

**EVIDENCE OF ARBITRARINESS AND DISCRIMINATION IN THE ADMINISTRATION
OF CAPITAL PUNISHMENT WITH SPECIAL REFERENCE TO MARYLAND: 1978-99**

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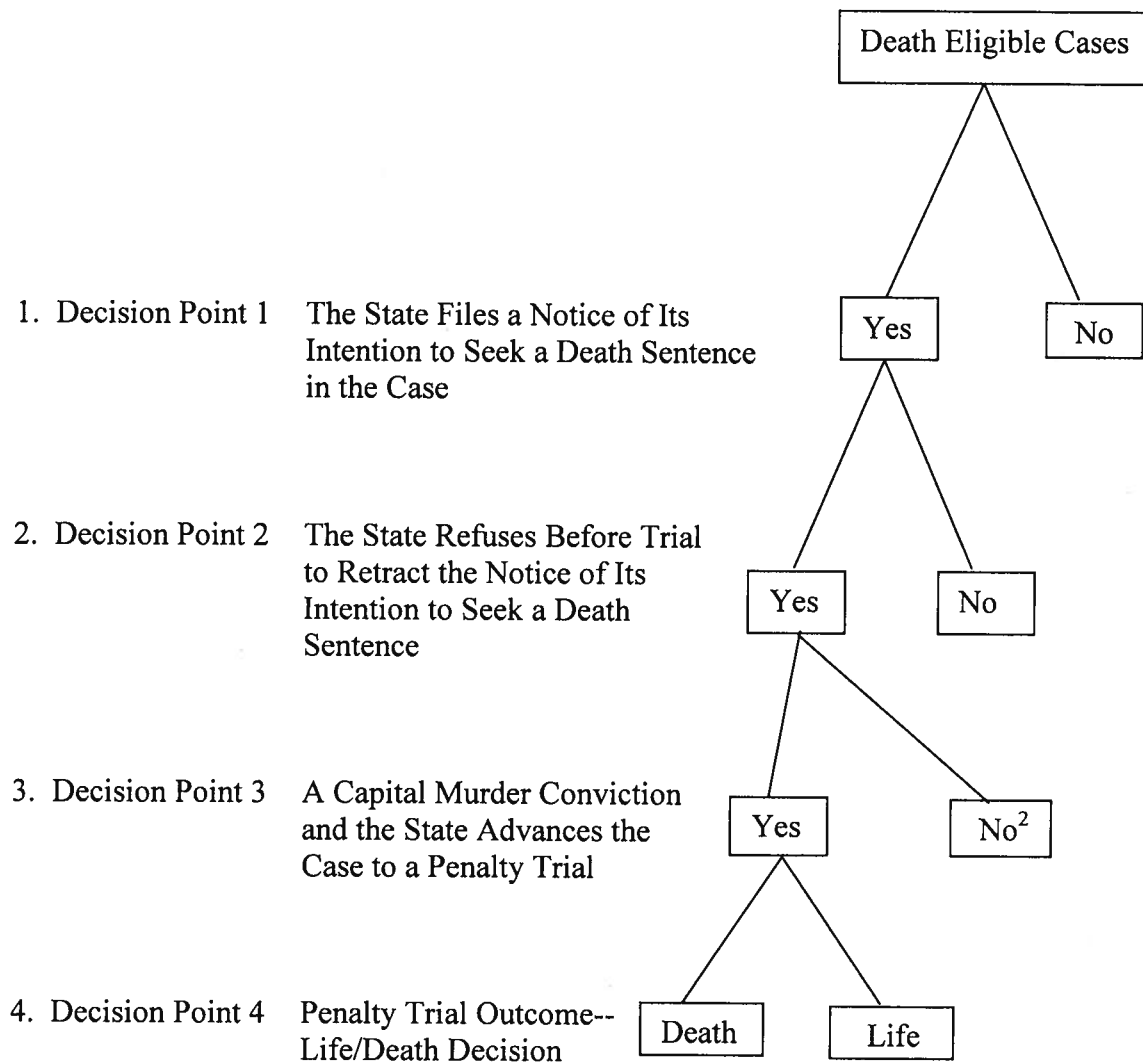
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FIGURE 1

CHARGING AND SENTENCING OUTCOMES AMONG MARYLAND DEATH-ELIGIBLE CASES:
7/1978 – 12/1999¹



¹Source: Fig. 1, MARGINS, p. 52.

²The failure of a case to advance to a penalty trial may be the product of a not guilty finding in the guilt trial on the capital murder charge or the State's waiver of the death penalty after a capital murder conviction.

Maryland Statutory Aggravating Circumstances

1. Victim was a law enforcement officer
2. Murder committed while defendant was in an institution
3. Murder committed in effort to evade capture by authorities
4. Murder committed in course of kidnapping
5. Victim was a child under the age of 12
6. Defendant carried out a contract killing
7. Defendant solicited killing
8. Defendant was serving a sentence of life imprisonment or death
9. Multiple victim murder
10. Murder committed along with carjacking/robbery/rape/arson

FIGURE 2
 CHARGING AND SENTENCING OUTCOMES AMONG MARYLAND DEATH-ELIGIBLE CASES AT FOUR
 DECISION POINTS: 7/1978 – 12/1999¹

Decision Point 1

1	The State Files a Notice of Its Intention to Seek a Death Sentence in the Case	
1A	Yes: 27% (353/1311)	1B
		No: 73% (958/1311)

Decision Point 2

2	The State Refuses Before Trial to Retract the Notice of Its Intention To Seek a Death Sentence	
2A	Yes: 60% (213/353)	2B
		No: 40% (140/353)

Decision Point 3

3	A Capital Murder Conviction and the State Advances the Case to a Penalty Trial	
3A	Yes: 85% (180/213)	3B
		No:² 15% (33/213)

Decision Point 4

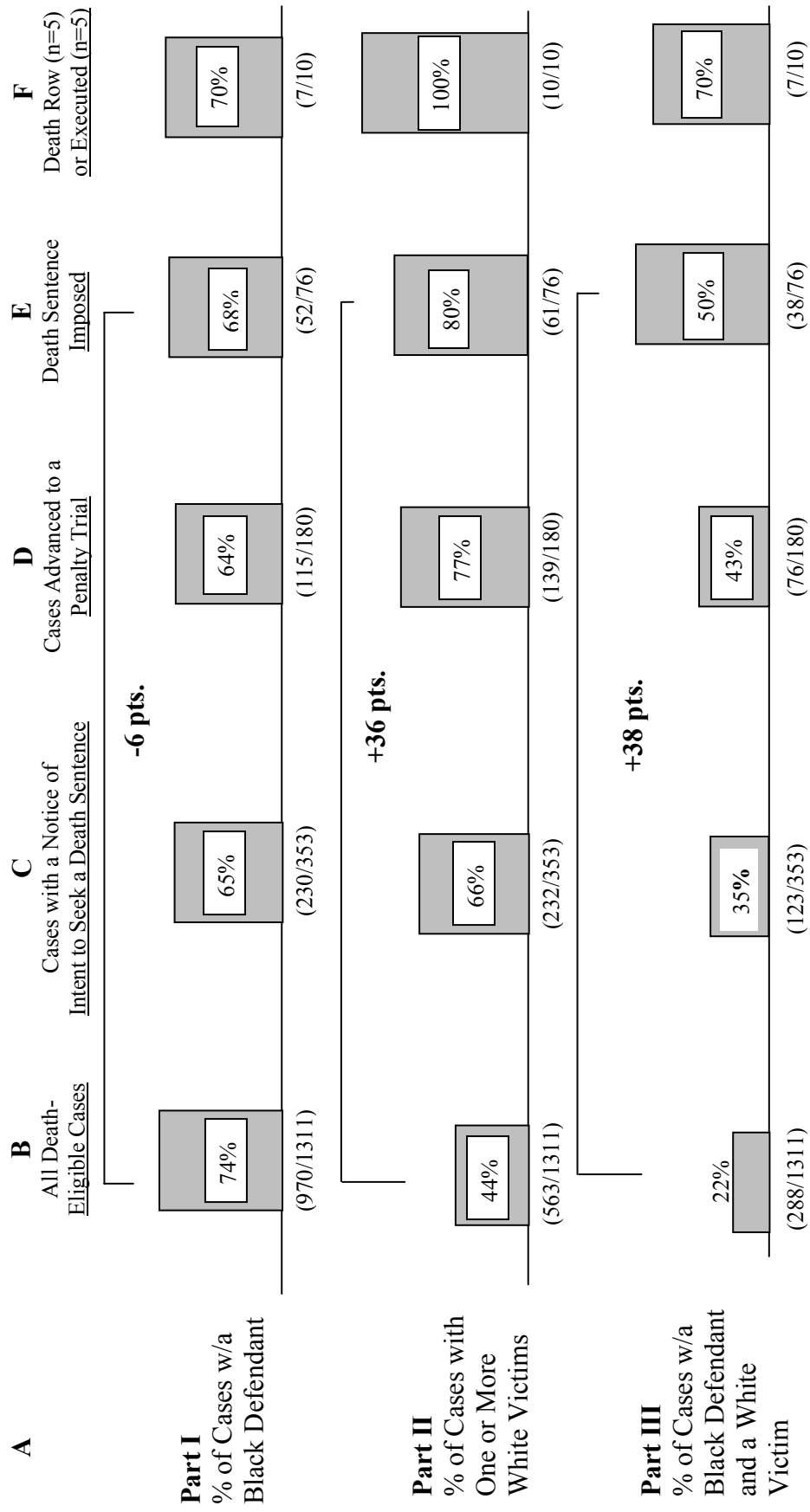
4	Penalty Trial Sentencing Decision			Death Sentencing Rate Among All Death Eligible Cases
4A	Death: 42% (76/180)	4B		
		Life: 58% (104/180)		6% (76/1311)

¹Source: MARGINS, Fig. 1, p. 52.

²The failure of a case to advance to a penalty trial may be the product of a not guilty finding in the guilt trial on the capital murder charge or the state's waiver of the death penalty after a capital murder conviction.

FIGURE 3
EVIDENCE OF RACIAL DISPARITIES IN CAPITAL CHARGING AND SENTENCING DECISIONS: MARYLAND 1978-1999

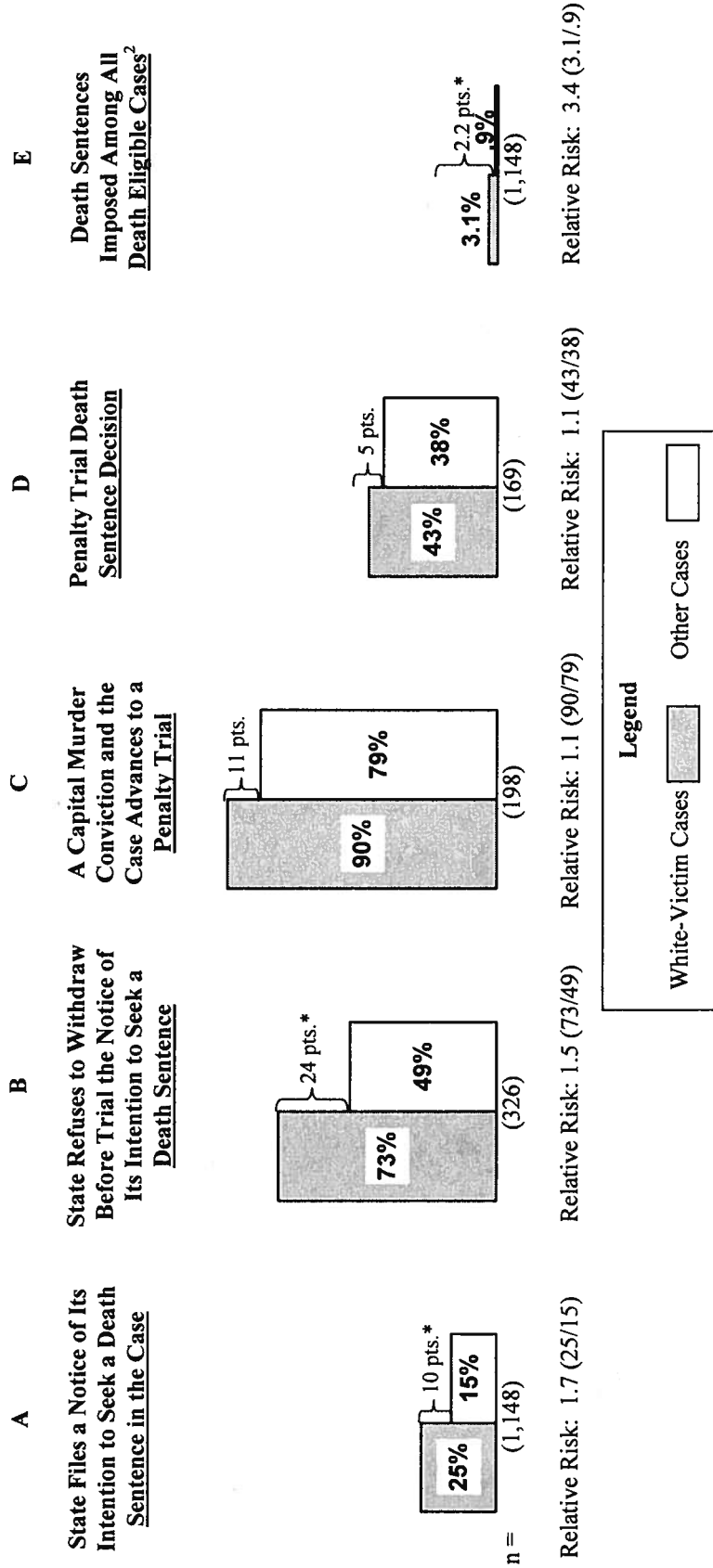
(The Height of the Bars and the Numbers in Them Indicate the Percentage of Cases with Identifiable Racial Characteristics at Successive Pools of Cases in the Process)¹



¹The percentage point measure between Columns C and D for each part indicates the increase in the rates of representation between Columns B and F. For example, the “42 pts.” in Part I indicates that the proportion of black defendants among those sentenced to death (Col. E) is 42 percentage points higher than the proportion of blacks among all death eligible defendants, i.e. 100% in Col. E v. 58% in Col. B.

FIGURE 4

ADJUSTED WHITE VICTIM DISPARITIES IN CAPITAL CHARGING AND SENTENCING DECISIONS: MARYLAND: 7/1978 – 12/1999¹



¹ Source: MARGINS, Tbls. 8A, 8B, 8C, 8D, 8E, 8F, 8G, pp. 79-85. The disparities reported in Columns A, B and E adjust for non-racial case characteristics and county of prosecution (Tables 8A and 8B). The disparities reported in Columns C and D (Tables 8C and 8D) do not control for county of prosecution. The adjusted rates in Columns A-E are reported in Table 8G.

²The disparity reported in this column is based on the model in Table 8E. An alternative model in Table 8F estimates a weaker white victim effect with a statistically significant disparity of .9 points and a relative risk of 2.0 (1.8/.9), which is not statistically significant.

Level of Statistical Significance: * = .05

TABLE 1
NON-RACIAL FACTORS USED IN PATERNOSTER/BRAME STUDY OF THE MARYLAND DEATH
PENALTY SYSTEM¹

		Mean/Proportion (N = 1,202)
1.	Number of prior violent felony convictions (0,1,2,3+)	0.558
2.	Multiple victim case	0.183
3.	Any of the victims a stranger to defendant	0.414
4.	Any of the victims has a criminal history	0.083
5.	Defendant has a history of alcohol abuse	0.339
6.	Defendant has a history of drug abuse	0.506
7.	Defendant has history of mental illness/emotional problems	0.217
8.	Defendant under age 21 at time of offense	0.265
9.	Defendant over age 60	0.005
10.	Defendant unable to control conduct due to alcohol/drugs	0.289
11.	Defendant unable to control conduct due to mental/emotional problems	0.127
12.	Defendant under control/influence of another person	0.080
13.	Defendant's participation in crime was minor	0.022
14.	Defendant claims killing was accidental	0.067
15.	Defendant was physically abused as a child	0.113
16.	Defendant was sexually abused as a child	0.043
17.	Defendant had generally good character	0.075
18.	Defendant had trouble in school	0.504
19.	Defendant had trouble holding a job	0.385
20.	Defendant has history of physical abuse as a child	0.116
21.	Defendant has history of sexual abuse as a child	0.043
22.	Defendant has spouse and/or family	0.285
23.	Defendant admitted crime	0.334
24.	Defendant expressed remorse for crime	0.126
25.	Defendant has history of mental illness/emotional problems	0.205
26.	Defendant has history of drug or alcohol use/abuse	0.512
27.	Defendant has an organic brain disorder	0.027
28.	Defendant maintains innocence	0.427
29.	Defendant has no major criminal history	0.240
30.	Defendant aided or assisted the victim	0.004
31.	Defendant surrendered within 24 hours	0.032
32.	Defendant was not the actual killer	0.037
33.	Defendant lay in wait for/ambushed the victim	0.363
34.	Defendant showed no remorse for the killing	0.116
35.	Defendant expressed pleasure at the killing	0.031
36.	Defendant alleged to have committed additional crimes contemporaneously	0.297
37.	Defendant actively evaded arrest	0.095
38.	Defendant was a fugitive for a prior violent crime	0.012

¹ Source: MARGINS, Tbl. 1, pp. 57-59.

39.	Defendant escaped from custody	0.017
40.	Defendant implicated in other killing(s)	0.052
41.	Defendant interfered with judicial process	0.017
42.	Defendant has previously threatened/attempted to kill victim	0.017
43.	Defendant threatened victim in front of family	0.036
44.	Defendant threatened other family members	0.028
45.	Defendant threatened to kill victim in advance	0.021
46.	Defendant abandoned victim who might otherwise have lived	0.075
47.	Defendant persisted in attack even after death was certain	0.140
48.	Defendant forced his/her way into place of murder of any of the victims	0.176
49.	Weapon brought to the murder scene of any of the victims	0.659
50.	Any of the victims killed with a bizarre or unusual weapon	0.097
51.	Any of the victims forced to beg/plead for their lives	0.069
52.	Any of the victims' murder planned for more than five minutes	0.282
53.	Any of the victims offered no resistance to killer	0.240
54.	Any of the victims not clothed or in bedclothes at time of killing	0.170
55.	Any of the victims suffered multiple trauma	0.212
56.	Any of the victims bound/gagged or otherwise restrained	0.121
57.	Any of the victims forced to do something against their will	0.166
58.	Any of the victims held hostage prior to killing	0.037
59.	Any of the victims tortured or mutilated before killing	0.056
60.	Any of the victims mutilated after killing	0.034
61.	Any of the victims brutally clubbed, beaten, stomped on	0.146
62.	Any of the victims shot more than one time	0.265
63.	Any of the victims shot in the face	0.089
64.	Any of the victims killed execution style	0.129
65.	Defendant tried to hide or dispose of bodies of any of the victims	0.130
66.	Defendant lay in wait for any of the victims	0.098
67.	Any of the victims stabbed many times or had throat slashed	0.183
68.	There was another victim that was injured but not killed by defendant	0.131
69.	Any of the victims killed in front of another person (not co-defendant)	0.339
70.	Crime scene was described as a bloody mess or particularly gruesome	0.121
71.	Any of the victims' murder took a long time to complete	0.087
72.	Physical details of crime are unusually repulsive/horrific	0.044
73.	Any of the victims bedridden or physically handicapped	0.021
74.	Any of the victims mentally/emotionally impaired	0.004
75.	Any of the victims defenseless due to youth	0.037
76.	Any of the victims defenseless due to advanced age	0.115
77.	Any of the victims pregnant	0.009
78.	Any of the victims asleep, just awakened or in bedroom	0.116
79.	Any of the victims in own house when defendant intruded	0.247
80.	Any of the victims defenseless due to gross size/strength disparity	0.131
81.	Any of the victims defenseless due to intoxication	0.082
82.	Any of the victims defenseless due to frail condition/illness	0.033
83.	Any of the victims have children or grandchildren	0.225
84.	Any of the victims killed after kidnapping/abduction	0.060

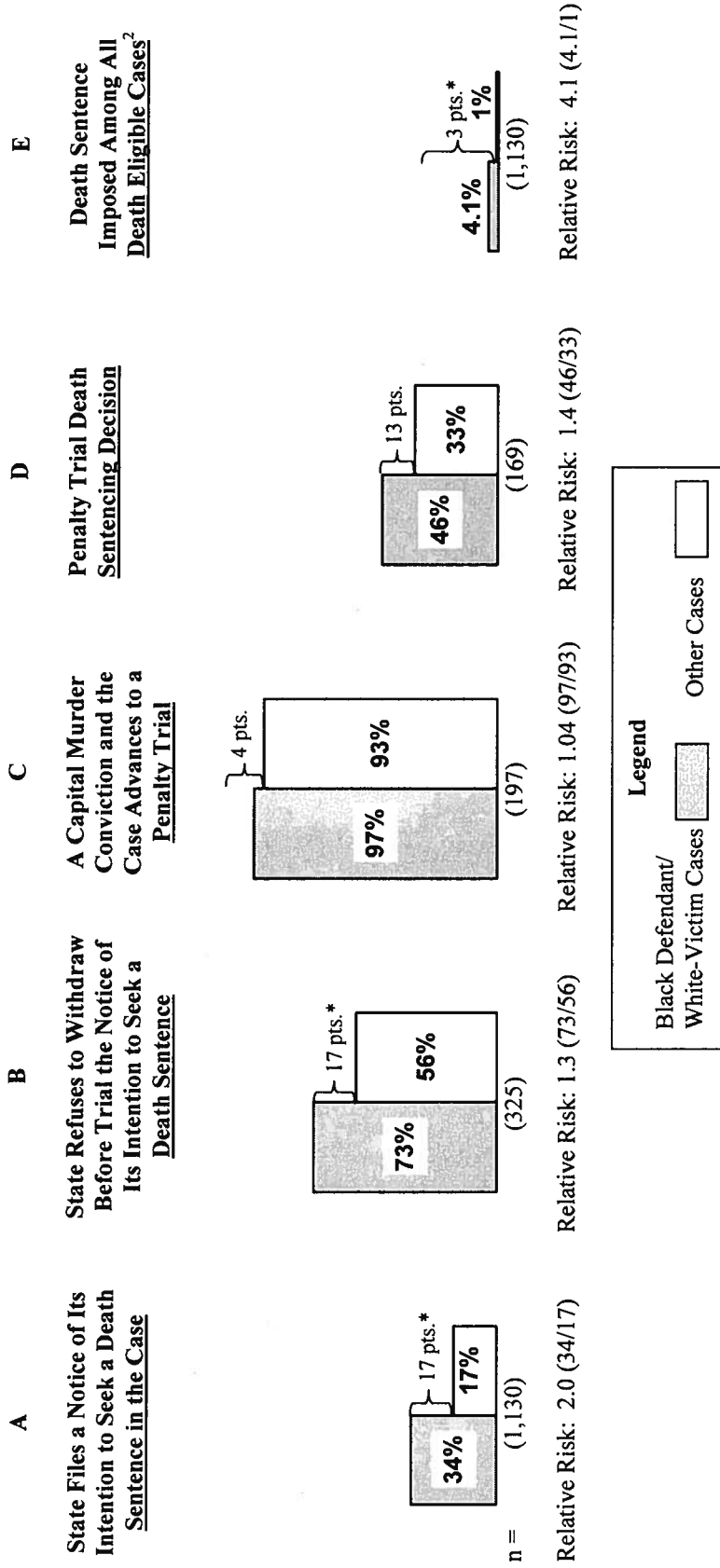
85.	Any of the victims verbally/physically mistreated prior to killing	0.336
86.	Any of the victims dismembered before killing	0.004
87.	Any of the victims mutilated in some way before killing	0.030
88.	Any of the victims sexually abused before killing	0.094
89.	Any of the victims burned before killing	0.026
90.	Defendant slapped, kicked, or punched any of the victims before death	0.165
91.	Any of the victims thrown in a body of water before being killed	0.004
92.	Any of the victims subjected to unknown form of abuse before killing	0.022
93.	Any of the victims dismembered after being killed	0.004
94.	Any of the victims mutilated after being killed	0.017
95.	Any of the victims sexually abused after killing	0.018
96.	Any of the victims burned after killing	0.030
97.	Defendant slapped, kicked, or punched any of the victims after death	0.003
98.	Any of the victims put in the trash or dump after death	0.015
99.	Any of the victims thrown in a body of water after being killed	0.020
100.	Any of the victims subjected to unknown form of abuse after killing	0.008
101.	Defendant made full confession to first-degree murder to police	0.182
102.	Defendant made full confession to second-degree murder	0.063
103.	Defendant made full confession to aggravating circumstances	0.151
104.	Defendant made partial/qualified confession to first-degree murder	0.025
105.	Defendant made partial/qualified confession to second-degree murder	0.045
106.	Defendant made partial/qualified confession to aggravating circumstances	0.047
107.	One eyewitness to the event testified	0.259
108.	More than one eyewitness to the event testified	0.209
109.	Physical evidence linking defendant to the crime was present	0.256
110.	An informant or jail-house snitch testified against defendant	0.092
111.	Defense claims case is based on circumstantial evidence	0.022
112.	Defense claims state's burden of proof not met	0.020

Statutory Aggravating Factors (Death-Noticed Cases Only; N = 327) Mean/Proportion

113.	Victim was a law enforcement officer	0.055
114.	Murder committed while defendant was in an institution	0.043
115.	Murder committed in effort to evade capture by authorities	0.037
116.	Murder committed in course of kidnapping	0.156
117.	Victim was a child under the age of 12	0.000
118.	Defendant carried out a contract killing	0.049
119.	Defendant solicited killing	0.018
120.	Defendant was serving a sentence of life imprisonment or death	0.012
121.	Multiple victim murder	0.205
122.	Murder committed along with carjacking/robbery/rape/arson	0.810
123.	Number of Statutory Aggravating Factors Present (1, 2, 3+)	1.544

FIGURE 5

ADJUSTED BLACK DEFENDANT/WHITE VICTIM DISPARITIES IN CAPITAL CHARGING AND SENTENCING DECISIONS: MARYLAND – 7/1978 – 12/1999¹



¹ Source: MARGINS, Tbls. 9A, 9B, 9C, 9D, 9E, 9F, and 9G. The disparities reported in Columns A, B and E adjust for non-racial case characteristics and county of prosecution (Tables 9A, 9B, and 9F). The disparities reported in Columns C and D (Tables 9D and 9E) do not control for county of prosecution. The adjusted rates in Columns A-E are reported in Table 9G.

The adjusted rates for the "Other Cases" in each column is the average rate for the three other defendant victim racial combinations reported in Table 9G.

Level of Statistical Significance: * = .05

TABLE 2
 UNADJUSTED RACIAL DISPARITIES IN CAPITAL CHARGING AND SENTENCING OUTCOMES IN BALTIMORE COUNTY (N=150):
 7/1978 – 12/1999¹

A Race Disparities	B State Files Notice of Its Intention to Seek a Death Sentence %	C Penalty Trial Death Sentencing Decision %	D Death Sentence Imposed Among All Death Eligible Cases %
Part I: White Victim (WV) Disparities Among All Cases	WV 67 (80/120) NWV <u>57</u> (17/30) Diff: ² 10 pts. Ratio: ³ 1.2	WV 48 (30/62) NWV <u>33</u> (4/12) Diff: 15 pts. Ratio: 1.5	WV 25 (30/120) NWV <u>13</u> (4/30) Diff: 12 pts. Ratio: 1.9
Part II: Black Defendant/White Victim (BD/WV) Disparities Among All Cases	BD/WV 75 (42/56) Other <u>59</u> (55/93) Diff: 16 pts. ** Ratio: 1.3	BD/WV 61 (20/33) Other <u>34</u> (14/41) Diff: 27 pts. ** Ratio: 1.8	BD/WV 29 (24/83) Other <u>15</u> (10/67) Diff: 14 pts. ** Ratio: 1.9

¹Source: Raymond Paternoster, *The Administration of the Death Penalty in Baltimore County 1978-1999* (2004).

²“Diff” is the percentage point difference between the two percentages in the cell.

³“Ratio” is the ratio of the two rates which is a measure of relative risk.

Levels of statistical significance: * = .10, ** = .05

TABLE 3
UNADJUSTED RACIAL DISPARITIES IN CAPITAL CHARGING AND SENTENCING OUTCOMES IN BALTIMORE CITY (N=551):
7/1978 – 12/1999¹

A	B	C	D
Race Disparities	State Files Notice of Its Intention to Seek a Death Sentence %	Penalty Trial Death Sentencing Decision %	Death Sentence Imposed Among All Death Eligible Cases %
Part I: White Victim (WV) Disparities Among All Cases	WV 14 (19/136) NWV <u>4 (15/393)</u> Diff: ² 10 pts. **** Ratio: ³ 3.5	WV 57 (8/14) NWV <u>50 (2/4)</u> Diff: 7 pts. Ratio: 1.1	WV 5.9 (8/136) NWV <u>.5 (2/393)</u> Diff: 5.4 pts. *** Ratio: 11.8
Part II: Black Defendant/White Victim (BD/WV) Disparities Among All Cases	BD/WV 17 (16/94) Other <u>4 (18/419)</u> Diff: 13 pts. **** Ratio: 4.2	BD/WV 58 (7/12) Other <u>50 (3/6)</u> Diff: 8 pts. Ratio: 1.2	BD/WV 7.4 (7/94) Other <u>.7 (3/419)</u> Diff: 6.7 pts. **** Ratio: 10.6

¹Source: Raymond Paternoster, *The Administration of the Death Penalty in Baltimore City, 1978-1999* (2004).

²“Diff” is the difference between the two percentages in the cell.

³“Ratio” is the ratio of the two rates which is a measure of relative risk.

Levels of statistical significance: * = .10, ** = .05; *** = .01; **** = .001

FIGURE 6

ADJUSTED WHITE VICTIM DISPARITIES IN CAPITAL CHARGING SENTENCING OUTCOMES:
 GEORGIA (1973-1980), MARYLAND (7/1978 – 12/1999), AND NEW JERSEY (1983-2004)

(The numbers in Columns B, C, and D are adjusted odds multipliers estimated in logistic multiple regression analyses)

A Decision Points	B		C		D
	White Victim Odds Multipliers				
	Georgia ¹	Maryland ²	New Jersey ³		
Part I Prosecutorial Decisions	3.3* (n = 708)	1.9* (n = 1,148)	2.3** - 2.4** (n = 512/431).		
Part II Penalty Trial Death Sentencing Decisions	3.4* (n = 253)	1.3 (NS) (n = 169)	.69(NS) - .71 (NS) (n = 153/137)		
Part III Death Sentences Imposed Among All Death Eligible Cases	4.3** (n = 2,484)	1.9 (NS) -3.7* (n = 1,148)	1.5 (NS) - 2.2 (NS) (n = 483/433).		

¹Georgia Sources: David Baldus, George Woodworth & Charles A. Pulaski, Jr., *Equal Justice and the Death Penalty: A Legal and Empirical Analysis* (1990): App. L, Schedule 8, p. 642, Part II: App. L, Schedule 9, p. 644, Part III: App. L, Schedule 4, p. 630 and Tbl. 52, p. 319.

² Maryland Sources: MARGINS: Tbl. 8A, p. 79; Part 2: Tbl. 8D, p. 82; Part 3: Tbls. 8E, p. 83 (1st estimate) & 8F, p. 84 (2nd estimate).

³New Jersey Sources: David Weisburd & Joseph Naus, Report to Special Master David Baime: Applying the Race Monitoring System to May, 2005 Proportionality Review Data (Nov. 9, 2005): Tbls. 19.1 (pp. 85-87) & 20.1 (pp. 90-01); Part II: Tbls. 7.1 (pp. 62-63) & 8.1 (p. 65); Part III: Tbls. 12.1 (p. 72) & 15.1 (all first case sample).

“n” indicates the sample size of a subgroup of cases.
 “NS” indicates that an odds multiplier is not statistically significant.
 Level of statistical significance of the disparity: * = .05, ** = .01

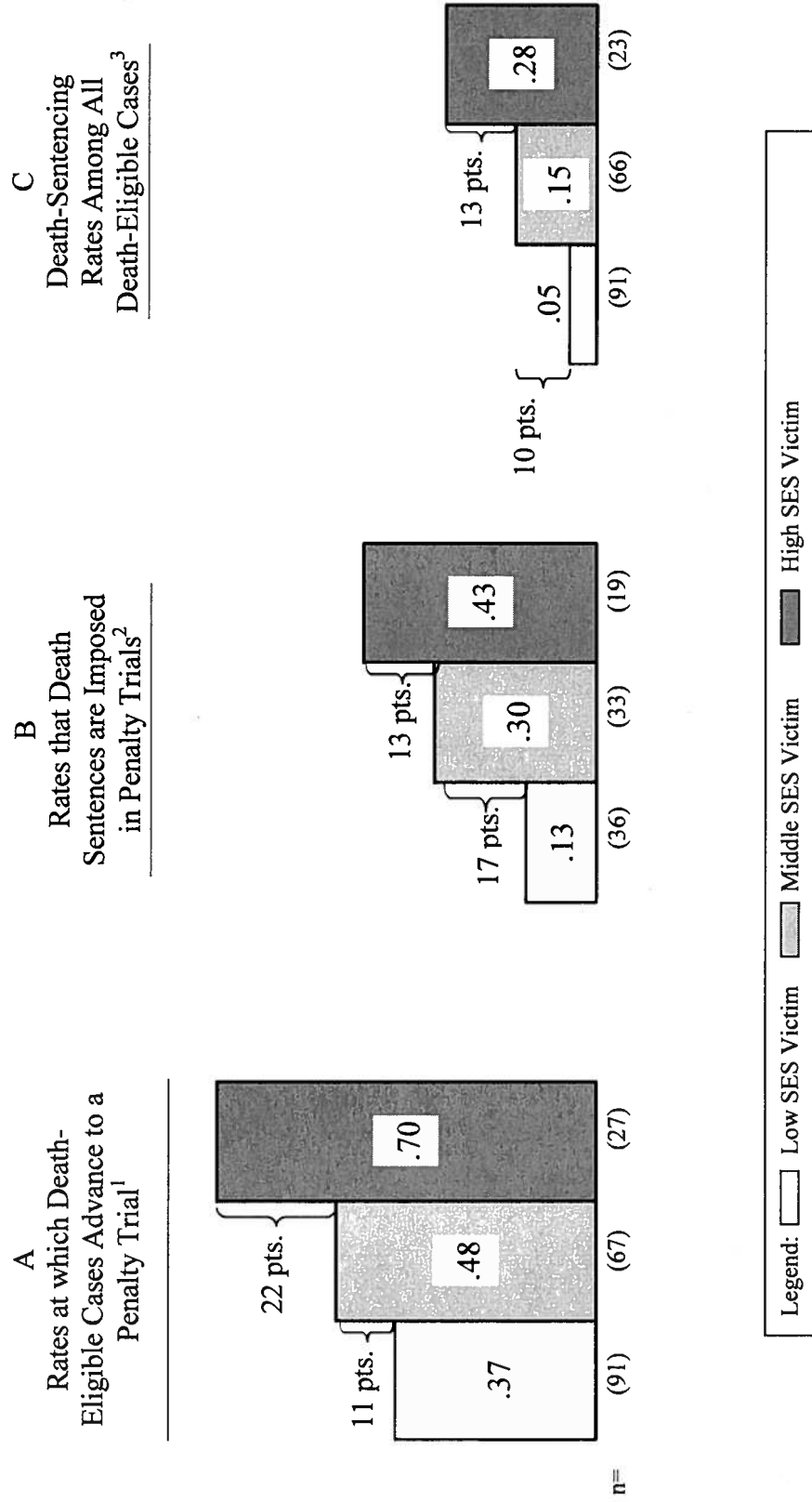
TABLE 4
ADJUSTED CAPITAL CHARGING AND SENTENCING OUTCOMES BROKEN DOWN BY COUNTY: MARYLAND 7/1978 – 12/1999¹

A County	B Rates the State Serves Notice of Its Intention to Seek a Death Sentence %	C Penalty Trial Death Sentencing Rates %	D Rates that Death Sentences are Imposed Among All Death Eligible Cases %	E Percentages of All Maryland Death Eligible Cases that are Prosecuted in the County %	F Percentages of All Maryland Death Sentences (n = 76) that were Imposed in the County %
1. Baltimore City (n = 570)	5.0	47.0	.6	43.0	13.0
2. Montgomery (n = 59)	12.0	21.0	1.0	4.0	3.0
3. Anne Arundel (n = 80)	20.0	44.0	4.7	6.0	7.0
4. Prince George's (n = 230)	38.0	20.0	1.7	18.0	10.0
5. Other Counties (n = 183)	48.0	37.0	5.5	14.0	18.0
6. Harford (n = 35)	50.0	55.0	4.5	3.0	4.0
7. Baltimore County (n = 153)	62.0	54.0	13.7	12.0	45.0

¹Source : MARGINS, Tbl. 6F

FIGURE 7
VICTIM SOCIOECONOMIC STATUS (SES) EFFECTS IN CHARGING AND SENTENCING OUTCOMES, CONTROLLING FOR THE NUMBER OF STATUTORY AGGRAVATING CIRCUMSTANCES IN THE CASES: NEBRASKA, 1973-1999
 (the bars indicate the death-sentencing rate in each subgroup of cases adjusted for the number of aggravators in the cases)

PART I: THE IMPACT OF VICTIM SOCIOECONOMIC STATUS (SES) ON CHARGING AND SENTENCING OUTCOMES



¹ The victim SES effects are significant at the .002 level after adjustment for defendant culpability.
² The victim SES effects are significant at the .01 level after adjustment for defendant culpability.
³ The victim SES effects are significant at the .001 level after adjustment for defendant culpability.