

EXPERT REPORT Brent R. Never, Ph.D.

I have been retained by the ACLU Foundation to serve as an expert in their litigation brought in connection with their representation of Mr. Antoine Fielder, who has been charged with capital murder under K.S.A. § 21-5401 in Wyandotte County, Kansas. In this report, I assess patterns of charging to determine the existence of racial disparities in the prosecution of death-eligible cases under Kansas law between 1994 and May 2022. This study is based on a review of case documents and statistical analyses of cases charged and prosecuted under the same statute. I assess evidence on racial disparities in charging of death-eligible cases in this period, and compare patterns of those cases charged capitally, death-noticed and those that proceeded to capital trials. I report here the research questions, study methodology, analysis, and conclusions.

A. Qualifications and Background

I am an associate professor in the Department of Public Affairs at the University of Missouri-Kansas City (UMKC). At UMKC, I am also the Director of the Midwest Center for Nonprofit Leadership (MCNL) and Associate Dean of Budget and Finance in the Henry W. Bloch School of Management. I hold a Ph.D. degree in Public Policy (Indiana University) and a Master's degree in Data Science (University of Missouri). I am an expert in research design, quantitative methods, and program evaluation. I have led and been part of a research team on a host of empirical studies funded by the National Science Foundation, the National Institutes of Health, and various philanthropic funders. A copy of my curriculum vitae is presented in Appendix I.

For this project I supervised a team of researchers to assist in data collection, coding and analysis. The team consists of five staff members of the Midwest Center for Nonprofit Leadership (MCNL). MCNL is an interdisciplinary academic center that works in partnership with community and nonprofit organizations to design and implement custom research. The team includes statisticians and researchers. Three MCNL team members coded 152 cases from crimes that occurred between 1994 to May 2022. Two additional team members and I worked to analyze the data.

The ACLU previously retained Jeffrey Fagan, a Professor of Law and Epidemiology at Columbia University, who conducted a similar study of charging and sentencing in Sedgwick County, Kansas. *See Appendix IV.* I reviewed the *Fagan* study and replicated the questions investigated in that report for this Wyandotte County study.

B. Questions Addressed in the Research

1. What are the demographic characteristics of the defendants for the following categories of cases:
 - a) All people charged with first degree murder, and who could have been charged with capital murder
 - b) All people charged with capital murder
 - c) All people charged with capital murder and who were eligible, but did not receive, a death notice

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- d) All people charged with capital murder and in whose case the District Attorney issued a notice of intent to seek death
 - e) All people charged with capital murder, who the District Attorney sought death, and who proceeded to capital trial?
2. What are the demographic characteristics of the victims for the defendants identified in Question (1)?
 3. Are race and/or gender associated with the likelihood of capital charging, receiving a death notice, or proceeding to capital trial when accounting for other factors?

We conducted comparisons of the following groups based on race, gender and age of the defendants and victims.

Comparison group	Reference group
All cases filed as capital murder	All homicides not filed as capital murder, but could have been charged with capital murder
All cases filed as capital murder with death notices	All cases that were or could have been charged with capital murder but that did not receive death notices
All cases filed as capital murder with death notices and tried capitally	All cases filed with death notices and not tried

One important distinction between the *Fagan* report and this one is that no Wyandotte County prosecutions have resulted in a death sentence. Accordingly, this study could not investigate the role of race or gender in death sentencing.

C. Files Reviewed

In consultation with ACLU attorneys, myself and others in the MCNL research team, we agreed to seek relevant case materials for all homicides charged as first degree or capital murder in Wyandotte County from 1994 to May 2022. The death penalty can only be sought in cases of intentional and premeditated murder in Kansas. We decided at the outset of the project that we would include cases that were charged at any point with first degree or capital murder, regardless of the final charge or conviction. Accordingly, we sought to identify all cases that fell within these parameters.

Records were requested and cross-referenced from various lists of first-degree/capital murder cases. Records were sought from the Wyandotte County District Attorney's Office (herein

DA), the Kansas State Board of Indigents' Defense Service (BIDS), the Kansas City Police Department, and the Wyandotte County Clerk of Court. We ultimately identified a total of 171 cases. After removing juvenile cases, we obtained case files for the remaining 152 cases.

The files were collected from (multiple entities, specifically through public record requests with the Wyandotte County District Attorney's Office (hereinafter "DA KORA"), a subpoena request to the Wyandotte County District Attorney's Office (hereinafter "DA Subpoena"), a request to the statewide indigent defense services agency for their internal list of cases (hereinafter "BIDS List"), and a memorandum and case file provided by s from the Kansas Capital Habeas Office (hereinafter "CHU Memo"), and requesting public record homicides from the Kansas City, Kansas Police Department.

District Attorney Lists

In response to requests filed pursuant to the Kansas Open Records Act (KORA), the Wyandotte County District Attorney's Office initially provided a list of three pending death penalty cases. It later provided a list of all homicide cases from 2012 to May 10, 2021. The list—organized by case disposition—included the defendant's name, case number, charges, count, statute violated, and the attorney assigned to the case. This list identified 90 cases as first-degree or capital murder cases.

In response to a subpoena and discovery motion from Mr. Fielder requesting all homicides, first degree and capital murder files from 1994 to present, the State provided a list of homicides between 2016 and 2022. The list included defendant, codefendant, and victim names, case numbers, the charge filed, and the person's sex. There were 82 capital or first-degree murder defendants on the provided list. The Wyandotte County District Attorney Office had earlier provided this same list to counsel for another capital defendant, Hugo Villanueva. The District Attorney did not provide any cases before 2012.

BIDS List

BIDS internal tracking documents contain information about homicides from 2018 through 2021 by offense charge. The BIDS List is a compilation of all homicides across Kansas. It includes the county, old and current case number, client name, statute prosecuted under, offense code, and the severity level of the crime. The BIDS List identified 53 cases that were prosecuted as first-degree murder in Wyandotte County.

CHU Memo

On May 15, 2020, the Kansas Capital Habeas Office prepared a memorandum of cases that were potentially charged capitally in Kansas from 1994 to May 2020. In total, the list has 175 cases. Of those 175, 41 were in Wyandotte County.

The Capital Habeas Office also compiled the case files (including complaints, death notices, journal entries, presentence investigation reports, offense reports, news articles, and the ROAs or dockets) for these 41 Wyandotte County death-eligible cases.

Kansas City Police Department Case List

The Kansas City, Kansas Police Department provided a list of homicides from 1991 through 2018. Although this list contains both information about the name of the victim and the suspect, the information about the suspect is redacted and the KCPD has not yet produced an unredacted list in response to the Court's order. Accordingly, this list was not used to create the main list.

Documents Obtained for Coding

- 1) Register of Actions: the Register of Actions is the docket sheet in the case which lists all proceedings and court filings in the case.
- 2) Complaint and amended complaint (if applicable): a complaint contains the list of charges (or "counts") that were brought against the individual. Amended complaints offer revisions to the initial complaint.
- 3) Death Notice: a Death Notice announces the prosecution's intent to seek the death penalty against an individual. The notice may identify the aggravating factor(s) which the prosecution believes justifies a sentence of death.
- 4) Journal Entry of Judgment: the Journal Entry of Judgment records the final decision (conviction and sentence) in the individual's case.
- 5) News/media stories: news articles or media stories published about the case/defendant.
- 6) Published appeals: these are published decisions from Westlaw or other legal databases.
- 7) Presentence Investigation Report: the Presentence Investigation Report is drafted after an individual has been found guilty of a crime in preparation for their sentencing hearing. It identifies what crime(s) the individual has been found guilty of in the current trial and describes their previous criminal history.
- 8) Kansas Standard Offense Report: the Kansas Standard Offense Report completed by Kansas Law Enforcement. It includes a breadth of information about the crime, including the date, time, location, statute violated, and weapon used. It also has personal information about the defendant and the victim, such as race, age, and gender.
- 9) Probable cause affidavits: a probable cause affidavit summarizes the facts and circumstances of the crime.
- 10) Autopsies: the autopsy has information about the victim, including race, age, gender, and cause of death.

I. STUDY DESIGN

I supervised MCNL staff to code the 152 cases. Coded variables include demographics, charging practices and sentencing practices in Wyandotte County capital cases. From the coded cases, a dataset was created containing relevant information for each case extracted from the source files. To ensure accuracy, parallel to MCNL's coding, law students from several universities also coded the same 152 cases into a separate dataset. The datasets were compared case by case. Differences were researched and correct data was identified. The corrected and MCNL dataset was readied for analysis. Rebecca Woodman, JD, adjunct instructor at University of Missouri Kansas City School of Law concurrently conducted an evaluation of whether each of these 152 cases could be considered death eligible under Kansas law. See Appendix III. She made that determination after answering pre-set evaluative questions concerning charges and potential for charges. The Woodman dataset was joined with the MCNL dataset and the unified data was loaded directly into the statistical program *R* for analysis. I conducted statistical analyses to evaluate the role of race and gender, if any, among first degree and capital murder cases in Wyandotte County.

A. Study Population

Three independent data files were combined, using best practices for intercoder reliability: coding developed by the trained staff of MCNL, coding developed by trained Law Students, and coding of a subset of questions developed by the Independent Attorney. The cases can be reviewed in Appendix II. Coding based on charging resulted in the following distribution of cases:

1. Cases Charged First Degree Murder ($N = 120$)¹
2. Cases Not Charged Capital Murder, but Independent Attorney review indicates Could Have Been Charged Capital Murder ($N = 26$)
3. Cases Charged Capital Murder ($N = 27$)
4. Cases Charged Capital Murder but Not Death Noticed by the District Attorney ($N = 8$)
5. Cases Charged Capital Murder and Death Noticed by District Attorney ($N = 19$)
6. Cases charged Capital Murder, received Death Notice from District Attorney, and proceeded to Capital Trial ($N = 6$)

B. Variables and Measures

The variables identified with descriptions are shown in Table 1.

¹ Three of the cases were juveniles and were excluded from the analysis.

Table 1. Description of Variables Used in Analysis

Variable Name	Variable Description
<i>Independent Variables</i>	
Defendant - Black	Bivariate variable where defendant categorized as Black or African American
Defendant - Hispanic	Bivariate variable where defendant categorized as Hispanic
Defendant - White	Bivariate variable where defendant categorized as White or Caucasian
Defendant - Female	Bivariate variable where defendant categorized as female
Defendant - Under 21	Bivariate variable where defendant categorized as aged under 21
Victim - Black	Bivariate variable where all victims are categorized as Black or African American
Victim - White	Bivariate variable where at least one victim categorized as White or Caucasian
Victim - Hispanic	Bivariate variable where all victims categorized as Hispanic
Victim - Female	Bivariate variable where at least one victim categorized as Female
Victim - White Female	Bivariate variable where at least one victim categorized as White and at least one victim categorized as Female
Victim - Juvenile	Bivariate variable where at least one victim categorized as under the age of 15
Number of Agg Factors	Number of aggravating factors as determined by independent attorney review
Vic > 1 Aggravating Factors	Bivariate variable where there is more than one aggravating factor
Number of Victims	Number of victims
Vic > 1 Victims	Bivariate variable where there is more than one victim
<i>Dependent Variables</i>	
Could Capital	As determined by independent attorney review, people charged with first degree murder, and who could have been charged with capital murder
Capital Murder	People charged with capital murder
Capital Yes Notice	People charged with capital murder and who received a death notice from the District Attorney
Capital Trial	People charged with capital murder, who received a death notice from the District Attorney, and who proceeded to capital trial

The variables used in this study were coded from case documents and independent documents developed by the Kansas Bureau of Investigation. Each independent variable was developed replicating the methodology laid out by Fagan (2023) in order to allow for

comparability, to the extent statistically possible, to studies developed in other regions. Dependent variables were coded according to the trial status of each defendant.

Most of the variables used in the subsequent analysis are bivariate in nature – sometimes called dummy variables. This means that they are coded either as ‘Yes’ or ‘No’ for each category, and in statistical analyses are accorded a ‘1’ or ‘0’ value. The Number of Agg Factors variable was determined by independent attorney review of the aggravating factors present in the case documents and represents values that range from 0 to 6. The Number of Victims variable was determined from the case documents and range from 1 to 4.

A. Methods of Analysis

1. *Bivariate analyses.*

A test for statistical significance of categorical variables is the Fisher’s Exact *T* Test. This test is ideal for analyses of small sample sizes but can be applied to any sample size. The test examines the statistical significance of an association between two variables, and is used to determine significance of the association between different classifications of variables. The significance is determined by the deviation of the values in each combination of variables and represented by a *p*-value.

2. *Regression*

Regression analysis is a statistical test measuring the relationship between the mean value of one variable corresponding to another variable. Various applications of regression analysis are used depending on the variable type. For binomial categorical dependent variables – those where a value is either ‘Yes’ or ‘No’ – a logistic regression is applied to find relationships between variables and estimate the likelihood of an outcome of the combination of those variables. The results of the logistic regression show the odds ratio indicating the likelihood of a unit change in the dependent variable given a change in the independent variable. A Firth regression is a form of logistic regression which is designed to reduce bias in estimates in small sample sizes. The logistic regression analyses for this sample were conducted in the statistical program *R*.

III. RESULTS

A. Bivariate Tests

A series of bivariate tests of each grouping of independent variables with the ‘test’ groups of capital-charged and death-noticed defendants were compared and analyzed. The use of bivariate analysis for this study is to indicate variables with potential relationships that could

subsequently be used in further inferential statistics. We only report on significant findings. Significance is a statistical measure in the confidence that a relationship present in sample of cases represents the actual relationship in the population of all possible cases. Specifically, it represents the probability that there is no relationship at all between the two variables; for example, a *p*-value of .05 would indicate that in five out of one-hundred samples of a phenomenon of interest, one would expect that there would be no relationship between the two variables. Conversely, this would indicate that in ninety-five out of one-hundred possible samples that there would be a relationship between the two variables of interest. In the *p*-value column, we report on findings that represent a *p*-value of .10 or less, which is a standard measure adopted in statistical analyses. All variables without a *p*-value should not be interpreted as having a statistically significant relationship.

Table 2: Comparison of Cases Charged as Capital Murder and Cases that Could Have Been Charged as Capital Murder

Variable	Charged Capital Murder (#)	Charged Capital Murder (% Yes)	Charged Capital Murder (% No)	Could be Charged Capital but Were Not (#)	Could be Charged Capital but Were Not (% Yes)	Could be Charged Capital but Were Not (% No)	p-value
Defendant - Black	16	59.3%	40.7%	19	73.1%	26.9%	
Defendant - Hispanic	5	18.5%	81.5%	7	26.9%	73.1%	
Defendant - White	6	22.2%	77.8%	0	0.0%	100.0%	.001***
Defendant - Female	0	0.0%	100.0%	0	0.0%	100.0%	
Defendant - Under 21	4	14.8%	85.2%	5	20.0%	80.0%	
Victim - Black	6	22.2%	77.8%	17	65.4%	34.6%	.000***
Victim - Hispanic	5	18.5%	81.5%	3	11.5%	88.5%	
Victim - White	13	48.2%	51.9%	4	15.4%	84.6%	.004**
Victim - Female	17	63.0%	37.0%	8	30.8%	69.2%	.012**
Victim - White Female	7	46.7%	53.3%	0	0.0%	0.0%	
Victim - Juvenile	5	18.5%	81.5%	2	7.7%	92.3%	
Vic > 1 Aggravating Factors	23	88.5%	11.5%	16	61.5%	38.5%	.020**
Vic > 1 Victims	22	81.5%	18.5%	13	50.0%	50.0%	.021**
<i>N</i>	27			26			

NOTE:

p-value significance

*: $p < 0.10$

**: $p < 0.05$

***: $p < 0.01$

Table 2 presents the bivariate analysis of defendants who were charged Capital Murder as compared to defendants who Could Be Charged Capital Murder, as assessed by an independent attorney review. Bolded values represent a significant relationship between the demographic variables of interest and the charging status variables, as determined by the Fisher's Exact T Test.

For this charging status, there is a significant relationship for the variables: Defendant – White, Victim – Black, Victim – White, Victim – Female, More than 1 Aggravating Factor, and More than 1 Victim. Given the relatively small number of observations in each condition, it is striking the level of significance for many of the relationships indicating the need for further inferential analysis through logistic regression. Victim – White Female did not result in a significant relationship, but this is due to the way that a Fisher's Exact *T* is calculated; the statistic considers the variation in each of the two conditions: whether a Victim is White and Female, and whether the defendant was charged with Capital Murder/Could Have Been Charged. In this case, none of the Victim – White Female, all were charged Capital Murder none were coded as Could Have Been Charged, resulting in no variability. Therefore it is not clear as to whether this relationship exists in the world of cases, but given the patterning one could suspect that this is an important relationship.

It is important to note that all relationships are between the two variables and should not be interpreted as controlling for other variables present. That is to say, it is not appropriate to view a table with many significant relationships as 'better' than one with fewer significant relationships as they are all to be taken completely independent of each other.

Table 3. Comparison of Cases Charged as Capital Murder and Issued a Death Notice vs Cases Charged with Capital Murder and Not Issued a Death Notice

Variable	Capital with Notice (#) <i>n</i> = 19	Capital with Notice (%)	Capital with No Notice (#) <i>n</i> = 8	Capital with No Notice (%)	p-value
Defendant - Black	15	93.8%	1	6.3%	.002***
Defendant - Hispanic	1	20.0%	4	80.0%	.017**
Defendant - White	3	50.0%	3	50.0%	
Defendant - Female	0	0.0%	0	0.0%	
Defendant - Under 21	2	50.0%	2	50.0%	
Victim - Black	6	100.0%	0	0.0%	
Victim - Hispanic	1	20.0%	4	80.0%	.017**
Victim - White	9	69.2%	4	30.8%	
Victim - Female	14	82.4%	3	17.7%	
Victim - White Female	7	100.0%	0	0.0%	
Victim - Juvenile	3	60.0%	2	40.0%	
Vic > 1 Aggravating Factors	17	73.9%	6	26.1%	
Vic > 1 Victims	16	72.7%	6	27.3%	

NOTE:

p-value significance

*: $p < 0.10$

**: $p < 0.05$

***: $p < 0.01$

Table 3 considers whether the District Attorney issued a Death Notice for a case charged as Capital Murder. Again, the small number of observations in each cell of the comparison makes the presence of significant relationships for Defendant – Black, Defendant – Hispanic, and Victim – Hispanic striking. This further highlights the need for subsequent inferential analysis.

Table 4. Comparison of Death Notice Cases that did not go to Capital Trial vs Death Notice Cases that did go to Capital Trial

Variable	Did NOT go to Capital Trial (#) <i>n</i> = 13	Did NOT go to Capital Trial (%)	Proceeded to Capital Trial (#) <i>n</i> = 6	Proceeded to Capital Trial (%)	p-value
Defendant - Black	8	72.7%	6	27.3%	
Defendant - Hispanic	0	0.0%	0	0.0%	
Defendant - White	3	100.0%	0	0.0%	
Defendant - Female	0	0.0%	0	0.0%	
Defendant - Under 21	1	50.0%	1	50.0%	
Victim - Black	3	50.0%	3	50.0%	
Victim - Hispanic	0	0.0%	0	0.0%	
Victim - White	6	75.0%	2	25.0%	
Victim - Female	10	76.9%	3	23.1%	.099*
Victim - White Female	5	83.3%	1	16.7%	
Victim - Juvenile	3	100.0%	0	0.0%	
Vic > 1 Aggravating Factors	10	66.7%	5	33.3%	
Vic > 1 Victims	9	64.3%	5	35.7%	

NOTE:

p-value significance

*: $p < 0.10$

**: $p < 0.05$

***: $p < 0.01$

Table 4 considers whether a case proceeded to a Capital Trial or not. Victim - Female has a significant relationship with capital trial status. Note the very small values in each cell, with the implication being significant findings to be rare.

Summary Of Bivariate Charging and Death Sentencing Results

The case universe for analysis is relatively small. In terms of any inferential statistical analysis, this would indicate that only the most substantial effects in the bivariate relationship would result in a statistically-significant relationship. There are several significant bivariate relationships warrant to be included in further inferential analysis that allows one to control for the effects of several variables, such as logistic regression techniques.

B. Firth Logistic Regressions

The primary value in conducting a logistic regression is the ability to consider the effects of several independent variables on a binomial dependent variable, commonly considered to be either a ‘yes’ or a ‘no’. Interpretation of a logistic regression table proceeds as follows: (a) interpret the significance of the Likelihood Ratio Test and the Wald Test to assess the overall strength of the model; (b) assess independent variables that are significant predictors of change in the dependent variable; and, (c) interpret the Odds Ratio of the significant independent variables as an ‘odds’ of a change in the dependent variable.

Table 5. Firth Logistic Regression on Defendants Charged with Capital Murder

	Odds Ratio	Coefficient	Stand Error	<i>p</i> -value
Defendant - Black	0.372	-0.99	0.775	0.201
Victim - White	6.619	1.89	0.768	0.011
Victim - Female	2.312	0.838	0.839	0.329
Number of Agg Factors	1.202	0.184	0.248	0.469
Number of Victims	2.46	0.9	0.386	0.012
Constant	0.065	-2.733	1.162	0.011
<i>p</i> -value				
N of Observations	53			
Likelihood Ratio Test	22.478	.000		
Wald Test	14.131	.015		

Table 5 shows the model for a dependent variable based on whether a defendant was charged Capital Murder. The Likelihood Ratio Test and Wald Test are significant, indicating a significant overall model.

Victim – White and Number of Victims are significant. Both also indicate a positive relationship. If there are white victims, a defendant is 661% more likely (or, 6.61 times more likely) to be charged with capital murder. As the Number of Victims increases, a defendant is 246% more likely (or, 2.46 times more likely) to be charged with Capital Murder.

Table 6. Firth Logistic Regression on Defendants Charged with Capital Murder and Issued a Death Notice

	Odds Ratio	Coefficient	Stand Error	<i>p</i> -value
Defendant - Black	2.352	0.855	0.755	.262
Victim - White	5.219	1.652	0.759	.026
Victim - Female	2.063	0.724	0.765	.353
Number of Agg Factors	1.384	0.325	0.244	.182
Number of Victims	1.841	0.61	0.374	.108
Constant	0.013	-4.359	1.294	.000
<i>p</i> -value				
N of Observations	53			
Likelihood Ratio Test	18.242	.003		
Wald Test	14.231	.014		

Table 6 represents the dependent variable of whether a Defendant was Charged Capital Murder and the District Attorney issued a Death Notice. This is a significant overall model as indicated by the Likelihood Ratio and Wald Tests. Victim – White is significantly related to Charged with Capital Murder and Issued a Death Notice, controlling for other variables. A White victim results in a defendant 521% (or, 5.21 times) more likely to be charged Capital Murder with the District Attorney issuing a Death Notice.

Table 7. Firth Logistic Regression on Defendants Charged with Capital Murder, Issued Death Notice, Proceeded to Trial

	Odds Ratio	Coefficient	Stand Error	<i>p</i> -value
Defendant - Black	8.707	2.164	1.353	0.064
Victim - White	1.456	0.376	0.847	0.682
Victim - Female	0.405	-0.905	0.955	0.365
Number of Victims	1.572	0.452	0.372	0.261
Constant	0.014	-4.253	1.499	.000
<i>p</i> -value				
N of Observations	53			
Likelihood Ratio Test	4.861	.302		
Wald Test	18.335	.001		

Table 7 describes the effect of independent variables on whether a defendant is charged with capital murder, issued a Death Notice, and then proceeds to a trial. Note that the Wald Test is significant while the Likelihood Ratio Test is not. The Wald Test measures how each independent variable individually interacts with the dependent variable, while the Likelihood

Ratio Test measures the overall interaction of all independent variables on the dependent variable. One would interpret this result as the model is showing that there are strong indications that there are individual independent variables that are influencing the charging condition. This most likely is due to the very small case universe of six total cases being charged Capital Murder, Issued a Death Notice, and Proceeding to Trial; it is that much more striking that the Wald Test indicates that there is a likely relationship in this model.

The individual relationships show that Black Defendants are 8.70 times more likely (or, 870%) to be in this charging condition as opposed to other defendants, controlling for all other variables.

IV. SUMMARY AND CONCLUSION

This study considers 152 cases in Wyandotte County that were charged either First Degree or Capital Murder from 1994 until May 2022. Of those 152 cases, only 27 were charged Capital Murder, with a good part of my analysis conducted on this small subset. A general tenant in Gaussian statistics is what many consider to be the law of large numbers: as the number of observations increases, the more clearly one can see a significant relationship. It is striking that the analysis has indicated so many statistically significant relationships in the context of so few observations. Particularly eye opening is the very large effect sizes, shown as odds, in how key independent variables affect charging decisions in Wyandotte County.

The results of the logistic regression analysis, in particular, are important to highlight. In this time period, the presence of White Victims leads to a significant and substantial, as measured by effect size, increase in whether a defendant is charged with Capital Murder or a Death Notice is issued by a District Attorney, holding all other variables constant.

The analysis ultimately indicates a strong effect of a victim's race on charging decisions by the District Attorney in Wyandotte County. There are also indications that the defendant's race, particularly being Black, as significantly influencing being charged Capital Murder, Issued a Death Notice, and Proceeding to Capital Trial.

A handwritten signature in blue ink, appearing to read "Brent R. Never".

Brent R. Never Ph.D.
Kansas City, Missouri
October 22, 2024

APPENDIX I

APPENDIX I.

CURRICULUM VITAE

Brent Ryan Never

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EMPLOYMENT:

2015-Present Associate Professor, Department of Public Affairs, *University of Missouri- Kansas City*
2021-Present Director, Midwest Center for Nonprofit Leadership, *University of Missouri- Kansas City*
2022-Present Associate Dean of Budget and Finance, Henry W. Bloch School of Management,
University of Missouri- Kansas City
2018-2021 Coordinator, Institute of Data Education, Analytics and Science (IDEAS), *University of Missouri- Kansas City*
2016-2017 Visiting Professor, School of Community Resources & Development,
Arizona State University
2009-2015 Assistant Professor, Department of Public Affairs, *University of Missouri- Kansas City*
2005-2009 Assistant Professor, Department of Public Administration, *University of Illinois at Springfield*

EDUCATION:

2022 M.S., Data Science, *University of Missouri- Columbia*
Spatial Analytics, Cloud Computing
2005 Ph.D., Joint Program in Public Policy, *School of Public and Environmental Affairs and Department of Political Science, Indiana University*
Public Policy, Public Management, Comparative Politics
1999 B.A., International Relations, *Connecticut College*
Member of *Cummings Center for International Study in the Liberal Arts*

RESEARCH PROPOSALS (FUNDED):

2024 DESE Missouri Supports for Early Childhood Administrators (MO-SECA). Department of Elementary and Secondary Education, State of Missouri. Brent Never (Co-PI). Funded, \$3,218,413.
2023 Missouri Supports for Early Childhood Administrators (MO-SECA). Department of Elementary and Secondary Education, State of Missouri. Brent Never (Co-PI). Funded, \$4,833,760.
2022 ADVANCE Catalyst: Diagnosing Intersectional Challenges for Equity in STEM (DICES). National Science Foundation. Brent Never (Co-PI). Funded, \$299,999.
2022 Health Impacts of City-Wide Zero-Fare Bus Transit. National Institute of Health, National Institutes of Health/National Institute of Diabetes and Digestive and Kidney Diseases (R-01). Brent Never (Senior Personnel). Funded, \$1,368,634.

2021	WeListen! Artificial Intelligence-Assisted Content Analysis of Social Media Discussion of Covid-19 Vaccination. Jackson County, Missouri. Brent Never (Co-PI). Funded, \$100,000.
2021	Addressing COVID-19 Vaccination and Other Health Inequities in KCMO's Eastside. Jackson County, Missouri. Brent Never (Co-PI). Funded, \$96,886.
2021	Deep-Learning Models for Image Analysis of Abandoned Housing. NextGen/DSAIC Award. Brent Never (Co-PI). \$39,478.
2021	Communities in Action: Sustainable Science in Cyberinfrastructure. UMKC Funding Faculty Excellence (FFE). UMKC Funding Faculty Excellence (FFE). Brent Never (Co-PI). Funded, \$22,500.
2020	SCC-PG: Early Community Intervention for Neighborhood Revitalization Using Artificial Intelligence and Emerging Technologies. National Science Foundation (1951971). Brent Never (Co-PI). Funded, \$150,000.
2020	SCC-PG: Early Community Intervention for Neighborhood Revitalization Using Artificial Intelligence and Emerging Technologies. University of Missouri System. Brent Never (Co-PI). Funded, \$24,000.
2018	An Evaluation of the Adopt-a-Neighborhood Program. Legal Aid of Western Missouri. Brent Never (PI). Funded, \$35,000.
2017	An Exploratory Study of Cooperative Behavior and Entrepreneurship in Common-Pool Resource Games. Luso-American Development Foundation. Brent Never (PI), Scott Helm (PI). Funded, \$3,500.
2016	Landscape Analysis of Out-of-School-Time Programs. Ewing Marion Kauffman Foundation. Brent Never (PI). Funded, \$108,000.
2014	Entrepreneurial Decision Making in the Nonprofit Sector: An Experimental Study. Bloch Family Foundation. Brent Never (PI), Scott Helm (Co-PI), and Will Self (Co-PI). Funded, \$13,000.
2013	Special Issue of <i>Nonprofit and Voluntary Sector Quarterly</i> . Bloch Family Foundation. Funded \$8,000.
2011	The Geography of Nonprofit Financial Vulnerability. The H&R Block Foundation. Award Amount: \$1,500.
2011	The Geography of Nonprofit Financial Vulnerability. The Jewish Heritage Foundation of Greater Kansas City. Award Amount: \$9,850.
2011	The Geography of Nonprofit Financial Vulnerability. Advancing Knowledge in Human Services, Indiana University Center on Philanthropy. Award Amount: \$19,000.
2010	Survey of Kansas City Aging Communities: Demand and Supply of Necessary Services. The Jewish Heritage Foundation of Greater Kansas City Award Amount: \$25,000.
2008	Summer Competitive Scholarly Research Grant, University of Illinois at Springfield. Award Amount: \$1,000.
2007	CIES Fulbright, University of Ulster Policy Studies Fellowship, Northern Ireland. Award Amount: \$25,000.
2006	Institute for Legal and Policy Studies Summer Research Grant, University of Illinois at Springfield. Award Amount: \$5,000.
2003	IIE Fulbright Dissertation Research Grant, Benin. Award Amount: \$24,500.
2001	Summer Pre-Dissertation Research Grant, Benin. Center for the Study of Global Change, Indiana University. Award Amount: \$3,000.

RESEARCH PROPOSALS (UNDER REVIEW):

2024	Digital Ambassadors Leading Digital Equity. National Telecommunications and
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2024 Information Administration. Brent Never (PI). Under Review. \$976,277.
 Kansas City Regional Digital Equity Project. National Telecommunications and
 Information Administration. Brent Never (PI). Under Review. \$851,597.

PEER-REVIEWED PUBLICATIONS:

2024 “Impacts of Zero-Fare Transit Policy on Health and Social Determinants: Protocol for a Natural Experiment Study.” With Amanda Grimes et al. *Frontiers in Public Health*. Accepted, August 2024.

2022 “Deep Learning Methods for Identifying Abandonment.” With Jim DeListle, Hye-Sung Han, Duy Ho, Yugyung Lee, and Ye Wang. *Cityscape*, 24(2), 23-52.

2022 “OpenComm: Open Community Platform for Data Integration and Privacy Preserving for 311 Calls.” With Yugyung Lee, Ye Wang, Duy Ho, and Srichakradhar Nagireddy. *Sustainable Cities and Society* (83), 103858.

2020 “Reframing the Properties, Places and Crime Paradigm: Exploring Spatiotemporal Regime Shifts.” With Jim DeLisle and Terry Grissom, *Journal of European Real Estate Research*, 15(1), 3-38.

2020 “The Big Data Regime Shift in Real Estate.” With Jim DeLisle and Terry Grissom, *Journal of Property Investment and Finance*, 38(4), 363-395.

2017 “Moving to Need: The Effect of Federal Contracts on Service Provider Location.” With Drew Westberg, *Nonprofit Policy Forum*, 8(2), 147-164.

2017 “The Cost of Accountability for Small Human Service Contractors.” With Erwin de Leon, *Human Service Organizations: Management, Leadership & Governance*, 41(4), 403-415.

2016 “The Ostroms’ Impact on Nonprofit and Voluntary Studies.” With Brenda Bushouse and Robert Christensen, *Nonprofit and Voluntary Sector Quarterly*, 45(4S), 7-26.

2016 Special Issue: “The Impact of the Ostroms’ on Nonprofit and Voluntary Studies.” *Nonprofit and Voluntary Sector Quarterly*, 45(4S). Co-edited with Brenda Bushouse and Robert Christensen.

2016 “Place Matters: The Spatial Effects of Human Service Expenditures.” With Drew Westberg, *Nonprofit Policy Forum*, 7(3), 369-388.

2014 “The Effect of Government Contracting on Nonprofit Human Service Organizations: Impacts of an Evolving Relationship.” *Human Service Organizations Management, Leadership & Governance* (formerly *Administration in Social Work*), 38(3), 258-270.

2013 “Divergent Patterns of Nonprofit Financial Distress.” *Nonprofit Policy Forum*, 5(1), 67-84.

2011 “Understanding Constraints on Nonprofit Leadership Tactics in Times of Recession.” *Nonprofit & Voluntary Sector Quarterly*, 40(6), 990-1004.

2011 “The Case for Better Maps of Social Service Provision: Using the Holy Cross Dispute to Illustrate More Effective Mapping.” *Voluntas: International Journal of Nonprofit and Voluntary Organizations*, 22(1), 174-188.

2010 “Framing Third-Sector Contributions to Service Provision: The Case of Holy Cross.” *Nonprofit & Voluntary Sector Quarterly*, 39(3), 460-477.

2004 “Performing Different Types of Volunteer Work: The role of religious and other networks.” Co-authored with Kirsten Grønbjerg. *Nonprofit Management and Leadership*, 14(3).

BOOK MANUSCRIPTS UNDER CONTRACT

Understanding Our Philanthropic Commons. With Brenda Bushouse and Robert Christensen (Eds.). Cambridge University Press. 2023.

MANUSCRIPTS UNDER SUBMISSION

“Nonprofit Location Theory.” With Drew Westberg. Submitted to *Nonprofit & Voluntary Sector Quarterly*.

“Impacts of zero-fare transit policy on health and economic factors: Protocol for a natural experiment study” With Amanda Grimes, et al. Submitted to *Annals of Epidemiology*.

PEER-REVIEWED PUBLISHED CONFERENCE PROCEEDINGS:

- 2017 “The Paradox of Organizing Prosocial Market-Based Opportunities.” Co-authored with Sharon Simmons, Scott Helm, and Sumita Sarma. Babson College Entrepreneurship Research Conference. *Academy of Management Best Paper Proceedings*.
- 2017 “The Effects of Entrepreneurial Experiences and Reputation Risks on Market Driven Opportunity Exploitation by Social Ventures.” Co-authored with Sharon Simmons, Scott Helm, and Sumita Sarma. Babson College Entrepreneurship Research Conference. *Frontiers of Entrepreneurship Research*, 37, 336-340.
- 2012 “Challenges of the Government-Nonprofit Relationship after the Recession.” Co-authored with Erwin de Leon. *Academy of Management Best Paper Proceedings*.
- 2012 “Geographic Information Systems and the Nonprofit Sector: The Last Frontier?” Co-authored with Sidne Ward. *18th Americas Conference on Information Systems Conference Proceedings*.

SCHOLARLY BOOK CHAPTERS:

- 2016 “The Changing Context of the Nonprofit Sector.” *The Jossey-Bass Handbook of Nonprofit Leadership and Management*, David O. Renz, ed.
- 2016 “Incidence-Prevalence-Exit Rates of Associations across Territories.” With David Horton Smith, *Palgrave Handbook on Volunteering and Nonprofit Associations*, David Horton Smith, ed.
- 2016 “Scope and Trends of Volunteering and Associations.” With David Horton Smith, *Palgrave Handbook on Volunteering and Nonprofit Associations*, David Horton Smith, ed.

ENGAGED SCHOLARSHIP:

- 2024 *Divergent Impacts of Capital Case Sentencing*. Report and testimony for American Civil Liberties Union (ACLU) in Wyandotte County, KS. Brent Never (PI), \$20,000.
- 2022 *State of Missouri Small Business Impact and Availability Study*. Disparity Study for State of Missouri. Brent Never (PI), \$750,000.

TRADE (NON-PEER REVIEW) PUBLICATIONS:

- 2014 “Hybrids and Competing Logics: Observant Dispassion is Called For.” Co-authored with Fredrik Andersson. *Nonprofit Quarterly*, 21(1).
- 2014 “Boards as Bridges.” *Nonprofit Quarterly*, 21(1).
- 2013 “Thinking of Boards as Bridges.” *Nonprofit Governance*, Terrie Temkin, ed. Charity Channel Press.
- 2010 “Renewing the Partnership between the State and Nonprofits.” Monograph prepared for *Illinois Issues*. Springfield, IL: University of Illinois at Springfield.
- 2009 “The Broken Partnership: Illinois Nonprofits and the Recession.” *Illinois Issues*, 35(10), 24-25.
- 2006 *The Challenge of Leading through Commissions: A Study of Illinois Municipal Executives*. Professional report commissioned by the Illinois Municipal League and the Institute for Legal and Policy Studies, University of Illinois at Springfield.
- 2002 “Volunteering and Nonprofits: The Role of Religious Engagement.” Co-authored with Kirsten Grønberg. Research Report. Center on Philanthropy, Indiana University-Purdue University Indianapolis.
- 2002 “The Dark Side of Nonprofits.” Guest Editor, Robert Christensen et al., *ARNOVA Abstracts*, 25(2).

BOOK REVIEWS:

- 2019 “Book Review: China Brotsky, Sarah M. Eisinger and Diane Vinokur-Kaplan: Shared Space and the New Nonprofit Workplace.” *Public Policy Forum*, 10(3).
- 2014 “Book Review: *Leadership Cases in Community Nonprofit Organizations*.” *Journal of Nonprofit Education and Leadership*.
- 2006 “Leading through Networks: The Problem of Institutional Stasis.” In *Transforming Public Leadership for the 21st Century*, Ricardo Morse, ed. Armonk, NY: M.E. Sharpe.

CONFERENCE DIRECTION:

- 2023-2024 Co-Director, Midwest Social Entrepreneurship Symposium, Kansas City, MO
- 2022 Co-Director, Governing Our Philanthropic Commons, Aspen Grove, UT
- 2014, 2015 Co-Director, Social Entrepreneurship Colloquium (Conference), Kansas City, MO
- 2011-Present Co-Director, Biennial Governance Conference, Kansas City, MO

RESEARCH EXPERIENCE:

- 2007 Visiting Faculty, Centre for Voluntary Action Studies, University of Ulster, Jordanstown, NORTHERN IRELAND
- 2003 – 2004 Research Assistant, Economic Policy Analysis Unit, *Ministry of Economic Planning*, Cotonou, BENIN
- 2001 - 2002 Research Assistant, Indiana Non-Profit Sector Survey Project, *School of Public and Environmental Affairs*, Indiana University
- 2001 Research Intern, Department of Statistics and Research, *Central Bank of West African States*, Cotonou, BENIN
- 2000 - 2005 Africa Research Group, *Workshop in Political Theory and Policy Analysis*, Indiana University
- 1998, 2001 Research Intern, Department of Statistics and Research, *Central Bank of West African States*, Cotonou, BENIN

CONFERENCE PRESENTATIONS:

- 2023 “Are You Feeling OK? The Paycheck Protection Program and Nonprofit Financial Vulnerability.” Co-authored with Kirill Zhurauliou. Association for Research on Nonprofit Organizations and Voluntary Action Annual Conference, November 17.
- 2023 “Sector Affiliation and Resource Allocation for Nonprofit and For-Profit Executives.” Co-authored with Scott Helm. International Association for the Study of the Commons Biennial Conference, Nairobi, KENYA, June 21.
- 2023 “Governing the Philanthropic Commons.” Co-authored with Brenda Bushouse and Robert Christensen. International Association for the Study of the Commons Biennial Conference, Nairobi, KENYA, June 17.
- 2021 “Overfishing Donors: Institutions Matter for Combatting Donor Fatigue.” Co-authored with Brenda Bushouse and Robert Christensen. Association for Research on Nonprofit Organizations and Voluntary Action Annual Conference, Atlanta, GA, November 15.
- 2020 “The Tragedy of the Donative Commons? Donor Fatigue and Institutional Responses.” Co-authored with Brenda Bushouse and Robert Christensen. Association for Research on Nonprofit Organizations and Voluntary Action Annual Conference, Virtual, November 13.
- 2020 “Theorizing Nonprofit Location.” Co-authored with Drew Westberg. Association for Research on Nonprofit Organizations and Voluntary Action Annual Conference, Virtual, November 13.
- 2019 “Governing the Philanthropic Commons: Institutional Arrangements and Donor Fatigue.” Association for Research on Nonprofit Organizations and Voluntary Action Annual Conference, San Diego, CA, November 21.
- 2019 “Nonprofit Movement and Complex Adaptive Systems.” Co-authored with Drew Westberg. Association for Research on Nonprofit Organizations and Voluntary Action Annual Conference, San Diego, CA, November 20.
- 2019 “Legacy Cities and Philanthropic Capture.” Co-authored with Daniel Hummel. USC Price School Conference: Philanthropy and Public Policy, Los Angeles, CA, March 14.
- 2018 “Placing Nonprofit Studies.” Association for Research on Nonprofit Organizations and Voluntary Action Annual Conference, Austin, TX, November 16.
- 2018 “Why Space Matters in Voluntary Studies: A Tour of Spatial Methods.” International Society for Third Sector Research Conference, Amsterdam, Netherlands, July 11.
- 2018 “Connecting Voluntary Action Studies and the Ostrom Tradition.” Co-authored with Brenda Bushouse and Robert Christensen, International Society for Third Sector Research Conference, Amsterdam, Netherlands, July 12.
- 2018 “Endogenous Amenities and Abandoned Properties.” Co-authored with Jim DeLisle. American Real Estate Society Annual Meeting, Bonita Springs, FL, April 12.
- 2017 “The Paradox of Organizing Prosocial Market-Based Opportunities.” Co-authored with Sharon Simmons, Scott Helm, and Sumita Sarma. Academy of Management Annual Meeting. Atlanta, GA, August 7.
- 2017 “Non-profit and Voluntary Action Contributions to the Commons: Opportunities for Shared Research.” Co-authored with Brenda Bushouse and Robert Christensen. International Association for the Study of the Commons Biennial Meeting. Utrecht, Netherlands, July 12.
- 2017 “The Effects of Entrepreneurial Experiences and Reputation Risks on Market Driven Opportunity Exploitation by Social Ventures.” Co-authored with Sharon Simmons, Scott Helm, and Sumita Sarma. Babson College Entrepreneurship Research Conference.

- Norman, OK, June 8.
- 2017 “Human Service Contractor Location: Moving to Need?” Co-authored with Drew Westberg. Public Management Research Association, Washington, DC, June 8.
- 2017 “The Use of Federal Contracts to Induce Nonprofit Action: Moving to Need.” Co-authored with Drew Westberg. Public Administration, Public Policy and Nonprofit Studies Research: Are We All Touching the Same Camel? Washington, DC, June 7.
- 2017 “The Contagion Effects of the Sale of Abandoned Houses: Insights from Geospatial Analysis.” American Real Estate Society Annual Meeting, San Diego, CA, April 8.
- 2016 “Location Matters: The Spatial Disconnect in Out-of-School Time Programming.” Association for Research on Nonprofit Organizations and Voluntary Action Annual Conference, Washington, DC, November 19.
- 2016 “Frontiers in Nonprofit Data Collection.” Association for Research on Nonprofit Organizations and Voluntary Action Annual Conference, Washington, DC, November 18.
- 2016 “Moving to Need: The Effect of Federal Contracts on Service Provider Location.” Co-authored with Drew Westberg. Nonprofit Public Policy Symposium, Washington, DC, November 15.
- 2016 “A Spatial Evaluation of a Polycentric System of Human Services.” Midwest Political Science Association, Annual Conference, Chicago, IL, April 8.
- 2015 “Why Location Matters: A Spatial Model of the Supply and Demand for Substance Abuse Services.” Co-authored with Robert Culleton and Drew Westberg. Association for Research on Nonprofit Organizations and Voluntary Action Annual Conference, Chicago, IL, November 19.
- 2015 “A Spatial Evaluation of a Polycentric System of Human Services.” Association for Research on Nonprofit Organizations and Voluntary Action Annual Conference, Chicago, IL, November 19.
- 2015 “Accounting for Geography: Nonprofit Financial Distress in a Devolved Service World.” Co-authored with Drew Westberg. Academy of Management Annual Conference, Vancouver, BC, August 12.
- 2015 “A Spatial Analysis of Human Service Spillovers: Impacts on Poor Communities.” Public Management Research Conference, Minneapolis, MN, June 11.
- 2014 “Accounting for Space in Human Services: A Spatial Regression of Human Service Organization Financial Distress.” Co-authored with Drew Westberg. Association for Research on Nonprofit Organizations and Voluntary Action Annual Conference, Denver, CO, November 20.
- 2014 “Making Entrepreneurial Decisions in the Face of Risk and Uncertainty.” Co-authored with Scott Helm. Association for Research on Nonprofit Organizations and Voluntary Action Annual Conference, Denver, CO, November 21.
- 2014 “Confronting Agency in New Venture Start-Up: An Experiment of Entrepreneurial and Non-Entrepreneurial Executives.” Co-authored with Scott Helm and Josh Schukman. Association for Research on Nonprofit Organizations and Voluntary Action Annual Conference, Denver, CO, November 21.
- 2014 “A Spatial Analysis of Human Service Spillovers: Impacts on Poor Communities.” Co-authored with Drew Westberg. Association for Public Policy Analysis and Management, Albuquerque, NM, November 8.
- 2014 “The Institutional Antecedents to Social Entrepreneurship: An Experimental Study.” Co-authored with Scott Helm. International Society for Third Sector Research (ISTR) Biennial Conference, Muenster, GERMANY, July 22.
- 2014 “Building Bridges across Literatures: The Potential for Common Understandings among Nonprofit and Voluntary Action Scholars.” Co-authored with Brenda Bushouse and

- Robert Christensen. Workshop on the Workshop V, Bloomington, IN, June 18.
- 2014 “The Institutional Antecedents to Social Entrepreneurship: An Experimental Study.” Co-authored with Scott Helm. Social Entrepreneurship Colloquium, Kansas City, MO, May 21.
- 2013 “The Ostroms’ Contribution to Nonprofit Studies: From Citation Analysis to Future Research Agenda.” Co-authored with Robert Christensen and Brenda Bushouse. Association for Research on Nonprofit Organizations and Voluntary Action Annual Conference, Hartford, CT, November 22.
- 2013 “Confronting Wicked Problems in the Metropolis.” Co-authored with Jered Carr. American Political Science Association Annual Meeting, Chicago, IL, August 30.
- 2013 “The Government-Nonprofit Contract Regime: Measuring the Financial Costs of Government Funding.” Co-authored with Erwin de Leon. Public Management Research Association Biennial Conference, Madison, WI, June 21.
- 2012 “Challenges of the Nonprofit-Government Relationship: Moving from Relational to Transactional Contracting.” Co-authored with Erwin de Leon. Association for Research on Nonprofit and Voluntary Action Annual Conference, Indianapolis, IN, November 15.
- 2012 “Understanding the Lumpiness in Human Service Geography: Modeling the Supply and Demand of Services for Older Adults.” Association for Research on Nonprofit and Voluntary Action Annual Conference, Indianapolis, IN, November 16.
- 2012 “Challenges of the Government-Nonprofit Relationship after the Recession.” Co-authored with Erwin de Leon. American Public Policy Analysis and Management Conference, Baltimore, MD, November 10.
- 2012 “Challenges of the Government-Nonprofit Relationship after the Recession.” Co-authored with Erwin de Leon. Academy of Management Annual Meeting, Boston, MA, August 6.
- 2011 “Mapping Service Deserts: The Supply and Demand of Essential Human Services.” Association for Research on Nonprofit and Voluntary Action Annual Conference, Toronto, ON, November 19.
- 2011 “The Use of Organizational Champions: Boards as Bridges to Resources.” Co-Authored with Erin Nemenoff and Jim Doyle. Association for Research on Nonprofit and Voluntary Action Annual Conference, Toronto, ON, November 17.
- 2011 “The Use of Organizational Champions: Boards as Bridges to Resources.” Co-Authored with Erin Nemenoff and Jim Doyle. Governance Conference, Kansas City, MO, April 15.
- 2011 “Informal Gender Roles on Boards: The Effect of Emotional Labor on How Boards Function.” Co-Authored with Erica Clinton and Wendy Hershberger. Governance Conference, Kansas City, MO, April 15.
- 2010 “State Contracting in Tough Times: The Failure of the Meta-Contract and Its Implication for Human Service Producers.” Association for Research on Nonprofit and Voluntary Action Annual Conference, Arlington, VA, November 18-20.
- 2010 “The Liability of Age? An Empirical Study of why Older Nonprofits Behave Entrepreneurially.” Co-Authored with Scott Helm and Fredrik Andersson. Association for Research on Nonprofit and Voluntary Action Annual Conference, Arlington, VA, November 18-20.
- 2009 “The Impact of Organizational Champions on Surviving Tough Economic Times.” Association for Research on Nonprofit and Voluntary Action Annual Conference, Cleveland, OH, November 19-21.
- 2009 “Organizational Tactics in the Face of Recession.” Fifth Transatlantic Dialogues, Washington, DC, June 4-6.
- 2009 “Coming off the Juice: Prospects for Service Delivery in Tough Times.” Urban Affairs Association, Chicago, IL, March 4-6.

- 2007 "Collaborative Challenges in a Networked Environment: An Empirical Study of Municipal Executives." Paper presented at Founders Forum, American Society for Public Administration, Washington, DC, March 23-27.
- 2006 "Mental Models as Ideals: Understanding the Failure of Idealism to Bring About Organizational Change." Paper presented at Founders Forum, American Society for Public Administration, Denver, CO, March 31.
- 2006 "A Grounded Theory Approach to Teaching Qualitative Methods." Paper presented at the Public Administration Teaching Conference, Olympia, WA, February 10.
- 2006 "The Challenge of Leading through Networks: Institutional Analysis as a Way Forward." Paper presented at Public Administration Theory Network, Olympia, WA, February 8.
- 2005 "Institutional Change and Organizational Action: Network and Coalition Action in Dahomey (1950-1972). Paper presented at Midwest Political Science Association, Chicago, IL, April 7.
- 2004 "Radical Youth Movements, Ideology, and Policy Change in Francophone West Africa." Paper presented at African Studies Association, New Orleans, LA, November 11.
- 2002 "Volunteering for Nonprofits: The role of religious engagement." Co-authored with Kirsten Grønberg, Indiana University. Paper presented at Society for the Scientific Study of Religion Annual Conference, Salt Lake City, UT, November 3.
- 2002 "Religion and Civic Cultures: A Cross-National Study of Voluntary Association Membership." Co-authored with Kirsten Grønberg, Indiana University. Paper presented at Association for the Sociology of Religion, Chicago, IL, August 15.
- 2002 "National Policy Forums in the Developing World: functional or folly in West Africa?" Paper presented at International Academic Conference on Public Administration and Governance Reform, Beijing, CHINA, June 15-18.

INVITED PRESENTATIONS:

- 2020 "The Spatial Turn in Nonprofit Studies." American University, Washington, DC, January 16.
- 2014 "Attracting and Retaining Young Employees." National Resource Center/ National Benefits Center, Department of Homeland Security, Lee's Summit, MO, May 8.
- 2014 "Public Service Motivation and the Federal Government." Federal Executive Board, Kansas City, MO, March 26.
- 2012 "The Supply and Demand of Human Services for an Aging Population." Kansas City Aging Funders Affinity Group, Kansas City, MO, December 11.
- 2012 "Confronting Wicked Problems in the Metropolis." University of Kansas Faculty Research Colloquium, Lawrence, KS, September 24.
- 2012 "Service Deserts and Nonprofits: 'Lumpiness' in the Fabric of Human Service Provision." University of Missouri- St. Louis Public Policy Administration Colloquium, St. Louis, MO, April 27.
- 2012 "The Tail of the Celtic Tiger: Northern Ireland and the Great Recession." Presented to the World Affairs Council of Central Illinois, January 30.
- 2010 "Public Policy Decoded." Presented to Sunflower Foundation Advocacy Fellowship Program, Lawrence, KS, December 1.
- 2005 "Managing and Leading: How to move between them." Presented to the Leadership Enhancement and Development Seminar, Illinois Municipal League, Oak Brook, IL, December 2.
- 2002 "Understanding NGO mediation in arenas of intergroup conflict: An ideal-type framework." Presented to the Canadian International Development Agency, Toronto,

CANADA, May 31.

AWARDS:

2014 Elmer F. Pierson Outstanding Teaching Award, *Bloch School of Management, University of Missouri- Kansas City*
2013 Elected, Bloch Most Impactful Teacher, *Bloch School of Management, University of Missouri- Kansas City*
2005 – 2006 Future Faculty Teaching Fellowship, *Graduate School, Indiana University*, Declined.
2000 Multi-Year Associate Instructorship, *School of Public and Environmental Affairs and Department of Political Science, Indiana University*
1999 Top Honors Thesis, *Center for International Study in the Liberal Arts, Connecticut College*
1999 Inducted, Pi Sigma Alpha, *National Political Science Honors Society*

TEACHING EXPERIENCE:

2015-Present Associate Professor, Department of Public Affairs, *University of Missouri- Kansas City*
2009 – 2015 Assistant Professor, Department of Public Affairs, *University of Missouri- Kansas City*
2005 - 2009 Assistant Professor, Department of Public Administration, *University of Illinois at Springfield*
2004 - 2005 Adjunct Instructor, Public and Environmental Affairs, *Indiana University*
2000 - 2003 Associate Instructor, Political Science, *Indiana University*

COURSES TAUGHT AT UMKC:

Masters: Management in Context
Big Data in the Smart City
Policy and Program Analysis
Program Evaluation
Research Methods
Urban Policy and Administration
Seminar in Social Entrepreneurship
Leadership for Public Service
Community Organizations and Public Policy
GIS for Management Decision Making
Voluntarism, Philanthropy, and the Nonprofit Sector in the U.S.
Research Methods for Executive MPA
Applied Statistical Methods for Executive MBA

COURSES TAUGHT ELSEWHERE:

Undergraduate: The Politics of Social Movements
National and International Policy
Public Management
Introduction to American Politics
Who Am I? Self-Identity (Honors)

Masters: Philanthropy

Organization Dynamics
Organization Dynamics (Online)
Nonprofit Sector and Society
Capstone

Doctoral: Advanced Topics: Local and Nonprofit Leadership
 Advanced Topics: Case Analysis
 Advanced Seminar in Qualitative Methods

DOCTORAL SUPERVISION:

Chair

Present IPh.D. Doctoral Committee, Elizabeth Ireland.
2013 IPh.D. Dissertation, Mark Schieffer. *Evaluating the Impact of PerformanceStat: A Case Study of the City of Baltimore's CitiStat Program.*
2009 DPA Dissertation, Tosha Cantrell-Bruce. *Nonprofit Evaluation: Using a Multiple-Constituency Approach to Discover Determinants of Organizational Effectiveness.*
2009 DPA Dissertation, Jeff Paine. *Motivation to Serve in Local Government: Testing the Measures.*

UNIVERSITY SERVICE:

University Service

2014-Present Committee Member, Total Rewards Advisory Committee
2020-2021 Total Rewards Advisory Rewards Task Force on UM System Leave Policy

Campus Service

2021 Co-Chair, UMKC Engagement Council
2020-Present UMKC Faculty Senate Task Force on Promotion and Tenure Policy
2017-2018 I.Ph.D. Executive Committee
2017-2018 Member, UMKC Chancellor Search Committee
2014-Present Secretary. Phi Kappa Phi Honors Society, UMKC Chapter.
2014-2015 Member. UMKC Provost Search Committee.
2014 Scholarship Committee Member. UMKC Women's Council Graduate Assistance Fund
2011-Present Committee Member. UMKC Consortium for Aging in Community.
2012-2013 Affiliated Faculty. UMKC Center on Aging Studies.
2012-Present Affiliated Faculty. Urban Studies Program.

School Service

2020-Present Bloch Faculty Leadership Committee
2017-Present Bloch Promotion and Tenure Committee
2015-2016 Committee Co-Chair. Bloch Strategic Planning Committee

2014-2015 Co-Convener. Bloch Faculty Methods Group
2015-2016 Member, Bloch Governance Committee
2010-2017 Member. Bloch Doctoral Faculty Committee
2013-2014 Member. Bloch Dean Search Committee
2010-2015 Member. Bloch Strategic Planning Committee

Department Service

2011-Present Member. Master of Public Administration Admissions Committee
2010-Present Faculty Advisor. Pi Alpha Alpha, Public Affairs Honors Society
2009-Present Senior Fellow. Midwest Center for Nonprofit Leadership
2009-Present Faculty Advisor. Public Affairs Student Association (PASA)

PROFESSIONAL SERVICE:

Professional Service

2021-Present Secretary, Data Analytics Section Board
2019-2020 President, Theory, Issues, Boundaries Section (TIBS) Board
2016 Member, Conference Committee, Association for Nonprofit Organizations and Voluntary Action Annual Conference
2016-Present Reviewer, Felice Perlmutter Best Paper Award, Theory, Issues, Boundaries Section (TIBS)
2015-Present Member, Theory, Issues, Boundaries Section (TIBS) Board
2014-2018 Track chair, Association for Nonprofit Organizations and Voluntary Action Annual Conference
2013, 2014 Conference Paper Reviewer, Academy of Management Annual Conference
2012 Reviewer, Gabriel Rudney Best Dissertation Award, Association for Nonprofit Organizations and Voluntary Action
2007 Track chair, American Society for Public Administration Annual Conference

Editorial Board Service

Nonprofit Quarterly

Public Voices

Journal Reviews

I have been an active reviewer in the fields of public administration and nonprofit management.

Human Service Organizations: Management, Leadership, & Governance

Journal of Policy Analysis and Management

Journal of Public Administration Research and Theory

Nonprofit Management and Leadership

Nonprofit and Voluntary Sector Quarterly

Public Administration Review

Public Voices

Small Business Economics

Urban Affairs Review

Voluntas: International Journal of Nonprofit and Voluntary Action

Review of Academic Books for Press

Oxford University Press

Sage Publications

Review of Grant Applications

University of Missouri Research Board

COMMUNITY SERVICE:

- 2018-2020 Board Member. Healthy Homes Advisory Committee, City of Kansas City, MO.
- 2014-2015 Board Member. Challenge Cabinet, Open Data Team, City of Kansas City, MO.
- 2011-2012 Commissioner. Citizens' Commission on Municipal Revenue. City of Kansas City, MO.
- 2011-2012 Board Member. American Society for Public Administration, Greater Kansas City Chapter.
- 2009-2012 Consortium Member. KC4Aging in Place. Center for Practical Bioethics and Mid-America Regional Council.

PROFESSIONAL MEMBERSHIPS:

Academy of Management (AOM)

Association for Research on Nonprofit Organizations and Voluntary Action (ARNOVA)

International Society for Third-Sector Research (ISTR)

Public Management Research Association (PMRA)

American Real Estate Society (ARES)

HONORARY MEMBERSHIPS:

Inducted as Fellow, Royal Society for the Encouragement of Arts, Manufactures & Commerce [Royal Society for the Arts]

British Fulbright Scholar's Association

The Fulbright Association

Phi Kappa Phi, National Honors Society

Pi Sigma Alpha, National Political Science Honors Society

LANGUAGES:

Advanced Proficiency: French

APPENDIX II

APPENDIX II.

Wyandotte County Death Eligible Case List

Last Name	First Name	Race	Charge Filed	Death Noticed
Adams	Terry	Black	Capital murder	Yes
Alatorre	Javier	Hispanic	Capital murder	
Almaguer	Rodney	Hispanic	Capital murder	
Ayers	Curtis	White	Capital murder	
Bolton	Gentry	Black	Capital murder	Yes
Brady	Joseph	White	Capital murder	Yes
Burks	Adrian	Black	Capital murder	Yes
Byers	Jermelle	Black	First degree, felony murder	
Caballero	Ismael	Hispanic	Capital murder	
Carta	Ramon	Hispanic	First degree, intentional murder	
Diaz	Robert	Black	First degree, felony murder	
Douglas	Mondale	Black	First degree, intentional murder	
Eddington	Kevin	Black	First degree intentional murder	
Fielder	Antoine	Black	Capital murder	Yes
Guerrero	Andrew	Hispanic	Capital murder	
Hargrove	Demetrius	Black	Capital murder	Yes
Harper	Branden	Black	First degree, felony murder	
Harris	Errik	Black	Capital murder	Yes
Henderson	Dai'leon	Black	First degree, intentional murder	
Hervey	Carlisle	Black	First degree, felony murder	
Hill	Donta	Black	First degree, intentional murder	
Horn	Curtis T	Black	First degree, intentional murder	
Irvin	Demetri	Black	First degree, intentional murder	
James	Tyron	Black	First degree, intentional murder	
King	Ernest L	Black	Capital murder	Yes
Law	Robert	Black	Capital murder	Yes
Lewis	Jamaal	Black	Capital murder	
Lewis Ii	Christopher	Black	First degree, intentional murder	
Littlewood	Carsey	White	Capital murder	
Livingston	Edgar	Black	First degree, intentional murder	
Markee	Tracy	White	Capital murder	Yes
Martis	Gordon	Black	Capital murder	Yes
Mock	Kalen	Black	First degree, intentional murder	
Navarre	Michael	Black	First degree, intentional murder	
Pizarro	Miguel	Hispanic	First degree felony murder	
Pizarro	Brian	Hispanic	First degree, felony murder	
Powell	Richard	Black	Capital murder	Yes
Ramirez-Parrilla	Jose	Hispanic	First degree, felony murder	
Sappington	Marc	Black	First degree, intentional murder	
Smith	Adam	Black	First degree, intentional murder	

Stallings	Darrell	Black	Capital murder	Yes
Tatum	Ataven	Black	Capital murder	Yes
Trober	Brian	White	Capital murder	Yes
Trotter	Christopher	Black	Capital murder	Yes
Tucker	Jason	White	Capital murder	
Valdez	Reno	Hispanic	First degree, intentional murder	
Vasquez	Ismael	Hispanic	First degree, felony murder	
Velasco	Victor	Hispanic	First degree, felony murder	
Villanueva	Hugo	Hispanic	Capital murder	Yes
Warren	Cedric	Black	First degree, intentional murder	
Williams	Lemarco	Black	Capital murder	Yes
Williams	Kenton	Black	Capital murder	Yes
Womack	Tobias	Black	First degree, intentional murder	

APPENDIX III

APPENDIX III.

Wyandotte County Death Eligibility Survey

1. Case Name (start with CR)

2. Last Name

3. First Name

4. Was the Defendant charged with any of these forms of intentional murder: intentional capital murder, intentional first degree murder, or intentional second degree murder?

Mark only one oval.

☐ Yes

☐ No, but there is evidence the defendant could have been charged with intentional murder.

☐ No, and the defendant could have not been charged with intentional murder (end survey).

5. Was there more than one trial?

Mark only one oval.

☐ yes

☐ No

6. If yes, and the prosecution sought death at one or more trials, describe.

7. If the Defendant was NOT charged with capital murder, is there evidence that would suggest they could have been charged with capital murder under Section 21-5401?

Mark only one oval.

☐ Yes

☐ No (end survey)

8. If yes, on what basis could they have been charged? (check all that apply)

- 1) Intentional and premeditated killing of any person in the commission of **kidnapping**, as defined in K.S.A. 21-5408(a), and amendments thereto, or **aggravated kidnapping**, as defined in K.S.A. 21-5408(b), and amendments thereto, when the kidnapping or aggravated kidnapping was committed with the intent to hold such person for **ransom**;
- 2) intentional and premeditated killing of any person pursuant to a **contract or agreement to kill** such person or being a party to the contract or agreement pursuant to which such person is killed;
- 3) intentional and premeditated killing of any person **by an inmate or prisoner confined** in a state correctional institution, community correctional institution or jail or while in the custody of an officer or employee of a state correctional institution, community correctional institution or jail;
- 4) intentional and premeditated killing of the victim of one of the following crimes in the commission of, or subsequent to, such crime: **Rape**, as defined in K.S.A. 21-5503, and amendments thereto, **criminal sodomy**, as defined in K.S.A. 21-5504(a)(3) or (4), and amendments thereto, or **aggravated criminal sodomy**, as defined in K.S.A. 21-5504(b), and amendments thereto, or any attempt thereof, as defined in K.S.A. 21-5301, and amendments thereto;
- 5) intentional and premeditated **killing of a law enforcement officer**;
- 6) intentional and premeditated **killing of more than one person as a part of the same act or transaction** or in two or more acts or transactions connected together or constituting parts of a **common scheme** or course of conduct; or
- 7) intentional and premeditated killing of a **child under the age of 14 in the commission of kidnapping**, as defined in K.S.A. 21-5408(a), and amendments thereto, or **aggravated kidnapping**, as defined in K.S.A. 21-5408(b), and amendments thereto, when the kidnapping or aggravated kidnapping was committed with **intent to commit a sex offense upon or with the child** or with intent that the child commit or submit to a sex offense.

Check all that apply.

- ☐ Kidnapping or aggravated kidnapping with intent to hold for ransom ☐ contract or agreement to kill
- ☐ by an inmate or prisoner
- ☐ in the commission of or subsequent to rape, criminal sodomy, aggravated criminal sodomy
- ☐ law enforcement officer
- ☐ killing more than one person as part of the same act or transaction or common scheme ☐ child under the age of 14 in the commission of kidnapping with sex offense intent

9. Is the Defendant under the age of 18?

Mark only one oval.

- ☐ No
- ☐ Yes (If yes, terminate the survey at this point). The case is not death eligible.

10. If the case was filed as capital murder, or could have been filed as capital murder, is there evidence suggesting the presence of an aggravating factor?

Mark only one oval.

- ☐ No, the case is not death eligible.
- ☐ Yes, and the case was death noticed.
- ☐ Yes, and although the case was not death noticed it could have been.

11. If yes, there is evidence suggesting the presence of aggravating factors, check all that apply

- (a) The defendant was previously convicted of a felony in which the defendant inflicted great bodily harm, disfigurement, dismemberment or death on another.
- (b) The defendant knowingly or purposely killed or created a great risk of death to more than one person.
- (c) The defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.
- (d) The defendant authorized or employed another person to commit the crime.
- (e) The defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.
- (f) The defendant committed the crime in an especially heinous, atrocious or cruel manner.
- (g) The defendant committed the crime while serving a sentence of imprisonment on conviction of a felony.
- (h) The victim was killed while engaging in, or because of the victim's performance or prospective performance of, the victim's duties as a witness in a criminal proceeding.

Check all that apply.

- ☐ prior great bodily harm prior conviction
- ☐ knowing/purposeful death or risk of death to more than 1 person
- ☐ purpose of receiving money or monetary value
- ☐ authorized or hired another person to commit the crime ☐
- ☐ avoid or prevent lawful arrest or prosecution
- ☐ HAC
- ☐ while serving felony conviction
- ☐ victim was witness

APPENDIX IV

APPENDIX IV.

Expert Report, Jeffrey Fagan, Ph.D. (with some appendices omitted for length)

EXPERT REPORT Jeffrey Fagan, Ph.D.

I have been retained by the ACLU Foundation to serve as an expert in their litigation brought in connection with their representation of Mr. Kyle Young, who has been charged with capital murder under K.S.A. § 21-5401 in Sedgwick County, Kansas. My expert services include research to assess patterns of charging to determine the existence of racial disparities in the prosecution of death-eligible cases under the same statutes in the period 1994 through August 2, 2020. My research and conclusions are based on a review of case documents, statutes and prosecution procedures, reports and monographs on capital punishment in Kansas and Sedgwick County, and statistical analyses of cases charged and prosecuted under the same statute. I assess evidence on racial disparities in charging and sentencing of death-eligible cases in this period, and compare patterns to cases charged capitally, death-noticed and death sentenced. This review includes cases charged under K.S.A. §§ 21-5401 (capital murder), 21-5402 (first degree murder) and 21-5403 (second degree murder). This report presents details of the research completed for this case, including questions addressed, data accessed, methods of analysis, and conclusions.¹

I. OVERVIEW

A. Qualifications

I am the Isidor and Seville Sulzbacher Professor of Law at Columbia Law School and Professor of Epidemiology at the Mailman School of Public Health at Columbia University. I am a faculty affiliate of the Columbia Data Science Institute. I also am a Senior Research Scholar at Yale Law School. A summary of my credentials and curriculum vitae are presented in Appendix F.

B. Questions Addressed

1. What are the demographic characteristics of persons charged by the Sedgwick County District Attorney (“DA”) with capital murder under K.S.A. § 21-5401? What are the characteristics of the cases and defendants who received death notices?
2. What are the demographic characteristics of defendants who were considered eligible for capital punishment by the Sedgwick County District Attorney but who were not charged under K.S.A. § 21-5401?
3. Of the cases where a death notice was issued, how many were sentenced to death? What is the gender, race and victim characteristics of those who were or were not sentenced to death?
4. Are there differences between those sentenced to death and those identified under ¶1-2 above based on their race, gender, and age, and the race, gender, and age of the victim?

¹ I supervised a team of researchers (the "Columbia team") to assist in data collection, coding and analysis. The team included two retired criminology professors, a third-year law student, a Computational Data Science researcher with a M.S. in Statistics, and advanced undergraduate majors and Ph.D. students in the Department of Psychology at Yale University.

5. What is the race-gender interaction of the cases identified in ¶1-2 above?

C. Files Reviewed

1. A roster of all cases charged with Capital Murder (§ 21-5401) in Kansas on or after July 1, 1994 through 2020 was obtained from the statewide indigent defense services agency (BIDS) (see Appendix A). A second list was obtained in response to a discovery request from the Sedgwick County District Attorney's Office (see Appendix B, discovery request dated November 29, 2019 and responses dated February 21, 2020, March 30, 2021, and December 14, 2021).
2. From the BIDS list, capital charges were confirmed in 23 cases in Sedgwick County.² Cases charged with Capital Murder fulfilled one or more of seven categories of murder (see Appendix C). A list of those cases is in Appendix D.
3. Defense Counsel submitted a public records request for all potentially capital-eligible cases to the Sedgwick County District Attorney's office. In response, the Sedgwick County District Attorney's office provided an initial list of 168 homicide cases falling within seven categories of potentially capital-eligible offenses (see Appendix B). Updates with five additions and four deletions to this list were provided on two occasions after the initial discovery response, resulting in a revised total of 169 cases. *Id.*
4. We excluded all manslaughter cases at the outset. For the remaining cases, we reviewed relevant records. The records included at least three components: (1) probable cause affidavits shared under seal through a stipulated court order; (2) public court records, including docket reports, complaints, presentence reports, entries of judgment, notice of intent to seek the death penalty at a separate sentencing proceeding, withdrawal of notice to seek the death penalty, notice of aggravating circumstances, notice of mitigating circumstances, and jury instructions, where applicable; and (3) Kansas Standard Offense Reports (KSORs) requested and received from the investigating police agencies. Where available, appellate decisions were also reviewed. In some instances, we also reviewed media reports.
5. In addition, the Sedgwick County DA's office generated and provided a list of adult defendant prosecutions it considered as death eligible. It updated this list twice. After removal of the juveniles, who were not eligible for the death penalty, the State DA's death eligible list included 44 individuals. Of these 44 death eligible cases, 23 cases were charged with capital murder, 17 cases were charged with first degree premeditated murder, three were charged with first degree felony murder, and one case was charged with second degree intentional murder. A roster of these cases is shown in Appendix D.

² This list included one case, Gregory Moore, where venue had been changed from Harvey County to Sedgwick County. Mr. Moore thus was not prosecuted by the Sedgwick County DA office and is not included in my analysis in this report. The Harvey County prosecutors filed a death notice in his case, and he was tried and convicted by a Sedgwick County jury.

6. From these lists, the Columbia team coded the records for a large number of factors, including: the race, age, and gender of the defendant and victim(s); whether the case was resolved by trial or plea; whether death was sought; and what sentence was imposed.

D. Additional Materials Reviewed

1. Additional materials reviewed included statutes, statistical data on the administration of the death penalty in Kansas from 1990–2019, and media accounts of Sedgwick County capital cases.
2. I read the November 2004 report titled "Report of the Kansas Judicial Council Death Penalty Advisory Committee Report on Certain Issues Related to the Death Penalty" and the June 4, 2021 report titled "Equal Justice Under Law," Report of the Racial Justice Task Force of the Wichita Bar Association to the Board of Governors.
2. Statutes - K.S.A. § 24-5401: Capital Murder Statute; K.S.A. § 21-5402: First Degree Murder Statutes; K.S.A. § 21- 5403: Second Degree Murder Statute; K.S.A. § 21-6624: Aggravating Circumstances.
3. Handouts from a presentation by District Attorney Marc Bennett on when to seek the death penalty.

E. Summary of Conclusions

Statistical analyses comparing death-noticed and death-sentenced persons to several sets of similarly situated cases suggest two forms of racial discrimination in charging.

1. Cases where one or more victims were White were significantly more likely to be charged with capital murder and death-noticed compared to cases of intentional killing with victims who were Black or from other racial or ethnic groups.
2. Cases with one or more female victims were also significantly more likely to result in a capital murder charge or death notice compared to cases with male victims.
3. Cases where the victim was a White female were significantly more likely to be charged with capital murder and to be death-noticed, compared to all other cases.
4. Black or Hispanic defendants who kill White victims were significantly more likely to be capitally charged and death-noticed compared to other death-eligible cases. The presence of an increased propensity to seek death for cross-racial cases is consistent with results of several charging and sentencing studies in the post-*Gregg*³ era.

II. STUDY DESIGN

A. Study Population

From the several sets of files described above, we developed four lists of cases for comparison

³ *Gregg v. Georgia*, 428 U.S. 153 (1976).

and analysis. These cases originated from 1994, when Kansas reinstated the death penalty, through August, 2020. The specific cases on each list are shown in Appendix D. The tables in Appendix D show the race and ethnicity of each of these subsamples.

1. Death Sentenced Cases (N=6)⁴
2. Capital Charged and Death-Noticed Cases (N=18)⁵
3. Compilation of Potential Death-Eligible Cases by the District Attorney Office as defined (“State DA List of Death Eligible”) N=44)⁶
4. Cases evaluated to be death-eligible according to a systematic, independent review using a decision tree analysis (N=58), (“Death Eligible by Independent Review.”) See Appendix E. These cases were identified by a senior capital defense attorney who was not previously a participant in any aspect of the study’s cases. This person independently reviewed files of Sedgwick County cases of persons charged with (a) capital murder who were not death noticed and (b) first degree and second degree murder cases. The Independent Attorney used a formally structured decision tree to determine whether: (1) capital murder could have been charged; and if so, (2) whether the case could have been death noticed. See Appendix E. The defense attorney did not independently review the cases that were actually death-noticed; those cases were by definition treated as death-eligible. Like the DA’s death eligible list, the defense attorney’s list included cases charged with: second degree murder, first degree murder, and capital murder.

B. Variables and Measures

All cases were coded by students trained and supervised by Columbia researchers. From the coded cases, a spreadsheet was created containing relevant information for each case extracted from the source files. Data were cross-checked against the source documents, and again were checked for consistency, accuracy and completeness by the supervisors. Data were ingested directly from the spreadsheets into a statistical database Stata 17,⁷ for statistical analysis.

In addition to demographic variables on victims and defendants shown in Tables 1 - 4, variables representing the details of each case were coded, including:

1. Number of victims and defendants

⁴ This list includes all death-sentenced cases, including those whose death sentences were later set aside.

⁵ This includes all cases where the defendant was charged with capital murder and the state filed notice of its intent to seek death, regardless of whether that notice was later withdrawn or the case was resolved by plea for a lesser offense. This list includes eight cases where the state filed notice of its intent to seek death after January 14, 2013, under the tenure of the present Sedgwick County District Attorney.

⁶ These are cases defined by the DA as death eligible, regardless of how they were charged or convicted. The State DA List of death eligible cases included individuals charged with (a) second degree murder, (b) first degree murder, (c) charged with capital murder but not death-noticed, (d) charged with capital murder and death noticed and (e) those sentenced to death. Five persons on the original list were identified as minors who were below the age of 18 and ineligible for the death penalty (Sakone Donesay, Joshua Duque, Carlos De La Cadena-Edwards, Everett Gentry, and Santos Carrera-Morales).

⁷ <https://www.stata.com/new-in-stata/>.

2. Kansas Penal Code charges
3. Co-defendants
4. Number and demographic characteristics of victims and defendants
5. Statutory aggravators alleged and found, where applicable
6. Weapon used
7. Defense counsel and prosecutors
8. Appellate review and decisions

Variables were eliminated from the analyses that were either redundant with this list or where missing information was too extensive and would bias the analyses.

C. Methods of Analysis

Two methods were used in the statistical analyses. First, we conducted a series of bivariate cross-tabulations to isolate variables in response to specific questions that would identify the potential influences of race or ethnicity, gender, and age of defendants and victims. We also included information on weapon used in the killing as a potential consideration in the charging of the crime and the alleging of specific statutory aggravators.

1. Bivariate analyses.

The test for statistical significance in a bivariate analysis of a contingency table of categorical (discrete) variables is the Fisher's Exact T Test.⁸ This test is ideally suited for tests when the sample sizes are small. It tests the statistical significance of an association between two variables. The p-value of significance is based on the deviation of the values in each combination of the variables compared to what one would expect from knowing frequencies of the specific variables. In the following example, we want to know if teenagers vary in how often they study for an important test.

	Men	Women	Row Total
Studying	<i>a</i>	<i>b</i>	<i>a + b</i>
Non-studying	<i>c</i>	<i>d</i>	<i>c + d</i>
Column Total	<i>a + c</i>	<i>b + d</i>	<i>a + b + c + d (=n)</i>

We would test to see if these values in each cell were significantly different from what we would expect only knowing the row or column totals. The basic formula is:

$$pp = \frac{\frac{aa + bb}{aa + cc} \cdot \frac{cc + dd}{bb + dd}}{\frac{aa + bb}{aa + cc} + \frac{cc + dd}{bb + dd}} = \frac{bb \cdot dd}{nn}$$

$\frac{aa + bb}{aa + cc} \cdot \frac{cc + dd}{bb + dd}$

The formula tells us the conditional probability that studying and gender are independent or if studying is conditional on gender. The statistical package⁹ used for this analysis calculates the

⁸ See Graham J.G. Upton, *Fisher's Exact Test*, 155 J. ROYAL STATISTICAL SOCIETY (SERIES A) 395 (1992).

⁹ See Stata 17, *supra* n. 7.

probability of observing the distribution. The p-values derived from these analyses assume a two-tailed distribution, which is agnostic about the actual distributions of this variable in a large population.

2. Multivariate Regression

Additional tests included multivariate regressions that estimated the factors that would predict which cases will be charged as capital cases and have a death notice filed. The primary interest was on racial disparities in death-noticing and sentencing capital cases compared to cases that were capital-eligible but not death-noticed or death-sentenced. This requires a regression method that is tailored for categorical (including binary) outcomes. Accordingly, logistic regression methods were used to identify the case factors that predict the outcomes of interest.¹⁰ The basic logistic regression model takes the form of:

$$\log \text{it}(YY) = \text{ln} \frac{\pi}{1 - \pi} = \alpha + \beta XX$$

The results of the logistic regression show the odds ratio¹¹ indicating the likelihood of a unit change in the dependent variable (group membership) given a change in the predictor (independent variable).¹²

However, the small number of cases in the various groups suggested that a linear or logistic regression would be underpowered to draw reliable conclusions.¹³ Accordingly, we use a Firth regression, a form of logistic regression designed to reduce the risk of biased estimates in regression estimates under conditions of small samples.¹⁴ Standard testing methods that rely on typical statistical theories will also not preserve the Type I error rate, and they risk an inflated Type II (false positive) error rate. Joint analyses by pooling or “collapsing” multiple factors based on information are preferred in association tests with finely divided groups.¹⁵ The Firth method provides a bias-reduction for small sample size to avoid these constraints. The Firth regression, as

¹⁰ David W Hosmer Jr, Stanley Lemeshow, & Rodney X. Sturdivant, *Applied Logistic Regression* (2nd. ed.) 1- 7 (Wiley & Sons, Inc., 2nd ed. 2013).

¹¹ See discussion *infra* Section III.B. n.23.

¹² Max A. Halvorson, Connor J. McCabe, Dale S. Kim, Xiaolin Cao, and Kevin M. King. "Making sense of some odd ratios: A tutorial and improvements to present practices in reporting and visualizing quantities of interest for binary and count outcome models." *Psychology of Addictive Behaviors* (2021), <https://doi.org/10.1037/adb0000669> (2021).

¹³ The power of a statistical test is the probability it correctly rejects a false null hypothesis. In lay terms, if an effect (a difference between groups) has a certain size, how likely are we to discover it given the sample size? Will it have sufficient sensitivity to detect those effects it purports to test? A more technical definition is that it is the probability of avoiding a Type II error, or rejecting the null hypothesis of no group differences when it may actually be true. For this charging and sentencing study, power is the ability to detect bias when it exists given differences in the charging and sentencing rates of small groups. Power depends not only on the difference in charging rates but on their magnitudes as well. Small variations in these parameters can produce large variations in power. See JACOB COHEN, *STATISTICAL POWER ANALYSIS FOR THE BEHAVIORAL SCIENCES* (Routledge, 2013).

¹⁴ David Firth, *Bias Reduction of Maximum Likelihood Estimates*, 80 *BIOMETRIKA* 27-38 (1993), <https://doi.org/10.1093/biomet/80.1.27>.

¹⁵ Xuefeng Wang, *Firth Logistic Regression for Rare Variant Association Tests*. 5 *FRONTIERS IN GENETICS* 187

(2014), <https://doi.org/10.3389/fgene.2014.00187>.

with logistic regression generally, generates unbiased statistical significance tests for the probability that a change in a predictor variable will produce a change in the dependent variable or outcome. The statistical package used for data analysis in this report, Stata, includes a component to execute a Firth regression.¹⁶

III. RESULTS

A. Bivariate Tests

We conducted a series of bivariate tests of each of the independent variables with the 'test' groups of capital-charged, death-noticed and death-sentenced defendants.

Prosecutors filed death notices in 18 cases in Sedgwick County during the relevant time period. Table 1 compares these 18 cases to the 26 cases the Sedgwick County prosecutors identified as death-eligible, but were not death-noticed.¹⁷ Among the comparisons in Table 1, I identified four statistically significant comparisons. Cases with female victims were more likely to be death-noticed as compared to cases with male victims.¹⁸ The number of aggravators alleged also is a significant predictor, but the discussion in Section III.C. below suggests reasons to doubt the reliability of those measures and the probative value of the conclusions about the aggravators. To examine the intersection of victim race and victim gender, a variable was created to compare White female victim cases with all other race-gender groups. The White female victim cases were significantly more likely than other victim race-gender combinations to be death-noticed.

¹⁶ Joseph Coveney, *FIRTHLOGIT: Stata Module to Calculate Bias Reduction in Logistic Regression*, (2021), available at <https://econpapers.repec.org/software/bocbocode/S456948.htm>.

¹⁷ There was a single Asian defendant in the death-eligible population, and that case was the only case with Asian victims. Because of the small numbers, they were captured in the analysis for “Defendant POC” and “Victim POC” but not shown independently.

¹⁸ In cases with multiple victims, the case was treated as “female” if there was at least one female victim.

**Table 1. Comparison of Death-Noticed Defendants with Defendants Without Notices
Among State DA Identified List of Death-Eligible Cases**

Variables	Death Notice (N=18)	State DA List/No Notice (N=26)
Defendant Black	7 (39%)	14 (54%)
Defendant Hispanic	3 (17%)	3 (12%)
Defendant White	7 (39%)	8 (31%)
Defendant POC	11 (61%)	18 (69%)
Defendant Female	1 (6%)	1 (4%)
Defendant Male	17 (94%)	25 (96%)
Defendant Over 21	8 (44%)	12 (46%)
Defendant Under 21	10 (56%)	14 (54%)
Victim Black	2 (11%)	9 (35%)
Victim Hispanic	2 (11%)	7 (27%)
Victim White	13 (72%)	10 (38%) p=.036
Victim POC†	5 (28%)	16 (62%) p=.036
Victim Female	18 (100%)	11 (42%) p=.000
Victim Male	0 (0%)	15 (58%) p=.000
Victim Under 15	2 (11%)	0 (0%)
Victim Over 14	16 (89%)	26 (100%)
Victim White Female	13 (72%)	5 (19%) p=.001
Cases with Multiple Aggravators	15 (83%)	10 (38%) p=.005
Mean N of Aggravators	3	1.42 p=0.000
Multiple Decedents	13	20
Mean Decedents	2	1.88

Note: The samples in this analysis are drawn from the State DA List of Death-Eligible cases.

† “POC” or “Person of Color” includes any defendant who is not White; this includes all Black (7), Hispanic (3), and Asian (1) defendants. This convention also applies to the other bivariate tables in this section.

p-values for the level of statistical significance are shown only for those comparison are significant at $p < .05$.

Table 2 compares characteristics of death-noticed cases with cases that were not death noticed among those identified as death-eligible through the Independent Review. Seven comparisons were statistically significant. Black victim cases were less likely to be death-noticed, while White victim cases were more likely to be death-noticed. Cases with victims who were either Black or Hispanic were significantly less likely to be death noticed. Similar to Table 1, cases with female victims and White female victims were significantly more likely to be death-noticed, as were cases with a higher number of statutory aggravators.

Table 2. Comparison of Death-Noticed Cases with Cases Not Noticed

Independent Variables	Death Notice (N=18)	Death Eligible by Independent Review with No Death Notice (N=40)
Def Black	7 (38.89%)	23 (57.50%)
Def Hispanic	3 (16.67)	6 (15.00)
Def White	7 (38.89)	10 (25.00)
Def POC	11 (61.11)	30 (75.00)
Def Female	1 (5.56)	2 (5.00)
Def Male	17 (94.44)	38 (95.00)
Def < 22 years old	8 (44.11)	20 (50.00)
Def > 21 years old	10 (55.56)	20 (50.00)
Victim Black	2 (11.11)	18 (45.00) p=.016
Victim Hispanic	2 (11.11)	9 (22.50)
Victim White	13 (72.22)	13 (32.50) p=.009
Victim POC	5 (27.78)	27 (67.50) p=.009
Victim Female	18 (100.00)	18 (45.00) p=.000
Victim Male	0 (0.00)	22 (55.00) p=.000
Victim < 15 years old	2 (11.11)	0 (0.00)
Victim > 14 years old	16 (88.89)	40 (100.00)
Victim White Female	13 (72.22)	6 (15.00) p=.000
N with >1 Aggs	15 (83.33)	14 (35.00) p=.001
Mean # Aggs	3.06	1.40 p=.000
Decedents > 1	13 (68.42)	31 (77.50)
Mean # decedents	2.11	1.85

Note: The samples in this analysis are drawn from the Independent Review of Death Eligible cases.

* p-values for the level of statistical significance are shown only for those comparisons that are significant at $p < .05$.

Table 3 compares cases charged as Capital Murder with those that were not charged as Capital Murder among the State DA List of death-eligible cases. As in the tables above, female victim cases and White female victim cases were significantly more likely to be charged as capital cases. Again, cases with more aggravators also were more likely to be charged with capital murder.

Table 3. Comparison of Cases Charged as Capital Murder and Cases not Charged as Capital Murder

Independent Variables	State DA List Charged Capital Murder (N=23)	State DA List Not Charged with Capital Murder (N=21)
Def Black	10 (43.48%)	11 (52.38%)
Def Hispanic	3 (13.04)	3 (14.29)
Def White	9 (39.13)	6 (28.57)
Def POC	14 (60.87)	15 (71.43)
Def Female	1 (4.35)	1 (4.76)
Def Male	22 (95.65)	20 (95.24)
Def < 22 years old	12 (52.17)	8 (38.10)
Def > 21 years old	11 (47.83)	13 (61.90)
Victim Black	4 (17.39)	7 (33.33)
Victim Hispanic	3 (13.04)	6 (28.57)
Victim White	15 (65.22)	8 (38.10)
Victim POC	8 (34.78)	13 (61.90)
Victim Female	22 (95.65)	7 (33.33) p=.000
Victim Male	1(4.35)	14 (66.67) p=.000
Victim < 15 years old	2 (8.70)	0 (0.00)
Victim > 14 years old	21 (91.30)	21 (100.00)
Victim White Female	14 (60.87)	4 (19.05) p=.007
Aggs >1	19 (82.61)	6 (28.57) p=.001
Mean # Aggs	2.87	1.24 p=.000
Decedents > 1	17 (73.91)	16 (76.19)
Mean # decedents	2.13	1.81

Note: The samples in this analysis are drawn from the State DA List of Death-Eligible cases.

*p-values for the level of statistical significance are shown only for those comparison are significant at $p < .05$.

Table 4 shows a familiar pattern of case factors that distinguish cases charged as Capital Murder from those that were not charged as Capital Murder among cases identified as death eligible by the Independent Review. Cases with Black victims were less likely to be charged with Capital Murder than victims of other racial or ethnic groups. The same is true in cases where the victim is a Person of Color. In contrast, cases with White victims and female victims also are significantly more likely to be charged as capital murders compared to cases which were not charged with capital murder. Together, these results suggest a preference to charge cases with White victims more often as capital cases. Cases with female victims, and White female victims in particular, were significantly more likely to be charged capitally. The number of aggravators alleged is also a significant predictor.

**Table 4. Comparison of Cases Charged as Capital Murder
with Cases Not Charged as Capital Murder**

Independent Variables	Charged Capital Murder (N=23)	Independent Review Not Charged with Capital Murder (N=35)
Def Black	10 (43.48%)	20 (57.14%)
Def Hispanic	3 (13.04)	6 (17.14)
Def White	9 (39.13)	8 (22.86)
Def POC	14 (60.87)	27 (77.14)
Def Female	1 (4.35)	2 (5.71)
Def Male	22 (95.65)	33 (94.29)
Def < 22 years old	12 (52.17)	16 (45.71)
Def > 21 years old	11 (47.83)	19 (54.29)
Victim Black	4 (17.39)	16 (45.71) p=.047
Victim Hispanic	3 (13.04)	8 (22.86)
Victim White	15 (65.22)	11 (31.43) p=.016
Victim POC	8 (34.78)	24 (68.57) p=.016
Victim Female	22 (95.65)	14 (40.00) p=.000
Victim Male	1 (4.35)	21 (60.00) p=.000
Victim < 15 years old	2 (8.70)	0 (0.00)
Victim > 14 years old	21 (91.30)	35 (100.00)
Victim White Female	14 (60.87)	5 (14.29) p=.000
N with Aggs >1	19 (82.61)	10 (28.57) p=.000
Mean # Aggs	2.87	1.29 p=.000
Decedents > 1	17 (73.91)	27 (77.14)
Mean # decedents	2.13	1.80

Note: The samples in this analysis are drawn from the Independent Review of Death Eligible cases.

* p-values for the level of statistical significance are shown only for those comparison are significant at $p < .05$.

Table 5 compares death sentenced individuals to those who were not death sentenced among the cases defined as death-eligible by the DA.¹⁹ Only six defendants have been sentenced to death in Sedgwick County since 1994. The ability to draw statistical conclusions about sentencing practices from this group is necessarily limited by the small number of cases. Nonetheless, similar patterns from the charging analyses apply in the death-sentenced cases.

Statistically significant differences were found in comparisons between those individuals ever sentenced to death and those considered death-eligible, as defined by the District Attorney. Compared to the DA death-eligible list, White victim, female victim, and White female victim cases were all significantly more likely to result in death, and victim of color cases were less likely to result in death.

Table 5. Comparison Death Eligible Cases Without Death Sentences with Death Sentenced Cases

Variables	State DA List of Death Eligible Cases Without Death Sentences (N=38)	Death Sentenced Cases (N=6)
Defendant Black	19	2
Defendant Hispanic	6	0
Defendant White	11	4
Defendant POC	27	2
Defendant Female	2	0
Defendant Male	36	6
Defendant Over 21	16	4
Defendant Under 21	22	2
Victim Black	11	0
Victim Hispanic	9	0
Victim White	17	6*
Victim POC	21	0*
Victim Female	23	6
Victim Male	15	0
Victim Under 14	2	0
Victim Over 14	36	6
Victim White Female	12	6**
Cases with Aggs > 1	19	6**
Mean Aggravators	1.89	3.33
Cases with > 1 Decedents	29	4**
Mean Decedents	1.92	2.33

Note: The samples in this analysis are drawn from the State DA List of Death-Eligible cases. The p-value for significance in this table is .10. This threshold accommodates the low sample size of death-sentenced cases. Significance: * = $p < .10$, ** = $p < .05$, *** = $p = .01$

¹⁹ The list of death eligible cases includes two pending cases: Kyle Young and Daniel Lopez.

Table 6 compares death eligible cases, as determined by the Independent Review, with those that resulted in a death sentence.²⁰ For the Independent Review, these same factors—White victim, victim of color, White female victim, multiple aggravators and multiple decedents—were statistically significant when comparing death-eligible defendants not death-sentenced to death-sentenced individuals.

**Table 6. Comparison of Cases Without Death Sentences
With Death Sentenced Cases**

Variables	Death Eligible Cases by Independent Review Without Death Sentences (N=52)	Death Sentenced Cases (N=6)
Defendant Black	28	2
Defendant Hispanic	9	0
Defendant White	13	4
Defendant POC	39	2
Defendant Female	3	0
Defendant Male	49	6
Defendant Over 21	24	4
Defendant Under 21	28	2
Victim Black	20	0
Victim Hispanic	11	0
Victim White	20	6**
Victim POC	32	0**
Victim Female	30	6
Victim Male	22	0
Victim Under 14	2	0
Victim Over 14	50	6
Victim White Female	13	6***
Cases with Aggs > 1	23	6*
Mean Aggravators	1.57	4
Cases with > 1	12	3.33*
Mean Decedents	1.88	2.67

Note: The samples in this analysis are drawn from the Independent Review of Death Eligible cases. Significance: * = $p < .10$, ** = $p < .05$, *** = $p = .01$

²⁰ The list of death eligible cases includes two pending cases: Kyle Young and Daniel Lopez.

Table 7 reports the numbers of individuals at each stage of the process for each of the factors that we tested. The factors are compared across each decision stat, from death eligibility to death sentencing. The first column includes the universe of death-eligible individuals as defined by the State. The table demonstrates where demographic groups fall out or concentrate in the process from death eligibility to death imposition. For example, Black victims are a significant portion of death eligible cases but a much smaller portion of death noticed cases and are entirely absent from death-sentenced cases.

Table 7. Progression of Death Eligible Cases as Defined by the State Through Charging, Death Noticing, Capital Trial and Death Sentencing

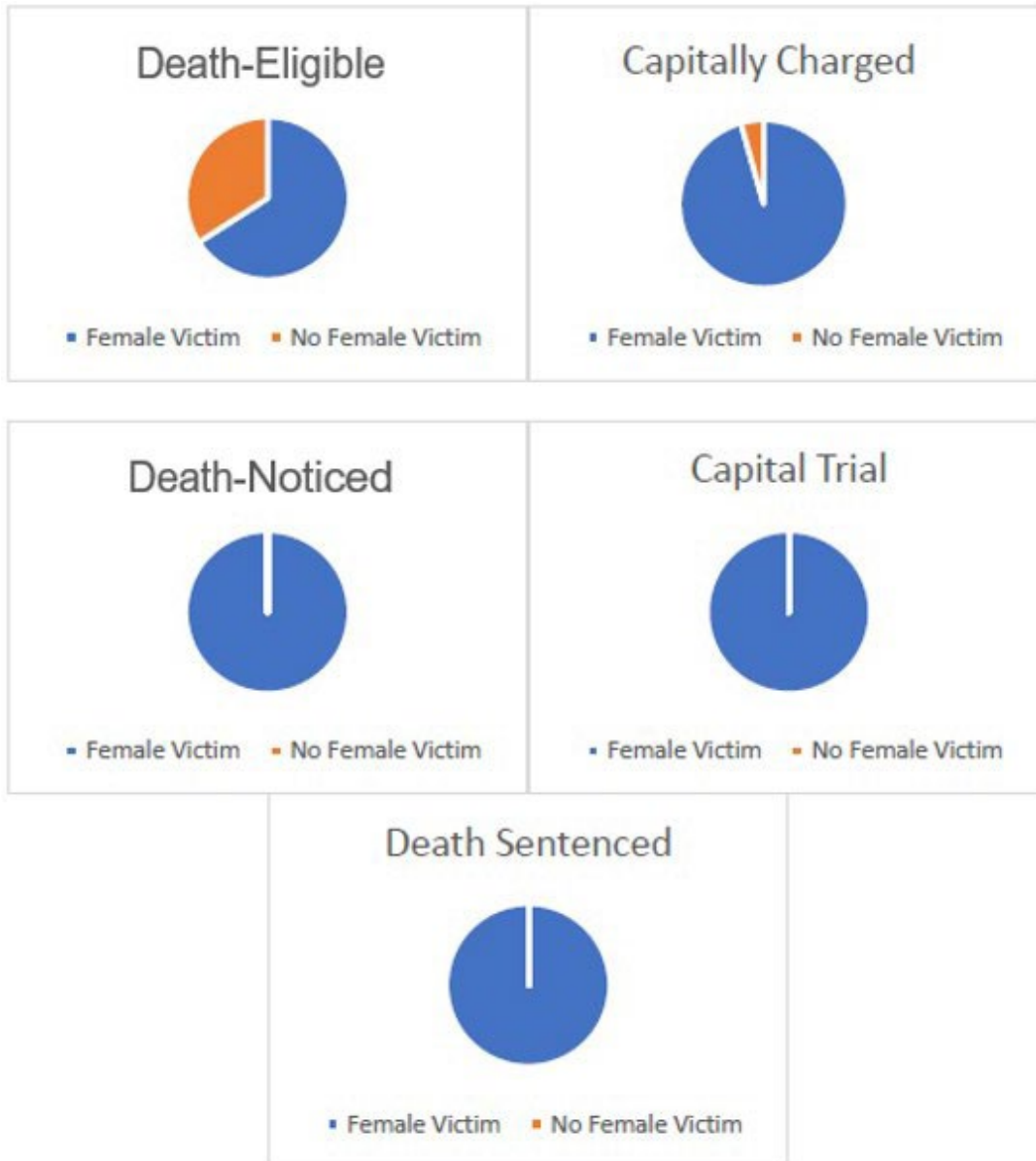
Variables	State DA List of Death Eligible	Charged Capital Murder	Death Noticed	Proceeded to Trial	Death Sentenced
Defendant Black	21 48%	10 43%	7 39%	5 56%	2 33%
Defendant Hispanic	6 14%	3 13%	3 17%	0 0%	0 0%
Defendant White	15 34%	9 39%	7 39%	4 44%	4 67%
Defendant POC	29 66%	14 61%	11 61%	5 56%	2 33%
Defendant Female	2 5%	1 4%	1 6%	0 0%	0 0%
Defendant Male	42 95%	22 96%	17 94%	9 100%	6 100%
Defendant Over 21	20 45%	12 52%	8 44%	6 67%	4 67%
Defendant Under 21	24 55%	11 48%	10 56%	3 33%	2 33%
Victim Black	11 25%	4 17%	2 11%	1 11%	0 0%
Victim Hispanic	9 20%	3 13%	2 11%	0 0%	0 0%
Victim White	23 52%	15 65%	13 72%	8 89%	6 100%
Victim POC	21 48%	8 35%	5 28%	1 11%	0 0%
Victim Female	29 66%	20 87%	18 100%	9 100%	6 100%
Victim Male	15 34%	1 4%	0 0%	0 0%	0 0%
Victim Under 14	2 5%	2 9%	2 11%	2 22%	0 0%
Victim Over 14	42 95%	21 91%	16 89%	7 78%	6 100%
Victim White Female	18 41%	14 61%	13 72%	8 89%	6 100%

This progression across cases can also be shown graphically. Using the State DA List of Death Eligible cases, Figures 1 to 3 illustrate the different stages beginning with the State's estimation of death eligible cases for cases with at least one White victim compared to all others (Fig. 1); cases with at least one female victim compared to all others (Fig. 2); and cases with at least one White female victim compared to all others.

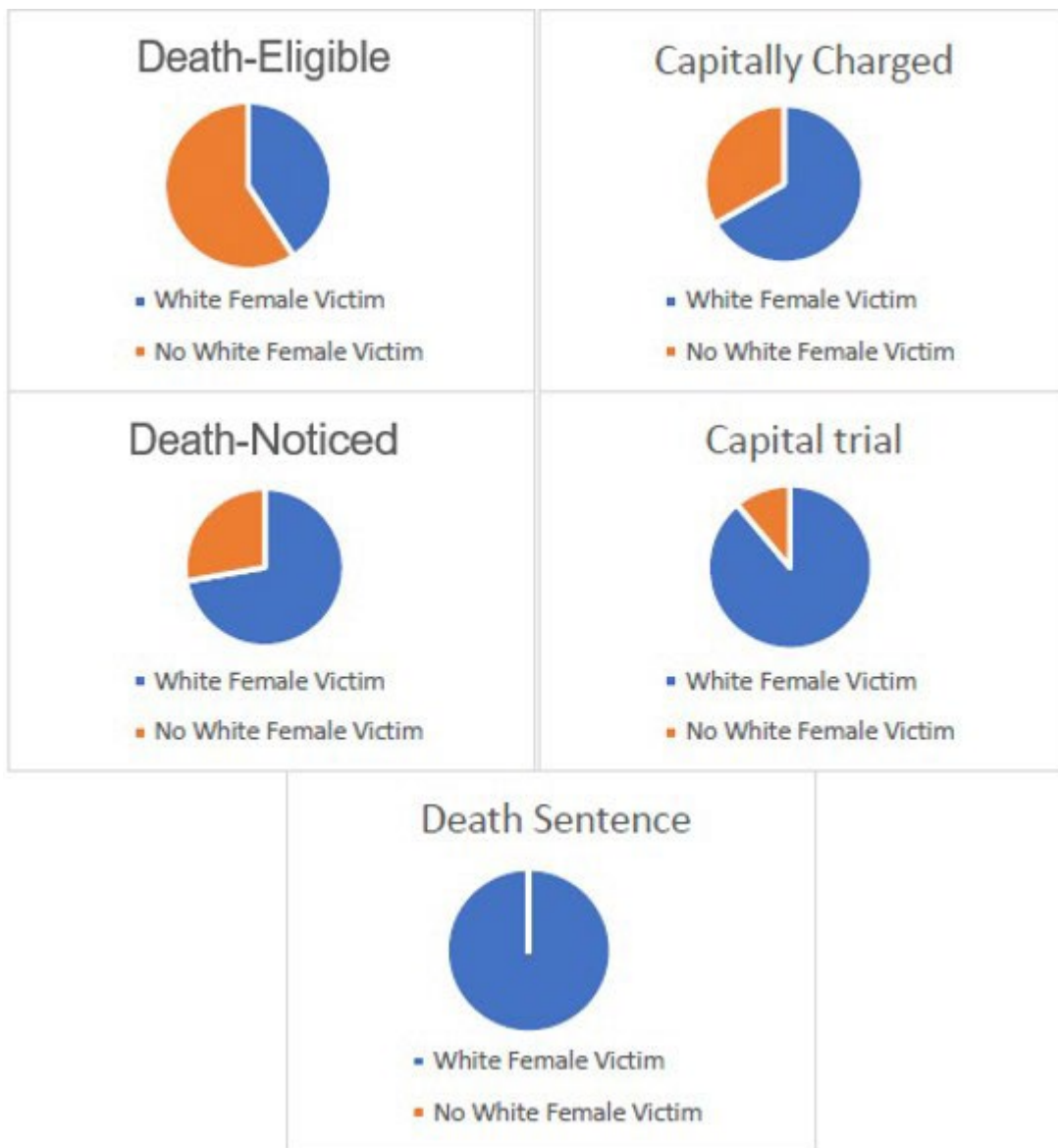
**Fig 1. Capital Stages by White Victim
Among the State DA List of Death Eligible**



**Fig 2. Capital Stages By Female Victim
Among the State DA List of Death Eligible Cases**



**Fig 3. Capital Stages for White Female Victims Compared to All Others
Among the State DA List of Death Eligible Cases**



Summary Of Bivariate Charging and Death Sentencing Results

The tables and figures shown above collectively and consistently identify a set of case characteristics that are associated with the decision to either charge a case as a capital murder or to pursue a death sentence, distinguishing those cases from other similarly situated murders where death is not sought. The patterns show the systematic contributions of White victim status to the decision to charge or seek a death sentence. A second consistent contributor to death-seeking is the subgroup of White victim cases where the victim is female.²¹ Additionally, some of these

²¹ See, e.g., Catherine M. Grosso, et al., *Race Discrimination and the Death Penalty: An Empirical and Legal*

tables identify a pattern of not charging Black victim cases capitally, suggesting again a preference for White victim cases. Even in the presence of other potential contributors to the decision to seek death, the robustness of the White victim feature of death-seeking stands out. This racial gap in death-seeking aligns with the results of empirical studies over the past three decades on charging and sentencing in capital-eligible cases.

B. Firth Logistic Regressions

Using the results in Tables 1-6, I estimated a series of Firth logistic regressions to identify the interaction of these factors in predicting which cases are more likely to lead to a decision to charge or seek a death sentence. From the tables above, I isolated factors associated with victim race, victim gender, and case features including the number of decedents and the statutory aggravators as potential explanations for patterns of death sentencing.²²

Table 8 below shows the results of the regressions. These models were designed to test the combined effects of the various case factors identified in Tables 1-6. The regression results are shown as odds ratios, for ease of interpretation. An odds ratio greater than 1.0 suggests that the factor is positively influencing the outcome compared to the reference group. An odds ratio below 1.0 suggests the factor is negatively influencing the outcome.²³

Four regressions were estimated, matching several of the bivariate comparisons and isolating the significant effects from those tables in the decision to charge or seek death. The first compares cases from the State DA list of death eligible cases in which defendants received a death notice, with cases from the State DA list which did not receive death notices. The second compares cases from the death eligible by independent review list that were death noticed with cases from the independent review list that were not death noticed. The third compares cases from the State DA list in which capital murder was charged, with cases from the State DA list in which capital murder was not charged. The fourth compared cases from the Independent Review list charged with capital

Overview, in America's Experiment with Capital Punishment: Reflections on The Past, Present, And Future of the Ultimate Penal Sanction 525-576 (J.D. Bessler et al. eds., 3rd ed., 2014); David C. Baldus, George Woodworth, Michael Laurence, Jeffrey Fagan, Catherine M. Grosso & Richard Newell, *Furman at 40: Constitutional Challenges from California's Failure to (Again) Narrow Death Eligibility*, 16 J. EMP. LEG. STUD. 693 (2019); Barbara O'Brien, Catherine M. Grosso, George Woodworth & Abijah Taylor, *Untangling the Role of Race in Capital Charging and Sentencing in North Carolina, 1990-2009*, 94 NCL REV. 1997 (2015); Scott Phillips & Justin Marceau, *Whom the State Kills*, 55 HARV. CR-CLL REV. 585, 625 (2020) (showing that those convicted of killing White victims were more likely to be sentenced to death and to be put to death). (2020) (showing that those convicted of killing white victims were more likely to be sentenced to death and to be put to death.); Daniel S. Medwed, *Black Deaths Matter: The Race of Victim Effect and Capital Punishment*, 86 BROOK L. REV. 957 (2001). See, generally, Alexis Hoag, *Valuing Black Lives: A Case for Ending the Death Penalty*, 51 COLUM. HUM. RTS. L. REV. 983 (2019).

²² We distinguish between statutory aggravators alleged and statutory aggravators found. The analyses focus only on statutory aggravators alleged, a selection criterion that produces a more conservative estimate of racial disparities in charging patterns.

²³ An odds ratio of 1.0 suggest no difference based on that factor. An odds ratio above 1.0 is interpreted as a multiple of the factor. For example, when the victim is a White female, the odds ratio above 1.0 suggests that defendant in that case is more likely to face a death charge or notice or sentence. If, for example, the defendant is Black, the odds ratio of .675 in Table 8 suggests that that person is 32.5% less likely to face the death penalty compared to defendants of other races. If the victim is a White female, the defendant is 9 times more likely to face a death charge than a person who murders a Black or Hispanic or Other Race female or male.

murder with cases from the Independent Review list that were not charged as capital murder.

Table 8. Firth Logistic Regressions on Factors Predicting Death Penalty Charge or Notice (OR, SE, p)

	Death-Noticed Cases v. State DA List		Death-Noticed Cases v. Independent Review		Capital Murder Charged Cases v. State DA List		Capital Murder Charged Cases v. Independent Review List ^a	
	OR	SE	OR	SE	OR	SE	OR	SE
Defendant Black or Hispanic	3.020	(3.00)	1.91	(1.69)	1.680	(1.43)	1.05	(.81)
Victim White Female	8.75**	(7.66)	9.39***	(7.62)	3.60*	(2.83)	4.30*	(3.13)
>1 Aggravators	4.68*	(3.89)	4.04*	(3.07)	6.76***	(4.95)	5.78***	(3.83)
Multiple Decedents	1.22	(.991)	1.33	(1.06)	1.32	(1.03)	1.32	(.96)
Constant	.042**	(.06)	.042**	(.06)	.125*	(.15)	.118**	(.123)
N of Observations	44		58		44		58	
Log likelihood	-19.12		-22.59		-20.16		-25.48	
Chi-square	10.25		14.51		11.24		15.15	
p(Chi-square)	0.040		0.006		0.024		0.004	

a. Excludes five cases that were prosecuted as death cases

Significance: * = p < .10, ** = p < .05, *** = p < .01

Across the four models in Table 8, the regressions show strong preference for seeking death in cases where the victim was a White female, and where multiple aggravators were alleged. The regression estimates for each variable take into account the influences of the other variables in the regression model. In other words, mutual influences of the various predictors are accounted for. The effects of victim-gender dyads are adjusted for - or controlled for - the effects of the other variables in the model, including number of cases with multiple aggravators. Accordingly, the results show that in White female victim cases, death is sought or charged at least three times more often than in other victim-gender dyads, and as high as nine times more likely in the death-noticed model compared to the Independent Review list, after controlling for the other variables in the model.

An additional set of Firth regressions was estimated to assess racial discrimination in the subset of cross-racial killings in the pool of cases charged with capital murder. This is an important feature of death penalty caselaw and research for over three decades, and that remains controversial today as a matter of Fourteenth Amendment Equal Protection and Eighth Amendment Cruel and Unusual Punishment caselaw.²⁴ I identified 18 cross racial killings, including 14 cases of Black or Hispanic

²⁴ See, e.g., Marvin E. Wolfgang & Marc Riedel, RACE, JUDICIAL DISCRETION, AND THE DEATH PENALTY, ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI. 407.1 (1973): 119-133. *McCleskey v. Kemp*, 481 U.S. 279 (1987); Grosso et al., supra n. 18. David C. Baldus, Charles Pulaski & George Woodworth, *Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience*. 74 J. CRIM. L. & CRIMINOLOGY 661 (1983); Barbara O'Brien et al., *The Role of Race in Charging and Sentencing*, supra n. 18; Glenn L. Pierce, Michael L. Radelet & Susan Sharp, *Race and Death Sentencing for Oklahoma Homicides*

Committed Between 1990 and 2012, 107 J. CRIM. L. & CRIMINOLOGY 733 (2017); Philips and Marceau, *Whom*

defendants killing White victims and an additional four cases of White defendants killing non-White victims. The model of four White defendants charged with killing non-White victims did not converge due to insufficient statistical power, and accordingly is not shown.

Table 9 shows the results of the Firth logistic regression on charging or death noticing in cross-racial killings in cases with Black or Hispanic defendants charged with killing White victims. Compared to within-race killings by Black or Hispanic defendants in the State DA List or in the Independent Review, cross-racial killings were more likely to be charged or noticed as a capital case compared to the same killings among those identified as death-eligible in the independent review. The result for the Independent Review list was statistically significant ($p < .05$).

Table 9. Firth Logistic Regressions on Defendants Charged with Capital Murder in Cross-Race Killings (OR, SE, p)

	Capital Murder Charged Cases v. Not Charged among Independent		Capital Murder Charged Cases v. Not Charged among State DA List	
	Review List			
	OR	SE	OR	SE
Cross-Racial Killings ^a	5.00**	(3.74)	2.58	(2.08)
Constant	.231***	(.12)	.529	(.309)
N of Observations	36		24	
Log likelihood	-14.13		-16.79	
Chi-square	7.19		4.25	
p(Chi-square)	0.028		0.039	

a. Includes 14 killings of White Victims by Black or Hispanic defendants. Models with 4 Killings by White Defendants of Black or Hispanic victims did not converge.

Significance: * = $p < .10$, ** = $p < .05$, *** = $p < .01$

Accordingly, within the broader set of cases in Sedgwick County, the analysis of this small subset of cross-racial killings adds to the evidence of racial discrimination in the application of the state's death penalty statutes.

the State Kills, *supra* n. 18; David C. Baldus, George Woodworth & Charles A Pulaski Jr., *The Influence of Racial and Suspect Factors in the Postconviction Phases of Georgia's Capital-Sentencing System*, in *Equal Justice and the Death Penalty: A Legal and Empirical Analysis* 140-97 (1990); Frank R. Baumgartner, Amanda J. Grigg & Alisa Mastro, *#BlackLivesDon'tMatter: Race-of-Victim Effects in US Executions, 1976-2013*, 3 *POLITICS, GROUPS & IDENTITIES* 209 (2015), <https://doi.org/10.1080/21565503.2015.1024262>; FRANK BAUMGARTNER, MARTY DAVIDSON, KANEESHA JOHNSON, ARVIND KRISHNAMURTHY & COLIN WILSON, *DEADLY JUSTICE: A STATISTICAL PORTRAIT OF THE DEATH PENALTY* 139 (2018); Jeffrey Fagan, Garth Davies and Raymond Paternoster, *Getting to*

Death: Race and the Paths of Capital Cases after Furman. 107 CORNELL L. REV. 1565 (2022).

C. Interpreting Statutory Aggravators

The *Gregg* Court was adamant that statutory aggravators are the case factors that would assist courts to distinguish crimes that might receive a death sentence from "ordinary" murders.²⁵ Although the research for this case collected and coded information on statutory aggravators, these data were inconsistently available. The information was often missing from the court and prosecution records that were the sources relied on to describe the specific nature of the killing and its eligibility for capital punishment. For the following reasons, data on statutory aggravators were not discussed in the interpretation of the analyses of racial bias in charging and sentencing.

As discussed above, the District Attorney's office provided a list of capital murder, first degree, and second degree murder cases it considered eligible for capital punishment. The DA's office did not provide a list of aggravating factors it considered present for those cases. Because the law requires notice of aggravators in death-noticed cases, the court records reflect the aggravators charged by the District Attorney in those cases in which it filed a death notice – or in 18 of the 44 cases it deemed death-eligible.

The number of aggravating factors charged, if any, is entirely a function of prosecutorial discretion, because there is nothing in Kansas law requiring prosecutors to charge aggravating circumstances. While aggravating factors are a requirement for a capital sentence and must be noticed, there is no requirement in Kansas law to allege aggravating factors in first degree murder cases, second degree murder cases, or capital murder cases where the prosecution does not seek the death penalty. Though aggravating factors were previously used to increase the presumptive sentence in first-degree murder cases, state law changed in July 2014 to increase the presumptive sentence for first-degree intentional murder to life in prison with the possibility of parole after 50 years.²⁶ From that point on, there was no functional purpose for prosecutors to allege statutory aggravators in first-degree premeditated murder cases.

The data analyzed in this study confirm that statutory aggravators are rarely mentioned in any of the first-degree murder case files, both before and after cases that were charged starting in July 2014. The revised statute attenuated the incentives for prosecutors to assess and charge statutory aggravators for many otherwise death-eligible cases. Likewise, in cases charged as capital murder but not death-noticed, aggravating factors serve no functional purpose and therefore would not be noticed by the prosecution. An observer would be unaware of their presence or absence.

For this analysis, then, because aggravating factors are often not noticed in death-eligible cases even when they are factually present, no conclusion can be made about the role of statutory aggravators in charging or death-noticing a case, when comparing cases charged or not charged with capital murder, or death-eligible cases that were death-noticed or not. This is true for the

²⁵ Chelsea Creo Sharon, "The "most deserving" of death: The narrowing requirement and the proliferation of aggravating factors in capital sentencing statutes." 46 *Harv. CR-CLL Rev.* 223 (2011). Sam Kamin and Justin Marceau. "Vicarious Aggravators." 65 *Fla. L. Rev.* 769 (2013). David C., Baldus et al. "Furman at 45: Constitutional challenges from California's failure to (again) narrow death eligibility." 16 *Journal of Empirical Legal Studies* 693 (2019). James S. Liebman, James S. "The overproduction of death." 100 *Colum. L. Rev.* 2030 (2000)

²⁶ See Kansas Legislator Briefing Book (2017) at 1-2, available at <http://www.kslegresearch.org/KLRD-web/Publications/BriefingBook/2017Briefs/G-7-Sentencing.pdf>.

subset of cases that were thought to be "potentially death-eligible," either through the Independent Review or the cases nominated in the State DA's list.

In terms of research design and statistical analysis, this inconsistent reporting of statutory aggravators means that data on aggravators are considered missing or censored information for a substantial number of cases, and no assumptions can be made about these cases. A researcher might assume that the data that are missing are random, in which case the gaps might be ignorable, but in this case, they are time-determined, not random, and cannot be ignored.²⁷ That is, one cannot assume that the distribution of aggravators in death-eligible cases is the same after 2014 as it was observable in cases before 2014, or that the distribution of aggravators by defendant or victim race in known cases are the same as in the cases where aggravators are not specified. In other words, one ignores this kind of selection bias at the risk of reliability of any conclusions; ignoring selection bias on cases or information would lead to flawed conclusions.²⁸ In simpler terms, the claim of race-neutral prosecutorial decisions to charge suspects with death-eligibility without complete or robust information on the statutory aggravators is blind to the possibility that these results may not be replicable under other sampling and measurement conditions.²⁹

An additional problem is the highly subjective nature of several of the statutory aggravating circumstances. The Independent Review, which was based on the records in the case files, identified 40 cases that could have been death-noticed but were not. The independent attorney identified 54 factually applicable aggravating circumstances across those 40 cases. In no case did she identify more than two applicable aggravating factors; the average number of applicable aggravating factors per case is 1.4. The aggravator "knowingly or purposely killed or created a great risk of death to more than one person" was by far considered the most applicable in her analysis. Table 10 shows the aggravators most frequently identified in the Independent Review.

Table 10. Aggravating Factors in the Independent Review	# Cases charged	% Cases applicable
(a) The defendant was previously convicted of a felony in which the defendant inflicted great bodily harm, disfigurement, dismemberment or death on another.	2	5%
(b) The defendant knowingly or purposely killed or created a great risk of death to more than one person.	32	80%
(c) The defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.	6	15%
(d) The defendant authorized or employed another person to commit the crime.	2	5%
(e) The defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.	4	10%
(f) The defendant committed the crime in an especially heinous, atrocious or cruel manner.	5	13%

²⁷ Shaun Seaman, John Galati, Dan Jackson, and John Carlin, "What is meant by "missing at random?" 28 *Statistical Science* 257 (2013).

²⁸ Todd D. Little, Terrence D. Jorgensen, Kyle M. Lang, and E. Whitney G. Moore. "On the joys of missing data." 39 *Journal of pediatric psychology* 151 (2014). Douglas G., Altman, and J. Martin Bland. "Missing data." *Bmj* 334, no. 7590 (2007): 424-424. Dean Knox, William Lowe and Jonathan Mummolo, "Administrative records mask racially biased policing." 114 *Am. Poli. Sci. Rev.* 619 (2020).

²⁹ Roland Neil and Christopher Winship, "Methodological challenges and opportunities in testing for discrimination in policing," 2 *Ann. Rev. Crim'gy* 73 (2019).

(g) The defendant committed the crime while serving a sentence of imprisonment on conviction of a felony.	1	3%
(h) The victim was killed while engaging in, or because of the victim's performance or prospective performance of, the victim's duties as a witness in a criminal proceeding.	2	5%

This list differed significantly from the State DA list of death-eligible cases. Table 11 reflects the aggravating factors noticed by the Sedgwick County District Attorney's office in the 18 cases in which a death notice was filed. Across those 18 cases, 56 aggravators were charged—an average of 3.1 aggravating factors per case, a total number more than twice the number charged in the list of cases that were considered death-eligible by the DA. If these considerations are based on the record, there is no reason for this difference to be present.

Table 11. Aggravating Factors in Death Noticed Cases by the State DA	# Cases charged	% Cases charged
(a) The defendant was previously convicted of a felony in which the defendant inflicted great bodily harm, disfigurement, dismemberment or death on another.	0	0%
(b) The defendant knowingly or purposely killed or created a great risk of death to more than one person.	13	72%
(c) The defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.	10	56%
(d) The defendant authorized or employed another person to commit the crime.	4	22%
(e) The defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.	11	61%
(f) The defendant committed the crime in an especially heinous, atrocious or cruel manner.	14	78%
(g) The defendant committed the crime while serving a sentence of imprisonment on conviction of a felony.	0	0%
(h) The victim was killed while engaging in, or because of the victim's performance or prospective performance of, the victim's duties as a witness in a criminal proceeding.	4	22%

Similar to the Independent Review, State prosecutors considered the “risk of death to more than one person” aggravating factor to be factually present in about 75 percent of cases in which it filed death notices. But there were important differences in which aggravators the prosecutors charged. They charged the “heinous, atrocious, or cruel” (HAC) aggravating circumstance, a capacious standard that relies on a subjective interpretation of aggravation, in more than 75 percent of the cases which were death noticed. In contrast, the Independent Review found it applicable in only 13 percent of cases, a sign of different interpretation and perceptions of the facts.³⁰ Similar patterns

³⁰ Bradley A. MacLean and H.E. Miller, *Tennessee's Death Penalty Lottery*, 13 TENN. J.L. & POL'Y 85 (2018). Fagan, Davies and Paternoster, *Getting to Death*, supra X. Michael Welner, Kate Y. O'Malley, James Gonidakis, and Ryan E. Tellalian, *The depravity standard I: an introduction*, 55 J. Crim Just. 1 (2018). Taylor Lopa, *The “Especially Heinous” Aggravator: Sharpshooter Bonuses Do Not Belong in Capital Sentencing Law*, 96 ST. JOHN'S LAW REVIEW 6 (2022). Sarah A. Mourer, *Forgetting Furman: Arbitrary Death Penalty Sentencing Schemes Across The Nation* 22 WM. & MARY BILL RTS 1183 (2013).

exist for the aggravating factors alleging that the defendant committed the crime to avoid a lawful arrest or prosecution (61 percent v. 10 percent) and that the defendant committed the crime for the purpose of receiving money or any other thing of monetary value (56 percent v. 15 percent). Because the data for this analysis is derived from two sources with different perspectives about the overall applicability of aggravating circumstances, the impact of aggravating factors on the likelihood that a case will be death-noticed will be overstated in the results relative to interpretations and perceptions of persons steeped in capital punishment law. The gap in these two estimates of the presence of statutory aggravators - especially those widely thought to be the most subjective and prone to racialized interpretation - typify reliability threats in social science: the ability of different observers to see a pattern of facts and reach the same conclusions about what those facts are saying.³¹

These comparative differences in perceptions of aggravation from two very different perspectives—perceptions about both which aggravators are present and their applicability in seeking a death sentence—suggest caution in interpreting the impact of aggravating factors on the likelihood that a case will be death-noticed. If present at all in the records, the role of aggravators is likely to be overstated in the data analyzed in this report. It is less of a burden to charge an aggravator, but prosecutors have the burden of proving that aggravator beyond a reasonable doubt at sentencing. That evidence is missing far more often than it appears in the data.

Finally, perhaps the most important reason to doubt the probative value of the heavy use of statutory aggravators is empirical: the models that were estimated for this report show that whether aggravators were present or absent, the White victim preference, and the corollary White female victim preference, were still significant predictors of a death charge and a death notice. In other words, the racial and gender components of death charging superseded the contributions of aggravators—if they could be at all observed and measured—in the decision to seek death.

IV. SUMMARY AND CONCLUSION

In statistical social science, when different analytic methods are applied to the same datasets and empirical questions, and when those methods reach the same conclusions, one can have confidence that relationships among the predictor variables and the outcomes are robust and reliable. That is the case in these analyses. Using tests specifically designed for small datasets, the analyses identified a consistent pattern of preferences by prosecutors to charge capital murder and seek the death penalty in cases where the victim is White, and especially when the victim is a White female. These results are present across comparisons of multiple subsets of cases that reflect a set of selection decisions by prosecutors.

The regression models are particularly important because the results of each variable are adjusted to account for the mutual influences among the predictors on the outcomes. However, the results of the bivariate models complement the multivariate models and show an overall pattern of effects that reinforce the statistical depiction of disparate treatment. Prosecutors are more likely to charge

³¹ Keith S. Taber, *"The use of Cronbach's alpha when developing and reporting research instruments in science education."* 48 Research In Science Education 1273 (2018): 1273-1296; Meiyuzi Gao, Philip Kortum, and Frederick Oswald. *"Psychometric evaluation of the use (usefulness, satisfaction, and ease of use) questionnaire for reliability and validity."* 62 Proceedings of The Human Factors and Ergonomics Society Annual Meeting, 1414-1418 (2018).

and seek death when the victim is White, and less likely to seek or charge death when the victim is Black. These patterns point to biases that can affect the decision making processes of prosecutors in deciding which cases are deathworthy.

The disparate treatment identified in these analyses reflect decision processes often cited in studies on charging and sentencing.³² The essential role of prosecutorial discretion in deciding when to seek death and for which victims and offenders was highlighted in the June 2021 report of The Racial Justice Task Force of the Board of Governors of the Wichita Bar Association.³³ The report notes that "[T]he decision whether or not to charge a crime, what crime to charge, and what plea negotiations to engage in, are inherently judgment calls of the prosecutor. If those decisions are affected by bias of the prosecutors against racial and ethnic minority people, including any implicit bias, that would be a way that the system would not result in 'equal justice' for those people."³⁴

The Racial Justice Task Force report goes on to note that there is data to "explore this problem."³⁵ This report does just that, to identify the extent of racial disparities in the selection of cases for capital punishment.

Post-Script

The data analyzed in this report begins at the charging stage of capital-eligible proceedings. Recent events in Wichita draw attention to earlier stages of the process: police investigation and arrests. As I have previously written about, the patterns of racial disparity may exist at this earlier stage, which, if present, produce a racially skewed supply of capital-eligible defendants.³⁶ My earlier research examined data from the FBI Supplementary Homicide Reports for every homicide reported between 1976 and 2009 and found that homicides with White victims are significantly more likely to be "cleared" by the arrest of a suspect than are homicides with minority victims.³⁷ Thus, the racially skewed process does not begin with discretionary decisions by prosecutors to seek death, but is implicated at the earliest stages of the administration of justice and the creation of a supply of potential capital cases for possible prosecution.

³² See, e.g., Nick Petersen, *Examining the Sources of Racial Bias in Potentially Capital Cases: A Case Study of Police and Prosecutorial Discretion*, 7 RACE & JUSTICE 7 (2017); Jefferson E. Holcomb, Marian R. Williams & Stephen Demuth, *White Female Victims and Death Penalty Disparity Research*, 21 JUSTICE QUARTERLY 877 (2004); Catherine Lee, *Hispanics and the Death Penalty: Discriminatory Charging Practices in San Joaquin County, California*, 35 J. CRIMINAL JUSTICE 17 (2007); Jeffery T. Ulmer, John H. Kramer & Gary Zajac, *The Race of Defendants and Victims in Pennsylvania Death Penalty Decisions: 2000-2010*, 37 JUSTICE QUARTERLY 955 (2020); Sherod Thaxton, *Disentangling Disparity: Exploring Racially Disparate Effect and Treatment in Capital Charging*, 45AM. J. CRIM. L. 95 (2018); Scott Phillips & Justin Marceau, *Whom the State Kills*, 55 HARV. CR-CLL REV. 585 (2020); Jeffrey Fagan & Amanda Geller, *Police, Race, and the Production of Capital Homicides* 23 BERKELEY J. CRIM. L. 261 (2018).

³³ Equal Justice Under Law: Report of The Racial Justice Task Force to The Board of Governors of The Wichita Bar Association (2018), https://cdn.ymaws.com/www.wichitabar.org/resource/resmgr/files/wba_racial_justice_report_06.pdf.

³⁴ *Id.* at 9.

³⁵ *Id.*

³⁶ See Jeffrey Fagan & Amanda Geller, *Police, Race, and the Production of Capital Homicides*, *supra* n. 28.

³⁷ *Id.* at 266.

Disclosures about officers employed by the Wichita Police Department and Wichita Sheriff's Department underscore this concern for the Sedgwick County cases. On March 21, 2022, an investigation by the *Wichita Eagle* revealed several overtly racist private messages exchanged between several officers in both departments.³⁸ The messages depicted memes, photoshopped images, and text containing racial slurs that praised the “hunting” and killing of Black people by police officers. *Id.* Though the text messages were discovered in April 2021, neither the police department nor the sheriff's office revealed the existence of a particularly offensive racist meme to the Sedgwick County District Attorney's office.³⁹ Other city officials were similarly dismayed by the lack of disclosure and the nature of the messages, with one county commissioner stating “I am very disappointed that this type of blatant racism is tolerated in part of our government.”⁴⁰

These revelations suggest that antagonism among police toward Black and Latinx residents may be widespread and diminish the intensity and integrity of investigations of homicides in their communities.⁴¹ These tensions and antagonism substantially explain why a diminished quality of investigations of Black or Latinx victim homicides may suppress prosecution of those cases.

Studies and reports of distrust between minority citizens and police have complicated police investigations of homicides in Los Angeles,⁴² New York⁴³ and Chicago.⁴⁴ In general, hostile policing in minority neighborhoods expose local residents to repeated stops, disrespect from police, and other types of petty indignities.⁴⁵ These police actions confirm the attitudes of police

³⁸ Available at: <https://www.kansas.com/news/local/article259423154.html>.

³⁹ See Michael Stavola, *Racist meme sent by Wichita Officer could affect cases, but DA wasn't told for months*, The Wichita Eagle (March 21, 2022) (“Federal law requires attorneys to disclose any exculpatory or impeachable evidence to anyone accused or convicted of a crime. That includes evidence that an officer involved in the case is biased toward a group of people.”). Available at <https://www.kansas.com/news/local/article259620404.html>.

⁴⁰ Chance Swaim & Matthew Kelly, *'Slap in the face': Officials react to racist messages between Wichita-area Officers*, The Wichita Eagle (March 21, 2022). Available at <https://www.kansas.com/news/politics-government/article259633769.html>.

⁴¹ Jeffrey Fagan and Daniel Richman, *Understanding Recent Spikes and Longer Trends in American Murders*, 117 COLUMBIA LAW REVIEW 1235, 1278-9 (2017) (citing a 2016 survey of African American residents in South Los Angeles showing “deep distrust and anger toward the police among African American residents, leading to a “profoundly serious disconnect” between the LAPD and the city's Black citizens”). See, e.g., Cindy Chang, *The LAPD's Biggest Conundrum: How to Suppress Crime Without Alienating South L.A.'s Black Residents*, L.A. Times (Feb. 4, 2017), available at: <https://www.latimes.com/local/california/la-me-lapd-crime-trust-20170203-story.html> See, also, Kate Mather & Cindy Chang, *LAPD Watchdog Takes a Long Look into Allegations of Racial Profiling*, L.A. Times (Nov. 15, 2016), <https://www.latimes.com/local/lanow/la-me-ln-lapd-biased-policing-20161115-story.html>.

⁴² Chang, *id.* Mather & Chang, *id.*

⁴³ Benjamin Mueller & Al Baker, *Rift Between Officers and Residents as Killings Persist in South Bronx*, N.Y. Times (Dec. 31, 2016), <http://nyti.ms/2jVye66> (on file with the Columbia Law Review) [hereinafter Mueller & Baker, *Rift Between Officers and Residents*]. Among the NYPD's seventy-seven precincts, nine of the fourteen lowest-staffed detective squads are in the Bronx.

⁴⁴ Monica Davey & Giovanni Russonello, *In Deeply Divided Chicago, Most Agree: City Is Off Course*, N.Y. Times (May 6, 2016), <http://nyti.ms/2kV84of>. See, also, Monica Davey, *In Chicago, Bodies Pile Up at an Intersection of 'Depression and Rage'*, N.Y. Times (Dec. 9, 2016), <http://nyti.ms/2k4UY3U> (detailing uncooperative witnesses after a major shooting).

⁴⁵ See Jill Leovy, *Ghettoside: A True Story of Murder in America* 48-49 (2015) (discussing clearance rates in L.A. County and South L.A.). See, generally, Josh Bowers, *Probable Cause, Constitutional Reasonableness, and the Unrecognized Point of a "Pointless Indignity,"* 66 Stan. L. Rev. 987, 1008 (2014). I. Bennet Capers, *Policing, Race, and Place*, 44 Harv. C.R.-C.L. L. Rev. 43, 68-69 (2009) (stating similar claims in terms of “public shaming”).

officers that characterize the views among police toward minority residents, views that reduce incentives for aggressive investigation of murders of people of color. The poor evidentiary record, for those cases that do result in an arrest, may translate into a weak evidentiary record and a pattern of decisions to prioritize White victim cases while reducing the salience of Black victim cases. We now have valid reasons to suspect that these pressures exist in Sedgwick County to produce the statistical findings presented in this report.

DECLARATION

I have not been compensated for this work.

A handwritten signature in black ink, appearing to read "Jeffrey Fagan", with a stylized, cursive script.

Jeffrey Fagan, Ph.D.
New York, NY

January 30, 2023

APPENDICES

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APPENDIX C

Appendix C1. K.S.A. 21-5401

21-5401. Capital murder

(a) Capital murder is the:

- (1) Intentional and premeditated killing of any person in the commission of kidnapping, as defined in K.S.A. 21-5408(a), and amendments thereto, or aggravated kidnapping, as defined in K.S.A. 21-5408(b), and amendments thereto, when the kidnapping or aggravated kidnapping was committed with the intent to hold such person for ransom;
- (2) intentional and premeditated killing of any person pursuant to a contract or agreement to kill such person or being a party to the contract or agreement pursuant to which such person is killed;
- (3) intentional and premeditated killing of any person by an inmate or prisoner confined in a state correctional institution, community correctional institution or jail or while in the custody of an officer or employee of a state correctional institution, community correctional institution or jail;
- (4) intentional and premeditated killing of the victim of one of the following crimes in the commission of, or subsequent to, such crime: Rape, as defined in K.S.A. 21-5503, and amendments thereto, criminal sodomy, as defined in K.S.A. 21-5504(a)(3) or (4), and amendments thereto, or aggravated criminal sodomy, as defined in K.S.A. 21-5504(b), and amendments thereto, or any attempt thereof, as defined in K.S.A. 21-5301, and amendments thereto;
- (5) intentional and premeditated killing of a law enforcement officer;
- (6) intentional and premeditated killing of more than one person as a part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct; or
- (7) intentional and premeditated killing of a child under the age of 14 in the commission of kidnapping, as defined in K.S.A. 21-5408(a), and amendments thereto, or aggravated kidnapping, as defined in K.S.A. 21-5408(b), and amendments thereto, when the kidnapping or aggravated kidnapping was committed with intent to commit a sex offense upon or with the child or with intent that the child commit or submit to a sex offense.

(b) For purposes of this section, “sex offense” means: Rape, as defined in K.S.A. 21-5503, and amendments thereto; aggravated indecent liberties with a child, as defined in K.S.A. 21-5506(b), and amendments thereto; aggravated criminal sodomy, as defined in K.S.A. 21-5504(b), and amendments thereto; selling sexual relations, as defined in K.S.A. 21-6419, and amendments thereto; promoting the sale of sexual relations, as defined in K.S.A. 21-6420, and amendments thereto; commercial sexual exploitation of a child, as defined in K.S.A. 21-6422, and amendments thereto; sexual exploitation of a child, as defined in K.S.A. 21-5510, and amendments thereto; internet trading in child pornography, as defined in K.S.A. 21-5514(a), and amendments thereto; aggravated internet trading in child pornography, as defined in K.S.A. 21-5514(b), and amendments thereto; or aggravated human trafficking, as defined in K.S.A. 21-5426(b), and

amendments thereto, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another.

(c) Capital murder or attempt to commit capital murder is an off-grid person felony.

(d) The provisions of K.S.A. 21-5301(c), and amendments thereto, shall not apply to a violation of attempting to commit the crime of capital murder pursuant to this section.

Appendix C2. K.S.A. 21-5402

21-5402. Murder in the first degree

(a) Murder in the first degree is the killing of a human being committed:

(1) Intentionally, and with premeditation; or

(2) in the commission of, attempt to commit, or flight from any inherently dangerous felony.

(b) Murder in the first degree is an off-grid person felony.

(c) As used in this section, an “inherently dangerous felony” means:

(1) Any of the following felonies, whether such felony is so distinct from the homicide alleged to be a violation of subsection (a)(2) as not to be an ingredient of the homicide alleged to be a violation of subsection (a)(2):

(A) Kidnapping, as defined in K.S.A. 21-5408(a), and amendments thereto;

(B) aggravated kidnapping, as defined in K.S.A. 21-5408(b), and amendments thereto;

(C) robbery, as defined in K.S.A. 21-5420(a), and amendments thereto;

(D) aggravated robbery, as defined in K.S.A. 21-5420(b), and amendments thereto;

(E) rape, as defined in K.S.A. 21-5503, and amendments thereto;

(F) aggravated criminal sodomy, as defined in K.S.A. 21-5504(b), and amendments thereto;

(G) abuse of a child, as defined in K.S.A. 21-5602, and amendments thereto;

(H) felony theft of property, as defined in K.S.A. 21-5801(a)(1) or (a)(3), and amendments thereto;

(I) burglary, as defined in K.S.A. 21-5807(a), and amendments thereto;

(J) aggravated burglary, as defined in K.S.A. 21-5807(b), and amendments thereto;

(K) arson, as defined in K.S.A. 21-5812(a), and amendments thereto;

(L) aggravated arson, as defined in K.S.A. 21-5812(b), and amendments thereto;

(M) treason, as defined in K.S.A. 21-5901, and amendments thereto;

(N) any felony offense as provided in K.S.A. 21-5703, 21-5705 or 21-5706, and amendments thereto;

(O) any felony offense as provided in K.S.A. 21-6308(a) or (b), and amendments thereto;

(P) endangering the food supply, as defined in K.S.A. 21-6317(a), and amendments thereto;

(Q) aggravated endangering the food supply, as defined in K.S.A. 21-6317(b), and amendments thereto;

(R) fleeing or attempting to elude a police officer, as defined in K.S.A. 8-1568(b), and amendments thereto;

(S) aggravated endangering a child, as defined in K.S.A. 21-5601(b)(1), and amendments thereto;

(T) abandonment of a child, as defined in K.S.A. 21-5605(a), and amendments thereto;

(U) aggravated abandonment of a child, as defined in K.S.A. 21-5605(b), and amendments thereto; or

(V) mistreatment of a dependent adult or mistreatment of an elder person, as defined in K.S.A. 21-5417, and amendments thereto; and

(2) any of the following felonies, only when such felony is so distinct from the homicide alleged to be a violation of subsection (a)(2) as to not be an ingredient of the homicide alleged to be a violation of subsection (a)(2):

(A) Murder in the first degree, as defined in subsection (a)(1);

(B) murder in the second degree, as defined in K.S.A. 21-5403(a)(1), and amendments thereto;

(C) voluntary manslaughter, as defined in K.S.A. 21-5404(a)(1), and amendments thereto;

(D) aggravated assault, as defined in K.S.A. 21-5412(b), and amendments thereto;

(E) aggravated assault of a law enforcement officer, as defined in K.S.A. 21-5412(d), and amendments thereto;

(F) aggravated battery, as defined in K.S.A. 21-5413(b)(1), and amendments thereto; or

(G) aggravated battery against a law enforcement officer, as defined in K.S.A. 21-5413(d), and amendments thereto.

(d) Murder in the first degree as defined in subsection (a)(2) is an alternative method of proving murder in the first degree and is not a separate crime from murder in the first degree as defined in

subsection (a)(1). The provisions of K.S.A. 21-5109, and amendments thereto, are not applicable to murder in the first degree as defined in subsection (a)(2). Murder in the first degree as defined in subsection (a)(2) is not a lesser included offense of murder in the first degree as defined in subsection (a)(1), and is not a lesser included offense of capital murder as defined in K.S.A. 21-5401, and amendments thereto. As set forth in subsection (b) of K.S.A. 21-5109, and amendments thereto, there are no lesser included offenses of murder in the first degree under subsection (a)(2).

(e) The amendments to this section by chapter 96 of the 2013 Session Laws of Kansas establish a procedural rule for the conduct of criminal prosecutions and shall be construed and applied retroactively to all cases currently pending.

Appendix C3. K.S.A. 21-5403

21-5403. Murder in the second degree

(a) Murder in the second degree is the killing of a human being committed:

(1) Intentionally; or

(2) unintentionally but recklessly under circumstances manifesting extreme indifference to the value of human life.

(b) Murder in the second degree as defined in:

(1) Subsection (a)(1) is a severity level 1, person felony; and

(2) subsection (a)(2) is a severity level 2, person felony.

Appendix C4. K.S.A. 21-6624

21-6624. Aggravating circumstances

Aggravating circumstances shall be limited to the following:

- (a) The defendant was previously convicted of a felony in which the defendant inflicted great bodily harm, disfigurement, dismemberment or death on another.
- (b) The defendant knowingly or purposely killed or created a great risk of death to more than one person.
- (c) The defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.
- (d) The defendant authorized or employed another person to commit the crime.
- (e) The defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.
- (f) The defendant committed the crime in an especially heinous, atrocious or cruel manner. A finding that the victim was aware of such victim's fate or had conscious pain and suffering as a result of the physical trauma that resulted in the victim's death is not necessary to find that the manner in which the defendant killed the victim was especially heinous, atrocious or cruel. Conduct which is heinous, atrocious or cruel may include, but is not limited to:
 - (1) Prior stalking of or criminal threats to the victim;
 - (2) preparation or planning, indicating an intention that the killing was meant to be especially heinous, atrocious or cruel;
 - (3) infliction of mental anguish or physical abuse before the victim's death;
 - (4) torture of the victim;
 - (5) continuous acts of violence begun before or continuing after the killing;
 - (6) desecration of the victim's body in a manner indicating a particular depravity of mind, either during or following the killing; or
 - (7) any other conduct the trier of fact expressly finds is especially heinous.
- (g) The defendant committed the crime while serving a sentence of imprisonment on conviction of a felony.
- (h) The victim was killed while engaging in, or because of the victim's performance or prospective performance of, the victim's duties as a witness in a criminal proceeding.

Appendix C5. K.S.A. 21-6815

21-6815. Imposition of presumptive sentence; jury requirements; departure sentencing; substantial and compelling reasons for departure; mitigating and aggravating factors

(a) Except as provided in subsection (b), the sentencing judge shall impose the presumptive sentence provided by the sentencing guidelines unless the judge finds substantial and compelling reasons to impose a departure sentence. If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure.

(b) Subject to the provisions of K.S.A. 21-6817(b), and amendments thereto, any fact that would increase the penalty for a crime beyond the statutory maximum, other than a prior conviction, shall be submitted to a jury and proved beyond a reasonable doubt.

(c)(1) Subject to the provisions of subsections (c)(3) and (e), the following nonexclusive list of mitigating factors may be considered in determining whether substantial and compelling reasons for a departure exist:

(A) The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction, except that this factor shall not apply to a sexually violent crime as defined in K.S.A. 22-3717, and amendments thereto, or electronic solicitation as defined in K.S.A. 21-5509, and amendments thereto, when: (i) The victim is less than 14 years of age and the offender is 18 or more years of age; or (ii) the offender hires any person by giving, or offering to or agreeing to give, anything of value to the person to engage in an unlawful sex act.

(B) The offender played a minor or passive role in the crime or participated under circumstances of duress or compulsion. This factor may be considered when it is not sufficient as a complete defense.

(C) The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants, drugs or alcohol does not fall within the purview of this factor.

(D) The defendant, or the defendant's children, suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(E) The degree of harm or loss attributed to the current crime of conviction was significantly less than typical for such an offense.

(F) The offender committed such crime as a result of an injury, including major depressive disorder, polytrauma, post-traumatic stress disorder or traumatic brain injury, connected to service in a combat zone, as defined in section 112 of the federal internal revenue code of 1986, in the armed forces of the United States of America. As used in this subsection, “major depressive disorder,” “polytrauma,” “post-traumatic stress disorder” and “traumatic brain

injury” shall mean the same as such terms are defined in K.S.A. 21-6630, and amendments thereto.

(2) Subject to the provisions of subsection (c)(3), the following nonexclusive list of aggravating factors may be considered in determining whether substantial and compelling reasons for departure exist:

(A) The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity which was known or should have been known to the offender.

(B) The defendant's conduct during the commission of the current offense manifested excessive brutality to the victim in a manner not normally present in that offense.

(C) The offense was motivated entirely or in part by the race, color, religion, ethnicity, national origin or sexual orientation of the victim or the offense was motivated by the defendant's belief or perception, entirely or in part, of the race, color, religion, ethnicity, national origin or sexual orientation of the victim whether or not the defendant's belief or perception was correct.

(D) The offense involved a fiduciary relationship which existed between the defendant and the victim.

(E) The defendant, 18 or more years of age, employed, hired, used, persuaded, induced, enticed or coerced any individual under 16 years of age to:

(i) Commit any person felony;

(ii) assist in avoiding detection or apprehension for commission of any person felony; or

(iii) attempt, conspire or solicit, as defined in K.S.A. 21-5301, 21-5302 and 21-5303, and amendments thereto, to commit any person felony.

That the defendant did not know the age of the individual under 16 years of age shall not be a consideration.

(F) The defendant's current crime of conviction is a crime of extreme sexual violence and the defendant is a predatory sex offender. As used in this subsection:

(i) “Crime of extreme sexual violence” is a felony limited to the following:

(a) A crime involving a nonconsensual act of sexual intercourse or sodomy with any person;

(b) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is 14 or more years of age but less than 16 years of age and with whom a relationship has been established or promoted for the primary purpose of victimization;

(c) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is less than 14 years of age;

(d) aggravated human trafficking, as defined in K.S.A. 21-5426(b), and amendments thereto, if the victim is less than 14 years of age; or

(e) commercial sexual exploitation of a child, as defined in K.S.A. 21-6422, and amendments thereto, if the victim is less than 14 years of age.

(ii) “Predatory sex offender” is an offender who has been convicted of a crime of extreme sexual violence as the current crime of conviction and who:

(a) Has one or more prior convictions of any crimes of extreme sexual violence. Any prior conviction used to establish the defendant as a predatory sex offender pursuant to this subsection shall also be counted in determining the criminal history category; or

(b) suffers from a mental condition or personality disorder which makes the offender likely to engage in additional acts constituting crimes of extreme sexual violence.

(iii) “Mental condition or personality disorder” means an emotional, mental or physical illness, disease, abnormality, disorder, pathology or condition which motivates the person, affects the predisposition or desires of the person, or interferes with the capacity of the person to control impulses to commit crimes of extreme sexual violence.

(G) The defendant was incarcerated during the commission of the offense.

(H) The crime involved two or more participants in the criminal conduct, and the defendant played a major role in the crime as the organizer, leader, recruiter, manager or supervisor.

In determining whether aggravating factors exist as provided in this section, the court shall review the victim impact statement.

(3) If a factual aspect of a crime is a statutory element of the crime or is used to subclassify the crime on the crime severity scale, that aspect of the current crime of conviction may be used as an aggravating or mitigating factor only if the criminal conduct constituting that aspect of the current crime of conviction is significantly different from the usual criminal conduct captured by the aspect of the crime.

(d) In determining aggravating or mitigating circumstances, the court shall consider:

(1) Any evidence received during the proceeding;

(2) the presentence report;

(3) written briefs and oral arguments of either the state or counsel for the defendant; and

(4) any other evidence relevant to such aggravating or mitigating circumstances that the court finds trustworthy and reliable.

(e) Upon motion of the prosecutor stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who is alleged to have committed an offense, the court may consider such mitigation in determining whether substantial and compelling reasons for a departure exist. In considering this mitigating factor, the court may consider the following:

(1) The court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the prosecutor's evaluation of the assistance rendered;

(2) the truthfulness, completeness and reliability of any information or testimony provided by the defendant;

(3) the nature and extent of the defendant's assistance;

(4) any injury suffered, or any danger or risk of injury to the defendant or the defendant's family resulting from such assistance; and

(5) the timeliness of the defendant's assistance.

APPENDIX D

Appendix D. Case Lists by Name, Suspect Race and Victim Race¹

Table D1. Sedgwick County Death Sentenced Individuals by Name, Race, and Race of Victim

Last Name	First Name	Defendant Race	Race of Victim(s)
Belt	Douglas	White	White
Elms	Stanley	White	White
Carr	Jonathan	Black	White
Carr Jr.	Reginald	Black	White
Marsh	Michael	White	White
Scott	Gavin	White	White

Table D2. Sedgwick County Death Noticed Individuals by Name, Race and Race of Victim

Last Name	First Name	Defendant Race	Race of Victim(s)
Alvarado-Meraz	Luis	Latinx	Latinx
Belt	Douglas	White	White
Bluml	Anthony	White	White
Burnett	Theodore	Black	White
Carr	Jonathan	Black	White
Carr Jr.	Reginald	Black	White
Ellington	Andrew	White	White
Elms	Stanley	White	White
Lopez	Daniel	Latinx	White/Latinx
Marsh	Michael	White	White
McNeal	Cornell	Black	Black
Nguyen	Vinh	Asian	Asian
Noyce	David	White	White
Oliver	Cornelius	Black	Black
Robinson	Elgin	Black	White
Schaberg	Kisha	Latinx	White
Scott	Gavin	White	White
Young	Kyle	Black	Black/Latinx

Table D3. Cases Death-Noticed During Marc Bennett's Tenure by Name, Race, and Race of Victim

Last Name	First Name	Defendant Race	Race of Victim(s)
Alvarado-Meraz	Luis	Latinx	Latinx
Bluml	Anthony	White	White
Ellington	Andrew	White	White
Lopez	Daniel	Latinx	Latinx/White
McNeal	Cornell	Black	Black
Nguyen	Vinh	Asian	Asian

¹ Data analysis considered cases with one or more victims as White if there was at least one White victim.

Schaberg	Kisha	Latinx	White
Young	Kyle	Black	Black/Latinx

Table D4. Death Eligible as Defined by District Attorney by Name, Race, and Race of Victim

Last Name	First Name	Defendant Race	Race of Victim(s)
Alford	Achaz	Black	White
Alvarado-Meraz	Luis	Latinx	Latinx
Bailon-Carmen	Pedro	Latinx	Latinx
Barber	Missy	Black	Black
Basurto-Flores	Edelberto	Latinx	Latinx
Bell, II	Earl	Black	Black
Belt	Douglas	White	White
Bluml	Anthony	White	White
Burnett	Theodore	Black	White
Carr	Jonathan	Black	White
Carr Jr.	Reginald	Black	White
Douglas	Romane	Black	Latinx
Edwards	Steven	Black	Latinx
Ellington	Andrew	White	White
Elms	Stanley	White	White
Garcia	Arturo	Latinx	White/Latinx
Gillespie	Eddie	Black	White
Gray	Marvin	Black	Black
Holton	Samuel	White	White/Black
Hopper	Adrian	Black	Black
Jamison	Chester	Black	Black
Jones	Austin	White	Latinx
Lopez	Daniel	Latinx	White/Latinx
Marsh	Michael	White	White
Marshall	Marquis	Black	White/Black
McCaslin	Billy	White	Latinx
McNeal	Cornell	Black	Black
Mitchell, Jr.	Victor	White	White
Nesbitt	Kasey	Black	White
Nguyen	Vinh	Asian	Asian
Noyce	David	White	White
Oliver	Cornelius	Black	Black
Penn	Samuel	Black	White
Pepper	John	White	Black
Ray	Adam	White	Latinx
Reynolds	Preston	Black	Black
Roach	Manuel	Black	Black

Robinson	Elgin	Black	White
Schaberg	Kisha	Latinx	White
Scott	Gavin	White	White
Smith	Braden	White	White
Wakefield	Jason	White	White
Woods	Clint	Native American	Black
Young	Kyle	Black	Black/Latinx

Table D5. Death Eligible as defined by Independent Attorney by Name, Race, and Race of Victim

Last Name	First Name	Defendant Race	Race of Victim(s)
Alford	Achaz	Black	White
Alvarado-Meraz	Luis	Latinx	Latinx
Bailon-Carmen	Pedro	Latinx	Latinx
Barber	Missy	Black	Black
Barnes	Gordon	White	White
Basurto-Flores	Edelberto	Latinx	Latinx
Bell, II	Earl	Black	Black
Belt	Douglas	White	White
Bluml	Anthony	White	White
Bryant	Ishmael	Black	Black
Burnett	Theodore	Black	White
Carr	Jonathan	Black	White
Carr Jr.	Reginald	Black	White
Carter	Quincy	Black	Black
Carter	Johnathan	Black	Black
Carter	Brent	Black	Black
Chavez-Aguilar	Carlos	Latinx	Latinx
Chavez-Guilar	Rene	Latinx	Latinx
Douglas	Romane	Black	Latinx
Edwards	Steven	Black	Latinx
Ellington	Andrew	White	White
Elms	Stanley	White	White
Gant	Christopher	Black	Black
Garcia	Arturo	Latinx	White/Latinx
Garcia	Ray	Latinx	White
Gillespie	Eddie	Black	White
Gray	Marvin	Black	Black
Holton	Samuel	White	White/Black
Hopper	Adrian	Black	Black
Jamison	Chester	Black	Black
Jones	Austin	White	Latinx
Lopez	Daniel	Latinx	White/Latinx

Marsh	Michael	White	White
Marshall	Marquis	Black	White/Black
McCaslin	Billy	White	Latinx
McNeal	Cornell	Black	Black
Miles	Jeremy	Black	Black
Mitchell, Jr.	Victor	White	White
Nguyen	Vinh	Asian	Asian
Noyce	David	White	White
Oliver	Cornelius	Black	Black
Penn	Samuel	Black	White
Pepper	John	White	Black
Ransom	Kendrall	Black	Black
Ransom	Karlan	Black	Black
Ray	Adam	White	Latinx
Reynolds	Preston	Black	Black
Roach	Manuel	Black	Black
Robinson	Elgin	Black	White
Schaberg	Kisha	Latinx	White
Scott	Gavin	White	White
Smith	Braden	White	White
Thomas	Benjamin	Black	White
Wakefield	Jason	White	White
Wilson	Kristy	White	White
Wimbley	Jamion	Black	Black
Woods	Clint	Native American	Black
Young	Kyle	Black	Black/Latinx

Table D6. Charged as Capital Murder

Last Name	First Name	Defendant Race	Race of Victim(s)
Alvarado-Meraz	Luis	Latinx	Latinx
Bell, II	Earl	Black	Black
Belt	Douglas	White	White
Bluml	Anthony	White	White
Burnett	Theodore	Black	White
CARR	Jonathan	Black	White
Carr Jr.	Reginald	Black	White
Edwards	Steven	Black	Latinx
Ellington	Andrew	White	White
Elms	Stanley	White	White
Lopez	Daniel	Latinx	White/Latinx

Marsh	Michael	White	White
Marshall	Marquis	Black	White/Black
McNeal	Cornell	Black	Black
Nguyen	Vinh	Asian	Asian
Noyce	David	White	White
Oliver	Cornelius	Black	Black
Pepper	John	White	Black
Robinson	Elgin	Black	White
Schaberg	Kisha	Latinx	White
Scott	Gavin	White	White
Smith	Braden	White	White
Young	Kyle	Black	Black/Latinx

APPENDIX E

Sedgwick County Death Eligibility Survey

1. Case Number (Begins with CR)

2. Defendant's Last Name

3. Defendant's First Name

4. Was the Defendant charged with any of these forms of intentional murder: intentional capital murder, intentional first degree murder, or intentional second degree murder?

Mark only one oval.

☐ Yes

☐ No, but there is evidence the defendant could have been charged with intentional murder.

☐ No, and the defendant could have not been charged with intentional murder (end survey).

5. If the Defendant was NOT charged with capital murder, is there evidence that would suggest they could have been charged with capital murder under Section 21-5401?

Mark only one oval.

☐ Yes

☐ No (end survey)

6. If yes, on what basis could they have been charged? (check all that apply)

- 1) Intentional and premeditated killing of any person in the commission of **kidnapping**, as defined in K.S.A. 21-5408(a), and amendments thereto, or **aggravated kidnapping**, as defined in K.S.A. 21-5408(b), and amendments thereto, when the kidnapping or aggravated kidnapping was committed with the intent to hold such person for **ransom**;
- 2) intentional and premeditated killing of any person pursuant to a **contract or agreement to kill** such person or being a party to the contract or agreement pursuant to which such person is killed;
- 3) intentional and premeditated killing of any person **by an inmate or prisoner confined** in a state correctional institution, community correctional institution or jail or while in the custody of an officer or employee of a state correctional institution, community correctional institution or jail;
- 4) intentional and premeditated killing of the victim of one of the following crimes in the commission of, or subsequent to, such crime: **Rape**, as defined in K.S.A. 21-5503, and amendments thereto, **criminal sodomy**, as defined in K.S.A. 21-5504(a)(3) or (4), and amendments thereto, or **aggravated criminal sodomy**, as defined in K.S.A. 21-5504(b), and amendments thereto, or any attempt thereof, as defined in K.S.A. 21-5301, and amendments thereto;
- 5) intentional and premeditated **killing of a law enforcement officer**;
- 6) intentional and premeditated **killing of more than one person as a part of the same act or transaction** or in two or more acts or transactions connected together or constituting parts of a **common scheme** or course of conduct; or
- 7) intentional and premeditated killing of a **child under the age of 14 in the commission of kidnapping**, as defined in K.S.A. 21-5408(a), and amendments thereto, or **aggravated kidnapping**, as defined in K.S.A. 21-5408(b), and amendments thereto, when the kidnapping or aggravated kidnapping was committed with **intent to commit a sex offense upon or with the child** or with **intent that the child commit or submit to a sex offense**.

Check all that apply.

- ☐ Kidnapping or aggravated kidnapping with intent to hold for ransom
- ☐ contract or agreement to kill
- ☐ by an inmate or prisoner
- ☐ in the commission of or subsequent to rape, criminal sodomy, aggravated criminal sodomy
- ☐ law enforcement officer
- ☐ killing more than one person as part of the same act or transaction or common scheme
- ☐ child under the age of 14 in the commission of kidnapping with sex offense intent

7. Is the Defendant under the age of 18?

Mark only one oval.

- ☐ No
- ☐ Yes (If yes, terminate the survey at this point). The case is not death eligible.

8. If the case was filed as capital murder, or could have been filed as capital murder, is there evidence suggesting the presence of an aggravating factor?

Mark only one oval.

- ☐ No, the case is not death eligible.
- ☐ Yes, the case could have been death noticed.

9. If yes, there is evidence suggesting the presence of aggravating factors, check all that apply

- (a) The defendant was previously convicted of a felony in which the defendant inflicted great bodily harm, disfigurement, dismemberment or death on another.
- (b) The defendant knowingly or purposely killed or created a great risk of death to more than one person.
- (c) The defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.
- (d) The defendant authorized or employed another person to commit the crime.
- (e) The defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.
- (f) The defendant committed the crime in an especially heinous, atrocious or cruel manner.
- (g) The defendant committed the crime while serving a sentence of imprisonment on conviction of a felony.
- (h) The victim was killed while engaging in, or because of the victim's performance or prospective performance of, the victim's duties as a witness in a criminal proceeding.

Check all that apply.

- ☐ prior great bodily harm prior conviction
- ☐ knowing/purposeful death or risk of death to more than 1 person
- ☐ purpose of receiving money or monetary value
- ☐ authorized or hired another person to commit the crime
- ☐ avoid or prevent lawful arrest or prosecution
- ☐ HAC
- ☐ while serving felony conviction
- ☐ victim was witness

