when the victim is female as opposed to male.¹ Homicide cases with men and women victims may differ along a host of dimensions. In addition, a victim's gender may influence multiple decision-making moments in capital litigation. In this review of prior work, we assemble the evidence of a female victim effect during several important and often decisive moments: the prosecutor's decision to charge the case as a capital crime, the judge and juries' verdicts, and capital sentencing decisions. The collected studies suggest a female victim effect on the likelihood of being charged with a capital crime and on the likelihood of being convicted of a capital crime and sentenced to death.²

*We dedicate this Article to our beloved friend, inspiring mentor, and remarkable colleague Theodore Eisenberg, the Henry Allen Mark Professor of Law and Adjunct Professor of Statistical Sciences, Cornell University, who died as our Article went to press. We miss him greatly. Our work and our lives are better for having known him. Caisa Royer and Amelia Hritz are students in the dual PhD/JD Developmental Psychology and Law Program, Cornell University. Valerie P. Hans is Professor of Law, Cornell Law School. Martin T. Wells is the Charles A. Alexander Professor of Statistical Sciences, Cornell University. John H. Blume is Professor of Law; Director of Clinical, Advocacy and Skills Programs; and Director, Death Penalty Project, Cornell Law School. Sheri Lynn Johnson is the James and Mark Flanagan Professor of Law and Assistant Director, Death Penalty Project, Cornell Law School. Financial support for this research project was provided by the Cornell Death Penalty Project, <http://www.lawschool.cornell.edu/research/death-penalty-project/About.cfm>, and by Cornell Law School's faculty research funds to Valerie Hans.

¹ See generally, Scott Phillips, Laura P. Haas & James E. Coverdill, *Disentangling Victim Gender and Capital Punishment: The Role of Media*, 7 FEMINIST CRIMINOLOGY 130 (2012).

² *Id.*

Most research on the effects of victim characteristics in capital sentencing is inspired by the ground-breaking study by David Baldus, George Woodworth, and Charles Pulaski, Jr., who analyzed the process and outcomes of 2000 murder cases in Georgia during the 1970s.³ After controlling for over 200 case-relevant and extralegal variables that might be related to death penalty sentencing, Baldus and his colleagues found that the victim's race remained a strong and statistically significant factor in determining whether a case received the death penalty.⁴ Among the pool of Georgia homicides, cases with white victims, especially white victims who were killed by black defendants, were much more likely to result in a death sentence.⁵ The Baldus study results were submitted to prove racial discrimination in the Georgia case of *McCleskey v. Kemp*.⁶ The United States Supreme Court accepted the validity of the Baldus study and agreed that it demonstrated race effects in some cases. However, *McCleskey* lost because he could not show that there was purposeful racial discrimination in his case, which is a necessary component of an Equal Protection Claim. The Baldus study stimulated a large body of research on the determinants of capital sentencing generally and the troubling role of race in death penalty cases specifically.⁷

Although much less noted in scholarly discussions of the Baldus study, the analysis also confirmed that the victim's gender was statistically associated with death sentencing as well.⁸ Georgia prosecutors and juries treated female victim cases more harshly than male victim cases, with juries influenced more strongly than prosecutors by the victim's gender.⁹ However, Baldus and his colleagues concluded that these differences between male and female victim cases were unlikely to be the result of pernicious gender discrimination. Instead, they were "persuaded that this punitive response is more probably a reaction to the greater physical vulnerability of many female victims."¹⁰

Other studies have also explored whether female victim murder cases are more likely to be pursued capitally. Michael Songer and Isaac Unah studied prosecutors' decisions to seek the death penalty in South Carolina homicide cases

³ DAVID C. BALDUS, GEORGE WOODWORTH & CHARLES A. PULASKI, JR., *EQUAL JUSTICE AND THE DEATH PENALTY: A LEGAL AND EMPIRICAL ANALYSIS* (1990).

⁴ *Id.* at 141.

⁵ *Id.*

⁶ 481 U.S. 279 (1987).

⁷ See *In Memoriam: David C. Baldus*, 97 IOWA L. REV. 1865 (2012); see also Samuel R. Gross, *David Baldus and the Legacy of McCleskey v. Kemp*, 97 IOWA L. REV. 1905 (2012); Judith Kavanaugh-Earl, John K. Cochran, M. Dwayne Smith, Sondra J. Fogel & Beth Bjerregaard, *Racial Bias and the Death Penalty in RACIAL DIVIDE: RACIAL AND ETHNIC BIAS IN THE CRIMINAL JUSTICE SYSTEM*, 147 (Michael J. Lynch, E. Britt Patterson & Kristina K. Childs eds., 2008).

⁸ BALDUS ET AL., *supra* note 3, at 157 (referring to table 33, finding that the fact that the victim was female had a statistically significant impact in determining who was sentenced to death).

⁹ *Id.* at 158, 169.

¹⁰ *Id.* at 158.

during the 1993 to 1997 time period.¹¹ They analyzed information gathered on 2319 non-negligent homicides from court files and the FBI's Supplemental Homicide Reports (SHR).¹² South Carolina prosecutors filed a notice to seek the death penalty in 130 of these cases.¹³ Songer and Unah analyzed the case factors potentially associated with the decision to seek death. They included statutory aggravating factors in the analysis as well as extralegal factors such as the political affiliation of the prosecutor, and the race and gender of both the victim and the defendant.¹⁴ Among cases with similar levels of statutory aggravation, cases involving female victims were 2.5 times more likely to result in capital prosecutions than cases with male victims.¹⁵ The prosecutors' decision to seek death more often in female victim cases suggests that there is something noteworthy and distinctive about the cases with female victims.

In addition to analyzing prosecutorial death seeking behavior, researchers have examined victim gender and the overall likelihood of a death sentence. A study of Ohio homicides between 1981 and 1997 analyzed 5976 homicides in which an additional felony was also charged.¹⁶ Of that total, 324 resulted in a death sentence.¹⁷ The researchers used fifteen predictor variables, including crime severity and demographic characteristics of the defendant and victim, to determine which factors were most closely associated with a death penalty outcome.¹⁸ They found that the odds a defendant would be sentenced to death were 2.617 times greater for cases involving female victims than for male victim cases.¹⁹

Similarly, in a study of defendants convicted of first-degree murder in Illinois, Glenn Pierce and Michael Radelet found that 4.3 percent of the offenders who were convicted of killing one or more females received the death penalty, compared to 1.2 percent of the offenders who were convicted of killing only male victims.²⁰

In addition to supplying evidence that victim gender on its own influences the likelihood of severe punishments such as the death penalty, some research has found that sentencing patterns are influenced by the interaction between the victim's race and gender. Several studies have found that the murder of a white female puts the offender at the greatest risk of being sentenced

¹¹ Michael J. Songer & Isaac Unah, *The Effect of Race, Gender, and Location on Prosecutorial Decisions to Seek the Death Penalty in South Carolina*, 58 S.C. L. REV. 161 (2006).

¹² *Id.* at 185.

¹³ *Id.*

¹⁴ Songer & Unah, *supra* note 11.

¹⁵ *Id.* at 205.

¹⁶ Jefferson E. Holcomb, Marian R. Williams & Stephen Demuth, *White Female Victims and Death Penalty Disparity Research*, 21 JUST. Q. 877, 888 (2004).

¹⁷ *Id.* at 888.

¹⁸ *Id.* at 890.

¹⁹ *Id.* at 892.

²⁰ Glenn L. Pierce and Michael L. Radelet, *Race, Region, and Death Sentencing in Illinois, 1988-1997*, 81 OR. L. REV. 39, 62 (2002).

to death.²¹ For example, in a study of capital sentencing outcomes in Georgia using the Baldus study dataset, Marian Williams, Stephen Demuth, and Jefferson Holcomb found that, after controlling for variables that Baldus and his colleagues identified as closely associated with a death sentence, the odds of receiving a death sentence for killing a white female were 14.5 times higher than the odds for killing a black male.²² The odds of receiving a death sentence were also significantly higher for killing a white female than the odds for killing a black female or a white male. Overall, there was a main effect of victim gender, with the odds of a death sentence 3.43 times higher when the victim was female.²³

From a historical perspective, perhaps it is not surprising that cases with white female victims are associated with more severe punishments in the United States. A “white female victim effect” is consistent with the increased severity of punishment for the victimization of white females historically in American culture, especially when committed by non-white offenders.²⁴ Most notably, the death penalty was imposed almost exclusively for the crime of rape when the victim was a white female and the defendant was a black man.²⁵

Despite historical data and academic studies suggesting the existence of a female victim effect, few researchers have attempted to explain its cause beyond speculation about perceived gender stereotypes.²⁶ It is assumed that prosecutors, judges, and juries perceive female victims as weaker and more vulnerable, and therefore as more deserving of societal protection. The perception that female victims are more vulnerable may lead prosecutors, judges, and juries to see the defendants who victimize them as more morally blameworthy. Some authors suggest that these perceptions lead a chivalrous criminal justice system to protect women victims by punishing defendants more severely.²⁷

²¹ Holcomb et al., *supra* note 16, at 890 (finding that compared to cases with white female victims, the odds of death sentence are 78% less with a black male victim, 68% less with a white male victim, and 61% less with a black female victim); *see also* Theodore R. Curry, *The Conditional Effects of Victim and Offender Ethnicity and Victim Gender on Sentences for Non-Capital Cases* 12 PUNISHMENT & SOC'Y 438 (2010) [hereinafter *Conditional Effects*] (finding that homicides committed against white females led to longer sentences than homicides committed against males of any race or ethnicity); Stephanie Hindson, Hillary Potter & Michael L. Radelet, *Race, Gender, Region and Death Sentencing in Colorado, 1980-1999*, 77 U. COLO. L. REV. 549 (2006) (finding that prosecutors are more likely to seek the death penalty for homicides with white female victims).

²² Marian R. Williams, Stephen Demuth & Jefferson E. Holcomb, *Understanding the Influence of Victim Gender in Death Penalty Cases: The Importance of Victim Race, Sex-related Victimization, and Jury Decision Making*, 45 CRIMINOLOGY 865, 878 (2007).

²³ *Id.* at 880.

²⁴ Holcomb et al., *supra* note 16, at 885-87 (reviewing historical examples of the white female victim effect).

²⁵ Sheri Lynn Johnson, *Coker v. Georgia: Of Rape, Race, and Burying the Past*, in DEATH PENALTY STORIES 171 (John H. Blume & Jordan M. Steiker eds., 2009).

²⁶ Williams et al., *supra* note 22, at 872.

²⁷ Theodore R. Curry, Gang Lee & S. Fernando Rodriguez, *Does Victim Gender Increase Sentence Severity? Further Explorations of Gender Dynamics and Sentencing Outcomes*, 40 CRIME & DELINQ. 319 (2004) [hereinafter *Victim Gender*]. For a discussion about why women in the criminal justice system might be treated under some circumstances with greater leniency and at

Some might assume that the female victim effect, if it exists, is for the benefit of women. But some feminist writers argue that it is men's ownership of women — their right to own or control them — that creates this protectiveness.²⁸ That is, a patriarchal society protects men's right to women when it punishes severely for killing women. The patterns discussed above on the interaction of race and gender in punishment decisions, in which white female killing is sanctioned most heavily, would suggest that white men are particularly angry at harm to their white women by black men.

Although gender stereotypes offer one possible explanation for the female victim effect, they are not considered to be legally relevant to sentencing. Only a few studies have attempted to test whether the female victim effect is best explained by factors that are legally relevant to sentencing, such as the seriousness of the crime and the defendant's criminal record.²⁹ If cases with female victims are more serious and aggravated than cases with male victims, that would offer a legally relevant reason for why death sentences are more likely in cases with female victims. In addition, few studies have tested whether extralegal factors such as presumed stereotypes about female victims are a viable explanation for the female victim effect. Do female victim stereotypes such as vulnerability or innocence influence decision makers? To explore these questions surrounding the female victim effect in capital sentencing, this Article examines both crime characteristics and victim characteristics in a sample of death penalty cases.

A. Crime Characteristics Explaining A Female Victim Effect

One potential explanation for the female victim effect is that cases may differ along a host of other characteristics that are directly or indirectly related to the victim's gender. For example, some legally relevant statutory aggravating factors may be more likely to occur in crimes involving female victims. Characteristics of the crimes might then help to explain the female victim effect.³⁰

Consider capital cases in which a murder is combined with the sexual assault of the victim. Sexual assault is a statutory aggravating factor in virtually every jurisdiction, and is considered a particularly heinous crime in and of itself.

other times with greater severity, see Jill McCorkel, Frederika E. Schmitt & Valerie P. Hans, *Gender, Law, and Justice*, in *HANDBOOK OF JUSTICE RESEARCH IN LAW* 301 (Joseph Sanders & V. Lee Hamilton eds., 2000).

²⁸ McCorkel et al., *supra* note 27, at 320, 322-24. See also SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN, AND RAPE* 16-30 (1970) (recounting historical and legal practices regarding rape, and concluding that "A crime committed against [a woman's] body became a crime against the male estate."). *Id.* at 17.

²⁹ Williams et al., *supra* note 22, at 867.

³⁰ It is important to note that a capital defendant is not eligible for the death penalty unless the sentencer finds the existence of at least one statutory aggravating factor beyond a reasonable doubt. If the defendant is found eligible for the death penalty, the sentencer then weighs the aggravating and mitigating factors to determine the sentence.

Indeed, the Baldus study found the occurrence of rape during a homicide was one of the strongest factors that increased the likelihood of a death sentence.³¹ Moreover, most homicides with sexual assault involve female victims.³² Williams and her colleagues used the Baldus study dataset to examine whether the sexualized nature of many crimes with female victims helped to explain the discrepancy in sentencing between crimes with male and female victims.³³ In their study, a crime was categorized as a sexualized crime when it involved rape, the forcible disrobing of a victim, or a homicide occurring while the victim was unclothed.³⁴ After accounting for the greater likelihood of female victims to experience sexualized crimes, Williams and her colleagues found that the difference in capital sentencing rates between cases with female and male victims was no longer statistically significant.³⁵ That suggests that the sexualized nature of crimes against women helps to partially explain the higher rate of death sentencing in female victim cases. The occurrence of a sexualized crime was the only factor that reduced the female victim effect within this dataset.

A similar analysis by Lane Gillespie and her collaborators used data from North Carolina death penalty cases that reached the sentencing phase.³⁶ Once the researchers took into account the fact that some homicides included the victim's rape, the victim's gender was no longer a significant predictor of the likelihood of a death sentence. This suggests that the female victim effect, at least in these studies, is strongly linked to the sexual nature of women's murders.³⁷ Because females are more likely to be victims of sexual crimes, the tendency to give more severe sentences to homicides involving sexual acts may contribute to the female victim effect.

Scott Phillips, Laura Haas, and James Coverdill further explored whether the amount of media attention given to murders involving the sexual assault of female victims increased the chance of a death penalty.³⁸ Their results indicated that cases involving sexual degradation received more media coverage, which in turn increased the chances that prosecutors would seek the death penalty. Murder cases involving a white female also generated substantially more newspaper articles.³⁹ Media coverage, however, could not fully explain the relationship between the race and gender of the victim and the prosecutor's decision to seek the death penalty. The odds of the district attorney seeking the

³¹ BALDUS ET AL., *supra* note 3, at 320 (finding that the death odds-multiplier of a murder that involved rape was 12.8).

³² Williams et al., *supra* note 22, at 870.

³³ *Id.* at 879-80.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Lane K. Gillespie, Thomas A. Loughran, M. Dwayne Smith, Sondra J. Fogel & Beth Bjerregaard, *Exploring the Role of Victim Sex, Victim Conduct, and Victim-Defendant Relationship in Capital Punishment Sentencing*, HOMICIDE STUD. 1 (2013).

³⁷ *Id.*

³⁸ Phillips et al., *supra* note 1.

³⁹ *Id.* at 138.

death penalty were 3.69 times higher for a white female victim even after the statistical analysis controlled for the extent of media coverage.⁴⁰ This suggests that there may be additional explanations of the female victim effect.

Moving outside the capital punishment arena, Curry examined whether victim gender and race impacted sentencing in cases of robbery, sexual assault and non-capital homicide.⁴¹ Overall, approximately half of the cases involved female victims. All of the victims in the sexual assault cases were female and so the effect of victim gender could not be explored in these cases. However, there were longer sentences for homicide cases with white female victims compared to cases with males of any race or ethnicity.⁴² In the robbery cases, no white female victim effect emerged.⁴³ Curry hypothesized that this was due to the fact that robbery cases are less serious because the victim lives and less serious crimes are less severe violations of racial and gender boundaries.⁴⁴ It is also possible that among less aggravated crimes, the urge to protect vulnerable women victims diminishes. Alternatively, in robbery cases, both men and women may be considered to be vulnerable victims. Overall, these studies suggest that variables unrelated to gender stereotypes can explain some, but not all, of the disparities in sentencing between cases with male and female victims.

B. Victim Characteristics Explaining Female Victim Effects

In contrast to case characteristics such as the presence of sexual assault, the female victim effect may also be partially explained by characteristics of the victims that influence how a case is perceived. This section explores two sets of victim characteristics that may lead sentencers to find cases with female victims to be more severe and more worthy of the death penalty. The first is the perceived vulnerability of the victim, which may produce greater empathy in the sentencers, and the second is the perceived risk-taking behavior, which could cause the sentencers to see a homicide as both avoidable and less heinous.

1. Victim Vulnerability And Empathy

One contributing characteristic of female victims that may help to explain the higher demand for capital punishment is female victims' perceived vulnerability. Victim vulnerability refers to victims' inability to protect themselves from crime victimization. For example, victims may be vulnerable in encounters with a physically stronger assailant, because they are pregnant, or because they must protect nearby children or other dependents. Some of the characteristics that make a victim vulnerable are more common among female

⁴⁰ *Id.* at 140.

⁴¹ *Conditional Effects*, *supra* note 21, at 438-39.

⁴² *Id.* at 452.

⁴³ *Id.* at 454.

⁴⁴ *Id.* at 456.

victims. Prosecutors may see a crime involving a vulnerable (and often female) victim as one that requires greater societal retribution and hence may be more inclined to seek severe punishment in such cases.⁴⁵ For example, speaking in support of enhanced penalties for those who committed crimes against vulnerable or infirm adults, Delaware's Attorney General Beau Biden remarked: "Crimes against vulnerable Delawareans are particularly reprehensible [W]e will continue to seek more stringent penalties against those who prey on those who cannot protect themselves."⁴⁶ This perception of vulnerability may also influence judges and juries as they make sentencing decisions. In their eyes, vulnerability of the victims may make some crimes appear more horrendous and more worthy of a death sentence.

Scott Sundby used interviews with California jurors from the Capital Jury Project to study whether victim characteristics had any influence on their sentencing decisions.⁴⁷ Most jurors denied being influenced by factors such as the victim's gender or criminal history.⁴⁸ Even so, jury decisions for death were more common in those cases in which the victim appeared to be innocent or helpless.⁴⁹ Jurors were also less likely to vote for a death sentence if the victim was involved in the crime, which may suggest that these victims appeared to be less vulnerable and more responsible for their deaths.⁵⁰

Further, when the victim was a parent or married, juries were more likely to recommend a death sentence for the defendant.⁵¹ Victims with children or a spouse have people who depend upon them, and this role may create a protective instinct in the jury, one that leads to the defendant appearing more monstrous and deserving of a capital sentence. This can become evident when victim impact evidence is admitted during the sentencing phase of a trial, and the victim's surviving family members and friends testify about the impact their loss has had on their lives and community.⁵² These statements may be especially influential in cases with female victims, because females are more likely to be primary caregivers than males. A defendant who kills a mother is not only harming the victim but also the family she leaves behind.⁵³ Sentencing decisions may reflect

⁴⁵ Songer & Unah, *supra* note 11, at 184.

⁴⁶ Press Release, Del. House of Representatives, House Majority Caucus, Rep. Longhurst, AG Biden Introduce Bill to Protect Vulnerable and Infirm Adults (Mar. 30, 2010), *available at* <http://news.delaware.gov/2010/03/30/rep-longhurst-ag-biden-introduce-bill-to/>.

⁴⁷ Scott E. Sundby, *The Capital Jury and Empathy: The Problem of Worthy and Unworthy Victims*, 88 CORNELL L. REV. 343 (2003).

⁴⁸ *Id.* at 347.

⁴⁹ *Id.* at 351.

⁵⁰ *Id.* at 353-54.

⁵¹ *Id.* at 358.

⁵² *Payne v. Tennessee*, 501 U.S. 808 (1991). For discussion of research on victim impact evidence in capital cases, see John H. Blume, *Ten Years of Payne: Victim Impact Evidence in Capital Cases*, 88 CORNELL L. REV. 257 (2003); Valerie P. Hans, *The Impact of Victim Participation in Saiban-in Trials in Japan: Insights from the American Jury Experience*, INT'L J. L. CRIME & JUSTICE, <http://dx.doi.org/10.1016/j.ijlcrj.2013.07.002> (forthcoming).

⁵³ Williams et al., *supra* note 22, at 870.

the greater perceived impact of a female's murder by taking into account the fact that the family becomes more vulnerable without her care.

As this research suggests, victim vulnerability is likely to be relevant in determining sentencing. Jurors may feel special empathy for victims placed in vulnerable situations, because the jurors feel vulnerable to crime themselves. If the defendant would harm someone responsible, who takes care of a family, and is defenseless, then the sentencer would also not have been safe from the defendant as well. Using data from the Capital Jury Project, Sundby found that jurors develop empathy for victims whom they see as an "everyman."⁵⁴ These victims are normal citizens who could easily be sitting alongside the jury members, and their deaths are especially horrific for the jury. Good, valued character traits of a victim encourage feelings of empathy, and the victim becomes a sympathetic figure, while the defendant becomes more deserving of punishment for taking advantage of the victim's vulnerabilities.

The jurors from the Capital Jury Project often compared themselves to the "everyman" victims by recounting times that they themselves or loved ones had been in parallel situations and susceptible to a similar crime.⁵⁵ This effect may be more pronounced for female victims, whom the jury may perceive as more vulnerable and less responsible within the context of the crime. This lack of responsibility for female victims may cause the crime to appear as if it happened randomly and could happen to anyone, especially if it happened to this innocent "everywoman" who was unable to protect herself and with whom the juror identifies. This association may make the defendant appear more personally threatening to the jurors or their loved ones, and thus may encourage them to recommend a death sentence.⁵⁶

2. Negative Victim Behavior: Risk-Taking And Relationships

Jury research indicates that jurors are deeply concerned with the character of the crime victim.⁵⁷ Indeed, interviews with South Carolina capital jurors revealed that the topic of the victim's character and the victim's role or responsibility in the crime were frequent topics of discussion during deliberations.⁵⁸

Just as juries are influenced by empathy towards a victim, juries are also likely to be persuaded by their perceptions that a victim engaged in reckless or unsavory behavior. In general, juries are less likely to impose a death sentence when the victim is perceived as being too careless.⁵⁹ When jurors see the

⁵⁴ Sundby, *supra* note 47, at 360.

⁵⁵ *Id.* at 361.

⁵⁶ *Id.* at 359.

⁵⁷ NEIL VIDMAR & VALERIE P. HANS, *AMERICAN JURIES: THE VERDICT* (2007).

⁵⁸ Theodore Eisenberg, Stephen P. Garvey & Martin T. Wells, *Victim Characteristics and Victim Impact Evidence in South Carolina Capital Cases*, in *WOUNDS THAT DO NOT BIND: VICTIM-BASED PERSPECTIVES ON THE DEATH PENALTY* 297 (James R. Acker & David R. Karp eds., 2006).

⁵⁹ Sundby, *supra* note 47, at 364.

victim's behavior as reckless, they see the crime as less appalling and less deserving of the death penalty. This may occur whether the victim has in fact taken more risks or the jury only assumes the victim has taken more risks. Jurors may assume that female victims are less likely to be risk takers and to place themselves in harm's way intentionally, and are therefore less blameworthy for their victimization.⁶⁰ Due to this assumption, crimes involving female victims may evoke focal concerns that women are less blameworthy which make the crimes appear to be more deserving of harsh punishment.

When a victim appears to be a risk taker, jurors find the defendant to be less personally threatening because the situation seems less likely to happen to them as they would not put themselves in risky situations.⁶¹ This is supported by previous research which has shown that observers attempt to differentiate themselves from individuals who are perceived to be responsible for a misfortune.⁶² In this situation, a jury member may see a victim as partially responsible for the murder due to his or her involvement in risky behavior. Jurors then seek to distance themselves from the victim in an effort to maintain the belief that such a heinous crime could not happen to them, like it has to the victim. This distancing leads to the victim appearing less deserving of sympathy, and therefore makes the defendant appear less dangerous and the death penalty unnecessary. For example, Sundby found that murder cases involving a victim who engaged in risky or antisocial behavior were more likely to result in a life sentence than murder cases with victims who did not engage in this type of behavior.⁶³ In addition, when the victim abused drugs or alcohol, jurors were less likely to recommend death.⁶⁴ This risk taking behavior may make it easier for the jury to distance themselves from the victim and therefore not recommend the death penalty.

When female victims actually violate the "vulnerable victim" stereotype by engaging in risky or other unsavory behavior, observers may distance themselves from the victim.⁶⁵ Female criminals who are considered to be "bad" and unfeminine are no longer seen to be in need of protection.⁶⁶ Furthermore, female victims who participate in a risky activity defy the stereotype of an innocent, vulnerable female, and this may lessen the sentencer's urge to punish the defendant. In contrast, when a female victim does not visibly participate in disreputable behavior, the chivalrous justice system may defend the stereotypically innocent female victim by sentencing the defendant to death.⁶⁷

⁶⁰ *Conditional Effects*, *supra* note 21, at 443.

⁶¹ Sundby, *supra* note 47, at 364.

⁶² Kelly C. Shaver, *Defensive Attribution: Effects of Severity and Relevance on the Responsibility Assigned for an Accident*, 14 J. PERSONALITY & SOC. PSYCHOL. 101 (1970).

⁶³ Sundby, *supra* note 47, at 364.

⁶⁴ *Id.*

⁶⁵ Nicole H. Rafter & Elena M. Natalizia, *Marxist Feminism: Implications for Criminal Justice*, 27 CRIME & DELINQ. 84 (1981).

⁶⁶ *Id.* at 85.

⁶⁷ *Victim Gender*, *supra* note 27, at 323, 336-37.

Another factor that may impact sympathetic perception of the victim is the relationship between the victim and the defendant. Using data from reviews of capital murder cases in North Carolina, Amy Stauffer and her colleagues found that a previous relationship between the victim and the defendant decreased the likelihood of a death sentence.⁶⁸ According to their data, defendants who murdered female strangers were significantly more likely to be sentenced to death, suggesting that a relationship with a victim weighs against the imposition of the ultimate punishment.⁶⁹ Female victims may appear to be more responsible for their death if they know the offender well.

The Baldus study likewise found that knowing one's victim lessened the chance that a defendant would be sentenced to death.⁷⁰ In contrast, using data from the North Carolina Capital Sentencing Project of capital cases which had advanced to the sentencing phase, Gillespie and her colleagues found an increase in the odds of receiving a death sentence if a female victim was an acquaintance of the defendant as opposed to a stranger.⁷¹ There was no difference found between strangers and family or friends. This may suggest that victims who only know their killers socially appear to be less responsible for the relationship and therefore more vulnerable when the murder occurred.

Conversely, if the victim is in a longstanding and perhaps abusive relationship with the victim, the victim may appear to be less vulnerable and the defendant may appear to be less culpable. Work on battered women has amply demonstrated that the victims of domestic abuse are often blamed for their own victimization.⁷²

Although research has shown that victim characteristics influence sentencing in capital cases, sentencing patterns remain unclear. Previous research has shown evidence for the female victim effect, but also that other characteristics of the crime can account for some of the sentencing disparity for female and male victims.⁷³ One important question that still needs to be addressed is how individual characteristics of male and female victims and the crime can contribute to the female victim effect. It is possible that crimes committed involving female and male victims differ significantly themselves, whether because they are more likely to involve risk-taking victims (which would lead to more life sentences) or more sex-related crimes (which could lead to more death sentences). The following study will examine whether and how crime and victim characteristics potentially interact to create a female victim effect.

⁶⁸ Amy R. Stauffer et al., *The Interaction Between Victim Race and Gender on Sentencing Outcomes in Capital Murder Trials: A Further Exploration*, 10 HOMICIDE STUD. 98 (2006).

⁶⁹ *Id.* at 104.

⁷⁰ BALDUS ET AL., *supra* note 3, at 157, 159.

⁷¹ Gillespie et al., *supra* note 36, at 12.

⁷² James Ptacek, *Why Do Men Batter Their Wives?* In FEMINIST PERSPECTIVES ON WIFE ABUSE 141, 154 (Kersti Yllo & Michele Bograd eds., 1988).

⁷³ See BALDUS ET AL., *supra* note 3, at 320; Eisenberg et al., *supra* note 58; Sundby, *supra* note 47; Williams et al., *supra* note 22, at 870.

III. THE DELAWARE DEATH PENALTY DATASET

The data used in this study were collected as part of an ongoing effort of the Delaware Death Penalty Project. The Delaware Capital Trials dataset includes information from capital cases in Delaware during the modern era of capital punishment, beginning in 1976.⁷⁴ Most cases in the dataset concluded by 2007, although there are a handful that extend beyond that date. Information was compiled from legal and other documents in the homicide case files in the offices of the Delaware Prothonotary and in the Delaware Archives. Sheri Lynn Johnson, John Blume, Theodore Eisenberg, Valerie Hans and Martin Wells previously employed the dataset in an article that appeared in the *Iowa Law Review*.⁷⁵

There are several advantages in using this dataset to examine the effect of female victims. First, unlike a number of previous research projects on the female victim effect that have examined larger homicide databases and have explored the factors associated with a death sentence, this dataset focuses exclusively on those cases in which a capital trial proceeded to a sentencing hearing. Prosecutorial decisions to charge capitally are not the object of study, although those decisions are reflected in the pool of capital trials that the decision maker considers. Second, the dataset includes sentencing decisions by both juries and judges. After the decision made in *Gregg v. Georgia*, which reinstated the death penalty in the United States, Delaware adopted a capital-sentencing statute in which a jury could only sentence a defendant to death if the decision was unanimous.⁷⁶ This decision was binding on the judge. However in 1991, following a highly publicized trial in which a jury was unable to reach unanimity in the cases of four defendants who had killed two victims, the Delaware legislature revised the capital sentencing statute to replace the jury with the judge as the final sentencing authority in capital trials.⁷⁷ Judges were required to weigh the jury's recommendation, which did not have to be unanimous. Since November 4, 1991, judges have made all capital sentencing decisions in Delaware. The current system still gives sentencing power to the judge, but juries are retained in their role of advisors.⁷⁸ Juries unanimously must find the defendant guilty of at least one statutory aggravating circumstance beyond a reasonable doubt and judges must give appropriate consideration to the jury's opinion.⁷⁹

⁷⁴ Sheri Lynn Johnson, John H. Blume, Theodore Eisenberg, Valerie P. Hans & Martin T. Wells, *The Delaware Death Penalty: An Empirical Study*, 97 IOWA L. REV. 1925 (2012).

⁷⁵ *Id.*

⁷⁶ *Gregg v. Georgia*, 428 U.S. 153, 169 (1976); *State v. White*, 395 A.2d 1082, 1086 (Del. 1978); Loren C. Meyers & Gayle P. Lafferty, *Capital Punishment*, in DELAWARE SUPREME COURT: GOLDEN ANNIVERSARY 1951-2001 179 (Justice Randy J. Holland & Helen L. Winslow eds., 2001).

⁷⁷ *Robertson v. State*, 630 A. 2d 1084, 1086-87 (Del. 1993).

⁷⁸ *Ring v. Arizona*, 536 U.S. 584, 609 (2002).

⁷⁹ Johnson, et al., *supra* note 74, at 1931-32.

Finally, Delaware provides a different population to look at the female victim effect. Delaware has a relatively high death sentencing rate and is not a southern state, unlike many states in which research has been done examining the death penalty.⁸⁰

In previous analyses of the operation of the death penalty in Delaware, the rate of Delaware death sentences by “race of defendant” and “race of victim” were obtained. This was determined by calculating the number of death sentences for different race of defendant/race of victim combinations per 1000 homicides occurring within these race of defendant/race of victim combinations.⁸¹ The results were striking. The death sentencing rate for black defendants who killed white victims was six times higher than black defendants who killed black victims and three times higher than white defendants who killed black victims.⁸² The previous analysis of the Delaware death penalty combined general information from the national homicide database with information about death sentences. It did not undertake in-depth analysis of the capital cases that ended with a decision of life imprisonment. This Article thus extends the previous analysis to consider life and death cases and the influence of victim gender.

The database contains information from 144 capital cases that reached the sentencing phase in Delaware between 1976 and 2007. Cases were identified as meriting inclusion using the filing system of the Prothonotary’s offices and by relying on other summaries of capital cases, including listings by the Delaware Supreme Court and the Office of the Public Defender. Nonetheless, it is conceivable that some Delaware capital cases that resulted in life imprisonment are not included in the database.

Trained coders created the database from information included in Superior Court files in the Delaware Archives and Prothonotary’s offices in all three Delaware counties. A detailed questionnaire was used to code over 700 elements of the case, including information about the crime, defendants, and victims.⁸³ Information about the cases was supplemented by other sources, including Delaware trial and appellate court of opinions, Third Circuit and U.S. Supreme Court opinions, news reports, law review articles, and Delaware judges and attorneys. The case files vary in their completeness. The case files sometimes lacked detailed information about elements of the underlying crimes, what was presented at trial, and what factors were considered in the penalty

⁸⁰ *Id.* at 1928 (describing unique features of Delaware as a site for capital punishment).

⁸¹ For example, the death sentence rate for “white defendant” with “white victim” crimes would be calculated by taking the number of instances the death penalty was given in cases with a white defendant and a white victim and dividing this number by the number of total instances of homicides involving a white defendant and a white victim; *Id.* at 1939-41.

⁸² *Id.* at 1940.

⁸³ The questionnaire was adapted from one created by David Baldus and his collaborators; see BALDUS ET AL., *supra* note 3, at 512-48.

phases of the trials.⁸⁴ The variables included in the regression analyses for the 144 cases, however, are largely complete, with the exception of potentially mitigating factors. Information about the specific mitigation that was presented, especially in penalty phase hearings that ended with a life verdict, was sometimes lacking.

The database includes basic information about the case, background information about the defendant and the victim, presence of aggravating or mitigating circumstances, and demographic information about the victim and the defendant.

The current study expands on previous research by looking at female victims in both life and death cases. In particular, we are interested in determining whether a female victim effect is present in Delaware capital trials, and, if so, exploring whether characteristics of the crime or other characteristics of the victim can help to explain it.

A. Scales Designed For Use In This Study

In addition to analyzing gender, race, and other case characteristics already available in the database, we developed several scales to explore some of the potential reasons why cases with female victims might lead to more severe punishment. The scales were created in order to examine the effects of crime characteristics (such as aggravating and mitigating elements of the crimes) and victim characteristics (such as vulnerability or involvement in crime).⁸⁵ Later, we examine to what extent these characteristics influence sentencing and whether they help explain the female victim effect. A full list of the items included in each scale is located in Appendix I.

1. Statutory Aggravating Factors

The statutory aggravating factors scale was designed to assess how many statutory aggravators the crime contained. The scale was made by aggregating a number of crime and defendant characteristics identified as potentially aggravating factors in Delaware's capital punishment statute.⁸⁶ These factors include whether the murder was committed against a person held as a shield or hostage, whether the crime involved the death of multiple victims, whether the defendant was previously convicted of another murder/manslaughter/felony

⁸⁴ Despite dogged efforts to collect complete information on these cases reliance on multiple sources, and excellent cooperation from the Delaware Superior Court and the Prothonotary's offices, some files have significant missing information. We are continuing to develop information on this set of capital cases.

⁸⁵ For all of the scales, each relevant item that is present in a case adds one point to the case's scale score. We recognize that some items may have been more influential to the sentencer than others. Nonetheless, our scales are designed to compare the total aggregate number of items across cases.

⁸⁶ See 59 Del. Laws 943 (1974) (codified as amended at DEL. CODE ANN. tit. 11, §§ 636, 4209 (2011)).

involving violence, whether the murder was committed during the defendant's engagement in another crime, and other items. As noted earlier, in order for a defendant to be death penalty eligible, the jury must find the existence of at least one statutory aggravating circumstance beyond a reasonable doubt. Delaware judges and juries are not limited to the list of statutory aggravators in their overall consideration of the deathworthiness of the case. They may take any aggravating factors into account when making the sentencing decision. For each aggravating factor that was suggested or explicitly stated in the case file, the case received a point on the statutory aggravators scale.⁸⁷

2. Mitigating Factors

The mitigating factors scale was designed to assess how many mitigating factors the crime contained. The scale was made from an aggregate of a number of crime and defendant characteristics identified in the Baldus study, and by other researchers, as potentially mitigating factors.⁸⁸ The scale included items such as an absence of prior criminal activity, whether the victim consented to the defendant's conduct, and whether the defendant expressed remorse for the crime. For each mitigating factor that was suggested or explicitly stated in the case file, the case received a point on the mitigating factors scale.⁸⁹

3. Heinousness

The heinousness scale was modeled after a scaled used by Phillips and colleagues.⁹⁰ Although the initial scale created by Phillips included the number of aggravating factors in a case minus the number of mitigating factors in a case, the heinousness scale developed for this study only looked at potential aggravators and excluded factors already included in the statutory aggravating factors scale. The scale was designed to provide additional information about aggravating features of the case, beyond the statutory aggravators scale which was designed to look at the legally-identified aggravating factors in a case. The heinousness scale combined a number of items, including whether the defendant continued a painful attack after it was apparent the victim was dying, whether the victim was bound or gagged, and whether the victim pleaded for his or her life. For each relevant factor that was suggested or expressly stated in the case file, the case received a point on the heinousness scale.⁹¹

⁸⁷ Scores on the statutory aggravating factors scale ranged from 0 to 8 ($M=2.59$, $SD=1.29$).

⁸⁸ 59 Del. Laws 943 (1974) (codified as amended at DEL. CODE ANN. tit. 11, §§ 636, 4209 (2011)) does not specifically list potentially mitigating factors; instead, the decision maker may take any mitigating factors into account.

⁸⁹ Scores on the mitigating factors scale ranged from 0 to 10 ($M=3.35$, $SD=2.30$).

⁹⁰ Phillips et al., *supra* note 1, at 136.

⁹¹ Scores on the heinousness scale ranged from 0 to 12 ($M=3.06$, $SD=2.24$).

4. Vulnerable Victim

The vulnerable victim scale was designed to assess perceptions of the victims' ability to protect themselves against the defendant. Victims who are perceived to be more vulnerable may appear more sympathetic in the eyes of the sentencer and high scores on this scale may be associated with more death sentences. The vulnerable victim scale was created from an aggregate number of factors, including whether the victim was handicapped, whether the victim was asleep, and whether there were gross disparities in physical size between the defendant and the victim. For each factor that was suggested or expressly stated in the case file, the case received a point on the vulnerable victim scale.⁹²

5. Sex Crime

The sex crime scale was designed to assess the sexualized nature of the homicide. As noted above, a homicide accompanied by a sex crime constitutes a statutory aggravating factor, and women are more commonly sex crime victims. This distinction could help explain the female victim effect. This scale was made up of an aggregate of case characteristics, including whether the crime involved a sexual attack, whether the victim was forced to disrobe, and whether the crime involved sexual perversion or abuse other than rape. For each relevant characteristic that was suggested or expressly stated in the case file, the case received a point on the sex crime scale.⁹³

6. Disreputable Victim Behavior

Theory and research suggest that some measure of the "worth" or reputation or risk-taking on the part of the victim might contribute to a victim gender effect.⁹⁴ We created a scale to assess victim characteristics that could potentially lead to the sentencer viewing the victim unsympathetically. We label it as the "disreputable victim behavior" scale, although we emphasize that the scale does not reflect the actual reputation or worth of the victim but rather includes items that might lead fact finders to downgrade the victim's reputation. Risk-taking behavior on the part of the victim may lessen a fact finder's likelihood of recommending death. More sympathetic victim or crime characteristics may lead to empathy by the fact finder and more recommendations for death. This scale was used to measure the extent to which the victim participated in certain risk behaviors. The scale was made from an aggregate of a number of characteristics, including whether the victim was defenseless due to gross intoxication or whether the crime was related to a drug

⁹² Scores on the vulnerable victim scale ranged from 0 to 6 ($M=1.35$, $SD=1.26$).

⁹³ Scores on the sex crime scale ranged from 0 to 6 ($M=.44$, $SD=1.18$).

⁹⁴ Sundby, *supra* note 47, at 357.

trade. For each factor that was suggested or expressly stated in the case file, the case received a point on the disreputable victim behavior scale.⁹⁵

7. Victim Family Responsibility

The victim family responsibility scale was designed to assess whether the victim was responsible for any family members. Research suggests that jurors are more sympathetic towards victims who have at least one dependent such as a spouse or a child. The scale was made from an aggregate of three characteristics: the victim was pregnant, the victim has a dependent, and the victim was supporting children. For each relevant factor that was suggested or expressly stated in the case file, the case received a point on the victim family responsibility scale.⁹⁶

8. Other Variables Used

Along with the scales created for this study, other variables were used to examine the influence of victim gender on sentencing outcome. These included the method of killing, the victim's relationship with the defendant, and the race of both the victim and the defendant.

a. Supplemental Homicide Reports

To provide a measure of death penalty seeking and to assess whether, and how, it varied by victim characteristics, one set of analyses employed the FBI's Supplementary Homicide Reports ("SHR") for the state of Delaware.⁹⁷ The FBI's SHR contains information on the vast majority of murders in the United States.⁹⁸ For each murder, the data include the year of the offense, the race, sex, and age of the victim and of the defendant arrested for the offense, the county in which the offense occurred, and information about the nature of the murder, including whether it was committed in the course of certain crimes such as robbery, rape, burglary, or larceny.⁹⁹ Crime analysts have concluded that despite some imperfections, the murder data are among the most reliable crime

⁹⁵ Scores on the disreputable victim behavior scale ranged from 0 to 9 ($M=.8451$, $SD=1.2954$).

⁹⁶ Scores on the victim family responsibility scale ranged from 0 to 3 ($M=.8732$, $SD=.9443$).

⁹⁷ JAMES A. FOX & MARC L. SWATT, UNIFORM CRIME REPORTS [UNITED STATES]: SUPPLEMENTARY HOMICIDE REPORTS, WITH MULTIPLE IMPUTATION, CUMULATIVE FILES 1976–2007 (2000), available at <http://www.icpsr.umich.edu/icpsrweb/NACJD/studies/24801>.

⁹⁸ *Id.*

⁹⁹ *Id.* For a discussion of the SHR data quality, see generally James Alan Fox & Marc L. Swatt, *Multiple Imputation of the Supplementary Homicide Reports, 1976–2005*, 25 J. QUANTITATIVE CRIMINOLOGY 51 (2009).

data.¹⁰⁰ We treated a case that did not include the offender's sex as unsolved and removed the case from the death sentence rate calculations.¹⁰¹

¹⁰⁰ See John J. Donohue, *Understanding the Time Path of Crime*, 88 J. CRIM. L. & CRIMINOLOGY 1423, 1425 (1998); John J. Donohue & Peter Siegelman, *Allocating Resources Among Prisons and Social Programs in the Battle Against Crime*, 27 J. LEGAL STUD. 1, 14 (1998); Robert J. Cottrol, *Hard Choices and Shifted Burdens: American Crime and American Justice at the End of the Century*, 65 GEO. WASH. L. REV. 506, 517 (1997) (book review). *But see* Michael Maxfield, *Circumstances in Supplementary Homicide Reports: Variety and Validity*, 27 CRIMINOLOGY 671, 675–81 (1989). The data exclude negligent manslaughters and justifiable homicides. FOX & SWATT, *supra* note 97, at 60.

¹⁰¹ Missing data for unsolved murders are not a concern for this study because unsolved murders do not produce candidates for death row.

IV. RESULTS

The Delaware Capital Trials Database includes 144 cases that were death penalty eligible and reached the sentencing phase of a capital trial.¹⁰² Of these cases, 54 resulted in a death sentence. Descriptive statistics for all variables used in the analyses are reported in Table 1, including statistics for both the total sample and the cases resulting in a death penalty. Of the 144 cases, only five defendants were female, so defendant gender was not included in the analyses. Twelve defendants successfully appealed their death sentences and received second trials and/or second penalty trials. Another two defendants appeared in our data set twice because each of them had two trials for two separate murders. The descriptive statistics for only the unique defendants (with data from the second trials for each defendant removed) are reported in Table 2.

A. Seeking A Death Sentence

Data was used from the SHR to calculate the death-seeking rates for Delaware until 2007, the year of the last offense in the dataset. We used the existence of a case in our database as evidence that the death penalty was sought. This understates prosecutors' pursuit of the death penalty, because cases that were charged capitally but that did not result in a capital murder conviction and penalty trial were not included in our database.

For both the Delaware SHR homicide data and the Delaware capital trials data, we calculated the numbers for each victim race and victim gender combination separately to assess whether these victim characteristics bore a relationship to pursuit of the death penalty. They did. See Figure 1, which displays, for black and white male and female victims, the percentage of homicides that resulted in a capital trial with a penalty phase hearing.¹⁰³ Figure 1 reveals that the death penalty was sought most in cases with white victims and least in cases with black victims. The female victim effect is strongest for black victims. During the relevant time period, nearly a quarter of the Delaware homicides with white victims of either gender resulted in a capital trial that reached the penalty phase.¹⁰⁴ In contrast, 18.07 percent of cases with black female victims and just 10.51 percent of the cases with black male victims led to a capital trial that reached the penalty phase. Thus, considering the overall pattern of homicides in Delaware, we see that the death penalty was sought less

¹⁰² Johnson et al., *supra* note 74, at 1936.

¹⁰³ We limited our analysis to black and white victims because there were too few victims of other races and ethnicities to calculate meaningful percentages.

¹⁰⁴ There are many reasons a case may not have reached the penalty phase and thus was not included in our study. For example, the defendant may have been acquitted, the defendant may have been found guilty of a lesser included offense for which the death penalty was not a legally permissible punishment, or the defendant may have been acquitted of a related offense, which was the death eligible statutory aggravating circumstance.

often when the cases involved black victims of either gender, and that was especially true for cases with

Table 1. Descriptive Statistics of Variables (N=144)

Variable	All Cases <i>n</i> (%)	Death Sentences* <i>n</i> (%)
Sentence		
Life	90 (62.5)	
Death	54 (37.5)	
Victim gender		
Male	93 (64.6)	30 (55.6)
Female	51 (35.4)	24 (44.4)
Victim race		
White	91 (63.2)	38 (70.4)
Non-White	53 (36.8)	16 (29.6)
Defendant race		
White	54 (37.5)	21 (38.9)
Non-White	90 (62.5)	33 (61.1)
Victim-defendant relationship		
Paramour	24 (16.7)	10 (18.5)
Family, friend or neighbor	23 (16.0)	5 (9.3)
Rival or acquaintance	40 (27.8)	13 (24.1)
Stranger	57 (39.6)	26 (48.1)
Method		
Shot	87 (60.4)	30 (55.6)
Stabbed	26 (18.1)	10 (18.5)
Beaten	15 (10.4)	6 (11.1)
Other	16 (11.1)	8 (14.8)
Sentencer		
Judge	90 (62.5)	44 (81.5)
Jury	54 (37.5)	10 (18.5)

Variable	Mean**	SD	Range
Statutory aggravating factors	2.61 (2.83)	1.27 (1.30)	0-8 (0-6)
Mitigating factors	3.36 (3.69)	2.29 (2.02)	0-10 (0-9)
Heinousness	2.55 (3.07)	1.85 (2.11)	0-10 (0-9)
Sex crime	0.44 (0.72)	1.18 (1.58)	0-6 (0-6)
Victim family responsibility	0.88 (0.76)	0.95 (0.91)	0-3 (0-3)
Victim vulnerability	1.35 (1.52)	1.26 (1.44)	0-6 (0-6)
Victim disreputable behavior	0.87 (0.81)	1.32 (1.13)	0-9 (0-5)

**n* is the number of death sentences recommended within that category; the percentage shown is within death sentence cases only.

**Mean, standard deviation, and range are shown for each variable overall, with the numbers shown in parentheses for death sentence cases.

Table 2. Demographic Characteristics for Unique Defendants (N=130)

Variable	<i>n</i> (%)
Sentence	
Life	85 (64.4)
Death	45 (34.6)
Victim gender	
Male	84 (64.6)
Female	46 (35.4)
Victim race	
White	80 (61.5)
Non-White	50 (38.5)
Defendant race	
White	49 (37.7)
Non-White	81 (62.3)
Sentencer	
Judge	77 (59.2)
Jury	53 (40.8)

black male victims. Cases with white female victims resulted in a capital trial with a penalty phase three times more often than in cases with black male victims.¹⁰⁵

An additional analysis of the proportion of death sentences per homicides in each of the victim race and gender groups largely confirms these patterns. The highest proportion is for homicides of white female victims, in which 11.6 percent of the homicides resulted in a death sentence at trial, and the lowest is for homicides of black male victims, in which 2.5 percent of the homicides led to a death sentence at trial. The proportions for homicides of white males (8.7 percent) and homicides of black females (8.4 percent) fell in between.

B. Gender And Death Sentences

The death-seeking rate differences just described indicate that victim gender and race are related to whether or not the death penalty is sought for a homicide and whether a death sentence results. We now consider how, in the sample of capital cases, victim gender is related to sentencing outcomes at trial.

Of the 144 total primary victims, 35.4 percent were female.¹⁰⁶ Within the female victim cases, 47.1 percent resulted in death sentences. For cases

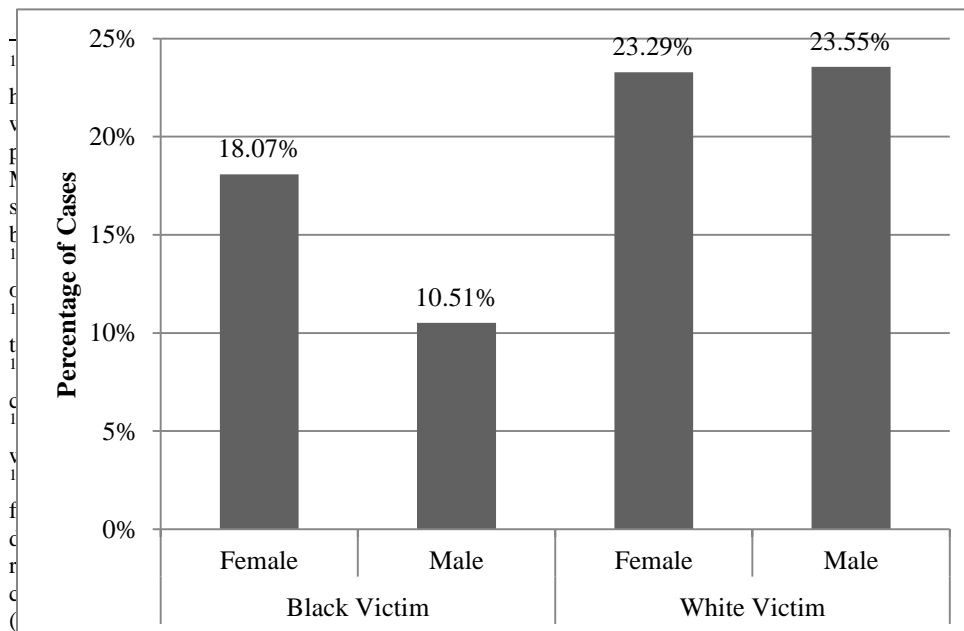
¹⁰⁵ This is consistent with the race of victim death sentencing rates found in Johnson et al., *supra* note 74, at 1939. In that analysis, which examined death sentencing rates (rather than death-seeking, as in the current analysis), the death sentencing rate for black defendants who killed white victims was six times higher than black defendants who killed black victims and three times higher than white defendants who killed black victims. The analysis in Johnson et al., *supra* note 74, did not include victim gender.

involving male victims, only 32.3 percent of the defendants were sentenced to death. A chi-square test of independence was performed to examine the relationship between gender of the victims and sentence, without controlling for any other case factors. The relationship between these variables approached statistical significance.¹⁰⁷ In line with the pattern found in other jurisdictions, cases involving female victims were percentage-wise somewhat more likely to result in the death penalty. Figure 2 shows that cases with male victims were more common, but those who killed them were proportionately more likely to be sentenced to life imprisonment.

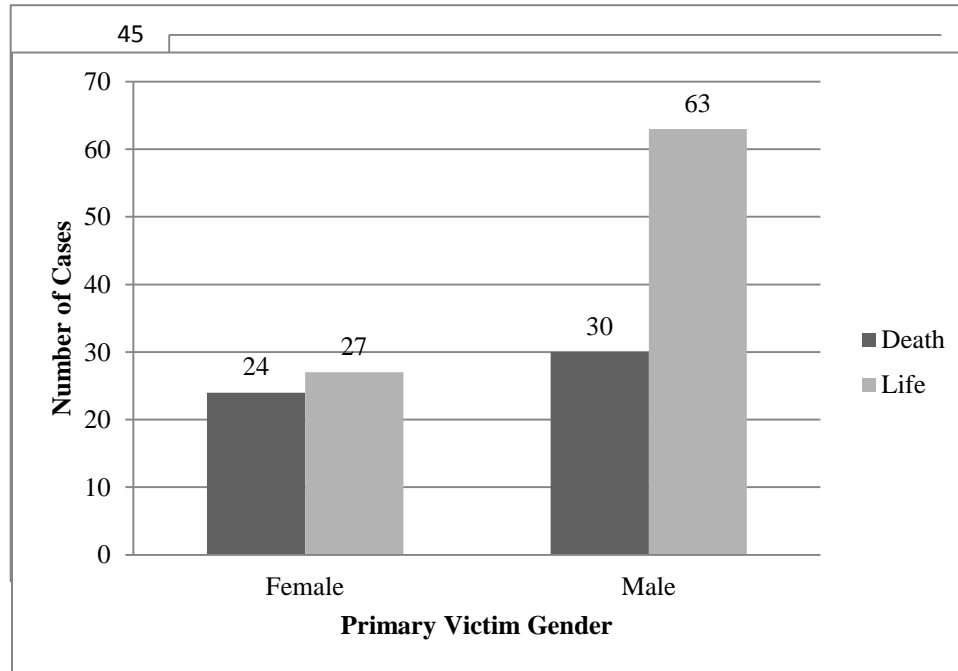
Although there was only a moderate relationship between victim gender and sentencing, male and female victim cases did differ significantly on several dimensions. First, the characteristics of the crimes themselves differed. Importantly, male victims were less likely to be sexually victimized than female victims.¹⁰⁸ In addition, male victims were less likely to have a history of assaultive conduct with the defendant than female victims.¹⁰⁹ The difference in these aspects of crimes that involve male and female victims may help explain the female victim effect because sentencing differed significantly based on whether sexual victimization occurred during the course of the crime. Crimes that received the death penalty had higher scores on the Sex Crimes scale than crimes that received a life sentence.¹¹⁰

Victim gender also was associated with the method of the murder and the relationship between the victim and the defendant.¹¹¹ Figure 3 shows that female

Figure 1. Death Seeking Rates In Delaware Homicides By The Victim's Gender And Race



were added to the “other” category for the purposes of the regression analyses. This category also included methods used in only one case in the database, including being hit by a car and receiving an intentional overdose.

Figure 2. Number Of Cases Receiving A Sentence Of Life Or Death Based

On Primary Victim's Gender

Figure 3. Relationship Between The Victim And The Defendent For Female And Male Victims

victims were far more likely to be killed by a paramour than male victims.¹¹² In addition, male victims were far more likely than female victims to be killed by a firearm.¹¹³ Female victims were more likely to be killed by a method in the “other” category, which includes methods used in only a small number of cases, including suffocation, poison, and being struck by a car. These rare methods were used more in murdering women.

Other characteristics of male and female victims may also play a role in the female victim effect. The characteristics of male and female murder victims differed along three dimensions. Male victims were less likely than female

¹¹² The Chi-square for victim gender and defendant-victim relationship, $X^2(3, N = 144) = 29.902, p < .001$.

¹¹³ For Chi-square for victim gender and method of the homicide, $X^2(3, N = 144) = 20.211, p < .001$. A total of 66 male victims (71.0%) were killed with a firearm, 15 (16.1%) were stabbed, 9 (9.7%) were beaten, and 3 (3.2%) were killed using other methods. In comparison, 21 (41.2%) female victims were killed with a firearm, 11 (21.6%) were stabbed, 6 (11.8%) were beaten, and 13 (25.5%) were killed using other methods.

victims to have family responsibilities.¹¹⁴ Male victims were also more likely to be involved in disreputable activity, such as being grossly intoxicated at the time of the crime or participating in a shootout with the defendant.¹¹⁵ Female victims also ranked higher on the vulnerable victim scale, which assessed dimensions of the cases that put the victim in an especially defenseless position.¹¹⁶

C. Victim Race And Death Sentences

Of the 144 defendants, 54 were white, 75 were African American, nine were Hispanic, three were multiracial, two were Asian, and one was Native American. Of the 144 primary victims, 91 were white, 42 were African American, six were Asian and five were Hispanic. Due to the small number of both victims and defendants who were not white or African American in our sample, race was collapsed into white and non-white categories for analysis. This resulted in 54 white defendants (37.5%) and 90 non-white defendants (62.5%); and 91 white primary victims (63.2%) and 53 non-white primary victims (36.8%).

Similar to the results found for gender, a relationship was found between victim race and the relationship between the defendant and the victim.¹¹⁷ White victims were far more likely to be killed by strangers than non-white victims, whereas non-white victims were more likely to be killed by a family member, friend or neighbor. Unlike victim gender, the method of the murder was only marginally related to victim race. Non-white victims were slightly, but non-significantly, more likely to be killed by firearms than white victims.¹¹⁸

Previous research on the relationship between homicide rates and death sentencing rates in Delaware showed that death sentencing rates were significantly higher for those who killed white victims, especially for black defendants who killed white victims.¹¹⁹ The death sentencing rate is calculated based on the total number of homicides in a time period. Only a portion of those

¹¹⁴ The average for male victims with family responsibilities was 0.72 ($SD = 0.89$); female victims were higher ($M = 1.16$, $SD = 0.97$); $t(140) = 2.92$, $p = .007$.

¹¹⁵ Male victims had higher average scores on the disreputable victim behavior scale ($M = 1.19$, $SD = 1.46$) than female victims ($M = 0.41$, $SD = 0.85$); $t(142) = -3.17$, $p < .01$.

¹¹⁶ Male victims had lower average scores on the vulnerable victim scale ($M = 1.15$, $SD = 1.02$) than female victims ($M = 1.71$, $SD = 1.55$); $t(142) = 2.581$, $p = 0.01$.

¹¹⁷ Chi-square for victim race and the relationship between the victim and the defendant, $X^2(3, N = 144) = 11.091$, $p = 0.011$. For white victims, 44 (48.4%) were killed by a stranger, 15 (16.5%) by a paramour, 9 (9.9%) by a family, friend, or neighbor, and 23 (25.3%) by a rival or acquaintance. For non-white victims, 13 (24.5%) were killed by a stranger, 9 (17.0%) by a paramour, 14 (26.4%) by a family, friend or neighbor, and 17 (32.1%) by a rival or acquaintance.

¹¹⁸ Chi-square for the relationship between race and the method of the homicide, $X^2(3, N = 144) = 6.415$, $p = 0.093$. For white victims, 49 (53.8%) were killed using a firearm, 19 (20.9%) were stabbed, 13 (14.3%) were beaten, and 10 (11.0%) were killed using other methods. For non-white victims, 38 (71.7%) were killed using a firearm, 7 (13.2%) were stabbed, 2 (3.8%) were beaten, and 6 (11.3%) were killed using other methods.

¹¹⁹ Johnson et al., *supra* note 74, at 1940.

homicides result in murder charges, and even fewer result in capital murder trials. Furthermore, as has been found in other jurisdictions, the majority of murders in the Delaware Capital Trials dataset were intraracial rather than interracial, making it difficult to discern whether there were distinctive patterns for white versus nonwhite defendants and victims. In this set of cases that proceeded to trial, resulted in first-degree murder convictions, and completed the sentencing phase, we did not observe markedly different sentences for victims (or defendants) of different racial and ethnic backgrounds. These trends can be found in Figure 4.

Limiting the analysis only to black and white defendants and victims, and not controlling for any other case factors, those who killed black victims received a death sentence 36 percent of the time (14 of 39 cases); those who killed white victims received a death sentence 41 percent of the time (35 of 86 cases).¹²⁰ This is in line with the differential death sentencing rates for homicides found by Johnson and her colleagues, but is not statistically significant. Analyses that took into account both the race of the victim and the race of the defendant and examined the likelihood of a death sentence at the capital trial also did not find differences. Figure 5 shows the relationship between victim gender and victim race. Although other researchers have found significant victim race and victim gender interactions, no significant interaction was found in our capital trials dataset between victim race and gender on sentencing patterns. This suggests that the race of victim effect found earlier by Johnson and her colleagues most likely reflects the influence of race upon decisions to seek death, rather than upon decisions to impose death sentences. The conclusion is reinforced by our analysis in Section III-A showing that death-seeking rates vary for different victim race and gender groups.

D. Generalized Linear Mixed Models Of Death Sentences

The gender and race of the victim can be related to other dimensions of their cases and trials, as we have described above. Therefore, we estimated multiple logistic regression models to predict the likelihood of a defendant receiving a death sentence, using a number of variables we hypothesized would be linked to a death sentence, and had the potential to explain the female victim effect found in previous studies. The estimates of the raw scores of the predictor variables on sentence, standard errors and odds ratios are displayed in Table 3. The positive estimates indicate that a death sentence is more likely.

Of the 144 cases in the database, 43 different judges presided over the trials during the time period.¹²¹ While many of the judges only presided over one

¹²⁰ For white versus nonwhite victims, $X^2(1, N = 143) = 0.87, p = 0.768$. For black versus white victims, $X^2(1, N = 132) = 1.70, p = 0.192$.

¹²¹ Information about the trial judge was missing in 7 trials. For the purposes of the regression, each of these cases was treated as having a unique judge, which is included in the total number of 43 judges.

case, several presided over multiple cases.¹²² In order to account for the possible non-independence of judges with multiple trials in our dataset, generalized linear mixed models were used, with judges treated as a random effect. These models were used to estimate the parameters of the unknown correlation between the cases of the repeated judges. Further, because there were 12 defendants in our dataset

¹²² The maximum number of cases a judge presided over was 13.

Figure 4. Number Of Cases Receiving A Sentence Of Life Or Death Based On Race Of Defendant And Victim

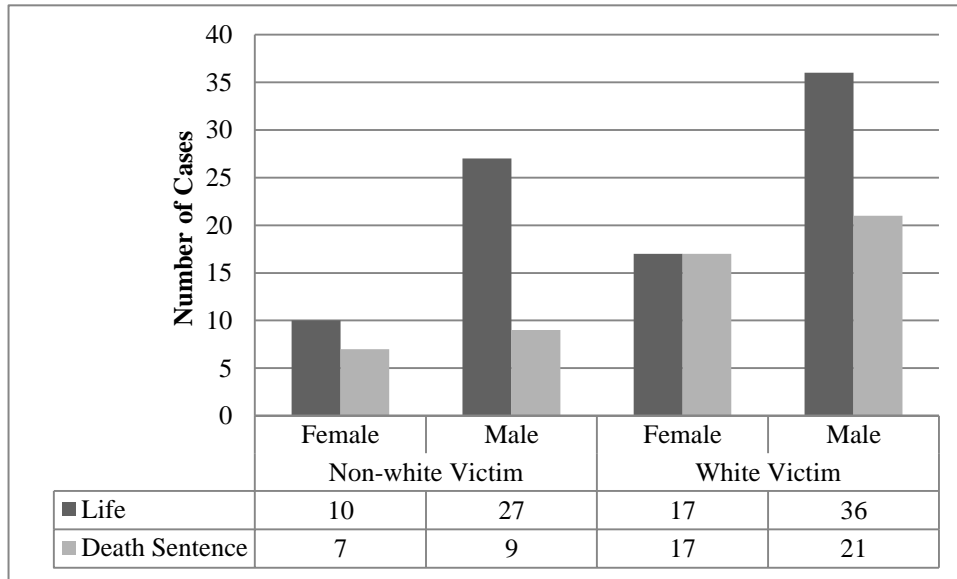
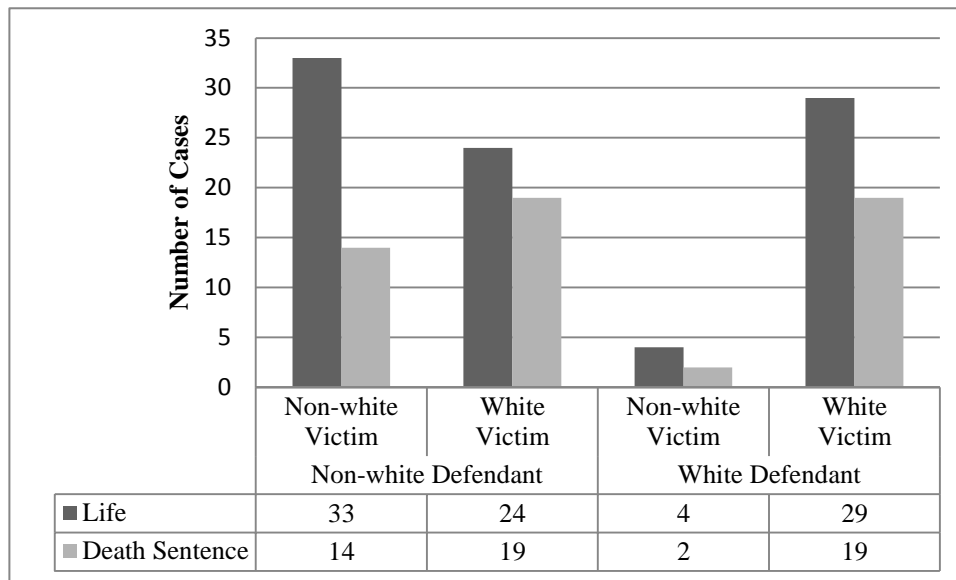


Figure 5. Number Of Cases Receiving A Sentence Of Life Or Death Depending On The Race And Gender Of The Victim



with multiple trials for the same crime, the variable “two trials” was included in all of the models to account for the presence of repeated defendants.¹²³

In Model 1, we estimated a logistic regression model predicting the likelihood of a death sentence using a set of key predictor variables: victim gender and race, defendant race, statutory aggravating factors, mitigating factors, and whether they received two penalty trials. Results showed the expected female victim effect on death sentences. The odds of a death sentence were 2.26 higher when the victim was female. In additional models not shown here, we explored whether there was a significant interaction between victim race and gender, but the interaction was not significant and thus we did not include the interaction in the models.

In Model 2 we added to the basic Model 1 two crime characteristics scales that we hypothesized would increase the chance of a death sentence: heinousness and the sexualized nature of crimes. In Model 2, once we added these variables, none of the predictor variables remained statistically significant predictors of a death sentence. This suggests that heinousness and the sexualized nature of crimes play a role in differentiating the sentences received for male victim and female victim crimes.

In Model 3 we added a different set of scales to the basic Model 1 that we hypothesized would affect the chance of a death sentence based upon characteristics of the victim: victim vulnerability, victim family responsibilities, and victim involvement in what might be perceived as disreputable behavior. In this model, victim gender was statistically significant, as it was in Model 1. The results from this model indicated that victim vulnerability, family responsibilities and involvement in disreputable behavior cannot fully explain the effect of victim gender in sentencing.

In Model 4, we included all the variables from Models 1-3 and added variables that we hypothesized would affect the chance of a death sentence and are associated with the crime in general: the method of killing and the victim’s relationship to the defendant. In this full model, the effect of victim gender is likely explained by the variance in the other variables as it is no longer statistically significant. Statutory aggravating factors and the heinousness of the crime are marginally significant predictors of a death sentence. In addition, death sentences are statistically more likely when the victims have family responsibilities. The chances of receiving a death sentence are significantly lower when the victim is a family member, a friend, a neighbor, a rival or an acquaintance of the defendant compared to when the victim is a stranger. In addition, the chance of receiving a death sentence is marginally lower when the victim is shot compared to when the victim is beaten. Overall, these results suggest that relationship and method help to explain some of the effects of victim gender that we found in earlier models.

¹²³ Additionally, there were two defendants in our dataset who had two trials for different murders. These trials were treated as independent because the victims were different in each case.

Table 3. Generalized Linear Mixed Models Predicting Likelihood of Death Sentences.

Variable	Model 1			Model 2			Model 3			Model 4		
	β	SE	Odds	β	SE	Odds	β	SE	Odds	β	SE	Odds
Intercept	-2.27**	0.75	0.10	-2.57***	0.78	0.08	-2.12**	0.82	0.12	-1.47	0.98	0.23
Aggravators	0.24	0.15	1.28	0.17	0.16	1.19	0.26	0.16	1.30	0.37+	0.21	1.45
Mitigators	0.07	0.09	1.07	0.06	0.09	1.06	0.10	0.09	1.11	0.07	0.11	1.07
Two trials	0.91	0.70	2.50	0.93	0.73	2.53	0.90	0.72	2.47	0.58	0.86	1.79
Defendant non-white	0.09	0.44	1.09	0.29	0.46	1.33	0.10	0.46	1.11	-0.09	0.56	0.91
Victim female	0.81*	0.41	2.26	0.65	0.44	1.91	1.00*	0.45	2.71	0.98	0.65	2.65
Victim white	0.54	0.46	1.71	0.43	0.48	1.54	0.47	0.48	1.59	0.01	0.60	1.01
Heinousness				0.19	0.12	1.21				0.27+	0.16	1.31
Sex crime				0.10	0.20	1.10				-0.72*	0.29	0.49
Family responsibilities							-0.37	0.23	0.69			
Vulnerability							-0.02	0.18	0.98	0.06	0.25	1.07
Disreputable							0.03	0.17	1.03	0.09	0.20	1.10
Relationship (compared to stranger)												
Paramour												
Family, friend or neighbour										-0.54	0.77	0.59
Rival or acquaintance										-2.19*	0.86	0.11
Method (compared to shot)										-1.30*	0.65	0.27
Stabbed												
Beaten										-0.10	0.68	0.90
Other										-1.92+	1.04	0.15
										-0.07	0.92	0.93

Note. $N = 144$. Random intercept = judge. Number of judges = 43. Two-tailed statistical significance levels are indicated by * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$, **** $p < 0.001$. The effects shown for each variable are compared to when its value = 0.

This may be due to the strong correlation between victim gender and the method of killing and the victim-defendant relationship, as discussed previously.

As a check on the regression results, we performed a classification and regression tree (CART) analysis of the relation between a death sentence and the explanatory variables in Model 4.¹²⁴ CART is a nonparametric test, and therefore has an advantage over regression in that it does not depend on underlying assumptions about the distributions of variables.¹²⁵ The CART analysis confirmed the regression results, increasing our confidence in the soundness of the regression results.

One possible concern is whether the sample size of 144 is large enough to detect a consistent, statistically significant female victim effect. Our computations indicate that it is.¹²⁶ Nevertheless, we do not interpret the absence of significance in Models 2 and 4 as evidence that female victim status is unimportant. However, note that controlling for the most attributes associated with female victim status, as in Model 4, resulted in increased coefficient size for the female victim variable compared to Model 1, though of reduced significance. This may be evidence that multicollinearity among variables associated with female victim status resulted in inflated standard errors and reduced significance levels.

V. DISCUSSION

Previous research has shown a female victim effect in capital sentencing cases, with cases involving female victims being more likely to result in a death sentence.¹²⁷ We hypothesized that the relationship between victim gender and

¹²⁴ CART analysis helps explore how decisions branch at what are believed to be relevant nodes (the explanatory variables). LEO BREIMAN, JEROME FRIEDMAN, CHARLES J. STONE & R.A. OLSHEN, CLASSIFICATION AND REGRESSION TREES (1984); Jonathan P. Kastlelec, *The Statistical Analysis of Judicial Decision and Legal Rules with Classification Trees*, 7 J. EMPIRICAL LEGAL STUD. 202 (2010). Each node in a decision tree is split into two groups, and the data are partitioned into those groups to process the data farther down the tree. This binary partitioning process can be repeated, with child nodes generating their own subnodes. Because CART is a nonparametric test, it is a useful check.

¹²⁵ Kastlelec, *supra* note 131.

¹²⁶ We used the results in BALDUS ET AL., *supra* note 3, to assess this concern. They report a female victim coefficient of 1.8418, significant at $p=0.001$, in a logistic regression model of whether a death sentence was imposed at the penalty trial in a sample of 206 trials. *Id.* at 654 (Model A: FEMVIC regression coefficient). This corresponded to approximately a 25 percent increased likelihood of a death sentence when victims were female. *Id.* at 655 (Model B: FEMVIC regression coefficient). Our sample of 51 female victims and 93 male victims had more than a 90 percent probability of detecting an effect this large or larger based on typical values for the other explanatory variables in their model. This is evidence that not detecting a consistent, statistically significant female victim effect of the magnitude in BALDUS ET AL., *supra* note 3, is unlikely to be an artifact of sample size.

¹²⁷ BALDUS ET AL., *supra* note 3, at 276; Gillespie et al., *supra* note 36, at 14; Holcomb et al., *supra* note 16, at 12; Songer & Unah, *supra* note 11, at 190; Sundby, *supra* note 47, at 357-58; Williams et al., *supra* note 22, at 1.

death sentences could be partially explained by two sets of differences between male and female victims: the characteristics of the crimes and the characteristics of the victims themselves. For example, cases involving female victims are more likely to involve sexual assault, a factor that may appear more heinous than a different aggravator that more commonly involves male victims.¹²⁸ Furthermore, male victims may be seen to be greater risk-takers and thus might be perceived as more disreputable, a characteristic that influences whether judges and juries recommend the death penalty or not.¹²⁹

Using data from the Delaware Capital Trials Database of death penalty cases that had reached the sentencing phase, our results showed general support for a female victim effect and supported our hypotheses about the crime and victim characteristics that help to explain it. Examining the proportion of Delaware homicides that resulted in a capital trial and a penalty phase and in death sentences, we found the combination of the race and the gender of the victim influenced the likelihood of these outcomes, with homicides of white female victims producing the most severe and homicides of black male victims the least severe outcomes.

Our first hypothesis was that characteristics of the crime help to explain the female victim effect. Consistent with previous research, we found that crimes involving female victims were more likely to involve sexual victimization. Furthermore, the higher a case scored on the sex crime scale, the more likely the case was to receive the death sentence. In other words, sexual violence during the crime increased the likelihood that the defendant would be sentenced to death. The results of our regression analyses suggest that the presence of sexual violence and the heinousness of the crime partially explain why killers of female victims have greater odds of receiving the death penalty, reinforcing the results found by Williams et al.¹³⁰

Although the number of statutory aggravators marginally predicted sentencing patterns in our final model, the number of statutory aggravators did not differ significantly for crimes involving male and female victims. Therefore, the number of statutory aggravators does not appear to explain the effect of gender on sentencing. It is possible that while crimes involving males and females are equally aggravated, the crimes with female victims involve aggravators that may be considered especially heinous, as perhaps is suggested by the greater presence of sexual crimes. Our models support this hypothesis, as heinousness and the sexualized nature of the crime were found to explain part of the gender effect, while the number of statutory aggravators did not.

To account for other differences in the type of crime, the method of the homicide and the victim-defendant relationship were also included in a regression model. With these additions to the basic model, the effect of victim

¹²⁸ Phillips et al., *supra* note 1, at 140.

¹²⁹ Sundby, *supra* note 47, at 6.

¹³⁰ Williams et al., *supra* note 22, at 16.

gender was no longer significant, suggesting that these variables were interrelated and thus help to explain some of the influence of gender on sentencing. Crimes in which the victim was killed by a family member, friend, neighbor, acquaintance or rival were more likely to produce a death sentence. When the relationship between the defendant and the victim was controlled for, the gender of the victim no longer strongly predicted sentencing. This may be because it removed the influence of the correlation between victim gender and relationship. In Delaware, as elsewhere in the United States, female victims were more likely to be killed by their paramours, while male victims were more likely to be killed by strangers or acquaintances. Further, female victims were more likely to be strangled or killed with a knife, crimes that appear to be much more personal, while men were more likely to be killed with a firearm. Crimes in which the victim was beaten to death predicted a sentence of death. While these relationships may not explain the female victim effect, these results do suggest that men and women differ in how they are killed and who kills them.

Our second hypothesis was that characteristics of the victim also contribute to the female victim effect. Although previous research on the effect of victim gender using a large database of information from capital trials have discussed victim characteristics, none have included separate scales specifically designed to measure these traits, such as family responsibility, vulnerability, or disreputable behavior. However, interviews with jury members from the Capital Jury Project suggested that these factors all influence jury behavior, as jury members commonly empathized with or distanced themselves from victims based upon these perceived traits.¹³¹ This suggests that victim characteristics may be worth individual examination.

Within the Delaware Capital Trials dataset, male and female victims differed significantly in their family responsibilities, their perceived vulnerability, and their perceived disreputable behavior. Females were more likely to have children and dependents, and also appeared to be more vulnerable than male victims. Either of these characteristics could lead to a more sympathetic jury or judge, and when controlling for other factors, our regression showed that the absence of family responsibilities did marginally predict the likelihood of a death sentence. However, victim vulnerability did not result in significant differences in sentencing outcomes and, further, neither vulnerability nor family responsibilities fully accounted for more severe sentences for cases involving female victims. Disreputable victim behavior was also not found to be associated with significant differences in death sentences. Males were found to be more likely to be involved in risk-taking and illegal behavior, which previous research has suggested leads to sentencers feeling less sympathy and empathy for victims.¹³² However, the presence of disreputable behavior was not found to have an effect on sentencing once heinousness and the presence of sexualized

¹³¹ *Id.* at 8.

¹³² Sundby, *supra* note 47.

victimization were controlled for. When these variables assessing victim characteristics were added to the regression model, the effect of victim gender remained significant, suggesting that these characteristics do not fully influence sentencing.

However, these differences, combined with differences in crime characteristics such as heinousness and method of murder, indicate that cases with men and women victims do differ significantly. These combined differences make cases with female victims seem and “feel” different than cases involving male victims, despite comparable numbers of aggravating or mitigating factors. Without taking into account any other variables, aspects of the case (e.g. sex crime or method) and characteristics of the victim (e.g. vulnerability or disreputable behavior) are all correlated with gender. These patterns in killing may lead sentencers to make different decisions when the cases involve male and female victims.

Unlike previous research, we did not find a significant race of victim effect or an interaction between victim race and victim gender. It’s possible that the lack of a significant interaction in our study is due to the small sample size of our dataset and the very low number of white defendant-nonwhite victim cases. However, it is also possible that the white female victim effect found by other researchers occurs at an earlier stage in the process when cases are selected for prosecution or when judges and juries determine a defendant’s guilt. In the cases included in the Delaware Capital Trials database, the prosecutors had already chosen to seek the death penalty and the defendants had been found guilty of a capital crime. Examining the death-seeking rates for black and white victims of either gender, as we did, suggests that crimes with black male victims are especially unlikely to lead to capital trials and the sentencing phase.

However, despite a modest sample size, the inclusion of hundreds of variables in our data set allowed us to consider many relevant variables that other studies have been unable to explore fully, including the victim’s vulnerability and the crime’s heinousness. The strong correlation between the scales used in this study and gender suggest that future research should continue to take these variables into account when exploring the effect of victim gender in sentencing.

VI. CONCLUSION

The use of the Delaware Capital Trials Database allowed us to take a rare look at the victim gender effect. Our results supported our hypothesis that characteristics of both the victim and the crime help to explain the female victim effect. Importantly, victim gender is strongly related to many case and victim characteristics that appear to influence the sentencer. These factors include things that are relevant to both the character of the victim (such as vulnerability) and the heinousness of the crime (such as the method of the homicide). While more research needs to be done, using both larger databases and information from other regions, our analyses suggest that victim gender continues to influence capital sentencing decisions. One unique aspect of the Delaware

Capital Trials Database is the inclusion of both jury and judge sentencing. Although we did not account for the difference between judges and juries in this Article, further research should be done to explore the impact of these factors with both types of sentencers on the likelihood of receiving the death penalty. Like other researchers, we encourage additional research on the role of the female victim effect in capital sentencing.

Appendix I. Scales Created for this Study

For all scales: when the case file suggested or expressly stated the characteristic of the crime, one point was added to the scale total. If the characteristic did not apply, was not suggested in the case file, or was missing, nothing was added to the sum for that scale.

Scale 1. Statutory Aggravating Factors Scale

Defendant was in/escaped from law-enforcement custody
Murder committed with purpose of preventing arrest/escape from custody
Murder was committed against officer, corrections employee, or firefighter during duties
Murder was committed against judicial officer during or because of duty
Murder committed against person held as shield or hostage
Murder committed against person held as ransom/reward
Murder committed against witness
Defendant was paid/agreed to be paid/pay for the killing of the victim
Defendant previously convicted of another murder/manslaughter/felony involving violence
Murder committed during defendant's engagement in other crime
Defendant's conduct resulted in deaths of 2 or more persons
Murder was outrageously vile, horrible, or inhumane
Defendant caused/directed another to commit murder or acted as another's agent in commission of murder
Defendant under sentence of life imprisonment at time of commission of murder
Murder committed for pecuniary gain
Victim was pregnant
Victim was severely handicapped or severely disabled
Victim 62 years-old or older
Victim was 14 years-old or younger and the murderer was at least 4 years older than the victim
Killing in retaliation for informant testimony
Murder was premeditated and result of planning
Murder committed for purpose of interfering with victim's free exercise of rights

Scale 2. Mitigating Factors Scale

Defendant has no significant history of prior criminal activity
Defendant acted under unusual pressures/influences
Defendant was under influence of mental/emotional disturbance at time of crime
Age of defendant at time of crime
Offender was accomplice in another person's crime and his/her participation was minor
Victim consented to/participated in defendant's conduct
Defendant's judgment impaired due to mental illness or defect, or intoxication
Defendant was physically abused as a child
Defendant was sexually abused as a child
Defendant has spouse and/or family
Defendant admitted crime
Defendant expressed remorse for the crime
Defendant maintains innocence
Defendant has shown that he/she can behave without difficulty in institutional and prison settings

Scale 3. Heinousness Scale

Methodical infliction of severe pain
Defendant continued or resumed a painful attack after it was apparent that the victim was dying
A total of 10+ stab wounds or cuts
Brutal clubbing or other unnecessarily painful method of attack
Brutal stomping or beating with hands or feet
Victim bound or gagged
Defendant lay in wait or otherwise ambushed the victim
Execution style homicide
Case involved contemporaneous felony and homicide was unnecessary
Victim pleaded for life
Defendant expressed pleasure with homicide
Mutilation during homicide
Homicide planned for more than five minutes
Attempt to dispose of/conceal body after death
Victim killed in presence of family members or close friends
Physical details of the crime are unusually repulsive

Scale 4. Vulnerable Victim Scale

Bed ridden/handicapped Mentally impaired Defenseless because of youth Defenseless because of advanced age Victim was asleep or had just woken up Victim defenseless because of gross disparities in physical size Victim defenseless because of physical condition or weakness Homicide occurred while victim was kidnapped Victim defenseless because of number of co-perpetrators

Scale 5. Sex Crime Scale

Victim or nondecendent forced to disrobe/disrobed by perpetrator Victim was not clothed at time of homicide Sexual perversion or abuse other than rape Primary victim was sexually attacked Any victim was sexually attacked Crime was done out of desire for sexual gratification Victim or someone in the victim's company was raped or sexually abused

Scale 6. Disreputable Victim Behavior Scale

Unsavory scene of the crime (liquor store or hotel room) Primary victim's primary occupational skill was unsavory (prostitution, unemployed, or drug dealer) Primary victim's secondary occupational skill was unsavory (prostitution, unemployed, or drug dealer) Victim defenseless due to gross intoxication Crime was retaliation or revenge for prior harm to defendant or other Dispute was related to drug trade Crime involved shootout with the victim Crime was retaliation for previous harm to the defendant

Scale 7. Victim Family Responsibility Scale

Victim was pregnant Victim was supporting children Victim has dependents
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