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Tara N. Richards
University of South Florida, tricha11@gmail.com

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Explaining the "Female Victim Effect" in Capital Sentencing Decisions: A Case for Sex-Specific Models of Capital Sentencing Research

by

Tara N. Richards

A dissertation submitted in partial fulfillment
of the requirements for the degree of
Doctor of Philosophy
Department of Criminology
College of Behavioral and Community Sciences
University of South Florida

Co-Major Professor: M. Dwayne Smith, Ph.D.
Co-Major Professor: Christine Sellers, Ph.D.
Wesley Jennings, Ph.D.
Holly Hills, Ph.D.

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Keywords: death penalty, extralegal characteristics, victim sex, juror discretion, gender

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ABSTRACT

The potential influence of extralegal characteristics on the outcome of post-*Furman* capital cases (1972) has been a focus of criminal justice researchers and legal scholars. Much of this literature has assessed the impact of victim and defendant race on the likelihood of receiving the death penalty while a relatively underdeveloped body of research focuses on how victim sex may affect capital sentencing decisions. The present study uses focal concerns theory and the chivalry hypothesis to test the potential mediating effect of theoretical variables on the relationship between victim sex and juror capital sentence decision-making. In addition, it uses victim sex specific logistic regression models to examine if different theoretical and/or control variables are important predictors of receiving the death penalty for male victim cases versus female victim cases. Findings demonstrate that victim rape mediates the relationship between victim sex and juror death penalty decision-making. In addition, findings reveal that sex specific models better explain juror decision making than the full model including victims of both sexes and that different extralegal and legal characteristics predict juror decision to choose the death penalty in cases with male victims versus female victims. Theoretical and legal implications as well as directions for future research are discussed.

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CHAPTER ONE: INTRODUCTION

The landmark Supreme Court decision, *Furman v. Georgia* (1972), stated that the use of the death penalty constituted cruel and unusual punishment as it was being imposed in an arbitrary and/or discriminatory fashion. As a result, the United States experienced a four-year moratorium on the death penalty. Since the reinstatement of the death penalty, under new, "fairer" legal statutes, the potential influence of extralegal characteristics on the outcome of capital cases has been a focus of criminal justice researchers and legal scholars. Much of this literature has assessed the impact of defendant and/or victim characteristics, most notably race of the defendant and or victim, on the likelihood of receiving the death penalty (for a review see Baldus & Woodworth, 2003a).

In contrast, a relatively underdeveloped body of research focuses on how victim characteristics, specifically victim sex, may affect capital sentencing decisions. Existing studies on victim sex have uncovered a "female victim effect" whereby cases with female victims are significantly more likely to result in death than cases with male victims (Stauffer, Smith, Cochran, Fogel, & Bjerregaard, 2006; Williams & Holcomb, 2004; Holcomb, Williams, & Demuth, 2004; Williams, Demuth, & Holcomb, 2007). Importantly, while this past research has examined *whether* victim sex differences exist in capital sentencing it has failed to explicate *how* victim sex impacts capital sentencing. Previous research has yet to consider that models of capital sentencing may be "gendered" such that certain legal and/or extra-legal variables differentially impact the

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likelihood of receiving the death penalty in cases with female victims versus male victims. Specifically, do other legal and extralegal variables work in conjunction with victim sex to produce this "gendered" effect? Existing research has indicated that such relationships may exist. For example, research by Williams and Holcomb (2004) has demonstrated that the female victim effect in capital sentencing decisions may actually be a function of race, whereas other research by Williams et al. (2007) provides evidence that sexual victimization may be an important factor in cases with female victims (but not male victims). Sex-specific models may reveal that different case characteristics or combinations of case characteristics predict receiving the death penalty for cases involving male victims compared to cases involving female victims.

In addition, there has been only limited interest among criminologists in developing theoretical orientations concerning how victim sex might influence the sentencing process. At present, the research focused on the effect of victim sex on capital sentencing has relied on theoretical orientations only for post hoc data interpretations instead of measuring theoretical variables with a priori hypotheses. Such theoretical orientations have included focal concerns theory and/or the chivalry hypothesis that were developed to explain the differences in sentencing among female and male *defendants*. Scholars have simply inserted the tenets of these theories directly into research concerning the impact of victim sex without progressing towards a new theoretical perspective. Given the vast differences in how criminal justice actors and the media often portray the victim versus the offender in capital cases, especially in cases where the victim is female and the offender is male, this gap in the body of knowledge concerning the death penalty may have significant implications for understanding the capital sentencing decision-making process.

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The present study has many important goals. First, it addresses an important gap in the death penalty literature by focusing on victim sex, a central characteristic that has often been under-explored or completely neglected as a main variable in previous capital sentencing research. Second, by using statistical models that separate cases involving female victims from cases involving male victims, the current research provides a more nuanced analysis of victim sex that can "tease out" the differential effects of legal and extra-legal variables that are, in whole or in part, a function of victim sex. Third, this study attempts to bridge the gap in current theory by attempting to lay the groundwork for the development of a theory concerning the role of victim sex in capital sentencing. Given the importance of impartiality in sentencing, especially in death penalty sentencing, the present study represents a novel approach to a longstanding area of research.

Organization of the Present Study

This chapter has given a general overview of the topics that will be examined in the present study as well as its implications. In Chapter 2, I will discuss the concepts of arbitrariness and discrimination as they pertain to capital sentencing. I will then review the existing post-*Furman* research regarding extralegal factors and the death penalty, emphasizing the limited research concerning victim sex. In addition, I will provide a detailed examination of focal concerns theory and the chivalry hypothesis to provide a starting point for conceptualizing the impact of victim sex on sentencing outcomes. In Chapter 3, I will discuss the data, methods, and analytical approaches of the study. In Chapter 4, I will present the results of the statistical analyses examining the differences in capital sentencing outcomes by victim sex, paying particular attention to the conditions and factors that may explain the victim sex gap in capital sentencing and the interaction

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of these factors (i.e., legal and extralegal case characteristics) with sex. In Chapter 5, I will discuss the key findings as well as their implications on a theoretical orientation of victim sex in capital sentencing. I will also discuss the limitations of the study as well as possibilities for future research.

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CHAPTER TWO: LITERATURE REVIEW AND THEORETICAL ORIENTATIONS

Arbitrariness and Discrimination in Sentencing Capital Cases

In *Furman v. Georgia* (1972) the Supreme Court held that the death penalty was unconstitutional in that it was imposed in an arbitrary, capricious, and discriminatory manner and, as such, violated the Eighth Amendment prohibition of cruel and unusual punishment and the equal protection clause of the Fourteenth Amendment (Gross & Mauro, 1989; Kavanaugh-Earl, Cochran, Smith, Fogel, & Bjerregaard, 2008). The central concern of the *Furman* decision was that jurors had complete discretion in deciding who received life and who received death in capital cases (Gross & Mauro, 1989; Poveda, 2009). In the view of the Court, such limitless discretion created an environment where racially prejudiced and arbitrary imposition of the death penalty was not only possible but probable (Poveda, 2009). For example, among the different Justices' opinions in the *Furman* decision, Justice Douglas concluded that capital sentencing was "pregnant with discrimination" (p. 257) while Justice Brennan described the death penalty "as little more than a lottery system" (p. 293).

The *Furman* decision invalidated all existing legal statutes concerning capital punishment; vacated all death sentences then in effect; and led to a moratorium on the death penalty in the United States (Gross & Mauro, 1989). Four years later, in *Gregg v. Georgia* (1976), the Supreme Court ruled that some states that had adopted new death penalty statutes could again impose the death penalty. According to *Gregg*, capital punishment could be employed constitutionally "under laws that guided and restricted the

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discretion [of death penalty sentencing] typically by providing lists of statutory aggravating and mitigating factors" to jurors (Gross & Mauro, 1989, p. 6). According to these new legal statutes, the jury must first identify the presence of a statutory aggravating factor in a death-eligible case[1], for the case to be subject to the death penalty. However, once the case advances to the penalty phase the jury still enjoys almost complete discretion as to the decision of life or death.

Even under contemporary death penalty statutes, research suggests that discrimination still exists in capital sentencing decisions, directly affecting who lives and who dies (see Kavanaugh-Earl et al., 2008). Although the evidence is mixed, research suggests that the primary source of this discrimination continues to be race, such that cases involving Non-White defendants and/or White victims are significantly more likely to result in the death penalty compared to similar cases involving White defendants and/or Non-White victims (Kavanaugh-Earl et al., 2008). This discrimination is, of course, incongruent with the *Furman* decision and more broadly with the Eighth and Fourteenth Amendments to the Constitution. However, race is not the only source of such discrimination. Just like racial discrimination, sex discrimination in capital sentencing decisions is a form of "arbitrariness" condemned by *Furman* because such decisions are based on a factor that has no bearing on the criminal culpability of the defendant.

Extralegal Characteristics and the Death Penalty

Research conducted post-*Furman* provides evidence that discrimination still exists in capital sentencing decisions based on extralegal variables such as defendant and/or victim race, and to a lesser extent, defendant and/ or victim sex. However, within this voluminous literature, studies vary in the quality of their data and statistical rigor.

[1] A case is considered "death eligible" if the facts of the case are adequate under state law to support a capital murder conviction, whether or not a prosecutor actually seeks the death penalty or a jury actually imposes a death sentence.

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To that end, the research reviewed here is limited to the body of work that (1) employs samples comprising of death-eligible cases, (2) utilizes multivariate statistical techniques, and (3) includes *victim sex*, as either a control variable or variable of interest, in the model.

As outlined previously, race effects have been the primary concern of the research investigating the effect of extralegal variables on death penalty decision-making; however, a small body of research has also considered the role of victim sex in capital sentencing decisions. Within the literature on the death penalty, a total of 11 empirical studies include victim sex in their research and utilize statistical models, typically logistic regression, to examine each variable in the model while controlling for other relevant variables (see Appendix A, Table 1A). Among the 11 studies, 9 have found that capital cases including female victims are significantly more likely to result in the death penalty compared to cases involving male victims (Baldus et al., 1990; Holcomb et al., 2004; Phillips, 2009; Radelet & Pierce, 1991; Stauffer et al., 2006; Unah & Boeger, 2009; Williams & Holcomb, 2001; Williams & Holcomb, 2004; Williams et al., 2007).

Within the prior research on the effect of extralegal factors on death penalty sentencing outcomes, the majority of studies include victim sex solely as a control variable, not as a variable of interest. In addition, this body of work often excludes the findings on victim sex, even when significant, from the results section and the discussion section of the research. For example, in 1990, Baldus, Woodworth, and Pulaski published what is considered the seminal study on the influence of extralegal factors on death penalty decision-making. The authors used a large sample of homicide cases (N=2,484) from Georgia for years 1973-1979 for which 127 cases resulted in death. Their analyses included 230 case characteristics that may affect jurors' decision to impose the death

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penalty. Baldus et al.'s main focus was on the potential effect of race on sentencing outcomes, and as such, developed a 39-variable "core model" that demonstrated superior explanatory power compared with multiple other models. Findings from this model demonstrated that the odds of receiving the death penalty were 4.25 greater for capital cases involving one or more White victims compared to similar cases involving a Non-White victim(s). Important to the current study, Baldus and co-authors also found a strong and highly significant effect of victim sex on likelihood of receiving the death penalty. Specifically, the odds of receiving the death penalty were 9.58 times higher for cases involving female victims compared to cases with male victims; however, the variable measuring victim sex is not included in the main model used for the Baldus study. The exclusion of the victim sex variable is interesting given that the effect of victim sex is more than twice as strong as the effect of victim race (B = 4.25 vs. B = 9.58).

Radelet and Pierce (1991) also examined the effect of the relationship between the race of the victim and the offender on likelihood of receiving the death penalty and included victim sex as a control variable in the model. The authors utilized logistic regression and controlled for six legal and extralegal case characteristics, including past felony convictions, whether the victim was a stranger, number of victims, number of offenders, location of the murder, and victim sex. The authors examined SHR data and case files for all homicides in Florida from 1976-1987 (n=10,142) for which 415 (4%) cases received the death penalty.

Findings indicated that offenders who killed Whites were over five times more likely to receive the death penalty than those who killed Blacks. Further, Blacks who killed Whites were almost four times more likely to receive the death penalty than Whites

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who killed Whites. Other extralegal predictors of the death penalty included geographic location and victim sex. Specifically, the odds of receiving the death penalty were 1.42 times greater for cases from urban counties compared with cases from rural counties and 3.19 times greater for cases involving female victims compared with cases involving male victims. However, although the effect of victim sex is included in a table, the authors neglect to even comment on the finding, even though it is a stronger predictor for receiving the death penalty than other variables that were explicitly noted, such as urban county or insignificant variables such as victim/offender relationship. There is also no mention of the finding concerning victim sex in the discussion section of the article.

Williams and Holcomb (2001) explored potential race disparities in the imposition of the death penalty in Ohio. Using logistic regression analysis Williams and Holcomb examined the influence of victim and offender race as well as nine other legal and extralegal variables including: victim sex, offender sex, weapon used, victim/offender relationship, whether the homicide involved another felony, whether there were multiple victims, whether the homicide took place in an urban county, whether the victim was 12 years old or younger, and whether the offender was 25 years or younger on likelihood of receiving the death penalty. The authors utilized SHR data for 5,319 death-eligible cases from 1981-1994 where death was imposed in 271 (5%) cases.

Findings indicated that multiple extralegal variables were significantly related to receiving the death penalty including one of the variables of interest, victim race, as well as victim/offender relationship, and offender and victim sex. The central finding indicated that the odds of receiving the death penalty were 1.66 times greater in cases with White victims compared to cases with Black victims. Findings, also demonstrated that the odds of receiving the death penalty were 1.80 times greater for cases involving a

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stranger homicide than for cases where the victim and offender knew each other. In addition, the odds of receiving the death penalty were 2.58 times greater for cases with male offenders compared with cases with female offenders and 2.35 times greater for cases with female victims compared with cases with male victims. Thus victim sex was a stronger predictor of receiving the death penalty than victim race and/or victim/offender relationship.

Pierce and Radelet (2002) explored the influence of race and geographic location on the likelihood of receiving the death penalty in Illinois. Using logistic regression analysis the authors explored the impact of victim/offender race interaction and the county of the trial while controlling for multiple legal and extralegal variables on the likelihood of receiving the death penalty. In addition to the race variables, other extralegal variables in the model included whether the victim was less than 12 years old or older than 59 years old and whether the victim was female. The authors collected data from the Illinois Department of Corrections, Chicago Police Department, and SHR for a subset of defendants convicted of first-degree murder for years 1988-1997. The sample included 4, 182 individuals for whom complete data were available; 76 (1.8%) cases received the death penalty.

Findings indicated that several extralegal variables were significantly related to receiving the death penalty including two of the variables of interest, victim race and county of the trial. Specifically, results demonstrated that the odds of receiving the death penalty were 0.40 times lower for cases involving Black victims compared to cases involving White victims. Additionally, the odds of receiving the death penalty for cases that went to trial in a county other than Cook County (the county encompassing the city of Chicago) were 0.16 times lower than cases that went to trial in Cook County and 0.45

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times lower for cases that went to trial in rural counties than urban counties. Offender race was not a significant predictor of receiving the death penalty net of other control variables. Further, victim age and sex were not significantly related to the odds of imposition of the death penalty.

Lenza, Guess, and Keys (2005) examined race of victim effects on capital charging and capital sentencing outcomes. In addition to victim race effects, the authors included several additional extralegal variables in the model: defendant and victim sex, whether the defendant was less than 30 years old, and victim/offender relationship. The data included 574 homicides "that were selected for prosecution as capital murder offenses" for the years 1978 to 1996 (p.153); the death penalty was imposed in 152 cases. Case information was collected from Missouri Circuit Court Trial Judge Reports (TJR) and SHRs.

Findings from the multivariate analyses revealed that the only extralegal factors significantly related to the probability of receiving the death penalty were victim age and victim/offender relationship. Results indicated that cases with victims who were less than 30 years old were more likely to receive the death penalty than similar cases with victims older than 30 years old; likewise, cases including stranger victims were more likely to receive death than cases including known victims. However, victim/defendant race, victim sex, and victim/offender relationship were not significantly related to the imposition of the death penalty.

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Unah and Boeger (2003) analyzed the effect of race as well as political[2] and socio-legal[3] factors on prosecutor's decision to seek the death penalty and jury's decision to impose the death penalty in the state of North Carolina; extralegal variables including age, sex, and educational attainment of the defendant and the victim as well as victim/offender relationship were also examined. The sample consisted of 502 murder cases for the years 1993 to 1997 selected from a random sample of 26 of the state's 44 judicial districts. Data were collected from multiple sources including defense and prosecution case briefs, medical examiner's autopsy notes, police reports, arrest warrants, and oral interviews with the prosecution and the defense attorneys.

A Probit analysis revealed that multiple extralegal factors were associated with increased odds of receiving the death penalty. In regard to political factors, the County ideology/County Non-White population interaction term, Republican D.A., Female D.A., North Carolina Piedmont, and North Carolina Coast were all associated with increased odds of receiving the death penalty. In addition, several demographic characteristics including victim/defendant race (White victim/Non-White defendant), victim and defendant age (younger), and defendant educational attainment (more educated) were associated with an increased risk of receiving the death penalty. Findings indicated that cases involving female victims were not at an increased risk of receiving the death penalty compared to cases with male victims.

[2] Political factors include: electoral proximity, county ideology (Republican), an electoral proximity/county ideology interaction term, party competition, an electoral proximity/party competition interaction term, Republican District Attorney (D.A.), County Non-White population, a Republican D.A./County Non-White population interaction term, a Republican D.A./County ideology/proximity interaction term, a Republican D.A./proximity/County ideology/County Non-White population interaction term, male D.A., Black D.A., Public defender, D.A. expertise, and location North Carolina Piedmont, North Carolina Coast, and North Carolina Mountain (comparison variable).

[3] Socio-legal variables included statutory aggravating factors; statutory mitigating factors; poisoning, lying-in-wait, imprisonment, torture, or starvation of the victim; willful, deliberate, and premeditated killing;
felony murder; hatred as a motive; financial gain as a motive; sex as a motive; rage as a motive; perpetrating another crime as a motive; whether there were multiple victims; whether there was post-mortem abuse; and whether the defendant had a prior criminal record.

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One study concerning the effect of extralegal factors on capital sentencing that departs from focusing on victim race is Phillips's (2009) research on the influence of the victim's social status on the imposition of the death penalty. Victim's social status was measured using a composite scale of several measures: vertical status or wealth (measured by median neighborhood income), radial status (measured by marital status), cultural status (measured by whether or not victim had a college degree and victim's race/ethnicity), and normative status (measured by whether victim had a clean criminal record).

Phillips also included multiple extralegal control variables including defendant race and sex, whether the defendant was 17 to 19 years old, 20 to 29 years old, or 30 years old or older, whether the victim was female, and whether the victim was a vulnerable age (16 years old or younger or older than 60). Phillips utilized a population of capital defendants (n=504) from Harris County, Texas for the years 1992 to 1999 where death was sought in 129 of the 504 cases. Data were derived from the Harris County District Court Clerk and the Harris County Information Management System as well as the Harris County District Attorney's office.

Results indicated that victim social status was significantly related to imposition of the death penalty. Each standard deviation increase in a victim's social status resulted in a 1.74 increase in the odds of the defendant receiving the death penalty. Victim age was related to receiving the death penalty so that cases including victims who were 16 or younger or older than 60 had an odds of receiving the death penalty that was 2.08 times greater than cases with young adult and middle aged victims.

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Defendant and victim sex were also significantly related to sentencing outcome. The odds of receiving the death penalty was 6.62 times greater for cases involving male defendants than similar cases involving female defendants and 2.11 times greater for cases involving female victims compared to male victims. Thus, victim sex was a stronger predictor of receiving the death penalty than other victim characteristics such as victim social status or victim age. Interestingly, Phillips's research is the only study to date focused on the impact of victim characteristics on death penalty sentencing that has included victim's marital status in their analysis. Comparatively, research exploring the effect of *defendant* characteristics on sentencing outcomes for non-capital crimes often includes a variable measuring the defendant's marital status (see Bickle & Peterson, 1991; Crew, 1991; Daly, 1989)

Although the aforementioned studies included victim sex in their models, victim sex is not the central focus of the research. In some cases, victim sex, even when strongly associated and highly significant, is not even reported in the results section, beyond its inclusion in the tables, and/or not examined in the discussion section. Furthermore, several large-scale studies have explored the impact of victim race on the likelihood of receiving the death penalty but omitted victim sex as a control variable in the study. For example, Baldus, Woodsworth, Zuckerman, Weiner, & Broffitt (1998) analyzed the impact of race of victim effects on jury decision making in capital trials using the universe of death eligible cases from Philadelphia (n=672) for the years 1983 to 1993. The multivariate model includes statutory aggravating and mitigating factors (that the jury accepted) as well as "conceptually important control variables" (p.1684) including defendant and victim SES and time period (1983-1985, 1986-1989, and 1990-1993); however, victim (and defendant) sex is excluded from the analysis. In addition,

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Paternoster and Brame (2003) analyzed victim race effects, defendant race effects, and victim-defendant race interaction effects on the likelihood of receiving the death penalty among 1,311 death eligible cases from Maryland for years 1978-1999. The authors considered 123 covariates including legal and extralegal victim and defendant characteristics; however, neither victim sex nor defendant sex was included as a covariate in the analyses. To date, only four studies have specifically focused on the relationship between victim sex and capital sentencing outcomes (Holcomb et al., 2004; Stauffer et al, 2006; Williams & Holcomb, 2004; Williams et al., 2007).

Victim Sex and the Death Penalty

The limited research focused on the effect of victim sex on death penalty sentencing has relied on theoretical notions regarding chivalry and focal concerns in that women, particularly white women, are perceived as the "victim type" most worthy of sympathy and protection. As such, studies focused on victim sex also analyze the potential interaction effect of victim sex and race on death penalty outcomes (i.e., a "White female victim" effect). First, Williams and Holcomb (2004) examined 5,320 homicide cases in Ohio from 1981-1994 for potential effects of victim sex and race as well as the interaction effect of victim sex/race. Results demonstrated that while both victim sex (female) and race (White) alone were significantly related to receiving the death penalty, there was an overarching effect of the combination of victim sex and race (White-female). Thus, the seeming female victim disparity was not actually a function of female victims but of White female victims. Specifically, Williams and Holcomb found that compared to cases involving a White female victim, cases involving Black female victims experienced a 65.8% decrease in the odds of receiving the death penalty.

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Likewise, Holcomb, Williams, and Demuth's (2004) examination of Ohio death penalty cases from 1981 to 1997 reaffirmed their previous results; cases with female victims and White victims were significantly more likely to receive the death penalty compared with cases involving male victims or non-White victims but, again, cases with White female victims were associated with the highest odds of receiving the death penalty.

Next, in an effort to expand Williams et al.'s (2004) and Holcomb et al.'s (2004) research, Stauffer et al. (2006) examined victim sex, victim race, the interaction of victim sex and race, and several relevant variables hypothesized to mediate the effect of victim sex. Their research utilized a near population of capital cases (n=953) from North Carolina for the years 1979 to 2002. Several models were estimated including a model testing for victim sex and race effects, a model testing for victim sex/race interaction effects, and a model testing for effects of hypothesized mediating variables; all models controlled for relevant legal variables. Findings demonstrated that cases with female victims had significantly greater odds of receiving the death penalty compared to cases with male victims; however, when the sex/race interaction term was examined there was no significant difference in the likelihood of a death sentence in cases with White female victims versus non-White female victims. Furthermore, when hypothesized mediating variables including previous criminal behavior (by the perpetrator), victim rape, victim illegal activity, defendant representation by a public defender, and number of aggravators accepted were introduced into the model, victim sex was no longer a significant predictor of receiving the death penalty. Instead, significant predictors of receiving the death penalty included two control variables, offenders older than 25 years old and stranger

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homicide, as well as four mediator variables: victim rape, public defender, (no) victim illegal activity, and (higher) numbers of aggravators accepted.

In the fourth and final study, Williams et al. (2007) reanalyzed the Baldus (1990) Georgia data from 1973-1979 to further examine the effects of victim sex and victim race as well as sex-related victimization on the odds of receiving the death penalty. Several models were estimated including a model testing victim sex and race effects, a model testing victim sex/race interaction effects, and a model testing variables representing different aspects of sexualized victimization; each model controlled for relevant legal variables. Findings first indicated that victim sex (female) and victim race (White) were independently significant; however, cases involving White female victims had the greatest odds of receiving the death penalty for any race-sex dyad. White female victim cases were 14.5 times more likely to receive the death penalty than cases involving a Black male victim. In addition, three variables representing sexualized victimization including victim rape, victim's being forced to disrobe prior to their murder, and killing an unclothed victim were significant predictors of receiving the death penalty. Further, the inclusion of the sex-related victimization variables in the model reduced the impact of victim sex to non-significance.

To synthesize the research concerning the impact of extralegal victim characteristics on the impact of receiving the death penalty, 10 of the 11 race of victim studies reviewed here have demonstrated that cases with White victims are more likely to receive the death penalty than similar cases with Black victims. The strength of this impact has been inconsistent, however, with odds ratios ranging from 1.50 to 5.13. In addition, one prior study indicates that the interaction of a non-White defendant and White victim increases the likelihood of the jury choosing a death sentence versus life

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without parole. Comparatively, 8 of the 11 studies indicate that cases involving female victims are more likely to receive the death penalty compared to similar cases with male victims. Similar to the race of victim effects, the significant odds ratios for the victim sex effect have also fluctuated, ranging from 1.43 to 9.58. Nonetheless, when comparing the victim sex and victim race effects across studies, of the 8 studies that demonstrate a significant victim sex effect, 5 demonstrate a larger odds ratio for the victim sex effect than the victim race effect.

While the four prior studies focused on victim sex have attempted to bridge the gap in the literature concerning the female victim effect in death penalty sentencing outcomes, the authors fail to go beyond mere descriptions of the female victim effect. The present research attempts to add to the literature by using victim-sex-specific models to explicate why the female victim effect exists. Using a sex-specific research design the current study is the first research to date capable of examining whether certain legal or extralegal variables differentially impact cases with male victims versus female victims concerning the likelihood that the case will receive the death penalty.

Theoretical Orientations

Given that the effect of victim sex on death penalty sentencing outcomes has been a minor focus of research in the literature, theoretical explanations as to why the female victim effect exists is limited. The existing research on the female victim effect has been more exploratory than explanatory in nature and has relied on theoretical orientations from research focused on the effect of *defendant* sex on sentencing outcomes. Previous studies concerned with the female victim effect in death penalty sentencing have borrowed two theoretical paradigms from the literature concerning the impact of defendant sex: focal concerns theory, that women are less blameworthy for their

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victimization than men and that men who kill women are more dangerous than men who kill other men; and/or the chivalry hypothesis, that the criminal justice system seeks to protect women by punishing their victimizers more harshly than victimizers of males (Baumer et al., 2000; Curry, Lee, & Rodriguez, 2004).

Focal Concerns Theory

The focal concerns theory developed by Steffensmeier (1980, 1993, 1998), originally focused on characteristics of the defendant, outlines three focal concerns that influence sentencing decisions made by criminal justice system actors such as judges and jurors. Focal concerns include the perceived blameworthiness of the defendant, their perceived dangerousness to the community, and the practical implications of sentencing (Steffensmeier, Ulmer, & Kramer, 1998; Steffensmeier & Demuth, 2000).

The first focal concern, blameworthiness, refers to the idea that the defendant's culpability directly influences the severity of their sentence (Steffensmeier et al., 1998). Blameworthiness is usually associated with the notion of retribution – that the punishment should fit the crime. Thus, legal characteristics such as a defendant's role in the crime (i.e., main offender or accomplice), criminal record, or the seriousness of the offense plays an important role in establishing level of blame (Steffensmeier et al., 1998). However, Steffensmeier et al. (1998) explains that various definitions of "wrongfulness and harmfulness" can be used to measure the suitability of punishment (p. 767) and these concepts may include personal characteristics of the defendant. A second related focal concern is protection of the community. This focal concern focuses on court actors' responsibility to protect the community from recidivism by incapacitating offenders who pose a threat of future criminality. Since the probability that an offender will reoffend is

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variable, the likelihood of recidivism is often predicted by defendant characteristics such as prior offenses, education, employment, or family ties.

A victim-centered interpretation of the focal concerns of blameworthiness and protection of the community suggests that offenders who kill women are perceived as more morally blameworthy and more dangerous to the community than those who kill men. Baumer et al. (2000) demonstrates evidence to this effect, finding that men who kill women are significantly more likely to be prosecuted and convicted on the most serious charges compared with similar men who kill other males. Also, from a victim perspective, stereotypes associated with traditional feminine gender roles as weak and/or vulnerable as well as the generally lower rates of criminality among females result in societal perceptions of women as less responsible for their victimization compared with men (Baumer et al., 2000). In this vein, several victim characteristics may prove especially salient in capital cases involving female victims. First, past research demonstrates that victim conduct is related to sentencing outcomes. For example, Baumer et al. (2000) indicate that in cases where the victim physically provoked the defendant, defendants were significantly more likely to be convicted on reduced charges than in cases where the victim did not provoke the defendant. In addition, disreputable conduct by the victim at the time of the homicide such as carrying a weapon or seeking to buy or sell drugs is related to a charge reduction for the defendant (Baumer et al., 2000). Since females in general are less likely to engage in physical violence or criminal activity, focal concerns theory argues that female victims will disproportionately benefit from these characteristics compared with male victims. A voluminous literature on female victims of sexual crimes demonstrates that victims who are harmed by strangers are considered more sympathetic than those who are victimized by intimates or acquaintances because

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such victims did not knowingly place themselves in harm's way (see for example, Bell, Kuriloff, & Lottes, 1994; Gray, Palileo, & Johnson, 1993). Rye, Greatrix, and Enright (2006) explain that judgments about victim responsibility are often predicated on perceptions of the "foreseeability" of the event (p.639). Thus, when a victim is harmed by someone they know, more blame is attributed to the victim and less blame is attributed to the offender (Rye et al., 2006). Further, Dawson's (2004) research on the influence of victim-offender relationship on the criminal processing of homicide cases indicates that homicides perpetrated by strangers result in harsher treatment at the charging, adjudication, and sentencing level compared to cases where the victim and defendants were intimates.

The third focal concern includes the practical constraints and consequences of sanctioning an offender. Such constraints include organizational concerns such as the court's caseload and the availability of criminal justice resources to process the offender. Practical concerns regarding the offender include the ability of the offender to handle sanctions in light of problems such as health conditions or family obligations. Research has demonstrated that familial responsibilities do affect the sentencing severity of defendants, especially female defendants (Daly, 1987; 1989). Cases involving female victims may also be affected by this focal concern due to perceptions about what the loss of women, who serve as both wife and mother to their families, may do to the family unit (Daly, 1987; 1989). In addition, judges and juries must consider the community norms and in well-publicized cases, community desires, about sanctioning particular offenders. In cases involving female victims, community norms and desires may dictate harsher punishments for victimizers of women in light of previously mentioned stereotypes concerning female vulnerability.

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The Chivalry Hypothesis

A second theoretical orientation, the chivalry hypothesis, may provide another helpful framework for understanding the female victim effect in capital sentencing decisions. The chivalry hypothesis suggests that the criminal justice system (CJS) is rooted in patriarchal notions of traditional gender roles and, as such, the CJS functions as a mechanism to protect the weaker, female sex from the harsh prison system. Important to this perspective is the fact that until the 1970s sex was a legal, not an extralegal factor, in determining sentencing decisions (Clements, 1972). The tendency for female defendants to receive more lenient sentences from the criminal justice system has been interpreted as a manifestation of either chivalry or paternalism by criminal justice actors. According to Moulds (1980) the two perspectives diverge in that chivalry refers to the idea that men should not inflict harm on women while paternalism views women as childlike and, as such, should not only be protected from harm but are also not fully responsible for their actions. However, given that these concepts are difficult to distinguish operationally, the majority of scholars view this perspective as the chivalry/paternalism hypothesis (Krohn, Curry, & Nelson-Kilger, 1983; Nagel & Hagan, 1982). From a victim perspective, the chivalry/paternalism hypothesis (henceforth referred to as the chivalry hypothesis) suggests that a male-dominated criminal justice system may produce harsher punishments for offenders who victimize women because of the desire for (typically male) criminal justice actors to behave in a chivalrous manner (see Curry et al., 2004).

One of the earliest investigations of the effect of sex on judicial behavior, and one which has provided support for the chivalry hypothesis, was conducted by Nagel and Weitzman (1971). Nagel and Weitzman (1971) examined pretrial release and sentencing

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outcomes for male and female criminal defendants charged with either grand larceny or felonious assault. Findings demonstrated that when compared with their male counterparts, more women were held less than two months before trial, more women received suspended sentences or probation, and fewer women were sentenced to jail. Although their research is widely cited as support for the chivalry perspective, their analysis did not include controls for multiple legal variables that may affect sentencing outcomes (e.g., prior record and criminal status). In contrast, Kruttschnitt and Green (1984) compared bail dispositions for a large sample of males and females convicted of theft, forgery, and drug crimes and included multiple legal variables in their analyses. Their results indicated that even after controlling for legally relevant variables such as severity of offense, whether the defendant had other pending cases, and the number of prior arrests females were more likely than males to be released on their own recognizance and when a cash bail was set, females were more likely than males to be released before trial.

Gruhl, Welch, and Spohn (1984) found evidence in support of the chivalry explanation, suggesting that female defendants are treated more leniently than male defendants at the charging and sentencing stages. Specifically, results suggested that chivalry was present in the prosecutor's decision to dismiss the charges against female defendants and in the judge's decision to incarcerate female defendants relative to male defendants. On the other hand, they found no evidence of paternalism in the judge or jury's decision to convict female defendants versus male defendants. The absence of sex differences in conviction also suggests that the chivalry argument applies most obviously to decisions whether to take female defendants out of their homes – decisions pertaining to sentencing and, to a lesser extent, to charging versus dismissing defendants.

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Comparatively, decisions whether to convict defendants do not, at least directly, confront the images of children made motherless or women brutalized by prison.

Feminist theory would caution that not *all women* are afforded protections from the criminal justice system or its actors – only women who overtly subscribe to traditional feminine gender roles (i.e., wife and mother) are deemed worthy of what is considered *selective chivalry* (Farnworth & Teske, 1995). Selective chivalry has been most often applied to the sentencing of female defendants in criminal cases, arguing that only female offenders who conform to traditional gender roles are entitled to the protection (i.e., leniency) granted by society (Crew, 1991; Daly, 1987, 1989; Kruttschnitt, 1984; Nagel & Hagan, 1982). Conversely, female offenders who fail to conform to conventional gender roles (e.g., by being single and/or divorced) forfeit the benefits granted to traditional women. As a result, non-conventional women are sentenced for what Herzog and Orez (2008) consider a "double deviance" (p. 49), first for their crimes, and then, for departing from their prescribed role as female (Bickle & Peterson, 1991; Steury et al., 1990).

Daly (1987; 1989) explored the interactive effects of gender and family variables on sentencing severity. Daly (1987) interviewed court actors including prosecutors, defense attorneys, judges, and probation officers on their sentencing decisions for male and female defendants. Daly found that court actors justified differential treatment of male and female defendants based on "their ties to and responsibilities for others" (p.138). Court actors reported that when defendants were "familied" (i.e., were married or had children) they deserved more lenient treatment than non-familied defendants and, when the defendant was both familied and female, she deserved more lenient treatment than a defendant who was familied and male. This "family-based" logic was used most

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often in cases where the defendant was at risk of incarceration and, as such, would be removed from the home. Later, Daly (1989) used quantitative sentencing data to further explore the interactive effects of familial variables (i.e., marriage and/or dependents) and gender on sentencing outcomes. She found that court officials sentenced female defendants who were married or had children more leniently than male defendants who were married or had children net of legally relevant control variables.

Likewise, the dichotomy of good and bad female victims has been a longtime focus of feminist criminologists. Such research suggests that for female victims of crime, married women as well as elderly or very young women are portrayed as "madonnas," and single (i.e., perceived as sexually active or promiscuous) women as "whores" (Feinman, 1986). Thus, the good girl/bad girl paradox defines femininity in relation to patriarchal gender norms. According to this sexual distinction, good girls are afforded privilege and protections while bad girls should expect to be victimized (Humphries, 2009).

Research by Phillips (2009) supports the notion of selective chivalry in cases of female victims of crime, finding that capital cases involving victims who were married (or widowed) were 1.5 times more likely to result in a death sentence than cases with victims who were divorced or had never married. Moreover, Eisenberg, Garvy, and Wells (2003) indicate that "familied victims" elicit the most sympathy from jurors. Their work demonstrates that jurors in capital trials spend more time talking about the loss or grief experienced by victim's families compared to the time they talked about the victim's character or the role they played in the crime.

Race also plays an important role in the receipt of selective chivalry by the criminal justice system. Historically, women of color have not benefited from chivalry to

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the same degree as White women (Feinman 1986; Rafter 1990). Bishop (1983) posits that criminal justice actors who were, and in many cases continue to be, mostly White men associate female defendants with their own mothers, wives, and daughters, and extend to them paternalistic protection in the form of leniency (as cited by Farnworth & Teske, 1995). However, defendants who do not conjure images of female loved ones, such as minority females, are unlikely to receive such benefits (Anderson, 1976). Research has supported the role of race in selective chivalry inasmuch as White women receive the greatest benefits. Farnworth and Teske (1995) examined the independent and interactive effects of gender and race net of legal variables on the court processing of felony assault and property offenses. Findings demonstrated that White females were twice as likely as minority females to receive a charge reduction. Steffensmeier and colleagues' (1998) examination of race and gender on sentencing severity also found that whereas females in general were sentenced more leniently than males, Black females were sentenced more harshly than White females.

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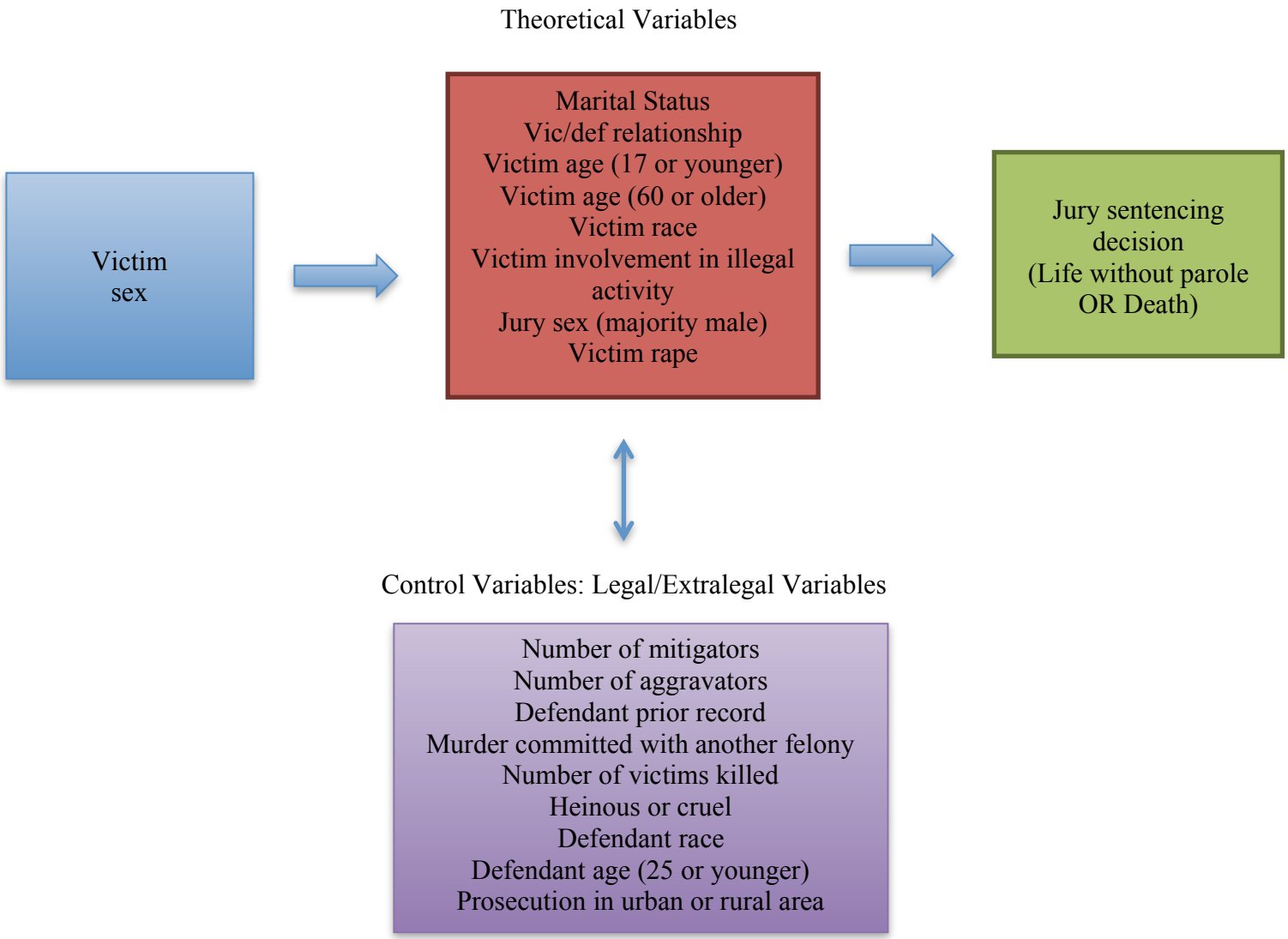

Figure 1.

Conceptual model of jury decision-making in capital trials: The mediating influence of variables from the focal concerns theory and chivalry hypothesis.

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Conceptual Model

The current research is the first study to date that has attempted to explain the female victim effect in capital sentencing decision making by using a priori theoretical orientations and hypotheses instead of post hoc theoretical interpretations. The current study proposes a conceptual model of capital sentencing whereby theoretical variables derived from the focal concerns theory and the chivalry hypothesis mediate the relationship between victim sex and jury sentencing decisions net of important legal and extralegal control variables (see Figure 1 on pg. 27).

The focal concerns theory presents three focal concerns that may impact sentencing decisions: the perceived blameworthiness of the defendant, the perceived dangerousness to the community, and the practical implications of sentencing (Steffensmeier, Ulmer, & Kramer, 1998; Steffensmeier & Demuth, 2000). The present research utilizes a victim-centered interpretation of the focal concerns theory. Past research demonstrates that men who kill women may be perceived as more blameworthy than men who kill men. Likewise, White victims may invoke more blameworthiness that Black victims. Additionally, other vulnerable populations such as the very young or the very old may enjoy more sympathy compared to adult victims. In addition, victims who are engaged in illegal activity at the time of their victimization or are victimized by someone they know (i.e., willing let into their lives) may be considered at fault for their own victimization. Finally, the loss of victims who are married may increase the perception of loss to the community. Measures related to the focal concerns theory include (1) victim sex, (2) victim race, (3) victim age (0-17, 18-59, 60 or older), (4) victim illegal activity, (5) victim/defendant relationship (strangers versus non-strangers), and victim marital status (single/divorced versus married/widowed). The current

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theoretical model suggests that, net of other control variables cases involving female victims, White victims, very young or very old victims, victims that were not engaged in illegal activity at the time of the homicide, those that were victimized by a stranger, and those that were married are more likely to result in the death penalty.

In addition, the chivalry hypothesis posits that male criminal justice actors will mete out harsher punishments for the victimizers of women compared to men in an attempt to act chivalrously. Likewise, the punishment for the rape of women will be severe. Chivalry will be measured by two variables (1) majority male jury (7 or more male jurors) and (2) whether or not victim rape preceded the homicide. The current theoretical model suggests that net of other control variables, female victim cases that are decided by a majority male jury and/or include victim rape will be more likely to receive the death penalty.

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Hypotheses and Expectations

Exploratory Models

First a series of logistic regression models will be estimated to explore (1) whether or not a female victim effect exists in the current sample net of important control variables and (2) whether or not the theoretical variables mediate the effect of victim sex and juror sentence decision making.

Hypothesis 1: I expect that after controlling for relevant legal factors (excluding the heinous and cruel variable) and extralegal variables a female victim effect in capital sentencing will persist; that is, cases involving female victims will be more likely to receive a death sentence than similarly situated cases with male victims net of the control variables.

Hypothesis 2: I expect that the model containing only the control variables (excluding the heinous and cruel variable) will demonstrate a more robust female victim effect than the model including the theoretical variables, and thus, demonstrating a mediating effect of the theoretical variables on the relationship between victim sex and juror capital sentence decision-making.

Hypothesis 3: A third logistic regression model will be estimated to explore whether or not a "female victim effect" still exists after controlling for relevant legal factors including the heinous and cruel variable, extralegal factors, and theoretical variables. Given the prior research that a cases designation of heinous and cruel greatly increases the likelihood a case will receive the death penalty, I expect that this variable will reduce the victim sex variable to non-significance.

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Sex Specific Models

Hypothesis 4: Setting aside whether there is a female victim effect in the main model, the central goal of the current research is to investigate whether certain variables derived from the theoretical orientations of the focal concerns theory and the chivalry hypothesis differentially impact jury sentence decision-making in cases with female victims compared to cases with male victims. As such, victim sex specific logistic regression models will be estimated according to the conceptual model described in Figure 1. In regard to the variables measuring focal concerns, I expect that cases including older and younger victims, White victims, married victims, and stranger victim/defendant dyads will significantly predict receiving death versus life without parole for both female victims and male victims; however, I expect that these theoretical variables will be most influential for female cases. I expect that the variable derived from the chivalry hypothesis, victim rape, will only be influential for cases with female victims and not cases with male victims.

Hypothesis 5: Prior research demonstrates that female victims who are intimately involved with their offenders may elicit less sympathy for their victimization compared to female victims who are harmed by strangers. As such, an additional model will be estimated for female victim cases examining the predictors of receiving the death penalty when victim/defendant relationship is modified from a comparison of a "stranger versus known" victim/defendant group to a comparison of an "intimate versus all other" victim/defendant group (strangers, friends, acquaintances, other family members). I expect that the non-intimate victim/defendant dyad will have a significantly greater likelihood of receiving death versus life without parole for female victims.

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Hypothesis 6: Previous research has also indicated that victim rape has a strong impact on juror sentence decision-making net of other important extra-legal and legal variables. A final model will be estimated for female victim cases examining the predictors of receiving the death penalty when cases including victim rape are eliminated. I expect that the theoretical variables will exert an even stronger effect on receiving the death penalty for female victim cases once cases including victim rape, an especially salient variable, are eliminated from the sample.

Jury Sex Composition Models

Hypothesis 7: The chivalry hypothesis suggests that male criminal justice actors extend greater protections to females compared to males in an attempt to act chivalrously. As such, a third set of sex-specific logistic regression models measuring the effect of a majority male jury on juror sentence decision-making will be estimated using a subset of cases where jury sex composition is available. I expect that female victim cases sentenced by majority male juries will have significantly greater likelihoods of receiving the death penalty compared to female victim cases sentenced by juries with other sex compositions. Likewise, jury sex composition will not be significantly related to receiving the death penalty for cases with male victims.

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CHAPTER THREE: METHODOLOGY

The current study aims to extend the limited body of knowledge on the "female victim effect" in death penalty sentencing by not only empirically demonstrating such an effect but also attempting to explain this effect using theoretically driven variables and a rigorous statistical design. Additionally, the present study is among the few that specifically focuses on jury decision-making in capital trials, instead of using data derived from all homicide cases or death eligible cases. As such, there is no confounding influence from the inclusion of cases that were never eligible for capital sentencing or cases that were offered (and accepted) a plea by the State and thus never went to trial. A focus on jury sentencing recommendations is particularly relevant for this research because the theoretical variables of interest could be expected to have their greatest impact in the context of jury decision-making.

Guided by feminist theories of focal concerns and selective chivalry, the present research will estimate different regression models, containing variables informed by the proposed theoretical orientations, for cases with a male defendant and female victims versus cases with a male defendant and male victims. The present study is the first research focused on the effect of victim sex on capital sentencing decision which, in an effort to determine how victim sex effects capital sentencing decision making, (1) measures the key tenets of feminist theoretical orientations including victim sex, victim race, victim illegal activity, victim-offender relationship, victim rape, jury sex composition, and victim *marital status* and (2) examines whether separate male-victim

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and female-victim models of sentencing better explain the differential sentencing outcomes for capital cases compared to a baseline model including victims of both sexes.

Data and Sample

The data for this research are provided by the North Carolina Capital Sentencing Project (NCCSP). Departing from the majority of datasets analyzed in previous research on the impact of victim and/or defendant extralegal variables on death penalty sentencing, the NCCSP consists of jury decisions in capitally tried cases only, instead of all homicide cases or all death eligible cases (which could potentially include capital cases for which the prosecution accepted a plea). Specifically, the data set is comprised of cases in which (1) the state secured a first-degree murder conviction, (2) sought the death penalty, and (3) the trial advanced to the sentencing phase whereby the jury is provided a form entitled "Issues and Recommendation as to Punishment" and instructed to record their responses regarding aggravating factors submitted by the prosecution, mitigating factors submitted on behalf of the defendant, and recommendation for a life or death sentence.

The NCCSP dataset contains all cases from North Carolina meeting these criteria for the period June 1977 – December 2008 (N=1,350). The initial date marks the return to capital punishment in North Carolina following the *Furman* decision. The latter date is the last year for which a full contingency of information is available. Importantly, the data represent a full population of cases tried capitally during the specified period. For reasons discussed below, a subset of these data were utilized for purposes of this research.

The process of capital punishment in North Carolina is complex, due in part, to the multiple safeguards put in place to protect capital defendants. To begin, prosecutors must

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first prove beyond a reasonable doubt that defendants committed first-degree murder. Second, in a separate phases of the trial, prosecutors must prove that at least 1 of the 11 aggravating factors listed in the North Carolina statute are present in the case, and that the level of aggravation outweighs the level of mitigation[4]. Finally, the jury must reach a unanimous decision concerning death versus life without parole. If jurors cannot reach a unanimous decision concerning aggravation or the final sentencing recommendation, the defendant is automatically sentenced to life without parole.

Although there is some variation in research findings regarding patterns and predictors of capital punishment across states, those results have been characterized as more notable for their similarities than their differences (Baldus & Woodworth, 2003b). Still, it is appropriate to select a state for the study of capital punishment that has pursued capital punishment on a comparatively regular basis since the *Gregg* decision so that a critical mass of cases available for analyses has been accumulated. In this regard, North Carolina is a particularly advantageous state in which to pursue death penalty research. As reported by Smith (2011), as of April 2010 (the last date for available statistics), North Carolina ranked 6th in the number of individuals on death row (167), 9th in the number of executions since 1976 (43), and 10th in the number of death sentences per 10,000 population (.047). As well, the documentation publicly available for North Carolina capital murder trials is particularly well suited to coding for purposes of empirical analysis and thus, for pursuing the topic of the research reported here.

[4] The jury can consider any mitigating factor introduced into evidence, not just those listed in the statute, and mitigating factors do not have to be proven beyond a reasonable doubt.

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Case information was obtained from the trial documents of the North Carolina Supreme Court and Court of Appeals and/or from public records. Since there is no central database for cases in North Carolina where the death penalty was sought, data collection began with a list of all defendants who were convicted of or pled guilty to first-degree murder. Using this list, researchers conducted *LexisNexis* searches of the appeals decisions for these cases as well as newspaper coverage of cases where no appeal was filed. Once a case was identified as capital, extensive trial information was derived from several sources including appeals files, county level files, and newspaper articles. Information for each defendant was obtained from the North Carolina Department of Corrections. Information for victims was obtained from two different sources. For victims who died from 1977 through 1996, information was obtained through the commercially available cd-rom, *North Carolina Vital Records: Deaths 1968-1996*; for victims who died after 1996, information was gathered from the North Carolina Medical Examiner's office.

Data for the present analysis are derived from 929 jury recommendations returned from April 1990 – December 2008, termed here as the post-*McKoy* era. This period represents the era following the U.S. Supreme Court decision *McKoy v. North Carolina* (1991) that altered the guidelines for how juries processed mitigating circumstances at trial; post-*McKoy,* jurors no longer have to unanimously accept a mitigating factor for it to be reflected on the Issues and Recommendation as to Punishment sheet as an accepted mitigator in the case. Jury responses to mitigating factors prior to the *McKoy* decision (June 1977-March 1990) are not directly comparable to cases after the *McKoy* ruling because of differing instructions on responding to mitigating factors presented by the defense. Because of the potential importance of mitigating factors in determining

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sentencing recommendations, it was determined that in order to include that variable in the analyses, it was necessary to utilize only data from the post-*McKoy* era. However, due to data selection decisions, as well as missing data, not all cases were available, leaving a final working sample of 709 cases. Reasons for elimination of cases, leading to the working sample total, are as follows:

- 33 cases with female defendants were removed because the chosen theoretical orientations of the focal concerns and the chivalry thesis pertain specifically to cases with male perpetrators and female victims; male victims with male perpetrators are included in the analysis as the comparison group.
- 90 cases that included defendants or victims classified as "other" races were omitted so that analyses could focus specifically on the primary race/sex interactions that have been the focus of much of the literature discussed earlier.
- 44 cases were not available for analysis because the jury did not find any aggravators. When this occurs, the defendant is no longer eligible for a death sentence and the deliberations end there; consequently, the jury does not consider mitigating factors. As mentioned above, information concerning mitigators is considered important as a control factor, so elimination of cases where mitigation was not responded to by the jury was necessary.
- 47 instances where the jury, despite their instructions, did not complete the Issues and Recommendation as to Punishment sheet, rendering those cases absent of any information concerning jury responses to aggravation or mitigation, and resulting in a default sentence of life imprisonment for the defendant. Consequently, these cases could not be included in the analyses.
- Finally, 6 cases were eliminated because victim marital status was not available.

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Despite these sources of missing data, the resulting data set can be said to consist of the population of jury decisions in capital murder trials that contained male defendants, White and/or Black defendants and victims, where the jury carried out their specific instructions regarding aggravation and mitigation, and where at least one aggravator was found so that the case remained death penalty eligible. It is, therefore, a highly appropriate and methodologically sound dataset with which to pursue the current research questions.

Description of Variables

Dependent Variable

In North Carolina, capital jurors are afforded only two sentencing options, (1) life in prison without the possibility of parole or (2) the death penalty. Therefore the dependent variable, jury recommendation, is expressed dichotomously (0=life without parole, 1=death penalty).

Independent Variables

Theoretical variables. The present interpretation of focal concerns theory provides evidence that certain victim characteristics may differentially impact criminal justice system actors, in this case capital jurors' perceptions of a victim's worthiness of protection by the criminal justice system (i.e., harsher punishments for their victimizers) (Curry et al., 2004). Central to the present theoretical orientation is that victim sex will influence the remaining theoretical variables inasmuch as each variable will work as a function of a victim being female. Such victim characteristics include the following:

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Victim age. Research suggests that for female victims of crime, elderly or very young women elicit the most societal sympathy (Feinman, 1986). The current research distinguishes victims who are very young (under 18 years old) as well as older victims (over 60 years old). Adult victims (age 18-59) are used as the control group.

Victim race. Prior research has demonstrated that women of color do not benefit from protection by the criminal justice system to the same degree as White women (Feinman 1986; Rafter 1990). Consequently, similar to Stauffer et al. (2006) and Williams & Holcomb (2004) the current research restricts victims to those who were determined to be either White or Black (White=1, Black= 0).

Victim marital status. Marriage is a measurable manifestation of a woman's commitment to the stereotypical feminine gender role. Contrary to prior research focused on female defendants, victim marital status is an under-explored variable in research considering the female victim in sentencing research. Victim marital status is coded so that victims who were married or widowed were coded as "married" and those who were single or divorced were coded as "unmarried".

Victim illegal activity. Past research by Baumer et al. (2000) suggests that disreputable conduct by the victim at the time of the homicide is associated with a charge reduction for the defendant presumably because criminal justice actors attributed some blame to the victim. Since women participate in far less crime compared to men, female victim illegal activity may be an especially important consideration in sex-specific models.

Whether the defendant was a stranger to the victim. Previous research indicates that victims who are harmed by strangers may be considered more sympathetic than those who are victimized by intimates or even acquaintances because such victims did not

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knowingly place themselves in harm's way (Rye, et al., 2006) and women are more likely to be victimized by a non-stranger such as an intimate, family member, or an acquaintance than a stranger (Truman, 2011). Thus, the negative influence of a non-stranger victim/defendant dyad may be especially influential for cases with female victims.

In addition, the chivalry hypothesis suggests that violence perpetrated by a male defendant on a female victim may be punished more harshly than violence towards male victims because the patriarchal criminal justice system attempts to act in a chivalrous manner. Two case characteristics are important measures of such chivalry: victim rape prior to the murder and jury sex composition.

Victim rape. Rape is a highly gendered crime such that the majority of rape victims are females and the majority of offenders are males. Given these victim/offender dynamics, a chivalrous criminal justice system may hand down the most severe punishment to male offenders who not only murder female victims but also commit rape against them. To this end, past research by Stauffer et al. (2006) and Williams et al. (2007) demonstrates that cases where a victim was raped prior to the murder were significantly more likely to receive the death penalty than similar cases that did not include rape.

Jury sex composition. The chivalry hypothesis posits that female victims will elicit more sympathy from male criminal justice actors due to their desire to act chivalrously. As such, juries that are comprised of a majority of male jurors (7 or more male jurors) are distinguished from those with an equal number of male and female jurors or a majority of female jurors.

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Both legal and extralegal control variables derived from past research on death penalty sentencing were also included in the analyses. Beginning with legal control variables these are:

Defendant's prior criminal behavior. Past research is inconsistent as to the inclusion of defendant prior criminal behavior in research regarding capital sentence decision-making. For example, while Williams and Holcomb (2004) suggest that defendant prior record is "not essential" to the investigation of victim-based disparities, others including Kleck (1981) and Stauffer et al. (2006), demonstrate that a defendant's prior criminal record is an important factor in death penalty sentencing above and beyond victim characteristics and/or other control variables. Defendant prior criminal behavior was gleaned from two variables in the dataset – whether the prosecution submitted and the jury accepted that "the defendant has been previously convicted of a violent offense" and/or "the defendant has been previously convicted of a capital offense" as an aggravating factor to seek the death penalty.

Number of victims killed. The jury may view cases including more than one victim as more egregious than cases with one victim.

Number of aggravating factors accepted by the jury. It could be assumed that the number of aggravators accepted by the jury would have an effect on jury sentencing decisions such that cases with more accepted aggravating factors would merit more severe sanctions compared to those with fewer accepted aggravating factors.

Number of mitigating factors accepted by the jury. Similar to level of aggravation, it could be assumed that the number of mitigating factors accepted by the jury would have an effect on jury sentencing decisions such that cases with more accepted mitigating factors would merit less severe sanctions compared to those with fewer aggravators.

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Extralegal control variables derived from past research on death penalty sentencing were also included:

Defendant race. In line with past research by Demuth and Steffensmeier (2004) demonstrating that defendants who self-identify as "other" race/ethnicity may be sentenced differently than similarly situated White and/or Black defendants, and in keeping with past research, the present research includes only defendants who were determined to be either White or Black (White=1, Black= 0).

Urban Jurisdiction. Following past research by Stauffer et al. (2006) and Williams and Holcomb (2004), whether the case was prosecuted in an urban area was included in the analyses. Jurisdictions were designated as urban if they resided in one of the 15 North Carolina Counties classified by the North Carolina Rural and Development Center as "urban" as per their population concentration. The 15 counties included Alamance, Buncombe, Cabarrus, Catawba, Cumberland, Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, New Hanover, Orange, Rowan, Wake.

Defendant 25 years or younger. The distinction of whether or not the defendant was 25 years old or younger was included. Past research has demonstrated that youthful defendants (most often 25 years or younger, but the cut-off year for "youthful" has varried) are less likely to receive the death penalty net of other important variables (Holcomb et al., 2004; Stauffer et al., 2006; Williams & Holcomb, 2004).

Heinous and cruel. The North Carolina death penalty statute lists 11 statutory aggravating circumstances (see Appendix B for a complete list) that may be accepted by the jury as a fact that elevates the case to death eligible status. Among these 11 factors is the designation of a murder as "especially heinous, atrocious, or cruel" (from this point on referred to as heinous and cruel) which has proven to be of particular importance. For

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this reason, a decision was made to include heinous and cruel as a stand-alone variable, above and beyond including the total number of aggravators accepted by the jury.

The especially heinous and cruel aggravating factor is employed by multiple states using a variety of different language with most statutes comprised of some combination of the terms "especially heinous, atrocious, or cruel," "depravity of mind," or "outrageously vile wanton or inhuman" (Rosen, 1986). Confusion as to what differentiates a murder that is especially heinous and cruel from one that is not has been the source of much litigation at both the state and federal level. For example, both the California (*People v. Superior Court,* 1982*)* and Delaware (*State v. Chaplin*, 1981) state supreme courts have found the conditions warranting designation as especially heinous and cruel unconstitutional while several state appellate courts that have rejected constitutional challenges to their especially heinous and cruel aggravating circumstances acknowledged that they may be *constitutionally suspect* as potential "catch-all" factors. In *Godfrey v. Georgia* (1980), the United States Supreme Court recognized that the especially heinous and cruel aggravating circumstance is "potentially overbroad and vague", holding that the standard must be narrowly *defined* and *applied* by a state to be constitutionally acceptable.

In *State v. Goodman*, (1979), the North Carolina State Supreme Court defined the heinous and cruel aggravator as cases involving circumstances that were (1) "unnecessarily torturous to the victim" and (2) limiting "circumstances" to include only acts committed during the commission of the murder itself. It further held that for a case to be considered heinous and cruel "there must be evidence that the brutality involved in the murder in question exceeded that normally present in any killing or the murder must have been a conscienceless or pitiless crime which was unnecessarily torturous to the

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victim." Jury instructions pertaining to case designation of heinous and cruel in North Carolina are presented in Appendix B. Although, the North Carolina Supreme court has provided rules as to how the heinous and cruel designation should be interpreted, fulfilling the Supreme court's instruction on a "narrow definition", jurors in North Carolina have designated multiple cases as heinous and cruel that are beyond the scope of the Court's definition, cases absent of physical abuse or torture to the victim before death (see for example, *State v. Oliver*, 1981; *State v. Pinch*, 1982; and *State v. Brown*, 1985) evidencing broad discretion by the jury in designating a case as heinous and cruel as well as a failure to follow the Supreme Court's directive on narrow application.

The North Carolina Pattern Jury Instructions (1993) direct the jury to weigh the aggravating and mitigating circumstances not by "applying a mathematical formula," but by considering the "relative substantiality and persuasiveness of the existing aggravating and mitigating circumstances" and determining "how compelling and persuasive the totality of the aggravating circumstances are when compared with the totality of the mitigating circumstances." Although the heinous and cruel designation is just one of 11 aggravators that jurors may potentially accept, there is evidence that it may be especially important in the jury's decision-making process. For example, Garvey (1998) found that 75.6% of the 153 capital jurors he surveyed in South Carolina reported that case designation as heinous and cruel would make them more likely to choose the death penalty while Luginbuhl and Howe (1993) found that 68% of their sample of 83 North Carolina capital jurors who believed the case was heinous and cruel indicated they would choose death because of the case designation. Other research demonstrates that jurors may misunderstand their instructions so that they believe case designation as heinous and cruel *requires* them to choose death. Bowers (1995) and Eisenberg and Wells (1993)

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found such confusion among 30%-40% of jurors while Bentele & Bowers (2000) indicated that every 5 out of 10 jurors across six different states believed that the law required them to choose death when the case was designated as heinous and cruel. In light of the broad discretion of the jury in designating a case as heinous and cruel and the potential impact of the designation on the jury's sentencing decision, jury acceptance of the heinous and cruel aggravator will be included as one of the legal control variables in addition to the total number of aggravators accepted. Since none of the prior research reviewed by the current study included the heinous and cruel aggravator (or the total number of accepted aggravators) in their statistical models with the exception of Baldus (1990), this variable will be excluded from the first logistic regression model allowing for comparison with past literature.

Plan of Analysis

Logistic regression analysis will be used to estimate the odds that a jury will sentence a capital defendant to the death penalty versus life in prison. First a series of logistic regression models will be estimated to explore (1) whether or not a female victim effect exists in the current sample net of important control variables and (2) whether or not theoretical variables mediate the effect of victim sex and juror sentence decision-making. First, Model 1 consisting of the victim sex variable and the the control variables (with the exception of a new variable in this area of focus, the heinous and cruel variable), will determine if the jury's capital sentence decision-making is significantly associated with the sex of the victim net of other variables (i.e., does a female victim effect exist?). Next, Model 2, including the victim sex variable, the control variables, and the theoretical variables will determine if the theoretical variables mediate the relationship between victim sex and juror capital sentence decision-making. As mentioned earlier, the heinous

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and cruel variable will be excluded in the first series of models so that the models are comparable to past research on victim sex where no prior study focused on victim sex includes case designation as heinous and cruel. An additional logistic regression model will be estimated that includes the case designation as heinous and cruel.

Next, two sex-specific models will be estimated with one model including only male victims and one model including only female victims. These models will be used to determine if the theoretical variables differentially impact jury decision-making in cases with male victims versus female victims net of the legal and extralegal variables. In addition, due to the female-specific implications of intimate partner violence and rape, the impact of the theoretical variables will be further explored in the female victim specific model by (1) modifying the victim/defendant relationship from a comparison of a "stranger versus known" victim/defendant group to a comparison of an "intimate versus all other" victim/defendant group and (2) excluding cases that involved victim rape. Furthermore, the potential impact of jury sex composition will be explored by re-running the gendered models using a subset of the data (n=525) for which jury sex composition is available. Potential collinearity between variables in the models will be assessed using a linear regression model and collinearity diagnostics (VIF < 5) (see Appendix A, Tables 2A and 3A).

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Finally, *z* tests will be preformed to compare the coefficients in the male and female regression models to examine whether there is a significant difference between the two coefficients (i.e., is the effect of a certain variable statistically different for males versus females?). The *z* formula used here is consistent with Paternoster, Brame, Mazerolle, and Piquero (1998) and Clogg, Petroka, and Haritou (1995):

$$Z = \frac{b_1 - b_2}{\sqrt{SEb_1{}^2 + SEb_2{}^2}}$$

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CHAPTER FOUR: RESULTS

The demographic characteristics for the present sample are presented in Table 1. In light of the chosen theoretical orientations, the sample was limited to male defendants. Almost 44.00% of victims are female while 56.00% are male. The majority of victims, 69.00%, are categorized as adults (ages 18-59 years old), 20.00% are categorized as older (60 years or older), and 10.40% are categorized as young (17 years or younger). Concerning victim marital status, 46.00% of victims are categorized as married (married or widowed) and 54.00% of victims are categorized as single (single or divorced). In regard to race, 62.00% of victims are White and 39.00 % are Black while 42.50% of defendants are White and 57.50% are Black. The majority of defendants (57.00%) are age 26 years or older. Finally, the majority of victims and offenders were non-strangers (66.00%).

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Table 1

Sample Demographics (n=709)

Demographic Variables	n	%
Defendant sex		
Male	709	100.00
Victim sex		
Female	310	43.70
Male	399	56.30
Victim race		
White	436	61.50
Black	273	38.50
Victim age group		
Young (17 years or younger)	74	10.40
Adult (18 to 59 years old)	492	69.40
Older (60 years or older)	143	20.20
Victim marital status		
Married/widowed	323	45.60
Single/divorced	386	54.40
Defendant race		
White	301	42.50
Black	408	57.50
Defendant age group		
25 years or younger	305	43.00
26 years old or older	404	57.00
Victim/offender relationship		
Strangers	241	34.00
Non-strangers	468	66.00

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The theoretical variables across jury capital sentencing decisions, life without parole (n=351) and the death penalty (n=358)[5] are presented in Table 2. In line with the theoretical orientations, findings demonstrate that significantly more female victim cases receive the death penalty than male victim cases (59.00% and 44.00%). Young victim cases were also significantly more likely to receive the death penalty (64.00%) compared to adult victim cases (50.00%). In addition, cases with victims who had not been involved in illegal activity received the death penalty at higher proportions than those who had been involved in illegal activity (53.00% and 41.00%). Cases that included victim rape were also significantly more likely to receive the death penalty than cases that did not include victim rape (77.00% and 48.00%).

[5]The current sample "overstates" the proportion of death penalty cases in the total population from the NCCSP due to the elimination of the cases with missing information.

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Table 2

Theoretical Variables by Sentencing Outcome

Theoretical Variables	No Death Sentence (n=351) n	%	Death Sentence (n=358) n	%	
Victim sex					
Female	126	40.60	184	59.40	**
Male	225	56.40	174	43.60	
Victim race					
White	205	47.00	231	53.00	
Black	146	53.00	127	47.00	
Victim age group					
Young (17 years or younger)	27	36.50	47	63.50	**
Adult (18 to 59 years old)	248	54.00	244	46.00	
Older (60 years or older)	76	53.00	67	47.00	
Victim marital status					
Married/widowed	172	53.30	151	46.70	
Single/divorced	179	45.60	207	54.40	
Victim/offender relationship					
Strangers	125	52.00	116	48.00	
Non-strangers	226	48.20	242	51.80	
Victim involved in illegal activity					
Yes	77	59.00	54	41.00	
No	274	47.50	304	52.50	**
Victim rape					
Yes	15	23.00	50	77.00	**
No	336	52.20	308	47.80	
Majority male jury (sub-sample n=521)	No Death Sentence (n=258) n	%	No Death Sentence (n=263) n	%	
Yes	116	47.50	128	52.50	
No	142	51.20	135	48.80	

* < .05, ** ≤ .001

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Exploratory Models

A series of logistic regression models were estimated to explore (1) whether a female victim effect exists net of important control variables (with the exception of case designation as heinous and cruel) and (2) whether the female victim effect is mediated by the theoretical variables in the conceptual model (see pg. 27). First, consistent with Hypothesis 1, findings from Model 1 presented in the first half of Table 3, establishes the presence of a "female victim effect" in the current sample net of important control variables ($b = .54$, $p < .05$). Next, somewhat consistent with Hypothesis 2, the results from Model 2 presented in the latter half of Table 3 reveals that the inclusion of the theoretical variables partially mediates the association between victim sex and juror capital sentence decision-making ($b = .44$, $p < .05$). Findings indicate that female victim cases are 56.00% more likely to receive the death penalty compared to male victim cases net of theoretical and control variables. Overall, the inclusion of the theoretical variables in the full model explain more variance than the model with the control variables alone as evidenced by the increase in the pseudo R^2s, from Cox & Snell = .25 and Nagelkerke = .33 to Cox & Snell = .27 and Nagelkerke = .35.

Findings from Model 2 also demonstrate that one legal variable, the total number of accepted aggravators, is a stronger predictor of jury capital sentence decision-making than the female victim variable. Specifically, for every accepted aggravator there is an associated 87.00% increase in the odds of receiving the death penalty. Comparatively, for each accepted mitigator there is an approximately 10.00% decrease in the likelihood of receiving the death penalty. In addition, cases with defendants aged 25 years or younger are 42.00% less likely to result in the death penalty compared to cases with older

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defendants, and cases that are prosecuted in an urban jurisdiction are 36.00% less likely to result in the death penalty than those prosecuted in a non-urban jurisdiction.

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Table 3

Logistic Regression Analysis Testing for the "Female Victim Effect" and Mediation in Capital Jury Sentencing Decisions Net of Other Control Variables (n=709)

	Model 1					Model 2					
Variable	B	SE	Wald's x^2	Odds Ratio	% Change	B	SE	Wald's x^2	Odds Ratio	% Change
Victim female	.54	.18	9.15	1.72 *	72.00	.44	.19	5.37	1.56 *	56.00
Victim White	-	-	-	-	-	.17	.23	.54	1.18	18.00
Child victim	-	-	-	-	-	.33	.32	1.08	1.39	39.00
Older victim	-	-	-	-	-	-.45	.25	3.32	.64	36.00
Victim married	-	-	-	-	-	-.28	.21	1.75	.76	24.00
Victim/defendant strangers	-	-	-	-	-	-.10	.21	.22	.91	9.00
Victim illegal activity	-	-	-	-	-	-.42	.24	3.00	.66	34.00
Victim rape	-	-	-	-	-	.40	.40	1.03	1.50	50.00
Defendant Black	-.29	.18	2.70	.75	25.00	-.16	.22	.52	.86	14.00
Defendant 25 or younger	-.65	.18	12.52	.52 *	48.00	-.66	.19	11.45	.52 **	48.00
Urban jurisdiction	-.36	.18	4.17	.70 *	30.00	-.44	.18	5.75	.64 *	36.00
Total aggravators accepted	.63	.10	37.21	1.88 **	88.00	.63	.11	33.62	1.87 **	87.00
Total mitigators accepted	-.10	.01	67.10	.91 **	9.00	-.10	.01	66.56	.90 **	10.0
Total number of victims killed	.16	.09	2.82	1.17	83.00	.17	.10	2.74	1.18	18.00
Defendant prior record	-.02	.21	.01	.99	1.00	.01	.22	.00	1.01	1.00
Murder committed in the course of another felony	.08	.10	.64	1.09	9.00	.08	.11	.53	1.08	8.00
	R^2(Cox & Snells)		.25			R^2(Cox & Snells)		.27		
	Corrected R^2 (Nagelkerke)		.33			Corrected R^2 (Nagelkerke)		.35		
	- 2 log likelihood		779.49			- 2 log likelihood		764.79		
	Model x^2		203.32 (df = 9; p< .001)			Model x^2		218.02 (df =16; p < .001)		

* < .05, ** ≤ .001

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The results of the second logistic regression model that contains all theoretical and control variables, including the variable measuring case designation as heinous and cruel are presented in Table 4. As hypothesized, the inclusion of the heinous and cruel variable alters the findings from the previous model such that victim sex is no longer a significant predictor of receiving the death penalty. Cases designated as heinous and cruel have a 154.00% higher likelihood of receiving the death penalty compared to cases without this designation. The next strongest predictor of receiving the death penalty in the current model is the total number of accepted aggravators – for each accepted aggravator there is a 57.00% increase of receiving the death penalty. Cases involving older victims were 44.00% less likely to receive the death penalty compared to cases with adult victims (age 18 to 59 years old). In addition, for each victim killed there is an associated 25.00% increase in receiving death versus life without parole. Comparatively, cases involving a defendant aged 25 or younger are associated with a 48.00% decrease in the likelihood of receiving the death penalty. Cases prosecuted in an urban jurisdiction are also associated with a 36.00% decrease in receiving the death penalty compared to cases prosecuted in a rural jurisdiction. Finally, each accepted mitigator results in an approximately 10.00% lower risk of the death penalty.

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Table 4

Logistic Regression Analysis Testing for the "Female Victim Effect" in Capital Jury Sentencing Decisions Net of other Control Variables Including Case Designation as Heinous and Cruel (n=709)

Variable	B	SE	Wald's x^2	Odds Ratio		% Change
Victim female	.23	.20	1.29	1.26		26.00
Victim White	.16	.23	.45	1.17		17.00
Child victim	.21	.32	.44	1.23		23.00
Older victim	-.58	.26	5.09	.56	*	44.00
Victim married	-.20	.21	.87	.82		18.00
Victim/defendant strangers	-.03	.21	.02	.98		2.00
Victim illegal activity	-.35	.25	2.02	.70		30.00
Victim rape	.39	.40	.97	1.48		48.00
Defendant Black	-.08	.22	.13	.92		8.00
Defendant 25 or younger	-.64	.20	10.65	.53	**	47.00
Urban jurisdiction	-.45	.19	5.80	.64	*	36.00
Total aggravators accepted	.45	.11	16.13	1.57	**	57.00
Total mitigators accepted	-.10	.01	67.25	.90	**	9.00
Total number of victims killed	.22	.11	4.36	1.25	*	25.00
Defendant prior record	.28	.23	1.53	1.33		33.00
Murder committed in the course of another felony	.15	.11	1.78	1.16		16.00
Heinous and cruel	.93	.23	16.80	2.54	**	154.00
R^2 (Cox &Snell)		.28				
Corrected R^2 (Nagelkerke)		.38				
- 2 log likelihood		474.67				
Model x^2	235.15 (df= 17; p < .001)					

* < .05, ** ≤ .001

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Sex Specific Models

In order to investigate whether the same predictors best explain jury sentence decision-making for cases with male victims and female victims, victim sex-specific logistic regression models were estimated. The results from the first sex-specific logistic regression model, the male victim model including all theoretical and legal/extralegal control variables are shown in Table 5. One of the variables derived from focal concerns theory, older victim age (age 60 years old or older), was a statistically significant predictor of receiving the death penalty; however, the effect was in the opposite direction than expected. Specifically, male victim cases involving older victims were 54.00% *less* likely to receive the death penalty compared to cases with adult male victims (age 18 to 59 years old). In comparison to the main model, the older victim variable decreased the odds of receiving the death penalty by 44.00% compared to cases with adult victims.

Similar to the main model, a case designation of heinous and cruel was the strongest predictor of receiving the death penalty; however, the heinous and cruel variable was not as strong a predictor in the male victim model as it was in the main model. Specifically, male victim cases designated as heinous and cruel had a 101.00% greater likelihood of receiving the death penalty compared to a 154.00% greater likelihood of receiving the death penalty when cases were not disaggregated by sex. Male victim cases with higher numbers of accepted aggravators were also at an increased likelihood of receiving the death penalty. For each accepted aggravator, a male victim case's likelihood of resulting in the death sentence increased by 74.00%. In addition, each additional murder victim was associated with a 43.00% increase in the likelihood of receiving the death penalty for cases with male victims.

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Additionally, several control variables, including defendant age 25 or younger, case prosecution in an urban area, and the number of accepted mitigators were statistically significant predictors of a decreased likelihood of receiving the death penalty in the male victim model. Male victim cases prosecuted in an urban area were associated with a 45.00% decrease in the likelihood of receiving the death penalty compared to cases prosecuted in a rural area. Comparatively, in the main model, prosecution in an urban area was associated with a 36.00% decrease in death penalty sentencing. Male victim cases including a defendant aged 25 years old or younger were also associated with a decrease of 49.00%, similar to the 47.00% decrease demonstrated in the aggregate model. Finally, the number of accepted mitigators in male victim cases resulted in a decrease in the likelihood of receiving the death penalty. For male victim cases, each mitigator accepted decreased the likelihood of receiving death by 9.00%; comparatively, each accepted mitigator was associated with a 10.00% decrease in receiving death in the main model.

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Table 5

Male – Specific Logistic Regression Analysis Testing for Capital Jury Sentencing Decisions Net of Other Control Variables Including Case Designation as Heinous and Cruel (n=399)

Variable	B	SE	Wald's x^2	Odds Ratio		% Change
Victim White	.25	.30	.73	1.29		29.00
Child victim	.05	.48	.01	1.05		5.00
Older victim	-.78	.37	4.47	.46	*	54.00
Victim married	-.04	.29	.02	.96		4.00
Victim/defendant strangers	.18	.28	.42	1.20		20.00
Victim illegal activity	-.44	.30	2.11	.64		36.00
Victim rape	-1.49	1.02	2.15	.23		77.00
Defendant Black	-.16	.29	.31	.85		14.00
Defendant 25 or younger	-.67	.27	6.19	.51	*	49.00
Urban jurisdiction	-.61	.25	5.77	.55	*	45.00
Total aggravators accepted	.55	.14	14.65	1.74	**	74.00
Total mitigators accepted	-.09	.02	28.40	.91	**	9.00
Total number of victims killed	.35	.18	4.05	1.43	*	43.00
Defendant prior record	.40	.30	1.73	1.49		49.00
Murder committed in the course of another felony	.21	.15	1.99	1.23		23.00
Heinous and cruel	.70	.34	4.35	2.01	*	101.00
R^2 (Cox &Snell)		.26				
Corrected R^2 (Nagelkerke)		.35				
- 2 log likelihood		424.07				
Model x^2	122.53 (df= 16; p < .001)					

* < .05, ** ≤ .001

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The findings from the second sex-specific logistic regression model the female victim model including all theoretical and control variables are presented in Table 6. Overall, the female victim model explains more variance than the male victim model as evidenced by an increase in the pseudo R^2s, from Cox & Snell = .26 and Nagelkerke = .35 to Cox & Snell = .32 and Nagelkerke = .43. Contrary to Hypothesis 3, none of the theoretical variables derived from focal concerns theory were significant predictors of receiving the death penalty for female victim cases; however, the variable measuring chivalry, victim rape, was a significant predictor of receiving the death penalty. Female victim cases that included victim rape were 194.00% more likely to result in the death penalty compared to female victim cases that did not include victim rape. Similar to the male victim model and the main model, case designation as heinous and cruel was the strongest predictor of receiving the death penalty in the female victim model. Specifically, female victim cases that were designated as heinous and cruel were 274.00% more likely to receive the death penalty than those without the designation. Comparatively, in the male victim model, the heinous and cruel variable was associated with a 101.00% increase in the receiving the death penalty and in the main model it was associated with a 154.00% increase. Divergent from the male victim model, number of aggravators is not a significant predictor of juror capital sentence decision making. Comparatively, like male victim cases, the total number of mitigators accepted by the jury is a significant variable in the female model. Specifically, the total number of mitigators accepted in female victim cases was associated with an 11.00% decrease in the likelihood of receiving the death penalty.

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Table 6

Female – Specific Logistic Regression Analysis Testing for Capital Jury Sentencing Decisions Net of Other Control Variables Including Designation as Heinous and Cruel (n=310)

Variable	B	SE	Wald's x^2	Odds Ratio		% Change
Victim White	-.22	.42	.28	.80		20.00
Child victim	.28	.48	.34	1.32		32.00
Older victim	-.19	.38	.26	.83		17.00
Victim married	-.44	.35	1.57	.64		36.00
Victim/defendant strangers	-.53	.35	2.29	.59		41.00
Victim illegal activity	-.06	.49	.02	.94		6.00
Victim rape	1.08	.50	4.74	2.94	*	194.00
Defendant Black	-.09	.38	.051	.92		8.00
Defendant 25 or younger	-.54	.32	2.79	.59		41.00
Urban jurisdiction	-.44	.31	2.04	.64		36.00
Total aggravators accepted	.37	.20	3.48	1.44		44.00
Total mitigators accepted	-.12	.02	38.42	.89	*	11.00
Total number of victims killed	.13	.15	.75	1.14		14.00
Defendant prior record	.15	.38	.14	1.16		16.00
Murder committed in the course of another felony	.09	.19	.23	1.10		10.00
Heinous and cruel	1.32	.34	14.87	3.74	*	274.00
R^2 (Cox &Snell)		.32				
Corrected R^2 (Nagelkerke)		.43				
- 2 log likelihood		301.26				
Model x^2	117.58 (df= 16; p < .001)					

* < .05, ** ≤ .001

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The results of *z* tests of the coefficients in the sex-specific logistic regression models are presented in Table 7. *Z* tests were estimated to examine whether any variables are better predictors of juror capital sentence decision-making for male victim cases versus female victim cases. Findings from the previous logistic regression models demonstrate that two variables are significant predictors of receiving the death penalty for both male and female victim cases: total number of mitigators and case designation as heinous and cruel. The non-significant z scores indicate that the effect of both the total number of mitigators (z =1.10) and case designation as heinous and cruel (z = -1.29) is similar for male and female victim cases. Only one variable exerted differential predictive power for female victim cases versus male victim cases, victim rape (z = - 2.27), a variable that is significant in the female regression model only.

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Table 7

Comparison of Coefficients for Male and Female Models Testing for Capital Jury Sentencing Decisions Net of Other Control Variables Including Case Designation as Heinous and Cruel

Variable	B (Males)	SE	B (Females)	SE	Z	
Victim White	.25	.30	-.22	.42	.93	
Child victim	.05	.48	.28	.48	-.34	
Older victim	-.78	.37	-.19	.38	-1.12	
Victim married	-.04	.29	-.44	.35	.89	
Victim/defendant strangers	.18	.28	-.53	.35	1.59	
Victim illegal activity	-.44	.30	-.06	.49	-.66	
Victim rape	-1.49	1.02	1.08	.50	-2.27	*
Defendant Black	-.16	.29	-.09	.38	-.16	
Defendant 25 or younger	-.67	.27	-.54	.32	-.32	
Urban jurisdiction	-.61	.25	-.44	.31	-.41	
Total aggravators accepted	.55	.14	.37	.20	.75	
Total mitigators accepted	-.09	.02	-.12	.02	1.10	
Total number of victims killed	.35	.18	.13	.15	1.00	
Defendant prior record	.40	.30	.15	.38	.52	
Murder committed in the course of another felony	.21	.15	.09	.19	.48	
Heinous and cruel	.70	.34	1.32	.34	-1.29	

* < .05

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The findings of an additional female victim logistic regression model that examines the predictors of receiving the death penalty when the victim/defendant relationship variable is modified from a comparison of a victim/defendant stranger group versus a known victim/defendant group to a comparison of a victim/defendant intimate relationship group versus an all other victim/defendant group are presented in Table 8. Overall, this model explains slightly less variance than the previous model as evidenced by a reduction in the pseudo R^2s, from Cox & Snell = .32 and Nagelkerke = .43 to Cox & Snell = .31 and Nagelkerke = .42. Also, contrary to Hypothesis 4, victim/defendant dyads that were intimate partners were no less likely to result in the death penalty than other victim/defendant groups. Similar to the initial model presented in Table 4, case designation as heinous and cruel was the strongest predictor of receiving the death penalty in this model. Specifically, cases designated as heinous and cruel were 274.00% more likely to result in death compared to cases without the designation, the same effect size as the previous model. Victim rape was also an important predictor of receiving death in this model, with cases including victim rape being 170.00% more likely to result in death than cases that did not include victim rape. In comparison, victim rape was associated with a 194.00% increase in receiving death in the previous model. Also similar to the prior model, each accepted mitigator was associated with an 11.00% decrease in the death penalty.

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Table 8

Female – Specific Logistic Regression Analysis Testing for Capital Jury Sentencing Decisions Net of other Control Variables Including Case Designation as Heinous and Cruel and Whether or not the Victim and Defendant were Intimates (n=310)

Variable	B	SE	Wald's x^2	Odds Ratio		% Change
Victim White	-.31	.41	.55	.74		26.00
Child victim	.30	.49	.38	1.35		35.00
Older victim	-.24	.41	.34	.79		21.00
Victim married	-.44	.35	1.60	.64		46.00
Victim/defendant intimates	-.03	.41	.01	.97		3.00
Victim illegal activity	-.03	.50	.01	.97		3.00
Victim rape	.99	.49	4.09	2.70	*	170.00
Defendant Black	-.14	.37	.15	.87		13.00
Defendant 25 or younger	-.60	.33	3.36	.55		45.00
Urban jurisdiction	-.42	.31	1.88	.66		44.00
Total aggravators accepted	.30	.19	2.59	1.35		35.00
Total mitigators accepted	-.12	.02	37.69	.89	**	11.00
Total number of victims killed	.13	.14	.76	1.13		13.00
Defendant prior record	.16	.38	.18	1.17		17.00
Murder committed in the course of another felony	.09	.19	.23	1.10		10.00
Heinous and cruel	1.32	.34	15.04	3.74	**	274.00
R^2 (Cox &Snell)		.31				
Corrected R^2 (Nagelkerke)		.42				
- 2 log likelihood		303.56				
Model x^2	115.27 (df = 16; p < .001)					

* < .05, ** ≤ .001

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In the previous female victim model, victim rape proves to be an important predictor of receiving the death penalty. As such, it is logical to assume that female victim cases including victim rape may be different from other female victim cases. The results of a female victim logistic regression model excluding the 59 cases where female victims were raped before they were murdered (n=251) are shown in Table 9.

Results indicate that contrary to Hypothesis 5, excluding female victim cases involving victim rape *does not* reveal additional predictors for receiving the death penalty among female victim cases. Similar to the previous female victim model, case designation as heinous and cruel is the strongest predictor of receiving the death penalty among female victims. However, for female victim cases that did not include victim rape, case designation as heinous and cruel resulted in a 300.00% increase in receiving the death penalty compared to cases without the designation – an increase in the effect size from the previous female model (274.00%). This demonstrates a relationship between cases that involved victim rape prior to the murder and cases designated as heinous and cruel. In addition, similar to the previous female victim model, each accepted mitigator was associated with an 11.00% decrease in the odds of receiving the death penalty.

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Table 9

Female – Specific Logistic Regression Analysis Testing for Capital Jury Sentencing Decisions Net of other Control Variables Including Case Designation as Heinous and Cruel and Excluding Cases with Victim Rape (n=251)

Variable	B	SE	Wald's x^2	Odds Ratio		% Change
Victim White	-.25	.440	.32	.78		22.00
Child victim	.32	.503	.41	1.38		38.00
Older victim	.03	.409	.01	1.03		3.00
Victim married	-.41	.374	1.17	.67		33.00
Victim/defendant strangers	-.31	.391	.65	.73		27.00
Victim illegal activity	-.40	.550	.52	.67		33.00
Defendant Black	-.33	.411	.66	.72		28.00
Defendant 25 or younger	-.37	.341	1.15	.69		31.00
Urban jurisdiction	-.53	.339	2.44	.59		41.00
Total aggravators accepted	.24	.215	1.24	1.27		27.00
Total mitigators accepted	-.12	.022	29.48	.89	**	11.00
Total number of victims killed	-.03	.205	.02	.97		3.00
Defendant prior record	.51	.425	1.44	1.66		66.00
Murder committed in the course of another felony	.14	.197	.52	1.15		15.00
Heinous and cruel	1.39	.378	13.48	4.00	**	300.00
R^2 (Cox &Snell)		.29				
Corrected R^2 (Nagelkerke)		.39				
- 2 log likelihood		259.41				
Model x^2	86.79 (df= 15; p < .001)					

* < .05, ** ≤ .001

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Jury Sex Composition Models

Next, in light of theoretical expectations of chivalry by patriarchal criminal justice system actors, the potential impact of a having a majority male jury (7 or more male jurors) was explored using a subset of cases where jury sex composition was available (n=521). The findings from a male victim logistic regression model including the jury sex variable are presented in Table 10. In support of Hypothesis 6, jury sex composition was not a significant predictor of receiving the death penalty for male victim cases. Contrary to all previous models including the variable measuring case designation of heinous and cruel, case designation as heinous and cruel is not a significant predictor of receiving the death penalty for this subset of male victim cases. On the other hand, similar to prior models higher numbers of accepted aggravators is associated with an increased likelihood of receiving the death penalty. Results demonstrate that for each accepted aggravator there is an 80.00% increase in receiving death versus life without parole. In addition, cases including multiple victims were also associated with higher odds of receiving the death penalty. Each additional victim killed increased the likelihood of a death sentence by 51.00%. Finally, cases involving defendants aged 25 or younger were 66.00% less likely to receive the death penalty than cases with defendants aged 26 or older.

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Table 10

Male – Specific Logistic Regression Analysis Testing for Capital Jury Sentencing Decisions Net of other Control Variables Including Jury Sex Composition (n=287)

Variable	B	SE	Wald's x^2	Odds Ratio		% Change
Jury majority male	.49	.31	2.62	1.64		64.00
Victim White	.21	.37	.32	.81		19.00
Child victim	.07	.55	.02	1.08		8.00
Older victim	-.97	.50	3.70	.38		62.00
Victim married	.39	.36	1.16	1.47		47.00
Victim/defendant strangers	.31	.34	.83	1.36		36.00
Victim illegal activity	-.33	.40	.65	.72		28.00
Victim rape	-.87	1.58	.30	.42		58.00
Defendant Black	-.32	.35	.84	.73		27.00
Defendant 25 or younger	-1.08	.34	10.23	.34	**	66.00
Urban jurisdiction	-.58	.31	3.43	.56		44.00
Total aggravators accepted	.59	.18	11.03	1.80	**	80.00
Total mitigators accepted	-.09	.02	21.29	.91	**	9.00
Total number of victims killed	.41	.20	4.22	1.51	*	51.00
Defendant prior record	.46	.38	1.49	1.59		59.00
Murder committed in the course of another felony	.32	.19	2.69	1.37		37.00
Heinous and cruel	.75	.42	3.17	2.12		112.00
R^2 (Cox &Snell)		.30				
Corrected R^2 (Nagelkerke)		.41				
- 2 log likelihood		290.45				
Model x^2	103.14 (df= 17; p < .001)					

* < .05, ** ≤ .001

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The results of the female victim models including jury sex composition are presented in Table 11. Overall, the female model explains more variance than the male model as evidenced by an increase in the pseudo R^2s, from Cox & Snell = .30 and Nagelkerke = .41 to Cox & Snell = .32 and Nagelkerke = .43. Contrary to Hypothesis 6, a majority male jury was not a predictor of receiving the death penalty for female victim cases. Similar to other models, the only theoretical variable that was significantly impactful for female victim cases was victim rape. Female victim cases that include victim rape were associated with a 231.00% increase in receiving the death penalty compared to female victim cases that did not include victim rape. In addition, like prior models, the strongest predictor of the death penalty was case designation as heinous and cruel. Female victim cases in this subset designated as heinous and cruel were 423.00% more likely to result in the death penalty compared to cases without such a designation.

In addition, several variables predicted a reduction in the likelihood of receiving the death penalty for female victim cases in this subset. First contrary to theoretical expectations, female cases that involved victims and offenders who were strangers had a 65.00% lower likelihood of receiving the death penalty compared to cases involving non-stranger victims and offenders. Female victim cases involving defendants who were 25 years old or younger also had a 55.00% lower likelihood of receiving death compared to cases involving defendants who were 26 years or older. Female victim cases prosecuted in an urban jurisdiction were 56.00% less likely to receive the death penalty compared to those prosecuted in a rural jurisdiction. In addition, each accepted mitigator decreased the likelihood of a case resulting in death by almost 9.00%.

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Table 11

Female – Specific Logistic Regression Analysis Testing for Capital Jury Sentencing Decisions Net of other Control Variables Including Jury Sex Composition (n=234)

Variable	B	SE	Wald's x^2	Odds Ratio		% Change
Jury majority male	.42	.34	1.51	1.52		52.00
Victim White	-.00	.48	.00	1.00		0.00
Child victim	.20	.54	.13	1.22		22.00
Older victim	-.20	.43	.22	.82		18.00
Victim married	-.55	.40	1.93	.56		42.00
Victim/defendant strangers	-1.04	.42	6.15	.35	*	65.00
Victim illegal activity	-.04	.59	.01	.96		4.00
Victim rape	1.20	.58	4.33	3.31	*	231.00
Defendant Black	.44	.44	.98	1.55		55.00
Defendant 25 or younger	-.80	.40	3.97	.45	*	55.00
Urban jurisdiction	-.82	.37	5.12	.44	**	56.00
Total aggravators accepted	.27	.22	1.62	1.32		32.00
Total mitigators accepted	-.09	.02	18.79	.91	**	9.00
Total number of victims killed	.20	.18	1.21	1.22		22.00
Defendant prior record	.41	.46	.78	1.51		51.00
Murder committed in the course of another felony	.20	.23	.76	1.22		22.00
Heinous and cruel	1.66	.41	16.20	5.23	**	423.00
R^2 (Cox &Snell)		.32				
Corrected R^2 (Nagelkerke)		.43				
- 2 log likelihood		228.11				
Model x^2	89.40	(*df*=17: p < .001)				

* < .05, ** ≤ .001

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The results of *z* tests of the coefficients in the sex-specific logistic regression models including jury sex composition are presented in Table 12. *Z* tests were estimated to examine whether any variables are better predictors of juror capital sentence decision-making for male victim cases versus female victim cases. Findings from the previous logistic regression models demonstrate that two variables are significant predictors of receiving the death penalty for both male and female victim cases: defendant 25 or younger and the total number of mitigators. The non-significant z scores indicate that the effect of both defendant age 25 or younger (z = - .548) and the total number of mitigators (z = 0) is similar for male and female victim cases. Only one variable exerted differential predictive power for female victim cases versus male victim cases, the variable indicating that the victim and defendant were strangers (z = 2.50), a variable that is significant in the female regression model only.

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Table 12

Comparison of Coefficients for Male and Female Models Testing for Specific Logistic Regression Analysis Testing for Capital Jury Sentencing Decisions Net of other Control Variables Including Jury Sex Composition

Variable	B (Males)	SE	B (Females)	SE	Z	
Jury majority male	.49	.31	.42	.34	.16	
Victim White	.21	.37	-.00	.48	.35	
Child victim	.07	.55	.20	.54	-.16	
Older victim	-.97	.50	-.20	.43	-1.17	
Victim married	.39	.36	-.55	.40	1.75	
Victim/defendant strangers	.31	.34	-1.04	.42	2.50	*
Victim illegal activity	-.33	.40	-.04	.59	-.40	
Victim rape	-.87	1.58	1.20	.58	-1.23	
Defendant Black	-.32	.35	.44	.44	-1.34	
Defendant 25 or younger	-1.08	.34	-.79	.40	-.55	
Urban jurisdiction	-.58	.31	-.82	.36	.51	
Total aggravators accepted	.59	.18	.27	.22	1.13	
Total mitigators accepted	-.09	.02	-.09	.02	0	
Total number of victims killed	.41	.20	.20	.18	.82	
Defendant prior record	.46	.38	.41	.46	.09	
Murder committed in the course of another felony	.32	.19	.20	.23	.41	
Heinous and cruel	.75	.42	1.66	.41	-1.53	

* < .05, ** ≤ .001

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Table 13 presents the findings of an additional female victim logistic regression model that examines the predictors of receiving the death penalty when jury sex composition is included and victim/defendant relationship is modified from a comparison of a victim/defendant stranger group versus a known victim/defendant group to a comparison of a victim/defendant intimate relationship group versus an all other victim/defendant group. Overall, this model explains less variance than the previous model as evidenced by a reduction in the pseudo R^2s, from Cox & Snell = .32 and Nagelkerke = .43 to Cox & Snell = .30 and Nagelkerke = .40. Also, contrary to Hypothesis 6 a majority male jury was not a predictor of receiving the death penalty for female victim cases. Likewise, victim/defendant dyads that were intimate partners were no less likely to result in the death penalty than other victim/defendant groups. Similar to the previous female victim models, the case designation as heinous and cruel was the strongest predictor of receiving the death penalty. Female victim cases designated as heinous and cruel were 378.00% more likely to receive the death penalty than cases without the designation.

Additionally, several variables were significantly related to a reduction in the likelihood of receiving the death penalty. Cases involving a defendant who was 25 years old or younger are 57.00% less likely to receive death compared to cases with defendants who are 26 or older while cases prosecuted in an urban jurisdiction are 54.00% less likely to result in the death penalty compared to cases prosecuted in a rural jurisdiction. Finally, each accepted mitigator is associated with a 9.00% decrease in receiving a death sentence.

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Table 13

Female – Specific Logistic Regression Analysis Testing for Capital Jury Sentencing Decisions Net of other Control Variables Including Jury Sex Composition and Whether or not the Victim and Defendant were Intimates (n=234)

Variable	B	SE	Wald's x^2	Odds Ratio		% Change
Jury majority male	.34	.34	1.05	1.41		41.00
Victim White	-.17	.46	.14	1.19		19.00
Child victim	.26	.55	.22	1.29		29.00
Older victim	-.17	.47	.14	.84		16.00
Victim married	-.54	.39	1.91	.58		42.00
Victim/defendant intimates	.15	.49	.10	1.17		17.00
Victim illegal activity	.10	.60	.03	1.10		10.00
Victim rape	1.04	.56	3.51	2.83		183.00
Defendant Black	.30	.43	.47	1.35		35.00
Defendant 25 or younger	-.85	.40	4.40	.43	*	57.00
Urban jurisdiction	-.77	.36	4.68	.46	**	54.00
Total aggravators accepted	.18	.20	.79	1.20		20.00
Total mitigators accepted	-.10	.02	19.78	.91	**	9.00
Total number of victims killed	.18	.17	1.13	1.19		19.00
Defendant prior record	.34	.45	.57	1.40		40.00
Murder committed in the course of another felony	.17	.22	.57	1.18		18.00
Heinous and cruel	1.56	.40	15.46	4.78	**	378.00
R^2 (Cox &Snell)		.30				
Corrected R^2 (Nagelkerke)		.40				
- 2 log likelihood		234.45				
Model x^2	83.07 (df= 17; p < .001)					

* < .05, ** ≤ .001

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Table 14 presents a final female victim model investigating the impact of jury sex composition for female victim cases that did not include victim rape (n=186). Like the previous jury sex models, a majority male jury was not associated with an increased likelihood of receiving the death penalty for female victim cases that did not include victim rape. The most significant predictor of receiving the death penalty in this model was case designation as heinous and cruel. Female victim cases that did not include victim rape but were designated as heinous and cruel were 399.00% more likely to receive the death penalty compared to cases without this designation. Additionally, prosecution in an urban jurisdiction was associated with a 56.00% decrease in the likelihood of receiving the death penalty compared to cases prosecuted in a rural jurisdiction. Also, for female victim cases that did not include victim rape each accepted mitigator decreased the chance of receiving death by almost 9.00%.

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Table 14

Female – Specific Logistic Regression Analysis Testing for Capital Jury Sentencing Decisions Net of other Control Variables Including Jury Sex Composition and Excluding Cases of Victim Rape (n=186)

Variable	B	SE	Wald's x^2	Odds Ratio		% Change
Jury majority male	.44	.36	1.49	1.56		56.00
Victim White	-.07	.59	.02	1.07		7.00
Child victim	.04	.57	.01	1.05		5.00
Older victim	-.03	.46	.01	.97		3.00
Victim married	-.62	.43	2.07	.54		5.00
Victim/defendant strangers	-.69	.46	2.26	.50		49.90
Victim illegal activity	-.58	.70	.68	.56		44.00
Defendant Black	.05	.49	.01	1.05		5.00
Defendant 25 or younger	-.65	.42	2.37	.52		48.00
Urban jurisdiction	-.82	.40	4.31	.44	*	56.00
Total aggravators accepted	.12	.24	.25	1.12		12.00
Total mitigators accepted	-.09	.02	16.25	.91	*	9.00
Total number of victims killed	.14	.23	.38	1.15		15.00
Defendant prior record	.82	.51	2.61	2.27		127.00
Murder committed in the course of another felony	.24	.23	.38	1.15		15.00
Heinous and cruel	1.61	.44	13.09	4.99	*	399.00
R^2 (Cox &Snell)		.27				
Corrected R^2 (Nagelkerke)		.36				
- 2 log likelihood		198.18				
Model x^2	59.33 (df = 16; p < .001)					

* < .05, ** ≤ .001

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CHAPTER FIVE: DISCUSSION AND CONCLUSIONS

Discussion

Much of the current literature addressing potential extralegal disparities in capital sentencing has assessed the impact of defendant and/or victim characteristics, most notably race of the defendant and/or victim, on the likelihood of receiving the death penalty (for a review see Baldus & Woodworth, 2003a). In comparison, only minimal research has focused on how victim sex may affect capital sentencing decisions (Holcomb et al., 2004; Stauffer et al., 2006; Williams & Holcomb, 2004; Williams et al., 2007). The limited extant research on the relationship between victim sex and death penalty sentencing indicates a female victim effect, such that cases involving female victims are significantly more likely to receive the death penalty compared to similar cases involving male victims. Importantly, while this past research has examined *whether* victim sex differences exist in capital sentencing, it has failed to explain *how* victim sex might impact capital sentencing. Specifically, prior research has yet to consider (1) that victim sex may be mediated by other variables and/or (2) that juror sentence decision-making may be victim sex-specific such that different case characteristics influence jurors' choice of death versus life for cases involving male victims compared to cases involving female victims.

In addition, there has been only limited interest among criminologists in developing theoretical orientations concerning how victim sex might influence the sentencing process. Since prior research has been widely exploratory, theory has been

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used only to assist in the interpretation of results *post hoc*, without progressing towards a new theoretical perspective.

The present study had several major goals. First, I focused on victim sex, a characteristic that has been overlooked in the majority of previous studies on capital sentencing. Second, by using statistical models that separated cases involving female victims from cases involving male victims as well as *z* tests that measured significant differences between coefficients in the sex specific models, the current research provided a more nuanced analysis of victim sex effects. Third, this study advances theoretical progress by using *a priori* hypotheses and testing theoretically driven statistical models.

Key Findings

The Female Victim Effect

A mediation model demonstrated a significant female victim effect net of important control variables. Providing partial support for Hypothesis 1, when the reduced model was compared with a model including both control variables and theoretical variables the female victim effect was reduced, demonstrating a partial mediating effect between the theoretical variables and the relationship between victim sex and juror sentence decision making. Specifically, given that victim rape was the only significant theoretical variable, the present research indicated that victim rape mediated the relationship between victim sex and juror capital sentence decision-making. This finding is similar to the results from Holcomb et al.'s (2007) study indicating that three measures of sexual victimization (1) victim rape, (2) disrobing a victim prior to the murder, and (3) the killing of an unclothed victim mediated the relationship between victim sex and juror decision to choose death versus life without parole. However, the female victim effect did remain statistically significant when the theoretical variables were added to the

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model. This indicates that variables drawn from focal concerns theory and the chivalry hypothesis are insufficient to explain the female victim effect.

Nevertheless, consistent with Hypothesis 2, the current study found that cases involving female victims are more likely to receive the death penalty compared to similar cases involving male victims, net of theoretical and extralegal/legal control variables. Only one variable, a legal variable, served as a more powerful predictor of receiving the death penalty – the number of accepted aggravators. However, upon the inclusion of a new variable in this area of research, case designation as heinous and cruel, the victim sex variable was reduced to non-significance. This finding is consistent with Hypothesis 3 and provides evidence that previous research examining the influence of victim sex on death penalty sentencing may have been missing a key variable that mediates victim sex and juror capital sentence decision-making.

Sex Specific Models

For both male and female victim cases, case designation as heinous and cruel had the greatest impact on jurors' decision to choose the death penalty as opposed to life without parole. While female victim cases were more likely to be designated as heinous and cruel, *z* tests confirm that the influence of case designation as heinous and cruel is similar for both male and female victim cases. The total number of mitigators was also an important factor for both male and female victim cases with higher numbers of mitigators associated with a decrease in receiving the death penalty. *Z* tests also indicate that the effect of the number of mitigators is similar for cases involving victims of either sex.

The sex specific models also reveal several important differences between predictors for receiving the death penalty among cases involving male victims compared to female victim cases. The total number of accepted aggravators and the total number of

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victims killed proved to be important factors associated with an increased likelihood of receiving the death penalty for male victim cases but not female victim cases. In addition, cases prosecuted in an urban jurisdiction and cases involving defendants aged 25 or younger were less likely to receive the death penalty for male victim cases but not female victim cases. In regard to the theoretical variables, only one theoretical variable was associated with jurors' death penalty decision making for female and male victim cases; however, for male victim cases the effect was in the opposite direction than hypothesized. For female victim cases, victim rape was associated with higher odds of receiving the death penalty compared to similar cases that did not include victim rape, whereas for male victim cases, cases involving victims aged 60 or older were associated with a *decreased* likelihood of receiving the death penalty compared to adult victims.

In summation, results from the sex specific logistic regression model in Tables 5 and 6 demonstrate that different models of capital sentencing disaggregated by victim sex better explain juror capital sentence decision-making compared to a model including victims of both sexes (presented in Table 4). Victim sex specific models indicate that juror decision-making for cases involving male victims is influenced by multiple legal and extra legal case characteristics including whether or not the victim is 60 years old or older, whether or not the defendant is 25 years old or younger, whether or not the case is tried in an urban jurisdiction, the number of total aggravators accepted by the jury, the total number of mitigators accepted by the jury, the total number of victims killed, and whether or not the case is designated as heinous and cruel. Comparatively, for cases involving female victims, juror capital sentence decision-making is solely influenced by legal characteristics including the total number of mitigators accepted by the jury, whether or not the case was designated as heinous and cruel, and whether or not the

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victim was raped prior to the murder. Importantly, while victim rape was presented as a theoretically driven variable informed by the chivalry hypothesis, it may also be construed as a legal factor under North Carolina's fifth statutory aggravating factor – whether the murder took place during the commission or attempt of another felony including rape. In other words, multiple legal and extralegal factors influence juror decision-making for male victim cases while for female victim cases jurors are solely influenced by legal factors. Results also suggest the possibility that for female victim cases jurors' decision for or against the death penalty is often solely based on whether or not a case is designated as heinous and cruel but for male victim cases the designation alone does not warrant such sentencing severity. Instead, only when a male victim case is designated as heinous and cruel in conjunction with another important legal and/or extralegal predictor will jurors' choose death. Interestingly, although there were fewer significant variables in the female model than the male model, the female model was a more predictive model evidenced by the larger pseudo R^2s, Cox & Snell = .26 and Nagelkerke = .35 for males versus Cox & Snell = .32 and Nagelkerke = .43 for females.

Jury Sex Composition Models

In the final set of models, a subset of cases where jury sex information was available was utilized to explore the influence of a majority male jury on death penalty sentencing. In line with Hypothesis 7, jury sex composition was not influential for male victim cases; however, departing from all previous models, case designation as heinous and cruel was not a significant predictor for this sub-set of male victim cases. The heinous and cruel designation continued to be an important factor in juror decision to choose the death penalty for cases involving female victims. Diverging from the previous models and contrary to Hypothesis 5, female victim cases involving victim and

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defendants who were strangers were significantly less likely to receive the death penalty in the subset of cases for which jury sex information was available. In addition, contrary to Hypothesis 7, jury sex composition was not a significant predictor of receiving the death penalty for cases involving female victims, providing evidence that conflicts with the chivalry hypothesis that suggests male criminal justice actors provide greater protections for women.

Theoretical Implications

The current study was the first research concerning the influence of victim sex on juror sentence decision-making in capital cases to test a conceptual model informed by theoretical orientations. The conceptual model included eight variables measuring the tenets of the focal concerns theory and the chivalry hypothesis across several sex-specific models. None of the variables measuring the focal concerns theory were significantly associated with juror sentencing decisions in male or female victim cases. Contrary to theoretical expectations, cases that involved older victims (for female cases only), younger victims, White victims, victims who were harmed by strangers, married victims, and victims who were not involved in illegal activity were no more likely to result in the death penalty than adult victims, Black victims, victims who were harmed by a known offender, single/divorced victims, and victims who were involved in illegal activity. These findings dispel positions by previous studies that the focal concerns theory functions in the same way for victims as it does for defendants.

In addition, cases with male victims who were 60 years old or older were significantly *less* likely to receive the death penalty than adult victim cases. In other words, older male victims elicited less protection from jurors compared to other adult male victims. Although this finding is counter to focal concerns theory, Baumer et al.,

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(2000) posits that while older victims are perceived as vulnerable, their murders may be undervalued compared to the murders of younger victims because there are less years lost by the victim. Additionally, the present research did not find a significant relationship between cases with younger victims and receiving the death penalty. This finding is inconsistent with much of the research on the influence of extralegal victim characteristics and the death penalty which demonstrates that younger victim age is an important factor in juror death penalty sentence decision making (Baldus et al., 1990; Holcomb et al., 2004; Stauffer et al., 2006; Unah & Boeger, 2003; Williams & Holcomb, 2004); however, the cut-off year in the past research on victim age was 12 years old whereas the present study used a cut-off year of 17 years old. Perhaps the current study did not capture the influence of younger age because the younger victim group included teenagers instead of just children. It is possible that only young children benefit from positive focal perceptions by jurors while teenagers do not. Also, it is possible that similar to the existence of victim sex specific models of capital sentencing, there are victim age specific models such that different legal and extralegal characteristics are important in cases with child victims, adult victims, and older victims.

The present findings are also inconsistent with extant literature demonstrating that cases involving White victims are more likely to receive the death penalty than cases involving Black victims (Baldus et al., 1990; Holcomb et al., 2004; Phillips, 2009; Pierce & Radelet, 2002; Radelet & Pierce, 1991; Williams & Holcomb, 2001; Williams & Holcomb, 2004; Williams et al., 2007). Results are also contrary to past research demonstrating that cases involving known victim/defendant dyads are less likely to receive the death penalty than stranger victim/defendant dyads (Lenza et al., 2005; Williams & Holcomb, 2001). Additionally, results did not reveal a significant

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relationship between victim illegal activity and juror sentence decision-making. These findings are divergent from prior research by Baumer et al. (2000) and Stauffer et al. (2006) which found that cases involving victims who were engaged in illegal activity resulted in less severe sentences,

In regard to the chivalry hypothesis, victim rape proved to be an important factor in juror decision-making among female victim cases. Victim rape was a significant predictor of receiving the death penalty in each of the female victim models with odds ratios ranging from 2.70 to 3.31. The most direct measure of chivalry available, the majority male jury variable, was not a significant predictor of receiving the death penalty among female victim cases. It may be that chivalry is so embedded in culture that both male and female jurors subscribe to it. To further complicate the influence of chivalry in juror sentence decision-making, the statutory aggravating factor of heinous and cruel was the most important variable among female cases. A greater percentage of cases in which heinous and cruel was submitted as a case aggravator involving female victims received jury acceptance of the heinous and cruel designation than cases involving male victims (84% versus 69%). Possibly, this reflects the broad discretion enjoyed by jurors in accepting or rejecting aggravating factors, and suggests differential treatment by jurors towards cases with female victims. It may be that jurors are acting chivalrously towards cases with female victims by designating them as heinous and cruel more often than similar cases including male victims.

Findings also indicate that for both male and female victim cases, cases tried in an urban jurisdiction were significantly less likely to receive the death penalty than cases tried in the non-urban jurisdictions. This finding is inconsistent with research by Radelet and Pierce (1991) that found that the odds of receiving the death penalty were higher for

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cases from urban Florida counties compared with cases from rural Florida counties. There may be important state-based differences between urban and non-urban counties in North Carolina compared to other states. In North Carolina there may be higher concentrations of wealth in urban areas and poverty in non-urban or rural areas compared to states with more "stereotypical" poor, urban areas and wealthier suburbs and rural areas.

Legal Implications

Furman (1972) held that states' death penalty sentencing statutes were unconstitutional under the Eighth Amendment's cruel and unusual clause and the equal protection clause of the Fourteenth Amendment because they allowed for unbridled discretion by the jury, leaving too great a risk that extralegal factors most notably race of the defendant or victim could affect the imposition of death. In an attempt to fulfill the requirements of *Furman*, *Gregg* (1976) held that instead of unconstrained discretion, juries should be granted guided discretion in the imposition of the death penalty by way of a list of aggravating factors set forth by the state, one of which must be present to warrant the death penalty. Since *Gregg*, the Court has reiterated and reaffirmed the following principles concerning guided discretion (1) "the choice to sentence someone to die must be based on reason, not caprice or emotion"; and (2) "the state in its sentencing scheme must provide a rational and meaningful basis for the sentencer to use in singling out the few who are to die from among the many who are allowed to live" (Rosen, 1986, p.952). Central to the system of guided discretion is the correct formulation and application of aggravating circumstances by the state (Rosen, 1986). However, the present research indicated that the formulation of the aggravator of heinous and cruel in North Carolina has resulted in a disproportionate number of female victim cases with this

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designation compared to male victim cases (84% and 69%). Further, findings demonstrated that female victim cases disproportionately benefit from the legal variable of case designation as heinous and cruel in that female victim cases with the heinous and cruel aggravation alone have an increased odds of receiving the death penalty while male victim cases with the same designation receive the death penalty only if the case also includes another significant factor. These findings seem to indicate that victim sex, a fact that may not be considered when determining aggravating factors "without running afoul" of both the Fourteenth Amendment's equal protection clause and the Eighth Amendment's cruel and unusual punishment clause, may be at the heart of jurors' decision to designate a first-degree murder case as heinous and cruel in North Carolina (Rosen, 1986, p. 953).

Further, although the North Carolina statute treats all aggravating factors of equal weight, in practice the present research indicated that the jury does not weigh each aggravator equally but instead the heinous and cruel and victim rape aggravators seemingly carry the greatest weight – above and beyond the total number of aggravators present in a case. Since these variables are disproportionately found among cases involving female victims, female victim cases enjoy the benefit from this undue influence. Thus, the presence of these "gendered aggravators" creates a "legal" channel for discretion beyond the guidance of the statute and/or the court and arguably resulting in juror discrimination of defendants based on the sex of their victim.

Limitations and Directions for Future Research

One limitation of this study was that information on whether or not the victim had children was not available and thus not included in the present analyses. Previous research on defendant sex and non-capital sentencing outcomes demonstrates that

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parental status may be an important characteristic, especially among female defendants (Daly, 1987, 1989) and, as such, may be pertinent for female victims. Future research would benefit from analysis of victims' parental status as well as the impact of the interaction between victim sex and parental status on juror sentence decision-making in capital cases. In addition, the present study was not able to examine the socioeconomic status of the victim and/or the defendant a factor that may impact the severity of a defendant's sentence via focal concerns. Further, the negative influence of case prosecution in an urban jurisdiction on jurors' likelihood to choose the death penalty also warrants additional examination. Finally, the current research reveals the potential importance of victim age specific models of juror sentence decision-making. Future research should investigate whether different case characteristics are important in cases with younger victims, adult victims, and/or older victims.

Another limitation of the current study was that I was only able to examine one stage of the capital sentencing process, juror sentence decision-making. More specifically, because earlier stages of the process were not explored, it is possible that the full effect of victim sex has not yet been discovered. For example, it may be that victim sex plays a significant role in deciding which cases are charged as first-degree murder as well as those chosen for capital trials (not pled out). Therefore, future research should examine each individual stage of the decision making process, as well as their combined impact, to determine what influence the earlier stages have on the latter.

Finally, there are some questions as to the generalizability of the current research in regard to cultural practices concerning chivalry that may differ based on region. Specifically, chivalrous attitudes may be more apparent from majority male juries in Southern states that have strong cultural ties to traditional gender roles and corresponding

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attitudes about protecting "the vulnerable female". It is possible that the present findings might be different in a Southern state where individuals likely adhere to patriarchal views concerning male and female gender stereotypes. I would expect that selective chivalry would be afforded to conventional women –White, married women who are victimized by strangers – by majority male jurors with these cases demonstrating the greatest likelihood of being designated as heinous and cruel. Comparatively, in Northern states chivalry may be less embedded in cultural milieu such that jurors may be more likely to view women as emancipated from male dependence and/or the need for male protection. As such, the present findings concerning the disproportionate designation of heinous and cruel in female victim cases may be less evident. Future research focused on the influence of extralegal victim characteristics on death penalty decision-making may benefit from examining the connection between positive attitudes towards chivalry and juror case designation as heinous and cruel across different U.S. regions.

Conclusions

The present study's in-depth analysis of victim sex on juror sentence decision-making in capital cases provides the first examination of how victim sex may function through theoretical and control variables under the guise of a previously noted "female victim effect". Additionally, the current study's use of sex-specific models and *z* tests allowed for the first investigation of any differential effects from theoretically derived variables in cases with male victims compared to cases with female victims. The current study provides evidence that the focal concerns theory does not function in the same way for victims as it does for defendants.

Overall, the present research provided some support for the chivalry hypothesis that jurors afford more protection for female victims than male victims; however, such

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protection is not provided directly through a majority of male jurors but indirectly through legal variables such as victim rape and case designation as heinous and cruel. The present research demonstrated that female victim cases disproportionately benefit from these legal variables and, as such, female victim cases are seemingly associated with an increased likelihood of receiving the death penalty because the victims are women.

In light of these findings, future research should continue to conduct sex-specific analyses that include the understudied variable of the case designation as heinous and cruel. Research should also investigate the circumstances surrounding jurors' decisions to designate a capital case as heinous and cruel. Specifically, are positive attitudes towards chivalry evident among jurors most likely to designate a female victim case as heinous and cruel? Also, are regional differences apparent in jurors' attitudes towards chivalry? In addition, future studies should attempt to include victims' parental status in sex-specific models of juror capital sentence decision-making. This information was not available in the current data but according to prior research by Daly (1987, 1989) it may provide another "missing link" in the study of victim sex and death penalty sentencing.

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APPENDICES

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APPENDIX A: Additional Tables

Table 1A

Prior Empirical Studies that Include Victim Sex

Study	Year	Victim sex	Victim race	Victim sex/race interaction	Victim age	Victim married	Victim illegal conduct	Victim rape
Baldus et al.	1990	(FV) OR= 9.58*** (Not included in main model)	1 or more (W) OR= 4.25***	X	(V<12yr) OR=4.74*	X	X	OR=12.78***
Radelet & Pierce	1991	(FV) OR= 3.19***	(W) OR= 3.42***	X	X	X	X	X
William & Holcomb	2001	(FV) OR= 2.34**	(W) OR= 1.66**	X	(V<12yr) OR=1.462	X	X	X
Pierce et al.	2002	(FV) OR= 1.45	(B) OR= - .404**	X	(V<12yr) OR=1.04 (V>59yr) OR=1.40	X	X	X
Holcomb et al.	2004	(FV) OR= 2.62*	(W) OR=1.77*	^ (BF) OR= .385** ^ (BM) OR= .221** ^ (WM) OR= .322*	(V<12yr) OR=1.78*	X	X	X
Williams & Holcomb	2004	(FV) OR=2.34**	(W) OR=1.65**	^ (BF) OR = .376** ^ (BM) OR = .263** ^ (WM) OR = .342**	(V<12yr) OR= .46	X	X	X
Lenza, Keys, & Guess	2005	(FV) OR= .93	(BD/WV) OR=.81 (BD/BV) OR= 1.32 (WD/BV) OR=1.02	X	X	X	X	X
Stauffer et al.	2006	(FV) OR= 1.43*	(W) OR=1.50*	^ (BF) OR = .680 ^ (BM) OR= .464** ^ (WM) OR= .708*	(V<12yr) OR=1.99*	X	OR = .583*	OR= 2.73*
Williams et al.	2007	(FV) OR= 2.66*	(W) OR= 5.13***	(WF to BM) OR= 14.5*** (WM to BM) OR= 6.22*** (BM to BM) OR = 3.90*	X	X	X	OR= 6.34*
Phillips	2009	(FV) OR= 2.11**	(W) OR=2.03**	X	(V=6-16/ +60) OR=2.06*	OR=1.46	X	OR= 2.06
Unah & Boeger	2003	(MV) OR = .49	(WD/WV) OR=3.72	X	(Younger victims) OR= .91*	X	X	X

Notes: *p<.05, **p < .01, ***p < .001; OR= Odds Ratio; ^ = comparison group is White female; WF =White female; BF = Black female; BM = Black male; BF = Black female; WV = White victim; BV = Black victim; BD = Black defendant; WD = White defendant; W = White: B = Black; V = victim.

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APPENDIX A (Continued): Additional Tables

Table 2A

Collinearity Diagnostics for Theoretical, Legal, and Extra-legal Control Variables excluding Jury Sex Composition

Variable	Tolerance	VIF
Victim married	.690	1.449
Prior record	.690	1.450
Victim rape	.724	1.381
Child victim	.861	1.161
Older victim	.783	1.278
Victim/defendant strangers	.833	1.200
Defendant 25 years or younger	.829	1.206
Murder committed during course of another felony	.681	1.469
Urban jurisdiction	.931	1.074
Total number of mitigators	.902	1.109
Total number of aggravators	.527	1.898
Victim involved in illegal activity	.869	1.150
White victim	.861	1.162
Female victim	.778	1.285
Number of victims killed	.774	1.293
Heinous and cruel	.713	1.403

Note: A VIF > 5 demonstrates collinearity.

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APPENDIX A (Continued): Additional Tables

Table 3A

Collinearity Diagnostics for Theoretical, Legal, and Extra-legal Control Variables including Jury Sex Composition

Variable	Tolerance	VIF
Victim married	.684	1.462
Prior record	.675	1.480
Victim rape	.693	1.444
Child victim	.859	1.164
Older victim	.800	1.250
Victim/defendant strangers	.825	1.212
Defendant 25 years or younger	.828	1.207
Murder committed during course of another felony	.634	1.578
Urban jurisdiction	.895	1.117
Total number of mitigators	.853	1.172
Total number of aggravators	.509	1.964
Victim involved in illegal activity	.882	1.134
White victim	.857	1.167
Female victim	.769	1.301
Number of victims killed	.702	1.425
Heinous and cruel	.697	1.434
Majority male jury	.951	1.434

Note: A VIF > 5 demonstrates collinearity.

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APPENDIX B: STATUTORY AGGRAVATING FACTORS IN NORTH CAROLINA

The aggravating circumstances which may be considered shall be limited to the following:

(1) The capital felony was committed by a person lawfully incarcerated.

(2) The defendant had been previously convicted of another capital felony or had been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a capital felony if committed by an adult.

(3) The defendant had been previously convicted of a felony involving the use or threat of violence to the person or had been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a Class A, B1, B2, C, D, or E felony involving the use or threat of violence to the person if the offense had been committed by an adult.

(4) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or affecting an escape from custody.

(5) The capital felony was committed while the defendant was engaged, or was an aider or abettor, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any homicide, robbery, rape or a sex offense, arson, burglary, kidnapping, or aircraft piracy or the unlawful throwing, placing, or discharging of a destructive device or bomb.

(6) The capital felony was committed for pecuniary gain.

(7) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(8) The capital felony was committed against a law enforcement officer, employee of the Department of Correction, jailer, fireman, judge or justice, former judge or justice,

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prosecutor or former prosecutor, juror or former juror, or witness or former witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duty.

(9) The capital felony was especially heinous, atrocious, or cruel.

(10) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

(11) The murder for which the defendant stands convicted was part of a course of conduct in which the defendant engaged and which included the commission by the defendant of other crimes of violence against another person or persons.

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APPENDIX C: JURY INSTRUCTION AS TO CASES DESIGNATION AS HEINOUS AND CRUEL IN NORTH CAROLINA

Was this murder especially heinous, atrocious or cruel?

In this context heinous means extremely wicked or shockingly evil; atrocious means outrageously wicked and vile; and cruel means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others. However, it is not enough that this murder be heinous, atrocious or cruel as those terms have just been defined. This murder must have been especially heinous, atrocious or cruel, and not every murder is especially so. For this murder to have been especially heinous, atrocious or cruel, any brutality which was involved in it must have exceeded that which is normally present in any killing, or this murder must have been a conscienceless or pitiless crime which was unnecessarily torturous to the victim.

However, it is not enough for you to find that this murder was especially heinous, atrocious or cruel. Rather you must find that this defendant's conduct was especially heinous, atrocious or cruel. Not every defendant's conduct is especially heinous, atrocious or cruel, even if the crime for which they were convicted was especially heinous, atrocious or cruel. To find that the individual whose case you are trying displayed conduct that was especially heinous, atrocious or cruel, you must find beyond a reasonable doubt that the brutality displayed by this defendant must have exceeded the type of brutality normally displayed by someone who commits first degree murder or that this defendant personally acted in a conscienceless or pitiless manner and was personally unnecessarily torturous to the victim.

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If you find from the evidence beyond a reasonable doubt both that this murder and this defendant's conduct were especially heinous, atrocious or cruel, you would find this aggravating circumstance, and would so indicate by having your foreperson write, "Yes", in the space after this aggravating circumstance on the Issues and Recommendation form. If you do not so find, or have a reasonable doubt as to one or more of these things, you will not find this aggravating circumstance, and will so find by having your foreperson write a "No" in that space.

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