RESPONSE TO *COMMISSIONER'S SUPPLEMENTAL INTERROGATORIES*
State of Washington v. Allen Eugene Gregory
No. 88086-7

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INTERROGATORY **34**

Were the following five cases the cases that "were missing data and were therefore dropped from the analysis" reported in Table D of the Response to Evaluation at 25: Trial Report 210 (Cheyenne Brown), Trial Report 8 (Charles Bingham), Trial Report 15 (Patrick Jeffries), Trial Report 313 (Byron Scherf), and Trial Report 197 (Joseph Revay)? If not, please identify the five cases that were missing data and were therefore dropped from the analysis by trial report and defendant name and explain the reason each was dropped from the analysis.

Yes, the cases associated with Trial Reports 8, 15, 197, 210 and 313 were the cases that were dropped from previous analyses due to missing data.

INTERROGATORY **35**

Do you maintain that the data file was correctly left blank as to the number of prior criminal convictions for Trial Report 8 and Trial Report 15? If yes, please explain.

Attorneys Neil Fox and Lila Silverstein are providing the response to this Interrogatory; their response is shown in italics below.

Yes, this field was correctly left blank because the attachments were not included in the set of Trial Reports the Court provided to us. The Court sent a disk with all trial reports to us after we were appointed. It continued to e-mail us trial reports as they were filed. On December 2, 2013, in order to make a record of what we received, and to make it clear what precise documents were being utilized to decide this case, as part of our Motion to Complete the Process of Compiling a Full Set of Aggravated Murder Reports (filed 11/26/13), we filed with this Court a copy of the initial disk. On February 25, 2016, we then filed a second disk with this Court which contained a copy of all additional reports received up to the date of oral argument. As noted in the Updated Report, the study analyzes all trial reports received through May of 2014.

As we were litigating the motion to complete the process of compiling a full set of trial reports, and as we were working on the opening brief, we did notice that our copies of the trial reports were missing some attachments. Mr. Fox contacted the Court in late December 2013 or early January 2014 about the missing attachments. Court personnel acknowledged that the attachments had been omitted from the data set provided to counsel. Court personnel indicated this was due to the fact that the data set provided to counsel contained Word versions of the original reports that had been transcribed and that the Court initially lacked scanning abilities at the time the reports were transcribed into Word. By the end of January, 2014, the Court had apparently tracked down the attachments and stated it intended to scan them and distribute them to capital counsel. Unfortunately, this did not happen, apparently because of

understaffing at the Court during this period. The Preliminary Report and opening brief were filed in March, 2014.

Shortly after we filed the opening brief, dozens of missing Trial Reports were filed, presumably as a result of our earlier Motion to Complete.[1] We asked Professor Beckett and Ms. Evans to re-run the analyses with the updated data set. Thus, we again checked with the Court regarding the missing attachments. In May of 2014, the Court indicated it was almost fully staffed and would soon be able to provide the attachments. This did not happen, however.

Professor Beckett and Ms. Evans re-ran their analyses with the data set provided to them through May 31, 2014. They wrote the Updated Report in the summer because we wanted to file it in the fall of 2014 so the State would have sufficient time to respond to the study in its brief.

The researchers used all data we were given through May of 2014; the attachments were not part of the data set provided for proportionality review. On Page 14 of the Updated Report, the researchers noted that there was missing data in many trial reports but that the data set was still "fairly comprehensive" and included "numerous case, victim, and defendant characteristics" such that a meaningful study could be conducted. This Court has similarly stated numerous times that although there are omissions in the data set, it is complete enough to analyze proportionality in Washington capital sentencing. E.g. In re the Personal Restraint of Elmore, 162 Wn.2d 236, 269-70, 172 P.3d 335 (2007).

We would be happy to have the Court e-mail us (and counsel for the State) the attachments for Trial Reports 8 and 15. In the meantime, in response to Interrogatory 38, Professor Beckett and Ms. Evans have used the criminal history numbers the Commissioner provided (8 for TR8 and 15 for TR15), and have re-run the analyses to include that data. We are wondering if these numbers are a typo given that the trial report numbers match their respective criminal history numbers. If the attachments reveal different criminal history numbers, the researchers would be happy to re-run the analyses after receiving the attachments.[2]

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[1] Although many were filed, there were still several missing. For instance, Mitchell Rupe's third report, involving a life sentence imposed after a special sentencing proceeding in a case involving a White defendant, was never filed.

[2] We wish to make clear that we in no way blame the Court for this oversight with respect to distributing the attachments. Without question, everyone makes mistakes. The point is that the minor mistakes that have been uncovered during this process – whether mistakes by coders, counsel, or courts – do not affect the results in any significant way.

INTERROGATORY 36

Do you maintain that the data file was correctly left blank as to number of defenses for Trial Report 313? If yes, please explain.

No, this was an error. However, the number of defenses for the case described in TR 313 should be zero rather than one. The coding instructions pertaining to defenses are presented in numbers 31 through 43 of the numbered items in the coding protocol. Per these instructions, the coders were asked to count the number of defenses for which evidence or instructions were given. Because neither the evidence nor the instructions box was checked for the sole defense identified in TR 313, the correct number should be zero.

It is true that the instructions for coding mitigating circumstances are different than those pertaining to defenses. In the case of mitigating circumstances, the judge is asked to check a yes or no box to indicate whether evidence regarding mitigating circumstances was presented, and then to describe those mitigating circumstances. We instructed coders to enter the number of mitigating circumstances described regardless of whether the yes or no box was checked because if the judge described one or more such circumstance, then we can infer that the fact that the yes box was not checked was an omission on the part of the judge. The same is not true for defenses, where the question on the Trial Report specifically focuses on whether evidence or instructions were given. In this case, it is possible that a defense attorney would have articulated a defense for which no evidence or instructions were given. Indeed, this is usually the case for "general denial," which is the default defense listed at omnibus in most cases because the State bears the burden of proof. Thus we cannot infer that the absence of a checked box is an error of omission in the case of defenses. Moreover, we cannot follow a different procedure for Mr. Scherf other than that which is described in the coding protocol.

We have entered a 0 for number of defenses for Trial Report 313 in the database. As a result, the case will be included in subsequent analyses.

INTERROGATORY 37

Please indicate whether any of the cases that were dropped from the analysis reported in Table D should have been included in the analysis, identify such cases by trial report number and defendant name, and indicate the proper coding for the case variable(s) that were previously identified as missing information.

TR 313 (involving defendant Bryon Scherf) should be included in the analysis with zero defenses (see our response to Interrogatory 36). And although the omission of the cases associated with TRs 8 (Charles Bingham) and 15 (Patrick Jeffries) was appropriate based on the information

available to us at the time, these cases can now be included in the analysis using the information regarding the number of prior convictions (8 and 15, respectively) provided by the Commissioner.

As the Commissioner noted, TR 210 (Cheyenne Troy Brown) was also dropped from the prior analyses because the race of the defendant is listed as unknown on the Trial Report. However, we now have in our possession data regarding all felony sentences imposed by Washington State Superior Courts from 1986 through 2015.[3] Using the cause number (97-1-00356-4) and date of birth (11/18/76) that appear on TR 210, we were able to identify the defendant involved in this case in the database provided to us by the Caseload Forecast Council. Mr. Brown is identified as White in that database, so we have included that information in our capital sentencing data set. This case will also be included in the analyses presented below.

INTERROGATORY 38

Please report the results if the original model used in Table D and the two variants of Table D requested in interrogatory numbers 19 and 20 are re-run with proper coding for the cases that were previously identified as missing information.

Please note that all of the results presented below include the logarithmic transformations of variables set forth in the *Response to Evaluation*. In addition, all previously identified coding errors have been corrected. For each new model, we present the results in table format, then copy and paste the unaltered statistical output beneath it.

For reference, Table 1 (based on Model D) is copied below. This table appeared in response to Interrogatory 19 and has not been modified.

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[3] These data were provided to us by Duc H. Luu, Database and Sentencing Administration Manager at the Washington State Caseload Forecast Council. Mr Luu can be reached at duc.luu@cfc.wa.gov

Table 1. Revised Table 7 from *Updated Report* with Data Entry Errors Corrected and TR 34A Added: Impact of Case Characteristics and Defendant Race on Capital Sentencing Outcomes in Death Eligible Cases, December 1981 - May 2014

N= 77	Death Penalty Imposed			Pseudo R^2 = .2361
Variable	Coefficient	Exact P-Value	Odds Ratio	Referent (Compared to)
Prior Convictions (logged)	-0.091	.510	.913	
1 Victim	-0.722	.221	.486	Multiple victims
Aggravating Circumstances	0.630	.016	1.88**	
Mitigating Circumstances (logged)	-0.258	.089	.773*	
Defenses	-0.794	.034	.452**	
Victim Held Hostage	0.717	.222	2.05	Not held hostage
Black Defendant	1.582	.039	4.86**	Non-black

* significant at α = .10   ** significant at α = .05   *** significant at α = .01

Below, Table D1 presents the results obtained when the most recently updated data set is utilized. This data set includes all relevant information regarding the proceedings described in Trial Reports 8, 15, 210, and 313, which were formerly missing data. These cases are included in Table D1 below (n=81).

Table D1. Impact of Case Characteristics and Defendant Race on Capital Sentencing Outcomes in Cases with Special Sentencing Proceedings, December 1981 - May 2014

N= 81	Death Penalty Imposed			Pseudo R^2 = 0.2399 LR chi2(7) = 26.58 Prob > chi2 = 0.0004
Variable	Coefficient	Exact P-Value	Odds Ratio	90% Confidence Interval
Prior Convictions (ln)	-0.080	0.556	0.923	-.303, .143
1 Victim	-0.655	0.249	0.520	-1.59, .280
Aggravating circumstances	0.651	0.011	1.917**	.228, 1.07
Mitigating Circumstances (ln)	-0.263	0.084	0.769*	-.513, -.012
Defenses	-0.839	0.025	0.432**	-1.45, -.224
Victim Held Hostage	0.738	0.195	2.092	-.199, 1.68
Black Defendant	1.519	0.048	4.568**	.258, 2.78

 * significant at α = .10   ** significant at α = .05   *** significant at α = .01

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Unaltered Statistical Output Associated with Table D1
logit DP_Sentence  lnPriors Vics_1Total AppliedAggCir_Num  LnTotMitCircum Defenses_Num
Vics_AnyHostage D_RaceB, level(90) ;

Iteration 0:   log likelihood = -55.395695
Iteration 1:   log likelihood = -42.668294
Iteration 2:   log likelihood = -42.107671
Iteration 3:   log likelihood = -42.103606
Iteration 4:   log likelihood = -42.103605

Logistic regression                             Number of obs    =        81
                                                LR chi2(7)       =     26.58
                                                Prob > chi2      =    0.0004
Log likelihood = -42.103605                     Pseudo R2        =    0.2399


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     DP_Sentence |    Coef.    Std. Err.     z     P>|z|    [90% Conf. Interval]
-----------------+------------------------------------------------------------
        lnPriors |  -.0799751   .1356967   -0.59   0.556   -.3031763    .1432261
      Vics_1Total |  -.6545582   .5682018   -1.15   0.249   -1.589167    .2800506
AppliedAggCir_Num |   .6508112    .25691    2.53   0.011    .2282319   1.073391
   LnTotMitCircum |  -.2625053   .1520873   -1.73   0.084   -.5126666   -.0123439
     Defenses_Num |  -.8391754   .3737478   -2.25   0.025   -1.453936   -.2244149
  Vics_AnyHostage |   .7381753    .570023    1.29   0.195    -.199429    1.67578
          D_RaceB |   1.519062   .7665843    1.98   0.048    .2581425   2.779981
            _cons |  -1.113436   .7334553   -1.52   0.129   -2.319863    .0929906
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The results of this (most inclusive) model show that Black defendants were 4.6 times as likely as non-Black defendants to be sentenced to death after controlling for the other variables included in the model. This result is significant at p=.048. In this model, the findings indicate that the impact of defendant race (i.e. Blackness) on the chances that the death penalty was imposed is equivalent to the impact of nearly four (3.9) additional aggravating circumstances.[4]

Below, Table D2 and associated output show the findings obtained when the first of two proceedings of three defendants (including Mr. Gregory) who were sentenced to death twice are excluded from the analysis. These proceedings are described in TRs 7, 180 and 216. Two of three of these defendants are Black.

As we suggested in our response to the Commissioner's prior interrogatories, we believe that intentionally excluding these proceedings (as well as that associated with TR 34A) is improper. Each of these defendants' special sentencing proceedings were separated by years, involved different juries and different case characteristics. For instance, both Mr. Davis's and Mr. Gregory's criminal history changed between the two proceedings, and criminal history is a relevant case characteristic the jury considers at sentencing. Moreover, TR 34 and 34A describe

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[4] An odds ratio of 4.57 means that Black defendants are 357% more likely than non-Black defendants to be sentenced to death. An odds of ratio of 1.92 means that each additional aggravating circumstance increases the likelihood that a death sentence will be imposed by 92%. 357% divided by 92% = 3.9.

two different proceedings associated with two different crimes committed on two different dates. As a result of these meaningful differences, the first and second proceedings could very well have resulted in different sentencing outcomes.

Moreover, there is no rational basis for deciding which of a defendant's two special sentencing proceedings to include. Deciding to keep the first but exclude the second, or vice versa, is arbitrary, but because the proceedings involve different characteristics, either decision could have an impact on the results. Here, we have been asked to drop the first proceeding for Misters Rupe, Davis and Gregory, but the second proceeding for Mr. St. Pierre.

Finally, although it is true that a defendant's second special sentencing proceeding is not entirely independent of his or her first proceeding, it is also true that any proceedings adjudicated by the same judge, involving the same attorneys, or adjudicated in the same county violate the assumption of independence. Nonetheless, as a practical matter, researchers using regression methods to analyze sentencing outcomes routinely include cases that involve the same judges, attorneys, counties, and defendants in their analyses, and the results are often published in well-regarded, peer-reviewed journals.[5]

For all of these reasons, we believe that it is highly inappropriate to remove these proceedings from the analysis. Nonetheless, we have done so at the Commissioner's request.

The results are shown in Table D2 below. Trial Reports 7, 180, and 216 have been excluded from this model, decreasing the number of special sentencing proceedings included in the analysis from 81 to 78.

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[5] For examples in which Washington State sentencing data are analyzed, and cases involving the same defendant are included, see Randy R. Gainey, Sara Steen and Rodney L. Engen, "Exercising Options: An Assessment of the Use of Alternative Sanctions for Drug Offenders", *Justice Quarterly* 22:4, 488-520 (2005); Rodney L. Engen, Randy R. Gainey, Robert D. Crutchfield, and Joseph G. Weis, "Discretion and Disparity Under Sentencing Guidelines," *Criminology* 41, 1: 99-130 (2003); Rodney L. Engen, "The Power to Punish: Discretion and Sentencing Reform in the War on Drugs," *American Journal of Sociology* 105, 5: 1357-1395 (2000); and Alexes Harris, Heather Evans and Katherine Beckett, "Courtesy Stigma and Monetary Sanctions: Toward a Socio-Cultural Theory of Punishment," *American Sociological Review* 76, 2: 234-64 (2011).

Table D2. Impact of Case Characteristics and Defendant Race on Capital Sentencing Outcomes in Cases with Special Sentencing Proceedings, December 1981 - May 2014				
N= 78	Death Penalty Imposed			Pseudo R^2 = 0.2240 LR chi2(7) = 23.65 Prob > chi2 = 0.0013
Variable	Coefficient	Exact P-Value	Odds Ratio	90% Confidence Interval
Prior Convictions (ln)	-0.029	0.843	0.972	-.271, .213
1 Victim	-0.599	0292	0.549	-1.53, .335
Aggravating circumstances	0.604	0.017	1.830**	.187, 1.02
Mitigating Circumstances (ln)	-0.246	0.110	0.782	-.500, .007
Defenses	-0.795	0.032	0.452**	-1.40, -.185
Victim Held Hostage	0.778	0.174	2.177	-.164, 1.72
Black Defendant	1.386	0.076	4.001*	.103, .267

  * significant at α = .10   ** significant at α = .05   *** significant at α = .01

```
Unaltered Statistical Output Associated with Table D2 above

logit DP_Sentence  lnPriors Vics_1Total AppliedAggCir_Num  LnTotMitCircum
Defenses_Num
Vics_AnyHostage D_RaceB, level(90) ;

Iteration 0:   log likelihood = -52.802235
Iteration 1:   log likelihood = -41.403094
Iteration 2:   log likelihood = -40.978678
Iteration 3:   log likelihood = -40.975888
Iteration 4:   log likelihood = -40.975888


Logistic regression                      Number of obs    =         78
                                         LR chi2(7)       =      23.65
                                         Prob > chi2      =     0.0013
Log likelihood = -40.975888              Pseudo R2        =     0.2240


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    DP_Sentence |     Coef.   Std. Err.     z    P>|z|    [90% Conf. Interval]
----------------+-------------------------------------------------------------
       lnPriors |  -.0290312  .1468684   -0.20   0.843   -.2706083    .2125459
     Vics_1Total | -.5988055  .5679374   -1.05   0.292   -1.532979    .3353684
AppliedAggCir_Num |  .6042179  .2535922    2.38   0.017    .1870959    1.02134
  LnTotMitCircum | -.2463513  .1542973   -1.60   0.110   -.5001479    .0074452
    Defenses_Num |  -.7947447  .3708464   -2.14   0.032   -1.404733   -.1847566
  Vics_AnyHostage |  .7777803  .5725256    1.36   0.174   -.1639404    1.719501
          D_RaceB |  1.386532  .7802066    1.78   0.076    .1032068    2.669858
           _cons | -1.165188   .734812   -1.59   0.113   -2.373847    .0434696
```

The results of this model show that Black defendants were four times as likely as non-Black defendants to be sentenced to death after controlling for the other variables included in the model. This result is significant at p=.076. These findings indicate that the impact of defendant

race (i.e. Blackness) on the chances that a death sentence was imposed is equivalent to 3.6 additional aggravating circumstances.[6]

Table D3 below shows the results obtained when the proceeding identified in TR 34A is also excluded from the model.

Table D3. Impact of Case Characteristics and Defendant Race on Capital Sentencing Outcomes in Cases with Special Sentencing Proceedings, December 1981 - May 2014				
N= 77	Death Penalty Imposed			Pseudo R^2 = 0.2182 LR chi2(7) = 22.81 Prob > chi2 = 0.0018
Variable	Coefficient	Exact P-Value	Odds Ratio	90% Confidence Interval
Prior Convictions (ln)	-0.027	0.852	0.973	-.268, .214
1 Victim	-0.593	0.295	0.553	-1.53, .339
Aggravating circumstances	0.589	0.021	1.802**	.169, 1.01
Mitigating Circumstances (ln)	-0.256	0.102	0.774	-.514, .001
Defenses	-0.767	0.040	0.464**	-1.38, -.152
Victim Held Hostage	0.767	0.180	2.154	-.173, 1.71
Black Defendant	1.354	0.083	3.873*	.067, 2.64

  * significant at α = .10   ** significant at α = .05   *** significant at α = .01

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[6] An odds ratio of 4.00 means that Black defendants are 300% more likely than non-Black defendants to be sentenced to death. An odds of ratio of 1.83 means that each additional aggravating circumstance increases the likelihood that a death sentence will be imposed by 83%. 300% divided by 83% = 3.6.

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Unaltered Statistical Output Associated with Table D3 Above
logit DP_Sentence  lnPriors Vics_1Total AppliedAggCir_Num  LnTotMitCircum
Defenses_Num   Vics_AnyHostage D_RaceB, level(90) ;

Iteration 0:   log likelihood = -52.269657
Iteration 1:   log likelihood = -41.265007
Iteration 2:   log likelihood =  -40.86863
Iteration 3:   log likelihood = -40.866041
Iteration 4:   log likelihood = -40.866041


Logistic regression                             Number of obs    =          77
                                                LR chi2(7)       =       22.81
                                                Prob > chi2      =      0.0018
Log likelihood = -40.866041                     Pseudo R2        =      0.2182


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    DP_Sentence |     Coef.    Std. Err.     z     P>|z|    [90% Conf. Interval]
----------------+--------------------------------------------------------------
       lnPriors | -.0273071   .1464425   -0.19   0.852   -.2681835    .2135694
    Vics_1Total | -.5932557   .5668311   -1.05   0.295    -1.52561    .3390985
AppliedAggCir_Num |  .5887332   .2550462    2.31   0.021    .1692195   1.008247
  LnTotMitCircum | -.2564319   .1567788   -1.64   0.102   -.5143101    .0014464
    Defenses_Num | -.7671008   .3739847   -2.05   0.040   -1.382251   -.1519507
  Vics_AnyHostage |  .7674686    .571835    1.34   0.180   -.1731163   1.708053
         D_RaceB |  1.353979   .7821919    1.73   0.083    .0673879    2.64057
           _cons |  -1.13715   .7361751   -1.54   0.122   -2.348051    .0737499
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```

The results of this model show that Black defendants were 3.9 times as likely as non-Black defendants to be sentenced to death after controlling for the other variables included in the model. This result is significant at p=.083. These findings indicate that the impact of defendant race (i.e. Blackness) on the odds that a death sentence was imposed is equivalent to 3.6 additional aggravating circumstances.[7]

INTERROGATORY 39
Please report the results if the original model used in Table D and the two variants of Table D requested in interrogatory numbers 19 and 20 are re-run with proper coding for the cases that were previously identified as missing information, and with Trial Reports 92, 167, 182, and 224 removed from the analyses.

Table D4 shows the results obtained when the unusual special sentencing proceedings described in Trial Reports 92, 167, 182, and 224 are intentionally excluded from the analysis.

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[7] An odds ratio of 3.87 means that Black defendants are 287% more likely than non-Black defendants to be sentenced to death. An odds of ratio of 1.80 means that each additional aggravating circumstance increases the likelihood that a death sentence will be imposed by 80%. 287% divided by 80% = 3.59.

Table D4. Impact of Case Characteristics and Defendant Race on Capital Sentencing Outcomes in Cases with Special Sentencing Proceedings, December 1981 - May 2014				
N= 77	Death Penalty Imposed			Pseudo R^2 = 0.2659 LR chi2(7) = 28.22 Prob > chi2 = 0.0002
Variable	Coefficient	Exact P-Value	Odds Ratio	90% Confidence Interval
Prior Convictions (ln)	-0.032	0.819	0.968	-.263, .198
1 Victim	-0.783	0.193	0.457	-1.77, .206
Aggravating circumstances	0.672	0.011	1.957**	.235, 1.09
Mitigating Circumstances (ln)	-0.252	0.106	0.778	-.508, .005
Defenses	-1.010	0.011	0.364**	-1.66, -.357
Victim Held Hostage	0.698	0.239	2.092	-.277, 1.67
Black Defendant	1.404	0.074	4.072*	.109, 2.70

   * significant at α = .10   ** significant at α = .05   *** significant at α = .01

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Unaltered Statistical Output Associated with Table D4 above

logit DP_Sentence  lnPriors Vics_1Total AppliedAggCir_Num  LnTotMitCircum Defenses_Num
 Vics_AnyHostage D_RaceB, level(90) ;

Iteration 0:   log likelihood = -53.053711
Iteration 1:   log likelihood = -39.620753
Iteration 2:   log likelihood = -38.952993
Iteration 3:   log likelihood = -38.945113
Iteration 4:   log likelihood =  -38.94511

Logistic regression                             Number of obs    =         77
                                                LR chi2(7)       =      28.22
                                                Prob > chi2      =     0.0002
Log likelihood =  -38.94511                     Pseudo R2        =     0.2659


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     DP_Sentence |      Coef.   Std. Err.      z    P>|z|     [90% Conf. Interval]
-----------------+--------------------------------------------------------------
        lnPriors | -.0320692   .1401606    -0.23   0.819    -.2626129    .1984746
     Vics_1Total | -.7834908   .6014816    -1.30   0.193     -1.77284    .2058584
AppliedAggCir_Num |  .6715556   .2656554     2.53   0.011     .2345913    1.10852
   LnTotMitCircum | -.2515831   .1558327    -1.61   0.106    -.5079051    .0047389
    Defenses_Num | -1.010317   .3971123    -2.54   0.011    -1.663508    -.357125
 Vics_AnyHostage |  .6980623   .5926745     1.18   0.239    -.2768005    1.672925
          D_RaceB |  1.404109   .7871728     1.78   0.074     .1093247    2.698893
            _cons | -.8029703   .7538879    -1.07   0.287    -2.043006     .437065
```

These results show that Black defendants were 4.1 times as likely as non-Black defendants to be sentenced to death after controlling for the other variables included in the model. This result is significant at p=.074. These findings indicate that the impact of defendant race (i.e. Blackness)

on the odds that a death sentence was imposed is equivalent to 3.2 additional aggravating circumstances.[8]

Table D5 shows the results obtained when the unusual special sentencing proceedings (described in TRs 92, 167, 182, and 224) *and* the proceedings described in TRs 7, 180, and 216 are excluded from the analysis. These exclusions reduce the number of cases (proceedings) analyzed to 74.

Table D5. Impact of Case Characteristics and Defendant Race on Capital Sentencing Outcomes in Cases with Special Sentencing Proceedings, December 1981 - May 2014				
N= 74	Death Penalty Imposed			Pseudo R^2 = 0.2522 LR chi2(7) = 25.53 Prob > chi2 = 0.0006
Variable	Coefficient	Exact P-Value	Odds Ratio	90% Confidence Interval
Prior Convictions (ln)	0.022	0.887	1.022	-.230, .273
1 Victim	-0.734	0.222	0.480	-1.72, .255
Aggravating circumstances	0.621	0.018	1.860**	.189, 1.05
Mitigating Circumstances (ln)	-0.238	0.132	0.788	-.498, .022
Defenses	-0.962	0.015	0.382**	-1.61, -.314
Victim Held Hostage	0.746	0.210	2.109	-.234, 1.73
Black Defendant	1.278	0.111	3.558	-041, .260

  * significant at α = .10   ** significant at α = .05   *** significant at α = .01

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[8] An odds ratio of 4.07 means that Black defendants are 307% more likely than non-Black defendants to be sentenced to death. An odds of ratio of 1.96 means that each additional aggravating circumstance increases the likelihood that a death sentence will be imposed by 96%. 307% divided by 96% = 3.2.

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Unaltered Statistical Output Associated with Table D5 above

logit DP_Sentence  lnPriors Vics_1Total AppliedAggCir_Num  LnTotMitCircum
Defenses_Num  Vics_AnyHostage D_RaceB, level(90) ;

Iteration 0:   log likelihood = -50.615144
Iteration 1:   log likelihood =  -38.40094
Iteration 2:   log likelihood = -37.853602
Iteration 3:   log likelihood = -37.848322
Iteration 4:   log likelihood =  -37.84832

Logistic regression                          Number of obs    =         74
                                             LR chi2(7)       =      25.53
                                             Prob > chi2      =     0.0006
Log likelihood = -37.84832                   Pseudo R2        =     0.2522


------------------------------------------------------------------------------
      DP_Sentence |     Coef.    Std. Err.      z    P>|z|    [90% Conf. Interval]
------------------+-----------------------------------------------------------
         lnPriors |   .0217379   .1530231     0.14   0.887   -.2299628    .2734386
      Vics_1Total |   -.733908   .6010649    -1.22   0.222   -1.722572    .2547559
 AppliedAggCir_Num|   .6205861   .2624808     2.36   0.018    .1888436    1.052329
   LnTotMitCircum |  -.2377665   .1579624    -1.51   0.132   -.4975915    .0220585
     Defenses_Num |  -.9621849   .3939383    -2.44   0.015   -1.610156    -.314214
  Vics_AnyHostage |   .7459783   .5957316     1.25   0.210    -.233913     1.72587
          D_RaceB |   1.277667   .8015577     1.59   0.111   -.0407782    2.596112
            _cons |  -.8527456   .7550018    -1.13   0.259   -2.094613    .3891219
------------------------------------------------------------------------------
```

The results of this model show that Black defendants were 3.6 times as likely as non-Black defendants to be sentenced to death after controlling for the other variables included in the model. These findings indicate that defendant race (i.e. Blackness) had an equivalent impact on the odds that a death sentence was imposed as three additional aggravating circumstances.[9]

Table D6 shows the results obtained in the proceeding associated with TR 34A is also excluded from the analysis, reducing the number of cases (proceedings) included to 73.

---

[9] An odds ratio of 3.56 means that Black defendants are 256% more likely than non-Black defendants to be sentenced to death. An odds of ratio of 1.86 means that each additional aggravating circumstance increases the likelihood that a death sentence will be imposed by 86%. 256% divided by 86% = 3.

Table D6. Impact of Case Characteristics and Defendant Race on Capital Sentencing Outcomes in Cases with Special Sentencing Proceedings, December 1981 - May 2014				
N= 73	Death Penalty Imposed			Pseudo R^2 = 0.2455 LR chi2(7) = 24.57 Prob > chi2 = 0.0009
Variable	Coefficient	Exact P-Value	Odds Ratio	90% Confidence Interval
Prior Convictions (ln)	0.023	0.881	1.023	-.228, .274
1 Victim	-0.728	0.225	0.483	-1.71, .259
Aggravating circumstances	0.607	0.022	1.834**	.172, 1.04
Mitigating Circumstances (ln)	-0.247	0.124	0.781	-.510, .017
Defenses	-0.936	0.018	0.392**	-1.59, -.283
Victim Held Hostage	0.737	0.215	2.091	-.241, 1.72
Black Defendant	1.248	0.120	3.484	-0.07, 2.57

* significant at α = .10   ** significant at α = .05   *** significant at α = .01

```
Unaltered Statistical Output Associated with Table D6 Above

logit DP_Sentence  lnPriors Vics_1Total AppliedAggCir_Num  LnTotMitCircum
Defenses_Num Vics_AnyHostage D_RaceB, level(90) ;

Iteration 0:   log likelihood = -50.043536
Iteration 1:   log likelihood =  -38.27904
Iteration 2:   log likelihood = -37.762875
Iteration 3:   log likelihood = -37.757769
Iteration 4:   log likelihood = -37.757767

Logistic regression                          Number of obs    =        73
                                             LR chi2(7)       =     24.57
                                             Prob > chi2      =    0.0009
Log likelihood = -37.757767                  Pseudo R2        =    0.2455


-------------------------------------------------------------------------------
    DP_Sentence |     Coef.   Std. Err.      z    P>|z|     [90% Conf. Interval]
----------------+--------------------------------------------------------------
       lnPriors |   .0228893   .1525828    0.15   0.881    -.2280871    .2738657
    Vics_1Total |  -.7276026    .599893   -1.21   0.225    -1.714339    .2591335
AppliedAggCir_Num |  .6065617   .2639889    2.30   0.022     .1723385    1.040785
  LnTotMitCircum |  -.246656   .1603164   -1.54   0.124     -.510353    .0170409
   Defenses_Num |  -.936296   .3972796   -2.36   0.018    -1.589763   -.2828292
 Vics_AnyHostage |   .7374072   .5949681    1.24   0.215    -.2412282    1.716043
        D_RaceB |   1.248204   .8032508    1.55   0.120    -.0730265    2.569434
```

These results show that Black defendants were 3.5 times as likely as non-Black defendants to be sentenced to death after controlling for the other variables included in the model. These

findings further indicate that the impact of defendant race (i.e. Blackness) on the odds that a death sentence was imposed was equivalent to three additional aggravating circumstances.[10]

Although the p-value for race of defendant remains below the .10 threshold in Models D1-D4, it rises above this level in Models D5 and D6. This does not change our conclusion regarding the impact of defendant race on capital sentencing outcomes, for three reasons. First, these models improperly omit relevant cases (TRs 7, 180, and 216 are omitted from both Models D5 and D6 and TR34A is omitted from Model D6). Second, in this study, the data include all Washington State aggravated murder proceedings that took place from 1981 to May of 2014 for which trial reports/data are available. The data thus consist of the *population* of relevant proceedings rather than a *sample* of that population. Under such circumstances, the direction and size of the coefficients and magnitude of the odds ratios are most important; p-values are far less meaningful.[11] Finally, p-values reflect, in part, the number of cases analyzed. It is therefore unsurprising that the p-values increased slightly for many variables (not just for defendant race) as the number of cases included in the analysis declined.

Discussion

Table D7 summarizes the findings regarding the impact of defendant race on capital case sentencing outcomes for each of the models presented above.

---

[10] An odds ratio of 3.48 means that Black defendants are 248% more likely than non-Black defendants to be sentenced to death. An odds of ratio of 1.83 means that each additional aggravating circumstance increases the likelihood that a death sentence will be imposed by 83%. 248% divided by 83% = 3.0.

[11] Alberto Abadie Susan Athey Guido W. Imbens Jeffrey M. Wooldridge, FINITE POPULATION CAUSAL STANDARD ERRORS, Working Paper 20325. National Bureau of Economic Research (2014) http://www.nber.org/papers/w20325. See also A. Agresti and B. Finlay, STATISTICAL METHODS FOR THE SOCIAL SCIENCES (Upper Saddle, NJ: Prentice Hall, 1997, 3rd edition) at 100-109, and CR VanVoorhis, Wilson and Betsy L. Morgan, "Understanding power and rules of thumb for determining sample sizes" (*Tutorials in Quantitative Methods for Psychology* 3.2 (2007): 43-50) for a discussion of the relationship between populations and sampling distributions.

Table D7. Summary of Model Variants Testing Impact of Case Characteristics and Defendant Race on Capital Sentencing Outcomes in Cases with Special Sentencing Proceedings, December 1981 - May 2014

Variable	Death Penalty Imposed Odds Ratios					
	D1. Includes All Relevant SSPs	D2. Excludes TRs 7, 180, 216	D3. Excludes TRs 7, 180, 216 and 34A	D4. Excludes TRs 92, 167, 182, 224	D5. Excludes TRs 92, 167, 182, 224, 7, 180, 216	D6. Excludes TRs 92, 167, 182, 224, 7, 180, 216 and 34A
Prior Convictions (ln)	0.923	0.972	0.973	0.968	1.022	1.023
1 Victim	0.520	0.549	0.553	0.457	0.480	0.483
Aggravating circumstances	1.917	1.830	1.802	1.957	1.860	1.834
Mitigating Circumstances (ln)	0.769	0.782	0.774	0.778	0.788	0.781
Defenses	0.432	0.452	0.464	0.364	0.382	0.392
Victim Held Hostage	2.092	2.177	2.154	2.092	2.109	2.091
Black Defendant	4.568	4.001	3.873	4.072	3.558	3.484
Number of SSPs in Analysis	81	78	77	77	74	73

Notes: TRs 7, 180 and 216 involve the first of two sentencing proceedings in which Mr. Rupe (White), Mr. Davis (Black) and Mr. Gregory (Black) were sentenced to death. TR 34A describes the second proceeding of Mr. St. Pierre (White), who was sentenced to life without parole twice for two different aggravated murders committed on two different dates. TR's 92, 167, 182 and 224 describe proceedings in which the prosecution stipulated during the proceeding that it could not prove beyond a reasonable doubt that there were not sufficient mitigating circumstances to warrant leniency.

In summary, the findings presented above indicate that from December 1981 through May of 2014, special sentencing proceedings in Washington State involving Black defendants were between 3.5 and 4.6 times as likely to result in a death sentence as proceedings involving non-Black defendants after the impact of the other variables included in the model has been taken into account. Moreover, the impact of defendant race (i.e. Blackness) is equivalent to between three and four additional aggravating circumstances. It is thus clear that the race of the defendant has had a powerful and substantial impact on capital sentencing outcomes in Washington State.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

    Respondent,

    v.

ALLEN GREGORY,

    Appellant.

NO. 88086-7

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SIGNED IN SEATTLE, WASHINGTON THIS 29TH DAY OF SEPTEMBER, 2017.

X _____

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