Distribution Agreement

In presenting this thesis as a partial fulfillment of the requirements for a degree from Emory University, I hereby grant to Emory University and its agents the non-exclusive license to archive, make accessible, and display my thesis in whole or in part in all forms of media, now or hereafter now, including display on the World Wide Web. I understand that I may select some access restrictions as part of the online submission of this thesis. I retain all ownership rights to the copyright of the thesis. I also retain the right to use in future works (such as articles or books) all or part of this thesis.

Cianan Lesley April 7, 2017

Is Justice Blind? The Effect of Popular Opinion, Race, and Selection System on Death Penalty Relief

by

Cianan McLaughlin Lesley

Dr. Tom S. Clark
Adviser

Department of Political Science

Dr. Tom S. Clark
Adviser

Dr. Thomas G. Walker
Committee Member

Dr. Michael Sullivan
Committee Member

2017

Is Justice Blind? The Effect of Popular Opinion, Race, and Selection System on Death Penalty Relief

By

Cianan McLaughlin Lesley

Dr. Tom S. Clark
Adviser

An abstract of
a thesis submitted to the Faculty of Emory College of Arts and Sciences
of Emory University in partial fulfillment
of the requirements of the degree of
Bachelor of Arts with Honors

Political Science

2017

Abstract
Is Justice Blind? The Effect of Popular Opinion, Race, and Selection System on Death Penalty Relief
By Cianan McLaughlin Lesley

This thesis examines the effects of popular support for the death penalty, judicial selection system, and the race of the defendant, as well as the race of the victim, on the probability of relief from the death penalty being granted. Using R for data analysis and data visualization, there is support for the claim that the race of the victim has an effect on the probability of relief.

Is Justice Blind? The Effect of Race, Selection System, and Popular Opinion on Death Penalty Relief

By

Cianan McLaughlin Lesley

Dr. Tom S. Clark
Adviser

A thesis submitted to the Faculty of Emory College of Arts and Sciences
of Emory University in partial fulfillment
of the requirements of the degree of
Bachelor of Arts Honors

Political Science

2017

Acknowledgements

I would like to extend my deepest thanks to Dr. Clark for aiding in the formation of this thesis and for his guidance in its execution. Without his help, this thesis would not have evolved into what it is now.

I would like to thank Dr. Walker and Dr. Sullivan for serving on this committee. I look up to both greatly and have more than appreciated all of the comments, suggestions, and guidance they have offered during this process.

I would like to thank my family, my friends, and Dustin for supporting and encouraging me through this process.

Finally, I would like to thank God, without whose faithfulness I would not have been able to complete this thesis, for putting all of the aforementioned people into my life.

Table of Contents

Introduction

Warren McCleskey died on September 25, 1991 (*DPIC*). Warren died because, on April 22, 1987, the Supreme Court of the United States issued an opinion in his case, refusing to accept and apply empirical evidence, in the form of the Baldus study, detailing the racist application of the death penalty in Georgia (*LDF*).

On February 22, 2015, John Oliver's main story for the evening was on judicial elections. "Why did you get [such a harsh sentence] for [such an innocuous crime]?" "Well, it was October in an election year. I should have known better." This satirical conversation captured Oliver's point for the night: judicial elections affect judicial decision-making and can make certain judges harsher in sentencing. (Oliver, 2015)

The criminal justice system believes that it is far more insulated than it actually is. Popular opinion, race, and judicial elections, are all factors that play a role in judicial decision-making. This thesis aims to demonstrate the real-world effect of these factors on judicial decision-making because taking these external considerations into the decision-making process removes the blindfold of justice.

Question, Hypotheses, Importance

The Political Science community has often debated whether judges should be selected with an eye toward judicial accountability or toward judicial independence. There are obvious benefits to each; judicial accountability allows voters to ensure that their preferences are being upheld in the justice system while independence allows judges to make decisions based solely on precedent and the case at hand without fear of losing their job in the next selection cycle. However, some scholars believe that the that the choice between accountability and

independence is one that is largely normative and, in turn, "political scientists are unable to contribute much to [the] decision" (Champagne 2011, 245).

I wish to problematize Champagne's view, however. Political scientists, by demonstrating the effects of different selection systems on judicial decision-making, can contribute a great deal to the decision of which value should be prioritized. This thesis aims to contribute to the accountability/independence debate by demonstrating the consequences of those systems for different groups of people across different levels of popular opinion. The belief here is that, if certain defendants are more likely to have their death sentences upheld in a certain selection systems because of their race and popular opinion, then there is an inherent unfairness that exists between selection systems that should be resolved. Values might lie on a spectrum, but if people convicted of the same crimes really are experiencing such radically different outcomes based on the color of their skin and popular sentiment in an area, then that is a unique and especially problematic brand of inequality.

This thesis aims to point to a selection system in which race and popular opinion do not play a starring role in the decision-making processes of judges. However, even if this thesis is unable to produce a clear recommendation about which system would be best, or even which value should be prioritized, I do hope to demonstrate the inconsistent way that the death penalty is applied across, and within, selection systems.

Thus, the hypotheses for this thesis are as follows:

1. Minority defendants will be less likely than their white counterparts to be granted relief across all levels of popular support for the death penalty in all selection systems.

2. Defendants who killed white victims will be less likely than their counterparts who killed minority victims to be granted relief across all levels of popular support for the death penalty in all selection systems.
3. Within each selection system, as popular opinion for the death penalty increases,[1] minority defendants will be more negatively affected by the positive increases in popular opinion than their white counterparts. I believe that this negative affectation will be comparatively more pronounced in partisan and non-partisan election systems than in retention election and appointment systems.
4. Within each selection system, as popular opinion for the death penalty increases, defendants who killed white victims will be more negatively affected by positive increases in popular support for the death penalty than defendants who killed minority victims. I believe this will be more pronounced in non-partisan and partisan election systems than in retention election and appointment systems.[2]

These hypotheses provide a couple of levels of analysis that will aid in finding the relationship between race, selection system, and popular opinion toward the death penalty. First, by examining both across and within selection systems, I will be able to see both the overall trend of the relationship and, further, whether there are certain systems that are particularly prone to sentencing based on race and popular opinion or certain systems that are particularly consistent regardless of these extraneous factors. This means that I will be able to identify if race acts as an amplifying factor that contributes to lower possibilities of relief within each system as popular

[1] It is important to note that either a comparatively more negative slope or a comparatively less positive slope can evidence relative negative affectation by increases in popular opinion.
[2] In terms of interpretation of graphs, this means that for the first two hypotheses I will look at the relative placement of the lines, based on race. For the second two hypotheses I will look at the relative slopes of the lines.

opinion increases, while simultaneously examining the effect of race across each selection system. Second, by examining both the victims' race and the defendants' races I will be able to see a complete picture of the way that race can affect criminal justice outcomes.[3]

The importance of these hypotheses is self-evident. If judges are disproportionately upholding death penalty decisions to appease constituents and/or because of the race of the defendant or the victim, then people are dying due to factors that are, not only out of their control, but, also, due to factors that have *nothing* to do with the facts of crime they committed or precedent regarding their case. This occurrence, if it is happening, is one that contradicts the belief that justice should be blind as well as applied fairly and consistently. Finally, if these hypotheses are supported, then this thesis can be added to the accumulating mass of literature that the death penalty is applied inconsistently that will hopefully, eventually, lead to reform.

If these hypotheses are not supported, then readers will be able to gain faith in the judicial system and in the application of the death penalty as well. Accepting the null hypotheses will also help to rule out possible explanations of any variation that is observed in the current application of the death penalty.

To explore this thesis I will be solely examining the way that judicial decision-making operates at the level of death penalty relief in state supreme courts. I have chosen to limit my thesis to this area for a couple of reasons. The first is that the death penalty is historically cited as an extremely salient issue and one that has led to significant changes in the way that campaigns for state supreme courts are run (Canes-Wrone, Clark, and Kelly 2014, Brace and Boyea 2008, 361). Some authors have even gone so far as to call death penalty cases the "lightening rod in judicial elections" (Champagne 2001, 1395). As Baum explains, the belief that the criminal

[3] As will be discussed in the literature review, there is conflicting evidence on whether it is the race of the defendant or the race of the victim that has an effect on sentencing outcomes.

justice system is too lenient on criminals is much more widely accepted than the belief that the criminal justice system is too hard on criminals (Baum 2003, 6). As a result he writes, "convincing voters that a judge is unwilling to impose or uphold death sentences is uniquely effective because capital punishment is especially easy to understand" (Baum 2003, 6). This means that looking at death penalty decisions is a prime opportunity to examine the effect of public opinion on judges. Further, death penalty decisions are referred directly to the "state courts of last resort" where they cannot be denied a hearing (Canes-Wrone, Clark, and Kelly 2014, 24, 27).[4] This means that I do not need to be concerned with the factors that go into refusing to hear a case and how those factors operate relative to upholding or overturning a death sentence.

Limiting my thesis solely to death penalty decisions could harm its' external validity. The difference between a sentence ordering death and a sentence ordering life in prison is much more intense than the difference between a sentence ordering five years in prison and a sentence ordering ten years. Therefore, any findings found here might not be applicable to other types of sentencing decisions. However, I believe that the controls offered by focusing solely on the death penalty, and the severity of the death penalty itself, allow the pros to outweigh the cons that come with limiting the scope of this thesis. Further, examining if the findings here are replicated in other sentencing areas is an opportunity for further study.

There are three areas of literature on which I rely heavily to inform the construction of my theory. The first is on the effect of judicial selection systems on sentencing. The second is the effect of popular opinion on judicial decision-making. The third is the demonstrated effect of

[4] It is important to note that, while there can be many different names for the "state courts of last resort", they do not change in these fundamental ways (Canes-Wrone, Clark, and Kelly 2014, 24, 27).

racial bias, both toward defendants and toward victims, within the criminal justice system.[5] In writing this thesis I will also unite these three areas of literature in order to develop a more complete picture of how external pressures affect judicial decision-making.

Relevant Background Information

Article III of the United States Constitution specifies the basic form of the federal court system. However, Article III does little to establish how that court system should work, which has resulted in an internal tension on what the best system for judicial selection is. At the federal level, all judges are appointed by the president and confirmed by the senate; as a result, once these judges are in office they are not responsible for representing a group of constituents, or, alternatively, a governor, who can remove them from office at the end of their term. These judges, in fact, do not have a term, per se, as they are appointed for terms of life as long as they demonstrate good behavior.

State judges, however, are not selected in such a uniform fashion. States are largely responsible for deciding how their selection systems operate. This has resulted in four broad systems of judicial selection: partisan elections, non-partisan elections, commission-retention systems, and legislative or executive appointment systems (Canes-Wrone, Clark, and Kelly 2014, 23). In partisan elections, judges are elected, but have their partisan affiliation noted on the ballot (Canes-Wrone, Clark, and Kelly 2014, 23). In contrast, non-partisan elections do not allow the partisan affiliation of the judges to be listed on the ballot (Canes-Wrone, Clark, and Kelly 2014, 23). In commission-retention systems, governors will appoint a judge who, after a certain amount of time, will be reviewed by the electorate for either retention or removal (Canes-Wrone, Clark, and Kelly 2014, 23). Finally, appointment systems operate by having a body (either the

[5] The literature review will be divided into these sections in an effort to keep this thesis as clean as possible.

governor and/or the state legislature) appoint judges who, at the end of the term, will be either reappointed or replaced by the same body (Canes-Wrone, Clark, and Kelly 2014, 23).[6] In looking at these systems it is apparent that they are all representative of different levels of emphasis on judicial independence and judicial accountability. In fact, as Champagne writes, "the four systems [can be arranged] along a continuum where on the one side is judicial independence and on the other side is judicial accountability" (Champagne 2011, 224).

The creation of these four broad systems happened in an interesting manner. While judges were originally all appointed, the American public became skeptical about judicial appointment during the 1800s when "party cronyism" was a deep concern (Kang and Shepard 2015, 932). As a result, judicial elections began to take hold in an effort to "make the judiciary less political" (Kang and Shepard 2015, 932). Elections, quite obviously, were subject to their own concerns and, as a result, states move in many different directions with their judicial selection systems, leading to the four systems detailed above, presumably based on the values of the area at the time (Kang and Shepard 2015, 932).

The death penalty is, quite obviously, the harshest punishment that can be given by a court of law in the United States. The Death Penalty Information Center details what standards must be met for a crime to qualify for deserving of the death penalty. In all states, the defendant must have committed first-degree murder with at least one aggravating or special circumstance (*DPIC*). This provides some level of similarity between the cases that I investigate.

Literature Review – Selection Systems and Sentencing

There has been a significant amount of research done on the relative effectiveness and disparities between different selection systems in the United States. Gordon and Huber examined

---

[6] Anthony Champagne confirms these four broad systems in his study "Judicial Selection from a Political Science Perspective" (Champagne 2011, 224).

the sentencing behavior of trial court judges elected through partisan elections as well as those appointed and retained through retention elections in Kansas (Gordon and Huber 2007, 107). They found that those judges who were elected through partisan elections sentenced defendants more harshly than those who were kept through retention elections (Gordon and Huber 2007, 108). While Gordon and Huber do not compare their findings with a measure of public opinion, it follows logically that judges selected through partisan elections believe that they are responding to the popular opinion of their constituents. This desire to act in line with public opinion would explain Gordon and Huber's findings. Gordon and Huber's study also adds credence to the third and fourth hypotheses' belief that judges who are elected to their positions by the wider public will be more susceptible to public opinion than their appointed or retained-through-retention-election counterparts. Finally, it is also worth mentioning that Gordon and Huber write, "we further find that nonwhites and Hispanics tend to receive larger punishments, even controlling for the legally relevant characteristics of individual cases. These findings, while troubling, are beyond the scope of the current analysis" (Gordon and Huber 2007, 121).

Canes-Wrone et al. also examine the effects of different selection systems on the likelihood that defendants will be granted relief. They expand upon the work done by Gordon and Huber by including non-partisan elections and appointment systems into their analysis and find that state supreme court judges in non-partisan judicial elections were the least likely to grant relief when compared with judges from the other three systems (Canes-Wrone, Clark, and Kelly, 2014). This, again, adds some support for the belief that judges who are elected by the wider public will be more inclined to follow popular opinions than their counterparts who are appointed by a smaller body or are only retained through election. However, support is only lent in terms of non-partisan elections. While Canes-Wrone builds significantly on the work of

Gordon and Huber, they do not examine the question of race in their analysis, which provides an area on which my thesis can build.

Anthony Champagne's work provides an interesting way of examining the relative amounts that judges in different selection systems would need to pay to popular opinion, dependent on the likelihood of being removed from office. After surveying the literature on trial and appellate courts, he explains that incumbent judges in partisan elections were most likely to be defeated, followed by those in non-partisan elections, and finally by those in retention elections (Champagne 2011, 235). While this does not fully explain the effect found by Canes-Wrone et al. that non-partisan judges were the harshest in their behaviors, it does provide more backing for the hypotheses that elected judges will be more responsive to public opinion than their appointed and retention counterparts because those elected judges are more subject to losses.

In all, these studies build an important foundation on which my theory can rest. Judges in different selection systems behave differently from each other, likely because of the selection system that they will face at the end of their term. This creates a spectrum on which judges who are elected by the wider public are more likely to be responsive to public opinion and, in turn, harsher, than their counterparts who face retention elections or appointment systems at the end of their terms, thus supporting my third and fourth hypotheses. In addition, these studies provide support for the idea that judges are willing and able to listen to popular opinion toward the death penalty, albeit at different levels depending on the system.

Literature Review – Popular Opinion, Attack Ads, and Sentencing

The effect of popular opinion on judicial sentencing is something that has been on the radar of political scientists for quite some time. Richard Brooks and Stephen Raphael examined

the death penalty in Chicago from the years 1870-1930 and found that judges who were up for reelection for the criminal court of Cook county were 15% more likely to assign the death penalty than their counterparts who were not up for reelection for a seat on the same court, as long as the defendant was found guilty of murder (Brooks and Raphael 2002, 610, 638). This demonstrates that judges are aware of their impending elections and, in turn, are willing and able to use the death penalty as a signal to constituents. During the timeframe of this thesis, 1980-2008, there were significantly different views toward racism than during the 1870-1930 timeframe of Brooks and Raphael's study. Further, during Brooks and Raphael's timeframe public opinion polls had not yet been created (*PBS*, 2002). Brooks and Raphael's research does little to expand upon knowledge of different selection systems and their study is limited in scope to Chicago. This means that my thesis has the opportunity to improve upon this work by including the racial dimension as well as popular opinion while simultaneously expanding the scope of knowledge by looking at death penalty decisions on a national lens.

The Canes-Wrone et al. piece, discussed above, also did some work on the effect of popular opinion on death sentence reversals. Specifically, they examine what they call the "pre-Bird" and "post-Bird" eras, denoting the time before and after the defeat of Rose Bird, as well as two other state supreme court judges in California, all of whom were up for retention election, but lost due to the many attack ads put out against their death penalty decisions (Canes-Wrone, Clark, and Kelly 2014, 25). This election signals the change between the way elections were run previously, without significant interest group involvement and influence, and how elections are run presently, with significant interest group involvement and influence (Canes-Wrone, Clark, and Kelly 2014, 25). Importantly, Canes-Wrone et al. found that judges in office after the historic Bird election were "significantly more likely to be influenced by public opinion" (Canes-

Wrone, Clark, and Kelly 2014, 25). This adds support for the idea that judges in the modern age are likely to be influenced by popular opinion, especially as it is transmitted through interest groups and attack ads.

Paul Brace and Brent Boyea examined the way that public opinion can affect judicial decision-making at the state supreme court level both directly, by "[leading] seated judges to alter their voting behavior to align with public opinion, or indirectly, by helping to recruit judges who share the public's sentiments" (Brace and Boyea 2008, 362). Brace and Boyea find that judges who are "retained electively," or are reelected to their position each selection cycle, are significantly affected by public opinion (Brace and Boyea 2008, 370). However, they note, that public opinion and selection system "do not outweigh the impact of case characteristics and judge ideology" (Brace and Boyea 2008, 370). This work adds more support for the idea that public opinion does affect judicial decision-making and, further, that elected judges are especially susceptible to being affected by public opinion. It also offers two important control variables: the aggravating factors of the case and, also, the ideology of the judge.

Baum takes a slightly more qualitative approach, examining the issues that influenced voters to vote against certain incumbents. After noting the Bird election, Baum notes three other elections, one for state supreme court, one for municipal judgeship, and one for a trial judgeship, where the criminal justice record of the judge running for reelection was used against them (Baum 2003, 6). As a result Baum concludes, "primarily in criminal justice […], justices face a greater risk of paying an electoral price for the positions they take in cases" (Baum 2003, 8). This provides more support for the idea that judges are aware of public opinion as well as their own elections. Further, it provides support for the idea that a judge's death penalty decisions can be the deciding factor in an election.

Kang and Shepard build more support for the idea that state supreme court judges are not only aware of attack ads, specifically televised ones, but that they also will respond more harshly toward defendants because of these ads (Kang and Shepard 2015, 930). Kang and Shepard conduct their study in response to Melinda Gann Hall's book *Attacking Judges: How Campaign Advertising Influences State Supreme Court Elections*, where Hall claims that attack advertising is widely unproblematic because it leads to more voter participation and, further, that these ads only affect vote share where there is not a ballot cue (in the form of the judge's party affiliation) for a particular justice (Kang and Shepard 2015, 930). Interestingly, Kang and Shepard are filled with consternation by the exact realization that assuages Hall's fear: that judges behave essentially like their elected and legislative counterparts (Kang and Shepard 2003, 930). Further, Hall's analysis does not focus on the way that attack advertising could be influencing judicial decision-making, but, instead, focuses on the effect of attack advertising on voters and on election outcomes (Kang and Shepard 2003, 934). As a result, Kang and Shepard examine the effect of attack advertising on judicial decision-making and, in turn, find, "tentatively," that "attack advertising was related to a greater likelihood of judicial decisions against criminal defendants in both partisan and non-partisan states," which, interestingly, stands in contrast to the findings of Hall, who found that attack advertising hurts non-partisan judges chances of reelection, but helps partisan judges chances of reelection (Kang and Shepard 2003, 935, 948). Regardless of whether Hall or Kang and Shepard are correct, there does seem to be a demonstrated effect of attack advertising on judicial decision-making and, at least in some systems, justices have reason to fear the effect of attack advertising on the electorate. This adds more support for the belief that judges have reason to pay attention to attack advertising and,

further, that the fear of retaliation in response to their death penalty decisions affects their decision-making.

Champagne's article provides another view of special interest involvement in the judicial selection process. Taking a largely qualitative approach, Champagne looks at the many electoral races in which interest groups have been involved and how their involvement has developed over time including, but not limited to, court of criminal appeals races and state supreme court races. He reflects that judges do not want to be labeled as "soft on crime" and, also, how not voting in favor of the death penalty led to losses of votes, if not seats, in Mississippi, Oklahoma, and Tennessee (Champagne 2001, 1396, 1399-1401). Champagne's illustration of cases demonstrates the wider problem with interest group involvement, as well. If the public focuses only on the question 'did this judge vote for or against the death penalty' instead of the question 'did the judge make the correct decision, based on the evidence and precedent' then judges may lose their seat for doing their job properly. This is what occurred in Tennessee, when a judge was defeated for voting for a new sentencing hearing despite upholding state law and despite agreeing with the other two justices hearing the case (Champagne 2001, 1400-1401). This adds another layer to the issue of judges following public opinion; sometimes judges might be faced with the choice between ignoring precedent and state law while simultaneously appeasing the public, or potentially losing their job for executing the law properly. Further, the Tennessee incident reinforces the might of public interest groups, as it was partially those groups that spread the message to vote against the Tennessee justice (Champagne 2001, 1400).

These pieces, taken together, provide a comprehensive narrative for how judges are aware of the effect of popular opinion, in conjunction with past decisions, at the ballot box. In addition, these pieces provide a mechanism with which the decisions of judges are

communicated to the voting public, through attack ads. Aware of the possibility and presence of attack ads, judges attempt to ensure that their decisions, especially in criminal justice and death penalty cases, follow public opinion.

Literature Review – Race, Sentencing, and Popular Opinion

The question of the effect of race in the criminal justice system is not a new one. Alesina and La Ferrara studied the "error rates" of judicial outcomes, or the reversal of a sentence from a lower court by a higher court by looking at both state supreme courts and federal courts (Alesina and La Ferrara 2014). They found that judges in Southern states have significantly higher error rates in cases where minority defendants killed white victims when compared with cases where minority defendants killed minority victim (Alesina and La Ferrara 2014, 3421). Alesina and La Ferrara further found that habeas corpus appeals to a federal court (which occurs after the direct appeal to the state supreme court), corrected more incorrect decisions than direct appeals from the lower courts did; along these lines Alesina and La Ferrara write that the findings are "consistent with the fact that in many states the selection of judges into state high courts still makes them responsive to the political preferences – and the possible bias – of their constituencies" (Alesina and La Ferrara 2014, 3421). This means that there is indicated racial bias in the criminal justice system that is especially present at the state court level. Further, as Alesina and La Ferrara mention above, it is possible that popular opinion has the ability to influence the presence of racial bias, and that popular opinion is the reason for the results they discovered.

Spohn, Gruhl, and Welch (1981) also examined the effect of racial bias, not only in sentencing, but also in whether or not defendants were found guilty or innocent. One important control that Spohn et al. incorporate into their research is the severity of the crime as well as

prior criminal record, two factors that could significantly affect the sentencing portion of the trial (Spohn, Gruhl, and Welch 1981, 75). Spohn et al. find that, when they control for these factors, black males did not receive harsher sentences than their white counterparts (Spohn, Gruhl, and Welch, 1981, 85). However, they did find that there were possible forms of economic discrimination, which would disproportionately affect black defendants, as those defendants who used public defenders were more likely to be given longer sentences (Spohn, Gruhl, and Welch 1981, 85). Spohn et al. also found that black defendants were more likely to be sentenced to prison than their white counterparts, even when severity of the crime and prior criminal record were controlled for (Spohn, Gruhl, and Welch 1981, 85). This creates an interesting finding where defendants who are on the cusp between long probation and short prison sentence are most affected by their race (Spohn, Gruhl, and Welch 1981, 85-86). I believe that these findings are slightly contradictory; when both black and white defendants are sentenced to prison, the prison term is not harsher for the black defendant than it is for the white one. However, when both a black defendant a white defendant are both on the cusp between long probation and short prison, the black defendant will go to prison while the white defendant will be given probation. Is going to prison not a harsher sentence than a lengthy probation, though? Moreover, I believe that the decision between sending someone to prison or sentencing them to probation is extremely similar to the decision between sentencing life in prison or the death penalty. The decisions are both between two different sentences that are seen as possible repercussions for the same crime with one harsher and more inhibitive than the other. As a result, I expect to find the same trend within my own data, that more minority defendants are given the death penalty while more white defendants are given life in prison.

However, some studies posit that it is the effect of the race of the victim that tips the scale, rather than the race of the defendant. A 1995 article in the New York Times states, "while death penalty opponents had long feared that the race of the killer would play a pronounced role in determining who would be executed and that blacks would be put to death far more frequently than whites, several studies suggest that the most significant distinction is the race of the victim" (Eckholm 1995). These findings, in combination with the findings by Alesina and La Ferrara above, are why I will be looking at both the race of the defendant and the race of the victim when doing my analysis because both occurrences of race offer an opportunity for racial bias to come in. However, because there has been an indication that both race of the victim and race of the defendant alter judicial decision-making, I have chosen to form hypotheses around both so that neither opportunity for racial bias is favored over the other.

Van Cleve and Mayes examine the current state of the criminal justice system and argue that the justice system is experiencing the mixing of two harmful racial attitudes; that of "new penology," which encourages judges to vote against those with a previous criminal record (which heavily biases the justice system against minorities), and "colorblindness," which allows for an institutionalized racial approach to occur while simultaneously denying that race plays any part in judicial decision-making (Van Cleve and Mayes 2015, 410-412). This environment provides an important background for my thesis because it primes the ability of justices to vote against minority defendants for reasons other than their race while, not only allowing racial bias to influence their decision, but also, simultaneously, doing what they perceive will be most in line with the interests of their constituents. As to this second point, Van Cleve and Mayes provide some support reflecting on the way the implicit association between "blackness" and "criminal" has negatively affected the criminal justice system and, further, can unconsciously affect the way

that people see people of color (Van Cleve and Mayes 2015, 421). This means that, if one sees a person of color flash on their screen during an attack ad they will perceive that person as more threatening than if a white person flashes on their screen during the same attack ad.

When looking at the interaction between public opinion and race, the work of Mendelberg provides an important starting point. Writing in response to a Huber and Lapinski piece which found that both implicit and explicit racial cues do not bring certain prejudices to the fore, Mendelberg details multiple bodies of research, including social psychology, political science, and aggregate studies, that all stand in contradiction to Huber and Lapinksi's findings (Mendelberg 2008). After providing her survey of these bodies of research she writes, "the media and politicians strengthen or dampen the impact of race on politics in a way that is consequential for American democracy" (Mendelberg 2008, 118). She also writes that implicit messages, for example messages "about a criminal that [include] an image of a black man with criminal traits, or the phrase 'inner city'" are extremely effective (Mendelberg 2008, 110). These findings are important for my thesis because they explain what, exactly, justices would have to fear if they reversed a death penalty appeal for a minority defendant: the opportunity for effective implicit racial cues to be used which could negatively affect their campaign.

In all, these pieces provide an important part of my framework by demonstrating bias in the criminal justice system, whether it is based on the race of the victim or the race of the defendant. However, these studies do not approach the bigger picture of the effect of selection system, race, and popular opinion all together, which offers an area for my thesis to explore.

Theory and Framework

The pieces for this theory are as follows: the actors are the judges, who can vote for or against relief, and voters, who can vote for against those judges. The judges have an interest in keeping their positions and the electorate has an interest in having judges who will decide cases in line with public opinion. In appointment systems, the governor or commission group will act as the voter, with the same set of choices available. Both parties are aware that the other party exists and, further, of the choice set available to them. The primary way that judicial behavior is translated to the voters is through interest groups, which translate some votes for relief votes as being "soft on crime." These interest groups communicate their message through attack ads. Judges are incentivized against granting relief to minority defendants, and defendants who kill white victims, because those defendants are found to be especially threatening by voters and racial imagery could be used in response to those decisions.

Each piece of this theory is supported by the literature in the above literature review. However, exploring voter choice a little bit further may prove to be fruitful. In James Fearon's chapter in *Democracy, Accountability, and Representation* Fearon explores that there are two ways voters could approach their electoral choices on Election Day; voters can either attempt to find candidates who are in line with their own preferences or, alternatively, voters can evaluate the past behaviors of officials and vote in a way that either rewards officials for representing the interests of the voters well or punishes the official for working against the interests of the constituents (Fearon 2001). Fearon concludes by saying that voters will end up voting for candidates who they feel will "share the public's preferences" (Fearon 2001, 57). This means that, if interest groups effectively communicate to the public that a certain judge does not share their preferences toward an issue as salient as the death penalty, then they will likely vote that

justice out of office. This means that there are potentially very serious repercussions for judges who do not vote in line with the preferences of the population they preside over.

Data, Variables, and Methods

The independent variables for this thesis are as follows: the selection system for the state court of last resort, public opinion toward the death penalty at the state level, and the race of the defendant and the victim. Popular opinion and selection system were generously provided from the Canes-Wrone, Clark, and Kelly piece.

This thesis will look solely at the "state courts of last resort" of 29 states.[7] Using the same dataset as Canes-Wrone et al. means that the same selection system for that piece will be used here. Canes-Wrone et al. write,

> We included all states in which supreme court judges are selected via a statewide procedure that is comparable to that of at least two other states. […] We also excluded Oklahoma because the state constitution requires that each justice reside in a separate district of the state. Only two additional states, Pennsylvania and post-1988 New Mexico, could not be examined due to lack of comparability. Because reappointment systems are uncommon, we included all such systems whereby the judges face reappointment by some combination of the legislature and/or governor. For example, in Virginia and South Carolina the reappointment powers reside with the legislature alone, while the governor is involved in New York (with the Senate) and in Connecticut (with both legislative chambers). […] we identified every death sentence appealed to the state's high court between 1980 and 2006. For manageability and not to skew the dataset too heavily to particular states, for the few in which the high court heard more than one hundred appeals, we randomly drew 100 cases. In states that switched their judicial selection mechanism during this 27 year period we allowed for up to 100 cases before the switch and an additional 100 after it (Canes-Wrone, Clark, and Kelley 2014, 27).

The only difference between the data used by Canes-Wrone et al. and myself is that I included states where the election is held at the district level. I did this because I did not want to shrink the data pool too heavily and, further, because I believe that state popular opinion is a sufficient proxy for the district level opinion.

[7] The full list of included states is included in Appendix C.

The unit of analysis will be each judge's vote on whether or not relief should be granted. To see a frequency distribution for all variables used, see Appendix B.

Independent Variables

The race of the defendant was coded as 1 if the defendant was a minority and 0 if the defendant was white. All races that were non-white were considered to be minorities, for the purpose of this study. To collect the race of the defendant I would search the citation for the opinion of the case, provided by Canes-Wrone et al., on Google Scholar. From there, I would get the full opinion of the court, which, more often than not, provided the full name of the defendant. I would search the name on the inmate search of the correctional department's website of the state where the crime was committed. This provided me of a list of inmates with the same name as the name I searched. If the database offered middle names, this was normally sufficient to find a match. If there were not a middle name, I would attempt to find the correct inmate by first eliminating inmates who could not be a match because their crime would not have warranted the death penalty. Next, I would check to see if the county provided by the state correctional database was mentioned in the court's opinion or, alternatively, if any other county was mentioned. If a county other than the one mentioned in the court's opinion was in the correctional database as the county the crime was committed in, and the county did not match with the county provided by the court's opinion, then I would not record the information provided by the state correctional database. Most state databases only provided information for inmates who were currently within the criminal justice system. This means that those defendants, who ultimately received the death penalty, and those who were later exonerated and/or died while in prison, were not available. To fill in this missing data, and to verify data where possible, I looked at all of the defendants available in the Death Penalty Information Center's (DPIC) database and compared their last names with the names of defendants in my dataset. If there was

a match, I would search the citation on Google Scholar and see if the full names matched. I would then check to make sure that there was no mention of another county in the court's opinion. This provided for 1,387 defendants with known races, which, in turn, provided for 9,832 votes with coded races of defendants.[8] Some states did not provide information about the defendant's race or the court opinions did not commonly list the full name of the defendant.[9] For these states, I collected and included data where I could, but this inevitably left holes in the data. While this process is not perfect, I believe that it provided for the fewest amount of errors in race-coding possible.

As with the defendant's race, if the race of the victim were white it would be coded as 0. If the victim were a minority, then it would be coded as 1. To collect the race of the victim I would find the name of the defendant in the same way that I did above. I would then search that name in the DPIC's database. Unfortunately, the DPIC's database only provides information for those defendants who ultimately received the death penalty, which could bias the data for the victim toward a lower probability of relief. In all, I was able to find the races for 521 victims, which translated into races for 1046 votes. If there were more time to complete this thesis, I would search for the crime in Lexis Nexis newspaper databases to provide a more complete dataset.

I made the decision to code all minority victims and defendants as 1 because of the many different ways that certain races can be coded. Matt Waite explored this on his piece about how he handled data after the 2000 presidential election. He writes that some people consider Hispanic as a race and others consider Hispanic as an ethnicity, which can affect whether or not

---

[8] The difference between these numbers is because multiple judges will hear the appeal at one time.

[9] California, Idaho, Maryland, New Mexico, and Washington all fall into this category.

it is listed as an option on forms (Waite 2013). This means that there could be massive differences between the ways that states treat someone of the same race when collecting and entering their information into the state correctional facility's database. By breaking my groups into white and minority, I hope that I alleviate some of those differences.

The Canes-Wrone et al. piece provided the public opinion data, but it is important that I detail how it was obtained here. To obtain the data, Canes-Wrone et al. used "multilevel regression with poststratification" (MRP) which essentially means that they took national level data and looked for the relationship between a series of attributes that were correlated with public opinion on the death penalty (Canes-Wrone et al. 2014, 28). Then, they looked at how those attributes were present in each state (by looking at population characteristics) and estimated a resulting state-level opinion of the death penalty (Canes-Wrone et al. 2014, 28). Canes-Wrone et. al. received the first part of this process from Shirley and Gelman (who developed the MRP process) and then performed the second part themselves to produce the death penalty support variable for each state over time (Canes-Wrone et al. 2014, 28). Canes-Wrone used data from the Census and American Community Survey to weigh the importance of certain attributes at the state level to receive the corresponding death penalty support. This process has the obvious drawback of being an estimate for state-level public opinion. However, in the absence of that raw data existing, it appears that this is the next best option to getting it.

Canes-Wrone et al. also provided the information for which states had which selection systems during certain periods of time.[10] They obtained this information from "the American Judicatures Society 'Judicial Selection in the States' website, which documents not only the

[10] The full list of states used in this study can be found in Appendix C.

current selection procedures for each state but also historical changes" (Canes-Wrone, Clark, and Kelly 2014, 30).

Dependent Variable

My dependent variable is whether or not the defendant's death penalty sentence was upheld. Canes-Wrone, Clark, and Kelly provided the data on the decision by judges to uphold or overturn a death sentence was also provided and used the coding of 1 to uphold the decision and 0 to overturn the decision (Canes-Wrone, Clark, and Kelly 2014, 28). Canes-Wrone et al. note, "reversals of convictions, remands for hearings on specific issues, vacation of death sentences, and remands for resentencing all constitute relief" because they adopt the Blume and Eisenberg (1999) definition of relief as "a judges position [supporting] a 'ruling that precludes the imposition of a death sentence unless further action is taken by some court'" (Canes-Wrone et al. 2014, 28). I have kept the same coding and definitions. Further, while it was implied before, it is worth saying directly that these courts that I am examining do not choose whether or not a defendant receives the death penalty in the first place; rather, these courts only determine whether these sentences should be upheld (Canes-Wrone, Clark, and Kelly 2014, 24).

Control Variables

Canes-Wrone, Clark, and Kelly also collected all the control variables. The control variables will be divided into the following sections: variables about the crime that might affect outcomes, variables about the case that might affect outcomes, variables about the judge that might affect outcomes, and external variables that might affect outcomes.

Under the first section, variables about the crime that might affect the outcome are variables such as killing a cop (***copkill***), raping the victim (***rape***), robbing the victim (***rob***), having multiple victims (***multivic***), and if the victim with female (***vic_fem***); each of these variables was "coded […] from the [cases] directly" (Canes-Wrone, Clark, and Kelly, 2014).

These variables could be seen as aggravating circumstances, which were mentioned by the Brace and Boyea piece as possibly causing an increased probability of voting against relief (Brace and Boyea 2008, 364). One control variable that is missing and might affect the results is the skill of the attorney for the defendant. As was discussed in the Spohn et al. piece as well as the Brace and Boyea piece, and the Alesina and La Ferrara piece, minority defendants use public defenders more frequently than their white counterparts and these public defenders are often less skilled than their counterparts which can lead to differences in case outcomes (Spohn, Gruhl, and Welch 1981, 82); (Brace and Boyea 2008, 364); (Alesina and La Ferrara 2014, 3427-2428). If the attorney is less skilled, then there could be a resulting increase in the probability of the defendant being found guilty. However, I believe that, with the incorporation of the other control variables, the effect of attorney skill will not alter the results too much. Incorporating this as a control variable does offer an opportunity for further investigation, though.

There are a couple of variables that might alter the possibility of the defendant being granted relief that have to do with the grounds on which the defendants appeal is brought on. The first of these variables is whether or not a Supreme Court decision came out recently before the case and that is what the defendant's appeal is based wholly off of (***SCOTUS***) (Canes-Wrone et al. 2014, 31). If the Supreme Court overturns precedent that was applicable to the way states conducted their trials and it is applied retroactively, then a significant number of warranted appeals could be submitted to the state court of last resort, which could shift the probability in favor of being granted relief (Canes-Wrone et al. 2014, 31). Canes-Wrone coded this data as 1 if the appeal was "based solely on a recent U.S. Supreme Court decision" and I have kept the same coding (Canes-Wrone, Clark, and Kelly 2014, 31). Another variable having to do with the case that could affect the likelihood of a defendant being granted relief is the grounds on which the

appeal is brought (***grounds***); Canes-Wrone et al. write, "'kitchen sink' appeals tend to be less meritorious and therefore less likely to succeed (e.g., Poulos 1990). We accordingly expect that the control *Grounds*, which is the natural log of the number of grounds on which the appeal is based, will be positively related to the likelihood that a judges votes to uphold a capital sentence" (Canes-Wrone, Clark, and Kelly 2014, 31). I have kept this same method and included it in my thesis. Finally, I have decided to include the state's homicide rate (***muderrate***) as a control, just in case it adds additional pressure on the justices to decide against relief, much the same way that Canes-Wrone et al. decided to add it as a 'just in case' variable (Canes-Wrone, Clark, and Kelly 2014, 31).

Finally, there are variables internal to the judge that could affect the likelihood of a defendant being granted relief. One of these variables is the ideology of the judge (***party, judgeid***), which Canes-Wrone et al. found through the listing of the judge's party affiliation on the partisan ballot, through matching with the governor who appointed the judges in appointment systems when no other information was available, and through "the American Bench biographical directories, local newspapers via Lexis-Nexis, and existing datasets" including Canes-Wrone, Clark, and Park 2012 and Langer 2002 (Canes-Wrone, Clark, and Kelly 2014, 30). Further, as was discussed in the Brooks and Rafael piece, judges can become more punitive in election years (Brooks and Rafael 2002). As a result, I have used Canes-Wrone et al.'s control for *Reselection Proximity* (***nextelec***), gathered from the state blue books, where the variable "equals 1 if a judge is slated for reelection or reappointment within two years of the decision and 0 otherwise" (Canes-Wrone, Clark, and Kelly 2014, 30). Finally, as Canes-Wrone et al. write,

> one might similarly expect a judge who is precluded from seeking a subsequent term because of mandatory retirement to exhibit different decision making in his/her final term […] We include the variable *Retire* [(***retire***)], which equals 1 if the judge is a Republican and facing mandatory retirement at the end of term, -1 for such Democratic judges, and 0

> if the judge does not face mandatory retirement. We similarly include *Lame duck* [(***lameduck***)] to control for justices serving out the remainder of their term after losing an election or having chosen not to seek reelection for a reason other than mandatory retirement. This variable is also set to 1 for Republican lame ducks, -1 for Democratic lame ducks, and 0 otherwise. Our expectation is that Democratic judges will be more disposed to reversing capital sentences if they are a lame duck or facing mandatory retirement and that Republicans will have the opposite incentives (Canes-Wrone, Clark, and Kelly 2014, 30)

I believe that this same logic would apply to my thesis, as they are the same judges making the same decision. The only difference is on my end, with the adding of the race of the defendant and the victim as an independent variable.

Finally, while examining the effect of the race of the defendant, I controlled for the race of the victim and vice-versa. This is so that I am able to see the effect of the defendant's race and the victim's race independently of each other as a way of isolating which race, if any, has more of an effect on the outcome.

To see if there was a relationship between the race of the victim or of the defendant, popular opinion, selection system, and the probability of relief, I will perform a binomial inverse logit regression between the race of the defendant and the likelihood of relief and the race of the victim and the likelihood of relief, respectively. This is because there are two possible outcomes, relief being granted or relief not being granted, and I want to know the probability of relief being granted on a continuum.[11] To see the effect of selection system I have looked across all selection systems (Figure 1), and then at each of the four selection systems individually (Figures 2-5). For convenience I have also provided the regressions by race, across selection systems, in Figures 6 and 7 for easy comparison. I have done the same for the victim's race, with the average across selection systems being displayed in Figure 8, the individual systems being displayed in Figures 9-12, and the compilation of all the systems, by race, in Figures 13 and 14.

[11] The R coding for this thesis is attached as an appendix.

Results – All Figures

The figures display the support for the death penalty on the x-axis and the probability of relief on the y-axis. The x-axis is limited from .02 to .5 because those were the minimum and maximum measures of popular opinion from the sample. On the average graph, as well as the individual selection system graphs, one line will represent the probability of a white or a minority defendant, or a defendant who killed a white or minority victim, being granted relief across increasing levels of popular opinion. The composite graphs are divided by race. Each line on the composite graph represents either the probability of being granted relief on average or in the selection system that the line is named.

Figure 1 depicts the average relationship between popular opinion toward the death penalty, race of the defendant, and the probability for relief. At all levels of popular opinion, minority defendants have a higher probability of being granted relief than their white counterparts. However, as popular support for the death penalty increases, both white defendants' and minority defendants' probability for relief decreases.

Figure 2 is the first of four figures that demonstrate the relationship between the race of the defendant, popular opinion toward the death penalty, and probability of relief within a certain system. Figure 2 demonstrates this relationship within retention election systems. Again, minority defendants have a significantly higher probability of relief across all levels of support when compared with their white counterparts. Interestingly, as popular opinion in favor of the death penalty increases, the probability of relief for both minority defendants and white defendants increases.

Figure 3 demonstrates the same aforementioned relationship, but in non-partisan elections. Here, white defendants have a marginally higher chance for relief than their minority counterparts. However, as popular opinion increases, the relative probability becomes almost the

same, as the probability for relief decreases for both minority and white defendants, with white defendants' probability decreasing more steeply than their minority counterparts.

Figure 4 demonstrates the same relationship as above, but for appointment systems. Appointment systems are the only system in which white defendants have a higher probability of relief than their minority counterparts that approaches significance. However, the probabilities become more similar as popular support for the death penalty increases, much like in the non-partisan election system above. As popular opinion in favor of the death penalty increases, white defendants are more affected by the increase than their minority counterparts are, which leads to a more similar probability of relief at higher levels of popular support.

Finally, Figure 5 demonstrates the aforementioned relationship within partisan election systems. Here, both minority and white defendants have a high probability of receiving relief that decreases as popular opinion in favor of the death penalty increases. At all levels of support, minority defendants have a higher probability of being granted relief than their white counterparts.

Figure 6 depicts the relationship between popular support for the death penalty and the probability of relief for white defendants in all of the systems, as well as the average. Figure 7 depicts the same relationship across all systems, including the average, however for minority defendants. With these two lines, it is clear to see that across all systems white defendants have a lower probability of relief than their minority counterparts.

Interestingly, the probability of being granted relief retention election systems increases as popular support for the death penalty increases, regardless of race. All other systems see a decrease in the probability of relief being granted as popular support for the death penalty increases.

Figure 8 begins the examination of the effect of the victim's race on the probability of relief across different levels of popular opinion. Here, the race of the victim has the opposite effect of the race of the defendant. Defendants who kill minority victims have a significantly higher probability of being granted relief than those defendants who kill white victims across all levels of popular opinion. As popular opinion increases, the likelihood of defendants being granted relief, regardless of the race of their victim, decreases.

Figure 9 begins the examination of individual selection systems with the retention election system. Those who kill minority victims are almost guaranteed to get relief regardless of popular opinion of the death penalty. Interestingly, as popular opinion in favor of the death penalty increases, those who kill white victims see an increase in the likelihood that they, too, will be granted relief. This same increase is not seen for those who kill minority victims, but if my hypothesis is correct, it is because those who kill minority victim's probability of relief was already as high as it could be.

Figure 10 depicts the relationship between victims' race, public support for the death penalty, and the probability of relief in non-partisan election systems. Again, defendants who kill minority victims have a higher probability of relief than those who kill white victims. However, the probability of those who kill minority victims being granted relief is not nearly as high as in non-partisan election systems as it was in retention elections. Interestingly, the same increase in probability of relief is visible as popular opinion increases.

Figure 11 depicts the same relationship as above, however this time in appointment systems. Again, those defendants who kill minority victims have a significantly higher chance of being granted relief than those who kill white victims. However, for the first time when looking at individual systems with regard for the race of the victim, the increase in popular opinion has a

negative effect on the probability of a defendant being granted relief. This negative effect appears to be slightly more pronounced for defendants who kill white victims compared with those who kill minority victims.

Finally, Figure 12 depicts the aforementioned relationship in partisan election systems. As in retention election systems, those who kill minority victims in partisan election systems are guaranteed to get relief regardless of the level of popular support for the death penalty. However, different from both the retention election and the non-partisan election systems discussed above, defendants who kill white victims in partisan elections see a decrease in their probability of relief as popular support for the death penalty increases.

Figure 13 and 14 offer a look at probability of relief in all systems for defendants who kill white victims and defendants who kill minority victims, respectively. Here it is extremely easy to see the marked difference in probability of relief for those who kill minority victims and those who kill white victims. Those who kill white victims have their highest chance of getting relief, about 50%, in a retention election system with ~50% support of the death penalty. Only two of the four systems approach that level of probability for those who kill minority victims: partisan elections, as long as popular support does not go above ~37% support and non partisan elections, as long as popular support is at least at 44%.

Analysis – Hypothesis One

My first hypothesis, that in all selection systems, the probability of minority defendants being granted relief would be lower than the probability of their white counterparts being granted relief, was not supported. In partisan and retention election systems minority defendants were significantly more likely than their white counterparts to be granted relief (See Figures 2 and 5). By a very small margin, white defendants were more likely to be granted relief than their

minority counterparts in appointment and non-partisan election systems (See Figures 3 and 4). Because of the significantly smaller margin by which white defendants were comparatively more likely to be granted relief than their minority counterparts in appointment and non-partisan election systems, I believe that the overall hypothesis is not supported. The average of both minority and white defendants furthers this lack of support; white defendants' chances of being granted relief are between 40% and 25% while minority defendants' chances are between approximately 58% and 40% on average (See Figure 1). This means that, on average, at all levels of popular support for the death penalty, minority defendants are more likely than their white counterparts to be granted relief.

In terms of statistical significance, the race of the defendant only approached statistical significance in partisan and retention election systems. In partisan election systems the race of the defendants was significant to a .1 level of significance. In retention election systems, the race of the defendant was significant to a .01 level of significance. The average of all selection systems did not produce statistical significance.

Analysis – Hypothesis Two

My second hypothesis, that, in all selection systems, those defendants who killed minority victims will be more likely than defendants who killed white victims to be granted relief, was supported. At all levels of support, people who killed minority victims in retention and partisan election systems were essentially guaranteed relief (See Figures 9 and 12). Further, those who killed minority victims in appointment systems were between approximately 90% and 80% likely to be granted relief (see Figure 11), a number that was only matched by defendants who killed white victims in partisan election systems when popular opinion was below ~37% (See Figure 13). Even judges in non-partisan election systems, which had consistently low levels

of relief granting without regard for race, offer between an ~18% and ~57% chance of granting relief (see Figure 10). The averages for defendants who kill minority victims and defendants who kill white victims support my second hypothesis as well (See Figure 8). Defendants who kill minority victims have approximately an 88%-90% chance of being granted relief while defendants who kill white victims have between a 40% chance and a 38% chance of being granted relief (See Figure 8).

This highlights the possibility of racial discrimination, based on the race of the victim. Most crimes that are committed are intra-racial not interracial, which means that the similar findings for minority victims and minority defendants, as well as for white victims and white defendants, is to be expected (Alesina and a Ferrara 3409). This holds somewhat in this dataset; white defendants were significantly more likely to have killed white victims. However, minority defendants were slightly more likely to kill white victims.[12] Even with this, I do not believe that this would overwhelm the possibility of the victim's race being the controlling factor. However, this does offer an avenue of further work where one can look at individual cases across selection systems.

In general, it is difficult to tell if the race of the defendant or the race of the victim is the more controlling factor in judicial decision-making. Studies cited in the literature review point that it is the race of the victim that more controls judicial decision-making (See Eckholm, Alesina and La Ferrara). Without doing a comparative analysis from this data about minority defendants who killed white victims and minority defendants who killed minority victims, and the same analysis for white defendants, I do not feel comfortable to say that one controls. However, this does offer a significant opportunity for further work.

[12] The contingency table for the overlap of victim race and defendant race can be found in Table 16.

In terms of statistical significance, the race of the victim reached significance in every selection system. Across all selection systems, the race of the victim reached statistical significance to the level of 0. In retention election systems, the race of the victim to the level of 0 while in appointment systems, the race of the victim reached a .1 level of significance. In non-partisan and partisan election systems, the race of the victim reached significance at the .05 and the .01 level respectively. This means that the race of the defendant has a statistically significant effect on the probability of a defendant being granted relief across all selection systems.

Analysis – Hypothesis Three

My third hypothesis, that within each selection system minority defendants will be more affected by increasing popular support for the death penalty than their white counterparts across all systems, and that they will be comparatively more affected in partisan and non-partisan election systems than in retention election and appointment systems, is not supported. I will start this analysis by providing an overview of changes in probability of relief being granted for both minority and white defendants. Then, I will discuss the comparative effects of increases in popular opinion for white defendants and minority defendants. Finally, I will examine changes in probability as popular opinion increases in partisan and non-partisan election systems compared with appointment and retention election systems first for white defendants and then for minority defendants.

As popular opinion increases, the likelihood of all defendants being granted relief in appointment, non-partisan election, and partisan election selection systems decreased (See Figures 3, 4, and 5). However, in retention election systems, an increase in popular opinion resulted in an increase in probability of relief being granted (See Figure 2). The differing behavior of retention election systems is interesting. It is possible that judges in retention

election feel their insulation from the greater public more greatly than judges in any other system because of the nature of retention elections; there is not an immediate challenger and the group or person that appointed the judge does not have sole control over whether or not the judge continues to serve. It could be an issue with the data collection, or with analysis. It is also possible that retention elections do not have significant interest group involvement because the likelihood of a judge losing a retention election is so low, that they do not find it worth the investment. As a result, judges might feel able to pursue their own ideology or the ideology of those that appointed them. Regardless, this interesting finding with retention elections does provide an area of further inquiry.

In terms of how much popular opinion affected minority defendants in comparison to white defendants, there is not support for the belief that minority defendants were more affected by an increase in popular opinion than their white counterparts. In partisan and appointment systems white defendants were more affected by an increase in popular opinion than their minority counterparts (See Figures 4 and 5). This is evidenced by how quickly the line slopes downwardly as popular opinion increases. The steeper the slope, the more each unit of increase in popular opinion decreases the chances of relief being granted. The fact that the line slopes more steeply for white defendants than for minority defendants in partisan and appointment systems means that white defendants are more affected by increases in popular opinion than their minority counterparts in the same systems.

In non-partisan election systems, there was not much difference between white defendants and minority defendants. All defendants had essentially a 0% chance of being granted relief across all levels of popular opinion (See Figure 3).

In retention election systems, minority defendants saw more of an increase in their probability of relief being granted as popular opinion increased when compared with white defendants in the same system. The steeper positive slope evidences this (See Figure 2). This means that, as popular opinion increases, minority defendants see a larger increase in their probability of being granted relief than their white counterparts. This does not support my hypothesis. However, it is in line with the findings from appointment and partisan election states.

In review, the steeper negative slopes for white defendants as popular opinion increased, when compared with minority defendants, indicates that white defendants are, in fact, more affected by increases popular opinion than minority defendants. The steeper positive slope in retention election systems for minority defendants is also in line with white defendants being more affected by increase in popular support than their minority counterparts; a comparatively flatter slope for white defendants means that their probability of being granted relief sees a smaller positive increase than minority defendants as popular opinion increases.

The discovery that white defendants are more affected by shifts in popular opinion than their minority counterparts is enough to show that my third hypothesis was not supported. However, I believe that it could be fruitful to see if non-partisan and partisan election systems do see more of an effect of popular opinion, by race. Therefore, I will examine whether popular opinion has a stronger effect in partisan and non-partisan election systems when compared with appointment and retention systems.

Partisan elections saw the steepest change in slope across all selection system for white defendants, which is in line with the theory of the hypothesis, even if the racial assumption was not correct (See Figure 6). Non-partisan elections saw virtually no change in slope. However, this is likely because there was no possible downward movement in probability. Appointment

systems saw a negative slope for white defendants as popular support for the death penalty increased. However, this slope was not as negative as the slope of partisan elections, nor did it reach a probability as low as in non-partisan elections (See Figure 6). Finally, retention elections saw a positive slope as popular support for the death penalty increased. These findings support the belief that judges in partisan and non-partisan selection system are more affected by popular opinion than judges in appointment or retention systems.

For minority defendants, the slopes of partisan and appointment systems were approximately equal, which does not support the belief that non-partisan and partisan election systems were more affected by popular opinion than appointment and retention election systems (See Figure 7). Further, non-partisan election systems did not see any negative change in slope. However, this was likely, again, because there was no room for downward movement. Retention elections again saw an increase in probability of being granted relief.

Because of the lack of slope in non-partisan elections, it is difficult to draw concrete conclusions about whether both non-partisan and partisan election systems are most affected by popular opinion. However, judges in partisan election systems are certainly significantly affected by popular opinion, especially for white defendants. Minority defendants are equally affected by popular opinion in appointment and partisan election systems. Minority defendants also saw a significantly positive increase in the probability of being granted relief in retention systems. As a result, I conclude that these findings do not support my hypothesis that defendants in partisan and non-partisan election systems are more affected by increases in popular opinion than in appointment and retention election systems.

When looking at the implications of statistical significance, the fact that the race of the defendant only reached significance in partisan and retention election systems provides further

support against my hypothesis. While the race of defendants does have an effect on their probability of being granted relief, it is not in the systems that I hypothesized. This might mean that there are certain pressures on judges that are present in retention election systems that are not present in non-partisan selection systems. It could also mean that the pressure of public opinion in a racial way is actually stronger in retention elections than in non-partisan elections.

In all, this means that minority defendants were not more negatively affected by increases in popular opinion than their white counterparts. Further, while white defendants were more affected by increases in popular opinion in partisan election systems, there was no change in non-partisan election systems. Minority defendants were equally affected by changes in popular opinion in partisan and appointment systems. Further, minority defendants were most affected by popular opinion in retention election systems, albeit positively. As a result, my third hypothesis was, overall, not supported.

Analysis - Hypothesis Four

My fourth hypothesis, that defendants who kill white victims will be comparatively more affected by positive changes in popular opinion than those defendants who killed minority victims, and that this negative affectation would be more pronounced in partisan and non-partisan election systems than in appointment and retention election systems, was not fully supported. As above, I will start my analysis by doing an overview of the effect of shifts in popular opinion. I will then compare the relative effects of increases in popular opinion for those defendants who killed white victims with those defendants who killed minority victims. Finally, I will examine if the discovered effects were more pronounced in partisan and non-partisan election systems than in appointment or retention election systems.

As popular opinion increases, the likelihood of defendants being granted relief in non-partisan election systems increased for defendants who killed both minority and white victims. This, like retention elections above, is extremely interesting, and was the opposite of what I expected to find. Exploring this effect in non-partisan elections is an extremely fruitful opportunity for further work, I believe, even if it is done with a more complete and diverse dataset. Comparatively within each selection system, those defendants who killed minority victims were more likely than defendants who killed white victims within the same system to be granted relief, across all levels of support. Both retention election and partisan election systems saw virtually no change in probability for those defendants who killed minority victims, likely because there was no possibility for upward movement. In appointment systems, defendants who killed minority victims and defendants who killed white victims were both negatively affected by increases in popular opinion.

When looking at the comparative effects of an increase in popular support for the death penalty, those defendants who killed white victims were more affected than those who killed minority victims.

In partisan election systems, defendants who killed white victims saw a significantly negative decrease in their probability of being granted relief as popular opinion increased. The steep negative slope of the line is indicative of this (See Figure 12). Defendants who killed minority victims saw no change in the probability of being granted relief, and, further, these defendants were always guaranteed relief, regardless of popular opinion. This supports my hypothesis, as those who killed white victims were negatively affected by the positive change in popular opinion while those defendants who killed minority victims were virtually unaffected and guaranteed relief at all levels of popular support.

In retention election systems, defendants who killed minority victims saw no change in their probability of being granted relief, reflected by the lack change in the slope of the line. Defendants who killed white victims saw a significant increase in their probability of being granted relief, indicated by the steep positive slope of the line (See Figure 9). This does not necessarily support my hypothesis, as those defendants who killed white victims were more affected by popular opinion than defendants who killed minority victims. However, it does not oppose my hypothesis either, because the lack of movement possibly because of the lack of ability to move upward in slope for those who killed minority victims.

In non-partisan elections, defendants who killed minority victims saw an increase in their likelihood of being granted relief while those defendants who killed white victims saw only a slight increase. The significantly steeper slope of the line depicting defendants who killed minority victims compared with the line depicting defendants who killed white victims evidences this (See Figure 10). This supports the hypothesis, because those who killed white victims saw, comparatively, a smaller increase in their probability of being granted relief than those who killed minority victims.

Finally, in appointment systems, both defendants who killed minority victims and defendants who killed white victims saw decreases in their likelihood to be granted relief (See Figure 11). However, the slope was slightly steeper for defendants who killed white victims when compared with defendants who killed minority victims. This indicates that defendants who kill white victims are more affected by increases in popular opinion than their counterparts who kill minority victims.

When comparing the effects of popular opinion in different systems, it is clear that defendants are not more affected in partisan and non-partisan election systems than in

appointment and retention election systems depending on the race of the victim. Defendants who kill white victims are strongly affected in partisan election systems as popular opinion increases. Further, when compared with defendants who killed minority victims in non-partisan election systems, defendants who kill white victims see significantly smaller increases in probability of being granted relief. However, white defendants are also significantly affected by increases in popular opinion in appointment and retention election systems (See Figure 13). This means that the effect of popular opinion is not significantly more pronounced in partisan and non-partisan election systems than in retention election and appointment systems. When examining defendants who kill minority victims, it is more difficult to draw solid conclusions because retention and partisan elections did not have the possibility for upward movement and, therefore, there are not slopes to compare. However, non-partisan election systems do see a significant increase in the probability of granting relief as popular support for the death penalty increases. Appointment systems were the only systems in which defendants who killed minority victims saw a decrease in their probability of being granted relief. Due to this, one could argue that defendants who killed minority victims were most affected in appointment systems because their probability of being granted relief went down.

Statistical significance adds an interesting layer to the analysis. In retention election systems, the race of the victim reached its highest level of significance (0). This dovetails well with the significance discovered with the race of the defendant, but it does not support the assumption that judges are more subject to a racial version of public opinion in partisan (.01) and non-partisan (.05) election systems. Again, this could be because of a difference in pressures present, or pressures not present, in retention election systems, which could lead to an increase, or a decrease, in the ability of judge to follow their own ideology. It is also possible that selection

system could be a proxy for an underlying set of values, beyond the values of judicial independence and judicial accountability. These values could have a strong effect on judicial decision-making, which could, in turn, be displayed through correlation between the race of the defendant and the likelihood of relief.

Overall, this means that defendants who killed white victims were more affected by popular opinion than those who kill minority victims. In non-partisan election, partisan election, and appointment systems, defendants who killed white victims either saw steeper negative slopes or less steep positive slopes compared with the slopes of minority defendants within the same system. In retention election systems, defendants who killed white victims saw a positive slope while defendants who killed minority victims did not see any change in their slope, which does not contribute heavily to the support of the hypothesis. However, I believe that this is because there was no possible upward movement for defendants who killed minority victims after the initial, slight, upward movement.

Analysis – General

When looking at the combined results of all four hypotheses an interesting picture emerges. White defendants are comparatively less likely to be granted relief than their minority counterparts and are more negatively affected by increases in popular opinion. Defendants who kill white victims are less likely to be granted relief than defendants who kill minority victims and are also more negatively affected by increases in popular opinion.

There are two possible explanations for these findings. The first possible explanation is that the public is negatively biased toward white defendants, which causes judges to treat them more harshly than their minority counterparts. This would explain the increasing downward movement at higher levels of popular opinion, and would explain the overall lower probability of

white defendants being granted relief. This explanation makes little sense, especially in light of previous findings discussed in the literature review.

The second explanation is that the public and, in turn, judges are comparatively more negatively affected by white victims than by minority victims. This also explains why white defendants are less likely to be granted relief, increasingly so as popular support for the death penalty increases and white defendants who kill white victims are less likely to be granted relief, increasingly so as popular support for the death penalty increases. This explanation is in line with previous findings discussed in the literature review and makes sense in the largely historical context of the justice systems and racial attitudes in the United States. Therefore, I believe that it should be tentatively accepted as the explanation for these findings.

However, one of the aforementioned weaknesses of this study is the limited and potentially biased dataset in terms of the victim's race. With a more complete dataset, it is possible that different findings would emerge. Given more time, a smaller analysis done with this dataset on interracial murders would be able to shed some light on whether or not this explanation is accurate. As a result, I believe that these findings should be accepted only tentatively.

Conclusion

From these results I believe three major findings can be deduced. The first is that, in all systems but retention election systems and, depending on the race of the victim, partisan (for minority victims) and non-partisan election systems (for both minority and white victims), increasing popular opinion places downward pressure on the probability of relief being granted, both within and across selection systems. Looking at the averages, this downward pressure is not

significantly more pronounced depending on the race of the victim or of the defendant. However, within selection systems this downward pressure heavily affects defendants who kill white victims and white defendants more.

The second is that race does have an effect on judicial decision-making. The literature review indicates that it is the race of the victim, not the race of the defendant, that influences decision-making. Therefore, tentatively, I will forward that as an explanation for the high probability of relief for minority defendants, and for those who kill minority victims, and the comparatively low probability of relief for white defendants and for those who kill white victims. However, without a comparative analysis of this dataset for minority defendants who killed white victims and minority defendants who killed minority victims, and the same for white defendants, I do not feel comfortable relying on this as certain.

Finally, and most importantly, there exists an inconsistency in the way that the death penalty is applied that is dependent on race, selection system, and popular opinion. As discussed in the beginning of this thesis, this means that defendants are not being granted relief based on factors that are out of their control and have nothing to do with their case. Whether or not one believes in the death penalty, the consistent application of it should be a top priority. Without consistency in application, the fundamental beliefs of justice and fairness in the criminal justice system cannot be upheld.

One could argue that these findings are largely because of the omitted control variable of attorney skill, or whether the defendant used a public defender or not. While this is possible, it does not explain away the inconsistent application of the death penalty. Further, this would mean that instead of racial discrimination based on the race of the victim occurring, discrimination based on the type of representation could be occurring.

This thesis offers multiple avenues for further work and exploration. For example, the effect of retention election selection systems on the interaction between race and public opinion would be an interesting area to begin further work. There are significant factors that could affect the demonstrated behavior patterns in retention election systems, for example the racial makeup of the area or, further, the way that race is portrayed in the media in these areas. Incorporating these variables as control variables, or using these differences as an independent variable could offer extremely useful insight into the underlying differences between selection systems. If these areas are concerned with the disproportionate effect of the criminal justice system on minority defendants than on their white counterparts, there could be pressure to rectify those effects when making death penalty relief decisions. It is also possible that selection system is a proxy for a wider set of values that affect judicial decision-making. Doing qualitative work involving interviews with judges and voters from different selection systems in different states could provide some insight into what those values might be. Understanding the underlying values of each system could explain the differences in outcomes better than the selection system could.

This work also opens up the opportunity to explore the effect of race, in conjunction with popular opinion, on lower court levels. Preforming the same analysis done here at the trial court level, by either looking at behavior patterns of the judge or of the prosecutor, could uncover further racial bias that was not corrected or visible at the state supreme court level. Relatedly, incorporating the effect of attorney skill, or whether the defendant used a private or public attorney, would be an extremely important control. It is possible that discrimination visible here is attributable to economic, rather than racial discrimination.

Finally, repeating this work with more cases, or with a case study looking at interest group involvement through attack ads, would be extremely enlightening. To do this, one could

take a small random sample from this set to see what the types of attack ads present are within each system. Absent the ability to do so, one could also look at a proxy, for example interest group spending or data on the types of advertisements at the state level. This would be able to answer whether attack ads are the mechanism by which judicial behavior is translated to the voting public. Confirming the work done here with a wider set of victim's races would be helpful in verifying the findings here, too. The races of victims could be found using Lexis Nexis' newspaper databases.

References

Alesina, Alberto and Eliana La Ferrera. 2014. "A Test of Racial Bias in Capital Sentencing." *American Economic Review*. 104(11): 3397-3433.

Author Unknown. 2002. "History of Opinion Polling." *PBS*. June 14. Available online at: http://www.pbs.org/now/politics/polling.html (December 12, 2016).

Author Unknown. "Landmark: McCleskey v. Kemp." *LDF*. Available online at: http://www.naacpldf.org/case/mccleskey-v-kemp (March 24, 2017).

Author Unknown. "Crimes Punishable by the Death Penalty." *Death Penalty Information Center*. Available online at: http://www.deathpenaltyinfo.org/crimes-punishable-death-penalty (March 23, 2017).

Author Unknown. "Warren McCleskey." *Death Penalty Information Center*. Available online at: http://www.deathpenaltyinfo.org/warren-mccleskey (March 24, 2017).

Baum, Lawrence. 2003. "Judicial Elections and Judicial Independence: The Voters Perspective." *Ohio State Law Journal*. 64:13: 1-16.

Brace, Paul, and Brent D. Boyea. 2008. "State Public Opinion, the Death Penalty, and Electing Judges." *American Journal of Political Science*. 52(April): 360-372.

Brooks, Richard R. W., Steven Raphael. 2002. "Life Terms or Death Sentences: The Uneasy Relationship Between Judicial Selections and Capital Punishment." *Journal of Criminal Law and Criminology*. 91(Spring/Summer): 609-639.

Canes-Wrone, Brandice, Tom S. Clark, Jason P. Kelly. 2014. "Judicial Selection and Death Penalty Decisions." *American Political Science Review*. 108(February): 23-39.

Champagne, Anthony. 2001. "Interest Groups and Judicial Elections." *Loyola of Los Angeles Law Review*. 34(June): 1391-1409.

Champagne, Anthony. 2011. "Judicial Selection from a Political Science Perspective." *Arkansas Law Review*. 64(221): 221-247.

Eckholm, Erik. "Studies Find Death Penalty Tied to Race Of the Victims." *The New York Times*. February 24, 1995.

Fearon, James D. 1999. "Electoral Accountability and the Control of Politicians: Selecting Good Types Versus Sanctioning Poor Performance." In *Democracy, Accountability and Representation*, eds. Adam Przeworski, Susan C. Stokes, Bernard Manin. Cambridge: Cambridge University Press, 55-97.

Gordon, Sanford Clark and Gregory Huber. 2007. "The Effect of Electoral Competitiveness on Incumbent Behavior." *Quarterly Journal of Political Science*. 2nd issue of 2007: 107-138.

Kang, Michael S., Joanna M. Shepherd. 2016. "Judging Judicial Elections." *Michigan Law Review*. 114(929): 929-949.

Mendelberg, Tali. 2008. "Racial Priming Revived." *Perspectives on Politics*. 6(March): 109-123.

Oliver, John. 2015. "Judicial Elections." Last Week Tonight with John Oliver. (HBO). Available online at: https://www.youtube.com/watch?v=poL7l-Uk3I8

Spohn, Cassia, John Gruhl, Susan Welch. 1981-1982. "The Effect of Race on Sentencing: A Re-Examination of an Unsettled Question." *Law & Society Review*. 16(1): 71-88.

Van Cleve, Nicole Gozalez and Lauren Mayes. 2015. "Criminal Justice Through "Colorbling" Lenses: A Call to Examine the Mutual Constitution of Race and Criminal Justice." *Law & Social Inquiry*. 40(Spring): 406-432.

Waite, Matt. 2013. "Handling Data about Race and Ethnicity." *Source*: *An OpenNews Project*. June 20. https://source.opennews.org/articles/handling-data-about-race-and-ethnicity/.

Appendix A: Figures

Figure 1 – Average Probability of Relief Based on Race of the Defendant

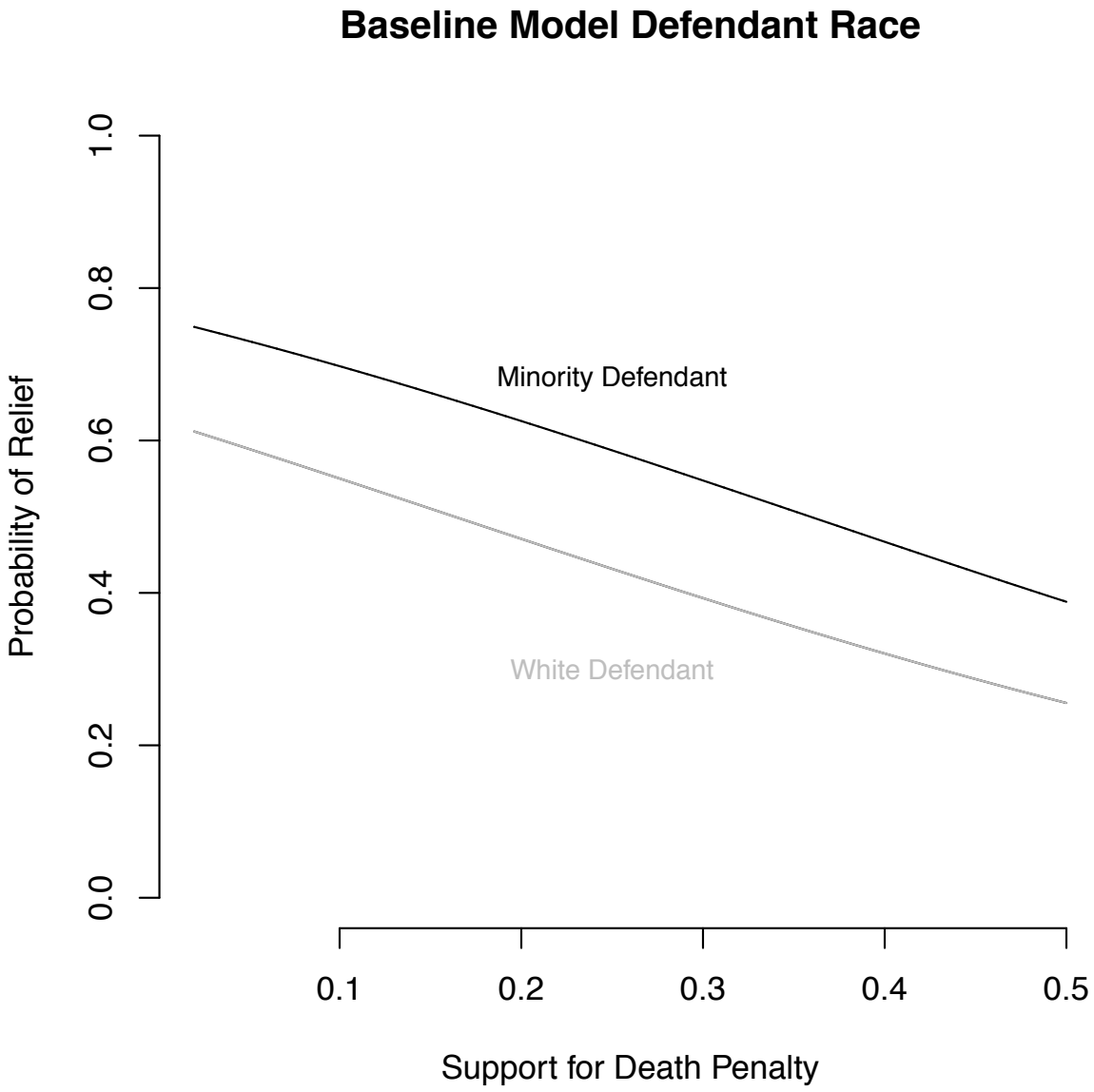


Figure 2 – Probability of Relief in Retention Election Based on the Race of the Defendant

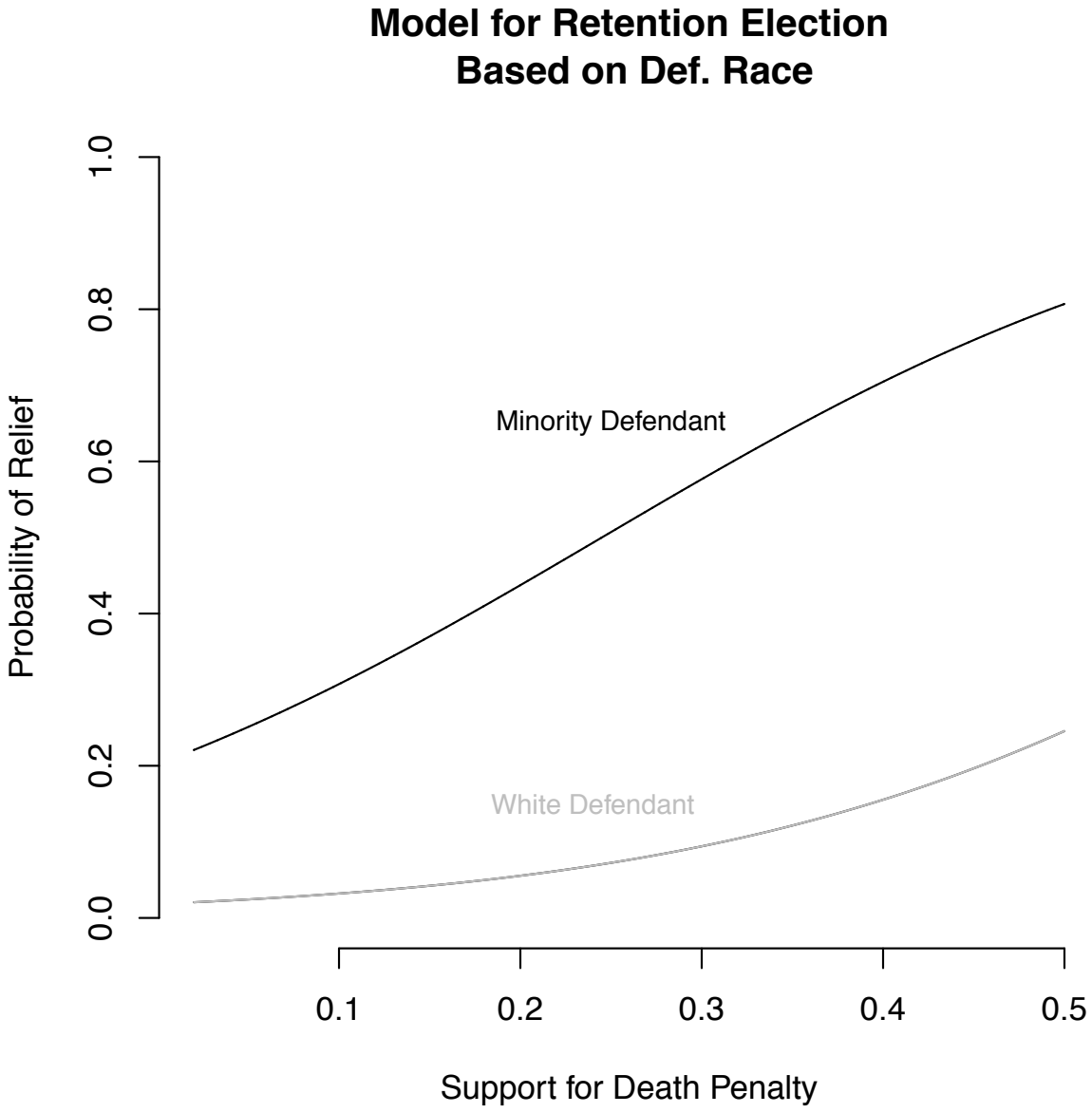


Figure 3 – Probability of Relief in Non-Partisan Election System Based on the Race of the Defendant

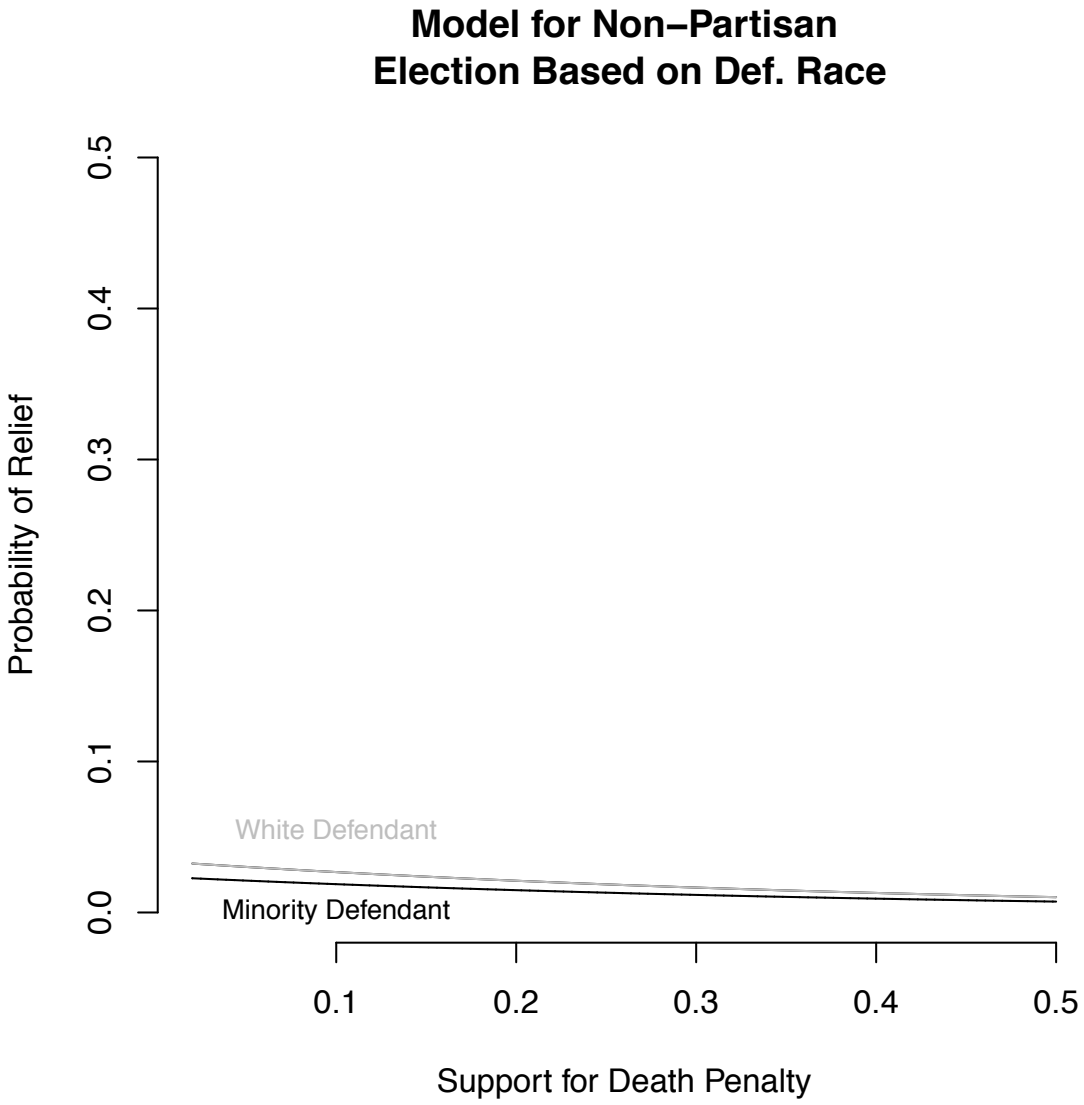


Figure 4 – Probability of Relief in Appointment Selection System Based on the Race of the Defendant

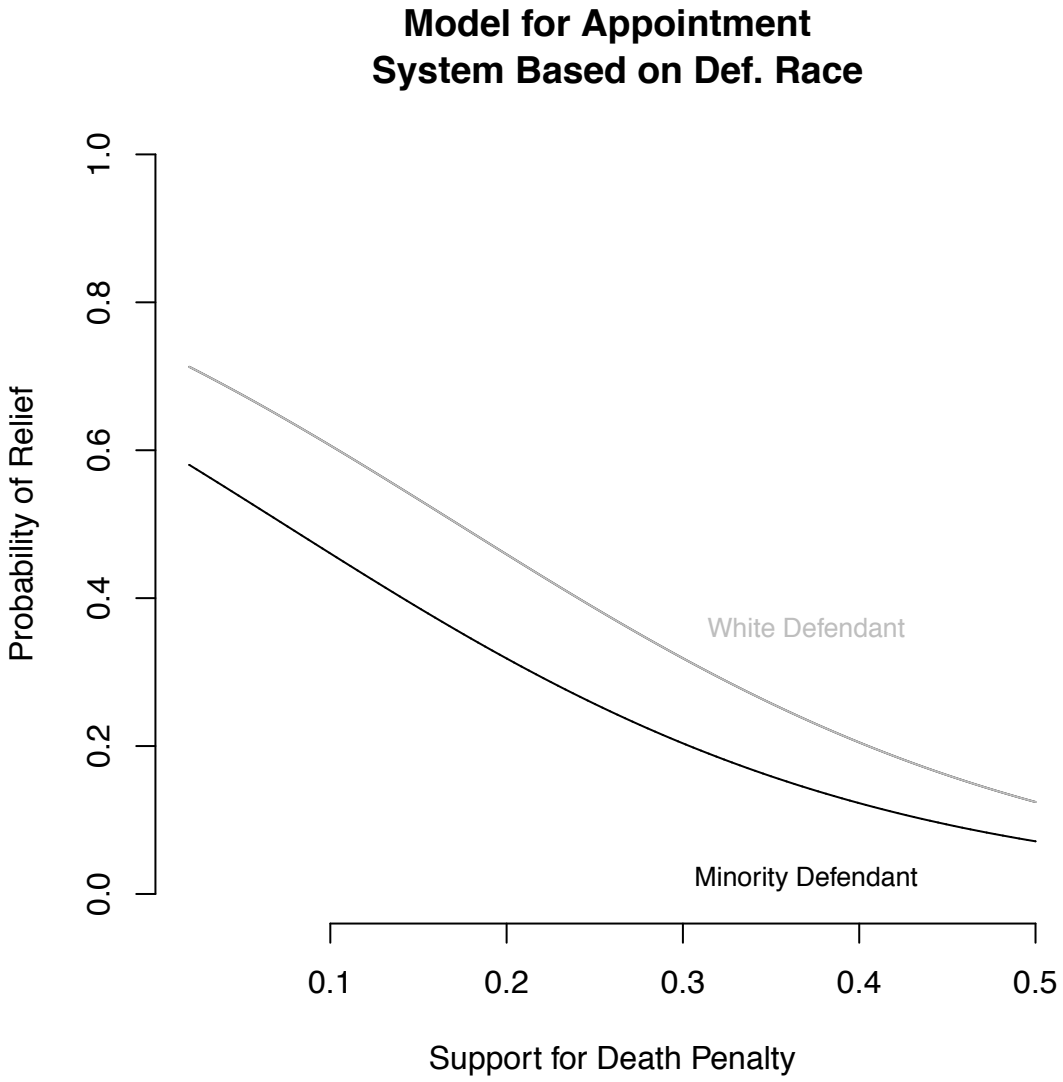


Figure 5 – Probability of Relief in Partisan Election System Based on the Race of the Defendant

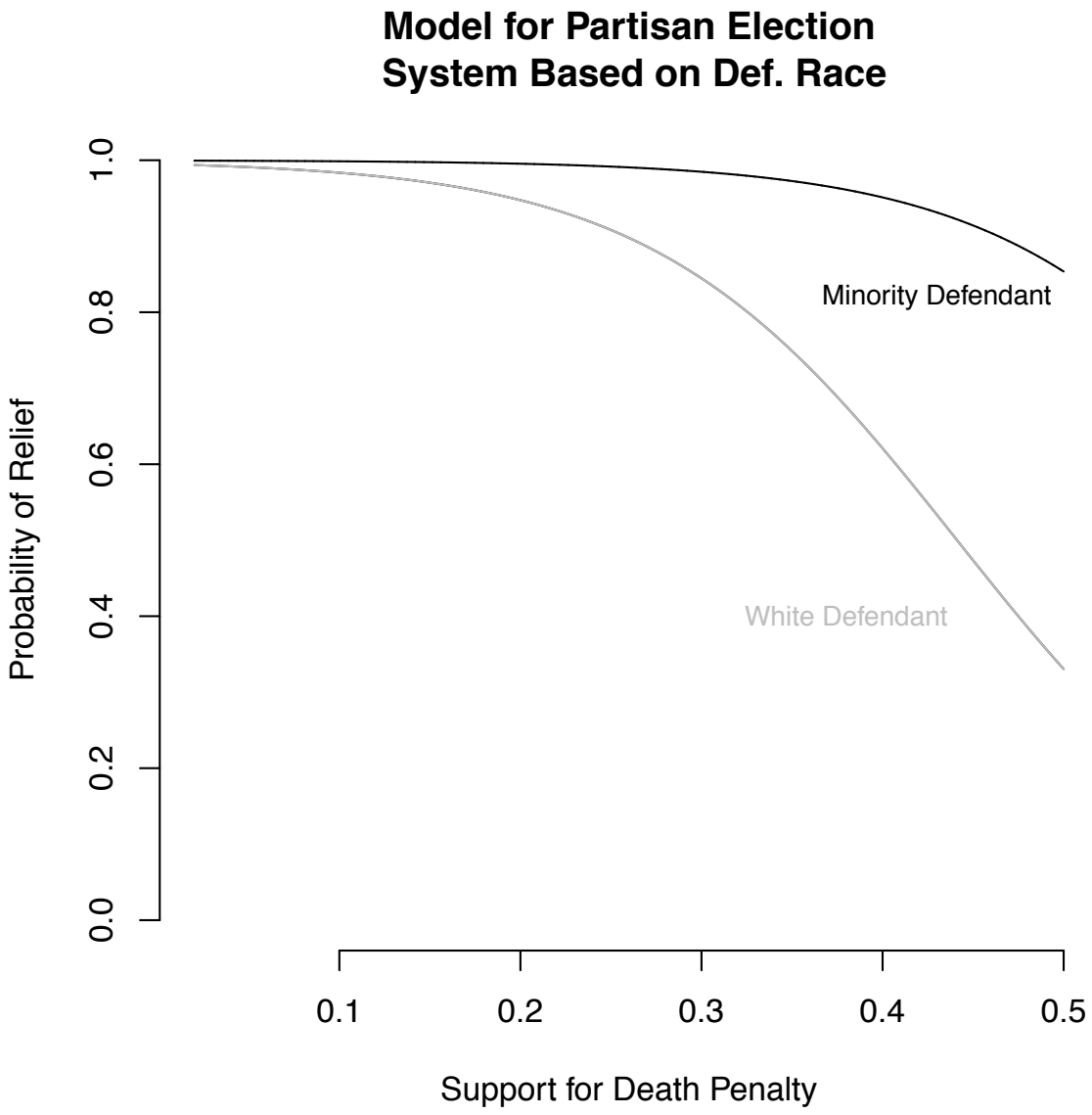


Figure 6 – Probability of Relief Across All Selection Systems for White Defendants

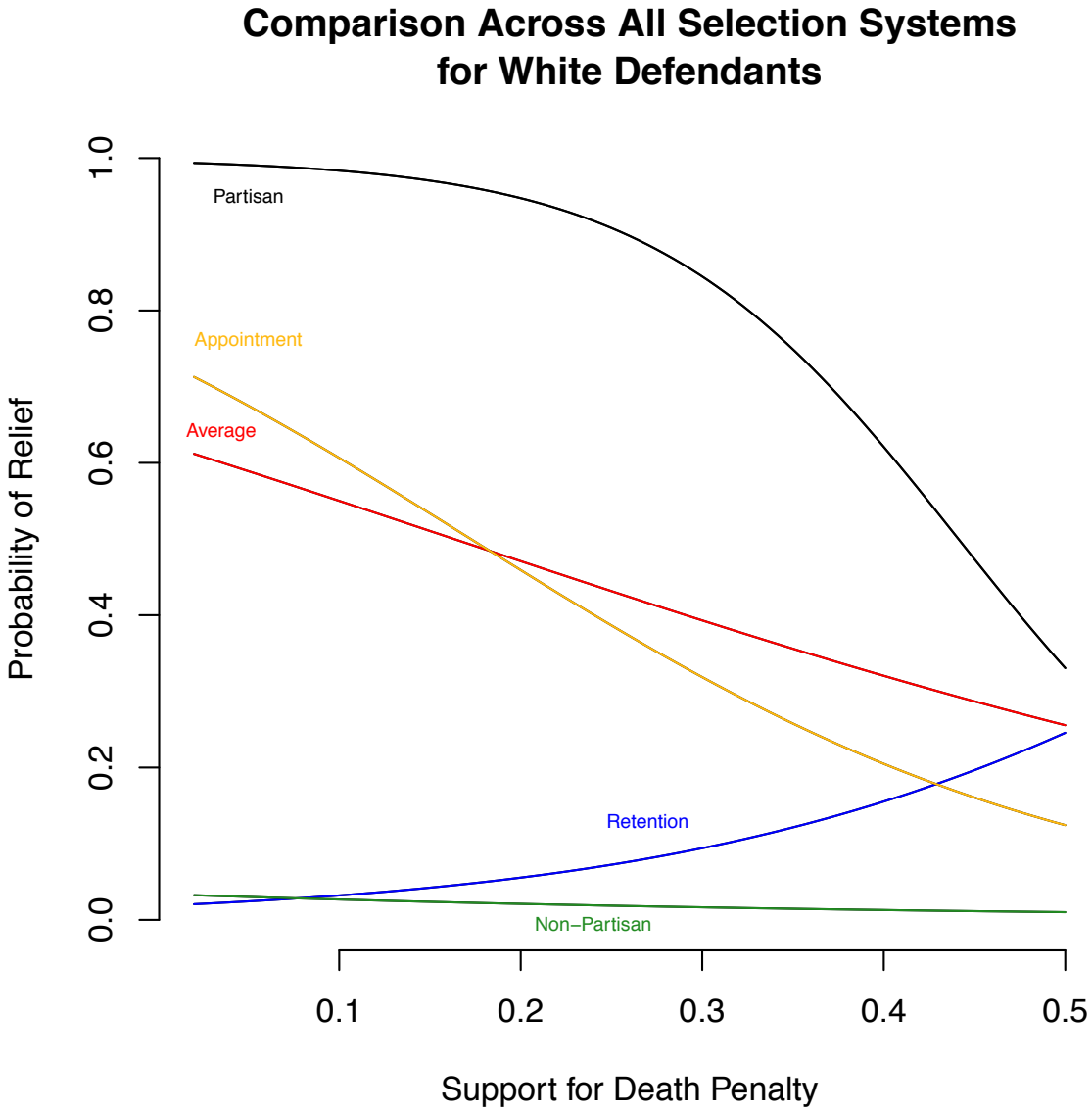


Figure 7 - Probability of Relief Across All Selection Systems for Minority Defendants

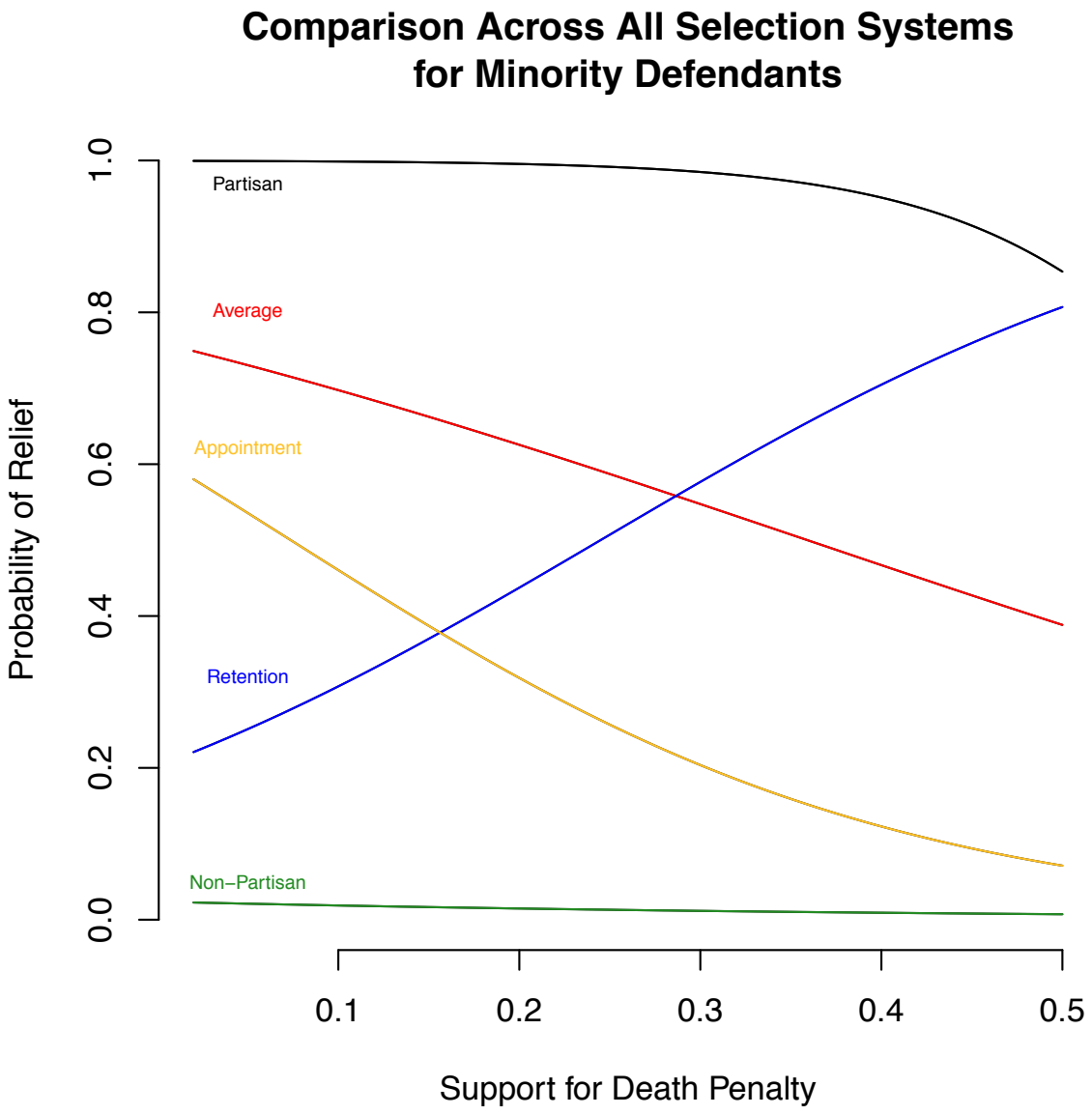


Figure 8 – Average Probability of Relief Based on Race of the Victim

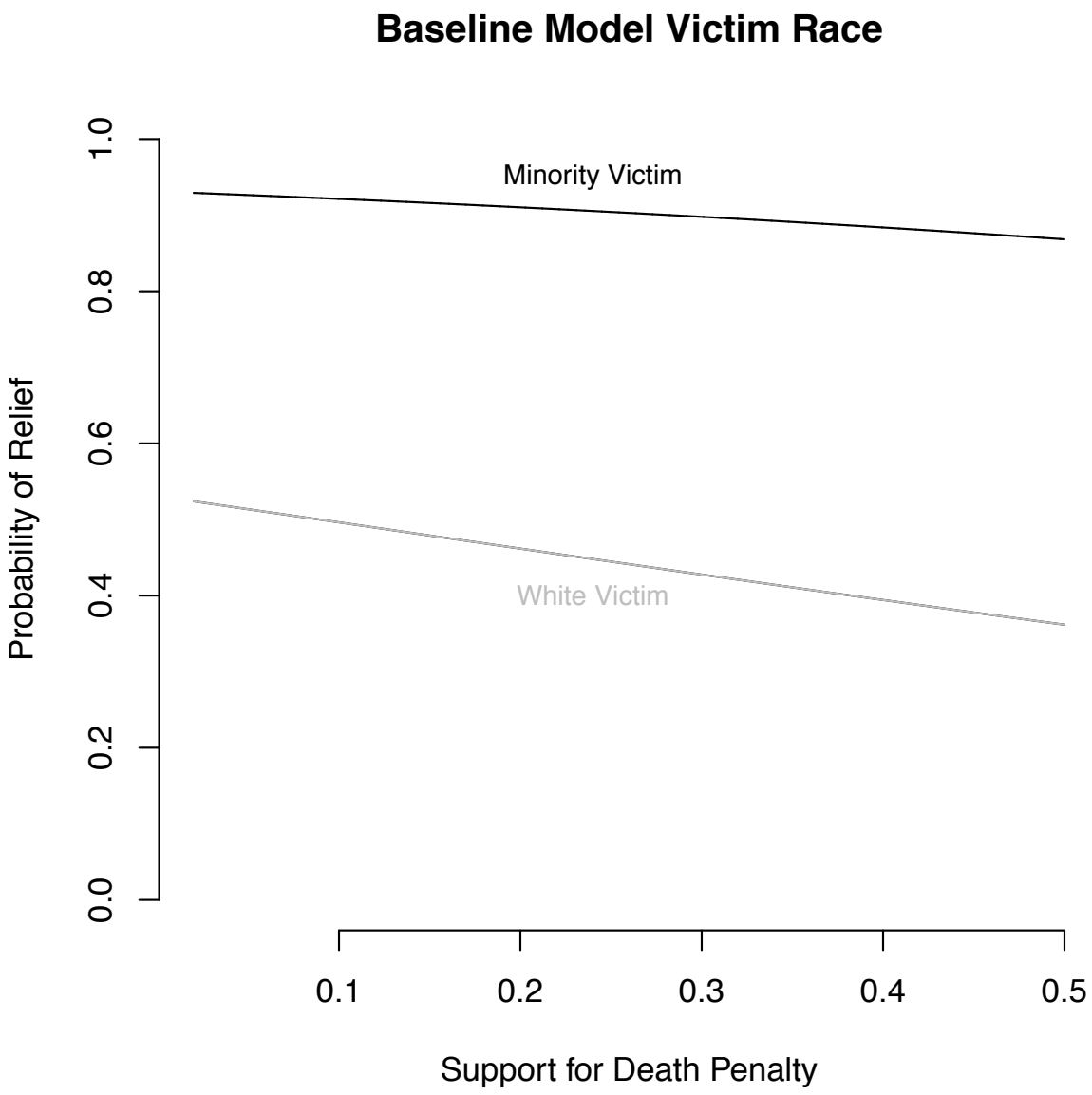


Figure 9 – Probability of Relief in Retention Election Based on the Race of the Victim

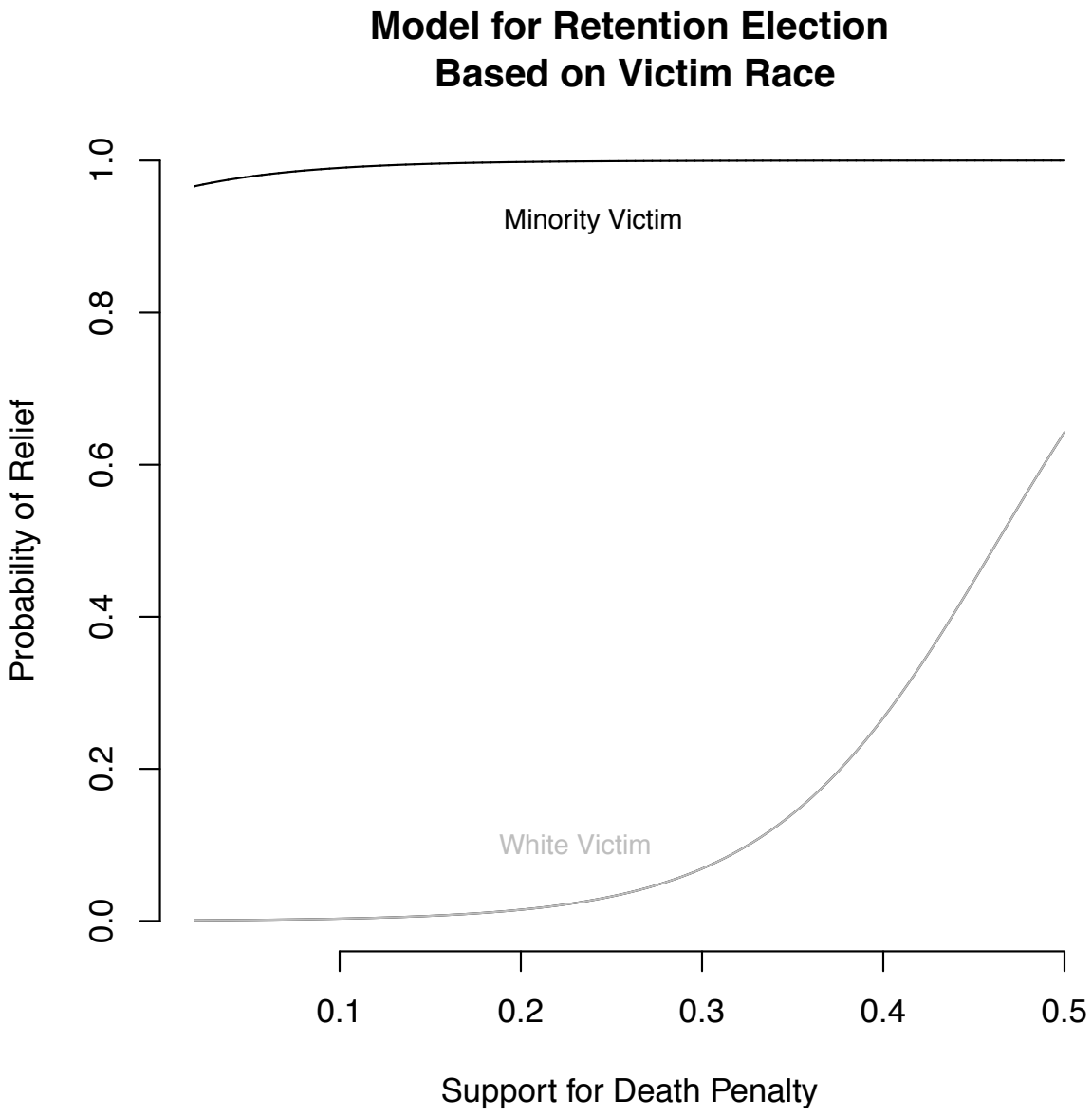


Figure 10 – Probability of Relief in Non-Partisan Election System Based on the Race of the Victim

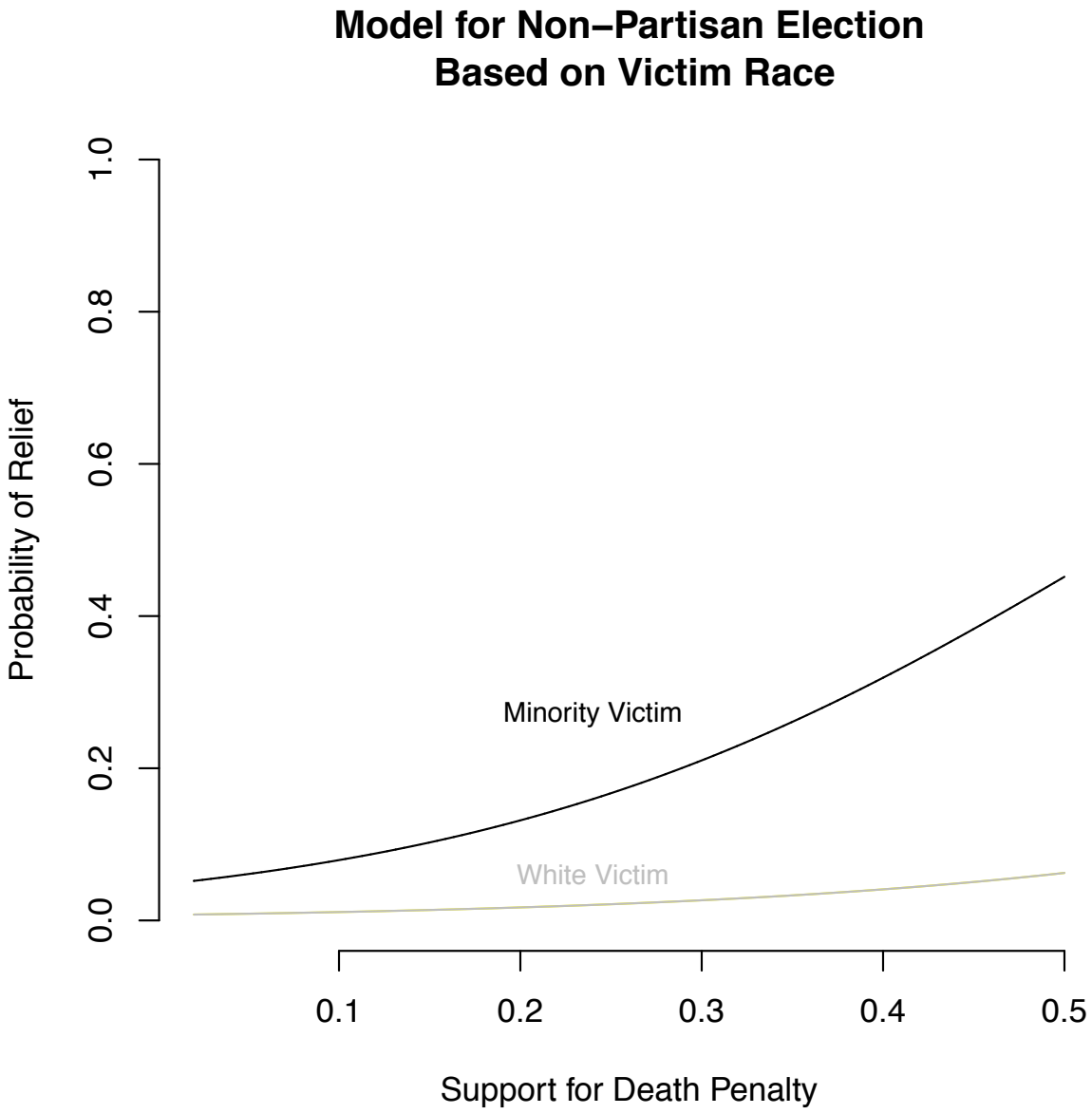


Figure 11 – Probability of Relief in Appointment Selection System Based on the Race of the Victim

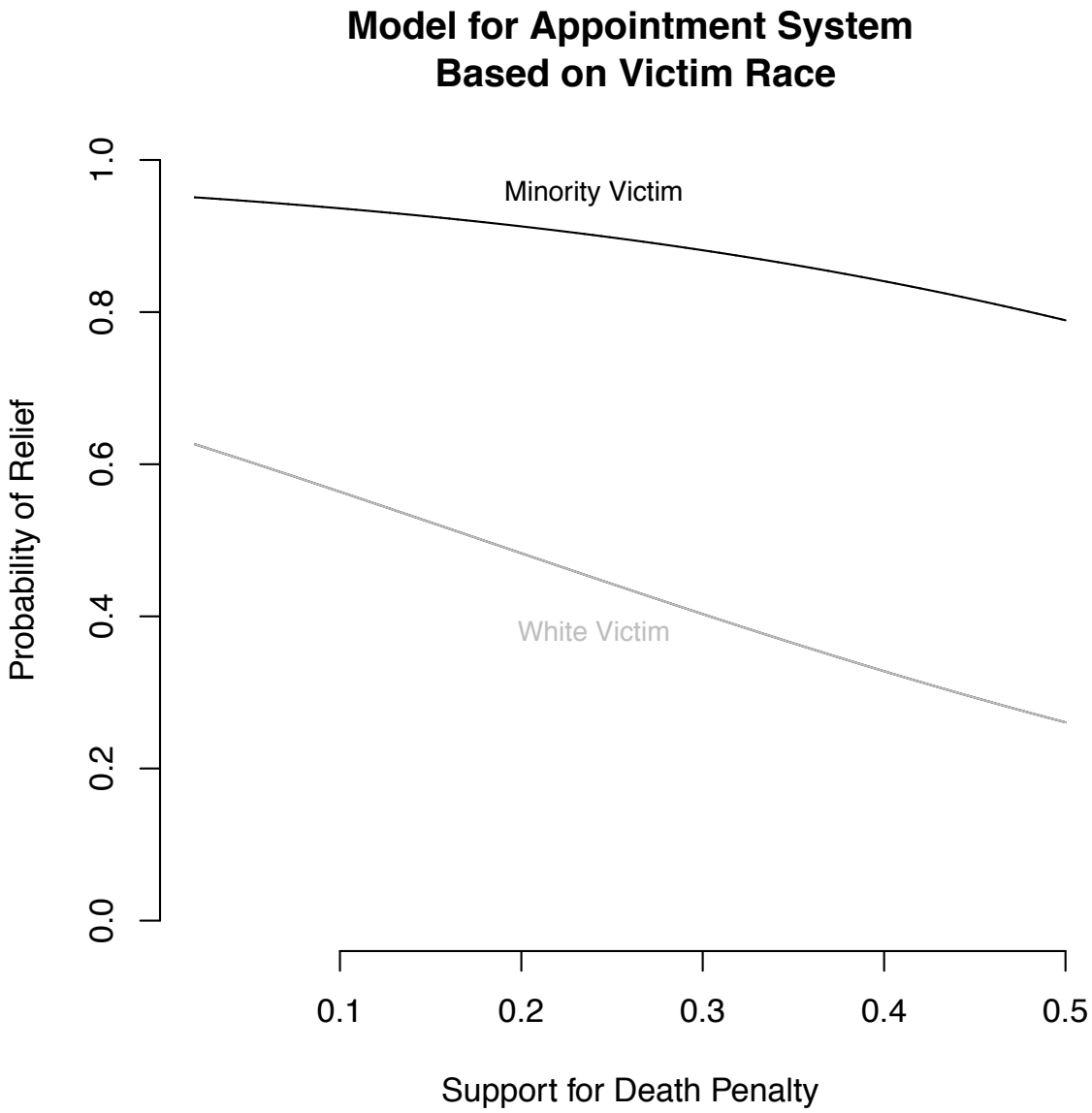


Figure 12 – Probability of Relief in Partisan Election System Based on the Race of the Victim

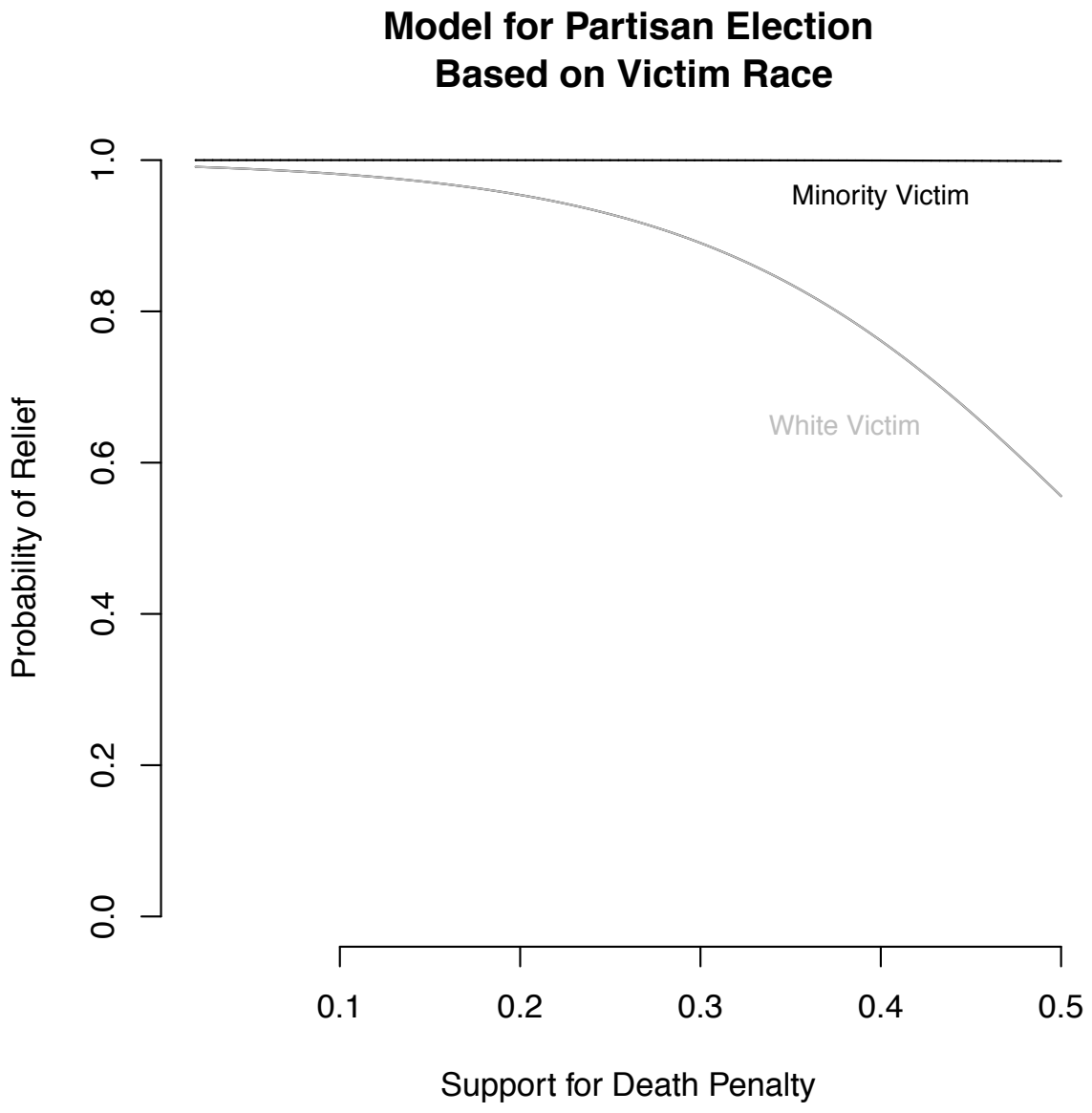


Figure 13 – Probability of Relief Across All Selection Systems for Defendants Who Killed White Victims

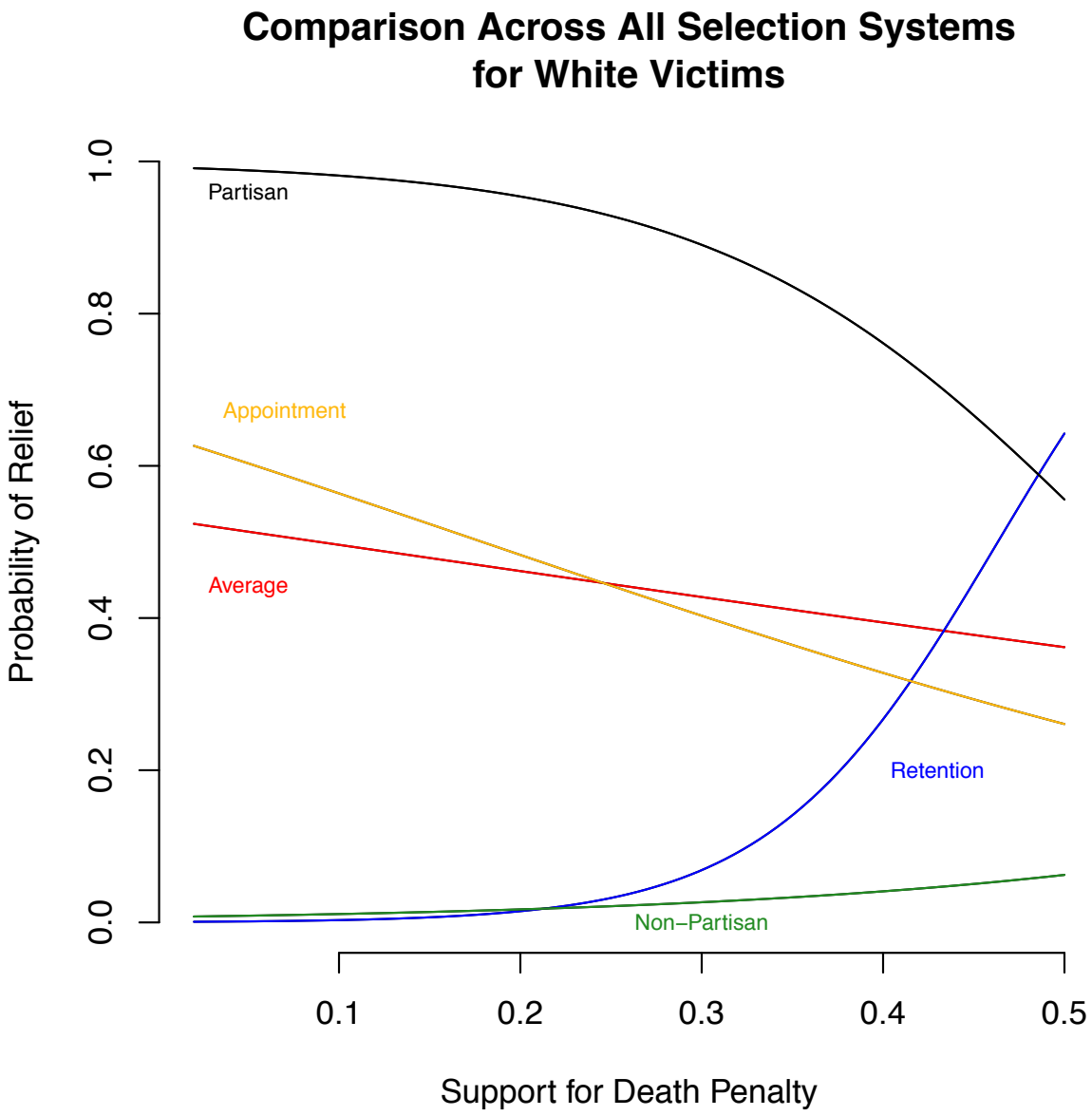
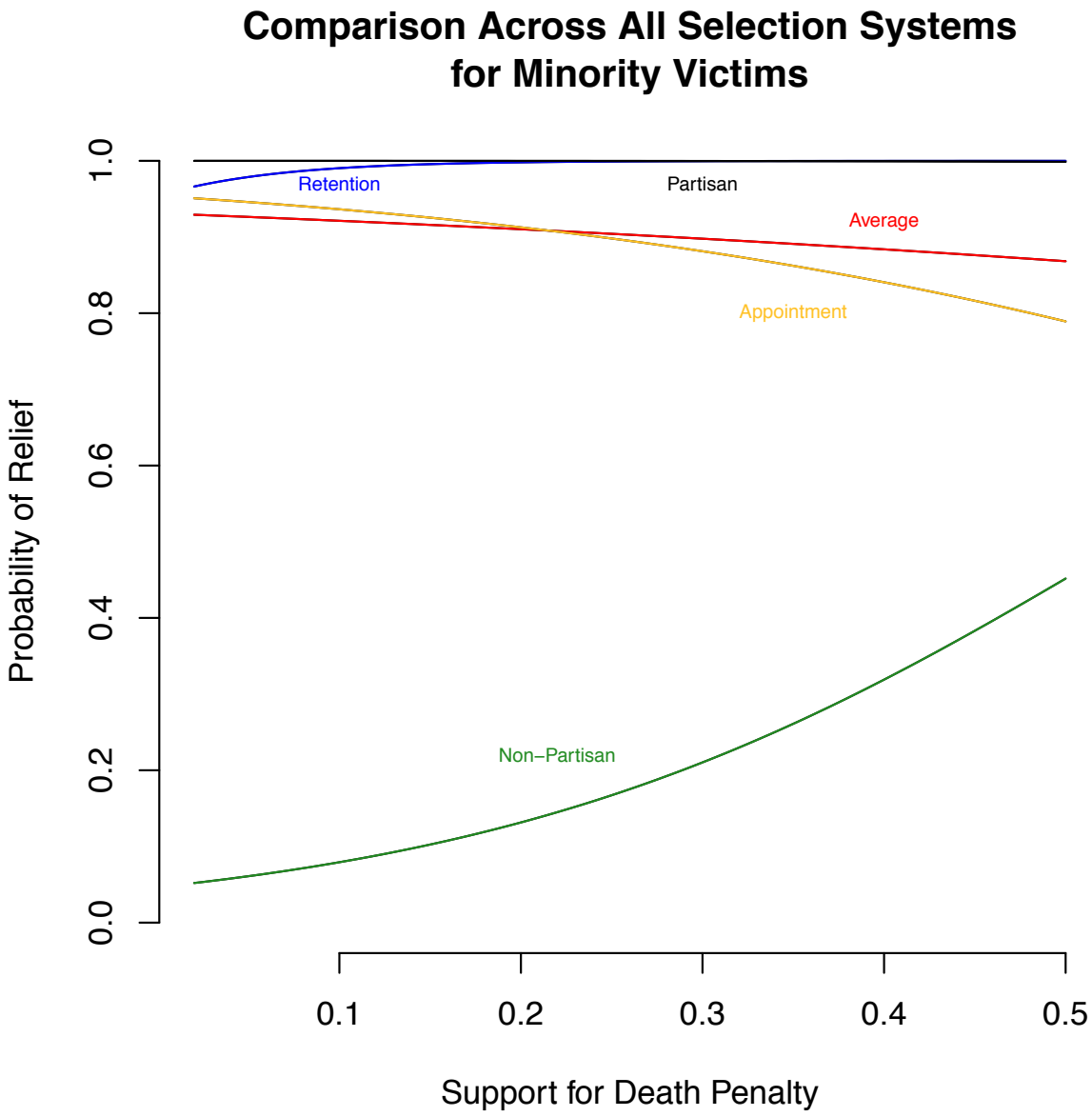


Figure 14 – Probability of Relief Across All Selection Systems for Defendants Who Killed Minority Victims



Appendix B: Tables

Table 1: Standard Deviation and Frequency Distributions of Variables

Variable	Mean	Standard Deviation	Minimum	Maximum
po50	.25060	.06602581	.02016	.45710
ConRace	.451	--	0	1
VicRace	.213	--	0	1
nextelec	3.00	--	0	13.00
murderrate	1.800	3.044471	1.800	17.200
copkill	.04921	.216324	0	1
rape	.2361	.4247162	0	1
rob	.4376	.4961122	0	1
multivic	.3352	.4720878	0	1
vic_fem	.5845	.4928234	0	1
party	.7115	--	0	1
retire	-0.03973	--	-1	1
lameduck	.008155	--	0	1
grounds	4.194	2.632867	1	12
judgeid	274.5	266.8757	1	560.0

Table 2: Model 1 – Standard Error

Variable Name	Standard Error
po50	1.0966104
VicRace	.1461453
ConRace	.4092216
nextelec	.0194314
murderrrate	.0211813
copkill	.4682319
rape	.1491879
rob	.1269718
multivic	.1244034
vic_fem	.1410775
party	.1307789
retire	.1598327
lameduck	.6441348
grounds	.026510
judgeid	.0003370
po50:ConRace.y	1.6512487

Table 3: Model 2 – Standard Error

Variable Name	Standard Error
po50	2.953
VicRace	.4052
ConRace	1.299
nextelec	.04813
murderrrate	.07088
copkill	751.8
rape	.3923
rob	.3995
multivic	.3339
vic_fem	.3926
party	.3327
retire	.4125
lameduck	---
grounds	.06311
judgeid	.0008997
po50:VicRace.y	4.218

Table 4: Model 3 – Standard Error

Variable Name	Standard Error
po50	3.152046
VicRace	.459736
ConRace	1.022509
nextelec	.069363
murderrrate	.056176
copkill	651.628385
rape	.357834
rob	.373178
multivic	.301440
vic_fem	.344009
party	.345922
retire	.695153
lameduck	1.141165
grounds	.062548
judgeid	.000821
po50:VicRace.y	3.916280

Table 5: Model 4 – Standard Error

Variable Name	Standard Error
po50	3.3660246
VicRace	.3005944
ConRace	.9904237
nextelec	.0334115
murderrrate	.0719586
copkill	.5475126
rape	.3321717
rob	.2571008
multivic	.2505868
vic_fem	.3099749
party	.3113916
retire	.3019183
lameduck	---
grounds	.0459921
judgeid	.0008567
po50:VicRace.y	4.7047464

Table 6: Model 5 – Standard Error

Variable Name	Standard Error
po50	4.299
VicRace	.3344
ConRace	1.359
nextelec	.05458
murderrrate	.05377
copkill	47.57
rape	.3112
rob	.2564
multivic	.2777
vic_fem	.3032
party	.3038
retire	.2968
lameduck	.9545
grounds	.06506
judgeid	.0006617
po50:VicRace.y	5.355

Table 7: Model 6 – Standard Error

Variable Name	Standard Error
po50	.9567
VicRace	.4552
ConRace	.1307
nextelec	.01963
murderrrate	.02114
copkill	.4673
rape	.1490
rob	.1271
multivic	.1262
vic_fem	.1416
party	.1317
retire	.1618
lameduck	.6622
grounds	.02605
judgeid	.0003401
po50:VicRace.y	1.993

Table 8: Model 7 – Standard Error

Variable Name	Standard Error
po50	3.693
VicRace	1.652
ConRace	.4439
nextelec	.05247
murderrrate	.07850
copkill	73.94
rape	.4124
rob	.4018
multivic	.3744
vic_fem	.4011
party	.3600
retire	.4456
lameduck	---
grounds	.06506
judgeid	.0009461
po50:VicRace.y	5.273

Table 9: Model 8 – Standard Error

Variable Name	Standard Error
po50	2.75
VicRace	.9616
ConRace	.4006
nextelec	.06930
murderrrate	.05685
copkill	65.16
rape	.3580
rob	.3721
multivic	.3061
vic_fem	.3546
party	.3425
retire	.7399
lameduck	1.153
grounds	.06603
judgeid	.0008281
po50:VicRace.y	4.539

Table 10: Model 9 – Standard Error

Variable Name	Standard Error
po50	3.683
VicRace	1.971
ConRace	.2320
nextelec	.05483
murderrrate	.05812
copkill	48.32
rape	.3192
rob	.2632
multivic	.2944
vic_fem	.3039
party	.3100
retire	.2986
lameduck	.9312
grounds	.06711
judgeid	.0006646
po50:VicRace.y	9.151

Table 11: Model 10 – Standard Error

Variable Name	Standard Error
po50	.9183
VicRace	3.683
ConRace	1.971
nextelec	.05483
murderrrate	.05812
copkill	48.32
rape	.3192
rob	.2632
multivic	.2944
vic_fem	.3093
party	.3100
retire	.2986
lameduck	.9312
grounds	.06711
judgeid	.0006646
po50:VicRace.y	9.151

Table 12: Model 11 – Standard Error

Variable Name	Standard Error
po50	1.0966104
VicRace	.146153
ConRace	. 4092216
nextelec	.0194314
murderrrate	.0211813
copkill	.4682319
rape	.1491879
rob	.1269718
multivic	.1269718
vic_fem	.1410775
party	.1307789
retire	.1598327
lameduck	.6441348
grounds	.0256510
judgeid	.0003370
po50:VicRace.y	1.6512487

Table 13: Model 12 – Standard Error

Variable Name	Standard Error
po50	1.0966104
VicRace	.146153
ConRace	.4092216
nextelec	.0194314
murderrrate	.0211813
copkill	.4682319
rape	.1491879
rob	.1269718
multivic	.1244034
vic_fem	.1410775
party	.1307789
retire	.1598327
lameduck	.6441348
grounds	.025651
judgeid	.0003370
po50:VicRace.y	1.6512487

Table 14: Model 13 – Standard Error

Variable Name	Standard Error
po50	.9567
VicRace	.4552
ConRace	.1307
nextelec	.01963
murderrrate	.02114
copkill	.4673
rape	.1490
rob	.1271
multivic	.1262
vic_fem	.1416
party	.1317
retire	.1618
lameduck	.6622
grounds	.02605
judgeid	.0003401
po50:VicRace.y	1.993

Table 15: Model 14 – Standard Error

Variable Name	Standard Error
po50	.9567
VicRace	.4552
ConRace	.1307
nextelec	.01963
murderrrate	.02114
copkill	.4673
rape	.1490
rob	.1271
multivic	.1262
vic_fem	.1416
party	.1317
retire	.1618
lameduck	.6622
grounds	.02605
judgeid	.0003401
po50:VicRace.y	1.993

Table 16: Contingency Table for Crime by Person

	White Victim	Minority Victim
White Defendant	1836	103
Minority Defendant	999	656

Appendix C: List of States Included

Alabama (AL)
Arizona (AZ)
Arkansas (AR)
California (CA)
Colorado (CO)
Connecticut (CT)
Florida (FL)
Georgia (GA)
Idaho (ID)
Indiana (IN)
Kansas (KS)
Maryland (MD)
Missouri (MO)
Montana (MT)
Nebraska (NE)
Nevada (NV)
New Mexico (NM)
New York (NY)
North Carolina (NC)
Ohio (OH)
Oregon (OR)
South Carolina (SC)
Tennessee (TN)
Texas (TX)
Utah (UT)
Virginia (VA)
Washington (WA)
Wyoming (WY)