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Court Actor Decision-Making: The Influence of Victim Characteristics on Legal Outcomes in Cases of Bias Homicide

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Court Actor Decision-Making: The Influence of Victim Characteristics on Legal Outcomes in
Cases of Bias Homicide

A thesis submitted in partial fulfillment
of the requirements for the degree of
Master of Arts in Sociology

by

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Abstract

While most states in America have passed laws permitting harsher punishments for those convicted of hate (or bias) crimes, there has been no research to date on the adjudication of these defendants, including how legal and extralegal attributes of bias crime shape prosecutorial and judicial decision-making. This gap in research is likely due in part to the limitations of official data on bias crimes. Fortunately, new data on legal outcomes for bias homicide offenders who target victims because of their race, ethnicity, nationality, religion, sexual orientation, gender identity or homed status have become available from the open-source database known as the Bias Homicide Database (BHDB). Drawing from the BHDB and theoretical perspectives on court-actor decision-making, the current study quantitatively investigates the relationships between victim attributes and the severity of case dispositions in bias-motivated homicide cases. Findings suggest that victim attributes are significantly related to justice outcomes. This study sheds light on how bias crime defendants are adjudicated in American courts with implications for broader debates regarding the social value and legal utility of enhanced punishments for those convicted of crimes targeting persons because of their social group.

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Table of Contents

I.	Introduction.....	1
II.	Theoretical Perspectives	4
	A. Extra-legal Factors and Biased Heuristics.....	4
III.	Literature Review	8
	A. Normal Crime, Typical Offenders and Bias Heuristics	9
	B. Effects of Extra-legal Variables on Court Outcomes.....	10
	C. Victim Blameworthiness and Court Outcomes	11
	D. Gaps in Research	12
IV.	The Current Study	14
V.	Data and Methods.....	16
	A. Dependent Variable(s)	17
	B. Independent Variable(s).....	18
	C. Analytic Strategy	21
VI.	Results.....	22
VII.	Discussion	33
	A. Limitations	35
	B. Conclusion.....	36
VIII.	References.....	37

CHAPTER ONE

Introduction

Bias crime, or the criminal and intentional targeting of someone wholly or in part based on their perceived identity or status, has been characterized as especially problematic in part because of their deleterious effects on impacted communities (McDevitt et al., 2001; Stacey, 2015; Walfield et al., 2016). In their annual hate crime report, the Federal Bureau of Investigation (FBI) noted an overall increase in bias incidents from 2019 to 2020, along with a decrease in participating law enforcement agencies (2020). How federal and local actors choose to respond to the rise in targeted violence, especially in cases that are fatal, has implications for already vulnerable populations (Dugan & Chenoweth, 2020; Gover, Harper, & Langton, 2020).

Violent crimes that target victims based on social group membership have periodically evoked national legislative responses in the U.S., largely due to the heinous nature of these incidents (Lyons & Roberts, 2014). Although the merits of penalty-enhancing hate crime legislation have long been debated (Baron, 2016; Brax & Munthe, 2015; Hurd, 2001), most states have passed laws permitting harsher punishments for those who commit hate (or bias) crimes.¹ According to the U.S. Department of Justice, however, there remain interstate disparities in the collection of hate crime data and the protections offered by specific statutes (U.S. Department of Justice, 2022). The absence of required data reporting in 18 of the 49 states that have now passed hate crime legislation, in conjunction with inconsistencies in what groups are protected by these laws, has historically made reliable bias crime data unavailable.

Likely stemming from the limitations of official data on bias-motivated violence, there are only a few studies that examine the judicial outcomes of these crimes (Iganski & Lagou,

¹ For more information, see <https://www.adl.org/education-and-resources/resource-knowledge-base/adl-hate-map>

2015; Phillips, 2009). Additionally, there has been no research to date on criminal justice responses to the most serious form of bias crime – homicide, or how such responses might vary by what social group is targeted. Prior research has uncovered discrepancies in arrest rates, convictions, and sentence severity along the lines of race and ethnicity (Martin, 2014) and gender (Curry et al., 2004; Steffensmeier et al., 1993) for traditional (non-bias) crimes, suggesting that defendant and victim attributes impact court actor decision-making at different stages of the judiciary process. In particular, prior research indicates that the American criminal justice system treats racial and ethnic minority defendants more harshly (Steffensmeier & Demuth, 2000), while also attributing undue blame on victims of female sexual violence (Dawtry, 2019), racial and ethnic minorities (Dukes, 2017), and LGBTQ+ victims (Michalski & Nunez, 2020). If justice outcome disparities observed in traditional crimes are also present in cases of bias homicide remains unknown.

Therefore, this study seeks to advance research by investigating how victim attributes shape prosecutorial and judicial decision-making in cases of bias (-motivated) homicide. More specifically, this study examines the impact of bias homicide victim characteristics on case dispositions and sentence severity using new open-source data on bias homicides in the United States. Open-source approaches to data collection have previously allowed for comparative examinations of bias crimes by overcoming some of the limitations of official crime data sources (Gruenewald & Allison, 2017; see also Parkin & Gruenewald, 2017). The current study extends prior open-source bias crime research, and the study of justice disparities more generally, illuminating how social and cultural biases may impact prosecutorial and sentencing outcomes across various types of bias homicide cases. By drawing from the Bias Homicide Database (BHDB) - an open-source, relational dataset containing information on all bias homicides

occurring in the United States since 1990 – this study addresses how victim-level attributes (e.g., race, gender, victim type, etc.) impact criminal justice outcomes (case dispositions and sentence severity) of bias homicide cases.

CHAPTER TWO

Theoretical Perspectives

The current study draws from a vast criminological literature on factors associated with discrepancies in case dispositions and sentence severity across comparable crimes. This research suggests that prosecutors and judges rely on both legal (e.g., crime severity, sentencing guidelines, criminal codes, etc.) and extra-legal (e.g., offender characteristics, status, background, etc.) factors to make decisions (McCarter, 2009; Reitler, Sullivan & Frank, 2013; Rollwagen & Jacob, 2018). This chapter begins by first exploring how courtroom work groups, or the collection of court actors that collaborate to create mutually beneficial outcomes, shape legal processes in criminal cases. Second, key theoretical perspectives on legal decision-making guided by extra-legal factors are introduced. Finally, the chapter concludes by focusing on three perspectives most central to the current study – focal concerns theory, bounded rationality, and blame attribution theory.

Courtroom Context and Legal Factors Shaping Decision-Making

Eisenstein and Jacob (1977) propose that courtroom workgroups are formed and maintained through common goals and a desire to avoid adversarial proceedings. Informal relationships between courts actors are developed and serve as determinants of mutually beneficial case processes and outcomes. In one study, Metcalfe (2016) assesses plea bargaining procedures through the lens of court actor collaboration to examine the role of working groups on guilty pleas in criminal cases. The findings suggest that familiarity between court actors – which is enhanced by similarities in gender, shared history, and similarities in professional experiences – increases the likelihood of a guilty plea. In another study of the guilty plea process in criminal courts, Nardulli et al. (1988) examines the environmental, contextual, and individual

factors that influence this highly probable case outcome. Their findings suggest that routine and bureaucratic norms dominate proceedings – arguing that individual judges, prosecutors, and defense attorneys have little impact on case outcomes (Nardulli, Eisenstein, & Fleming, 1988).

Extra-legal Factors and Biased Heuristics

Regarding the role of extralegal factors on judicial decision-making, existing studies have focused primarily on offender characteristics as potential explanations for disparities across case outcomes (Pierce et al., 2017; Steffensmeier et al., 1993; Steffensmeier & Motivans, 2000). Specifically, previous literature suggests that young Black and Latinx offenders experience more punitive criminal justice responses as opposed to their White counterparts (Chen, 2008; Curry & Corral-Camacho, 2008; Steffensmeier et al., 1998; Steffensmeier & Demuth, 2000). To account for racial and other discrepancies in criminal justice outcomes, some criminologists have studied how heuristics, or mental shortcuts, develop based on limited information and are relied upon to inform decision-making processes (O’Brian, 2009; Tartaro & Sedelmaier, 2009). Simon’s (1955) notion of bounded rationality seeks to explain how individuals use biased judgement heuristics to make decisions when access to pertinent information is limited. Although initially an economic theory, bounded rationality has been widely used to explain topics in criminology (Jacobs & Wright, 2009; Pontell, 2009; Taylor, 2017). Prior studies have concluded, for example, that judicial and prosecutorial decisions on charge severity, pretrial release, bail amounts, and sentencing outcomes are predisposed to cognitive biases (Edmond & Martire, 2019; Jolls & Sunstein, 2016) and incomplete rationality (Tumonis et al., 2013). In a study on prosecutor decision-making, O’Brien (2009) found that prosecutorial discretion is subject to cognitive biases and limitations that can become amplified absent systems of accountability. The author draws from two schools of thought, bounded rationality and institutional incentives that promote

abuses of power, on prosecutor biases when arguing that court actors operate in a system where they are constantly convincing others of their positions. According to O'Brien (2009), this makes them particularly vulnerable to biases and impedes rational decision-making. How heuristics impact prosecutorial and judicial decisions in bias homicide cases, however, has yet to be explored.

Other scholars have established what they consider to be key factors shaping legal decision-making processes. Albonetti (1991) proposes that court actors make prosecutorial and sentencing decisions by supplementing legal considerations with extra-legal considerations, such as remorsefulness and social status, to ascertain defendant dangerousness. Albonetti's theoretical work informs Steffensmeier and colleagues' (1993) focal concerns theory, which suggests that subjective assessments of blameworthiness, risk, and practical constraints help inform judicial outcome severity. Researchers posit that such assessments may be rooted in racialized and gendered heuristics and cultural expectations of criminals and victims might influence prosecutorial and judicial decision-making (Demuth, 2003; Guevara & Spohn, 2008; Harmon, 2011; Helfers, 2016; Kautt & Spohn, 2002). In a study examining factors shaping criminal sentencing outcomes, Steffensmeier et al. (1998) find that an offender's status – age, race, gender – had significant effects on sentence severity. Moreover, they find that Black men between the ages of 20 and 30 receive more severe punishments as compared to other groups, illuminating the cost of being a young Black male. In a comprehensive examination of the literature on racial disparities in punishment, Franklin (2018) finds that racialized criminalization as a judgement heuristic was both crime specific and context specific, such that the role of race differs significantly based on criminal history, crime severity, and employment status. Although this research suggests that racial minority males are more likely to be imprisoned and to receive

longer sentences than White offenders, it provides less clarity about how victim-specific factors shape legal outcomes in cases of serious forms of violence.

Literature on the role of victim attributes, such as in cases of sexual assault, indicate that extralegal factors at the victim level can also influence legal outcomes for offenders (Grubb & Turner, 2012; Harsey & Freyd, 2020; Spears & Spohn, 1997). Shaver's (1985) blame attribution model proposes that a perceiver assesses the cause of an event, evaluates moral responsibility, and, as a result, arrives at a determination of blame. Some scholars have argued that case disparities may be linked to the attribution of blame assigned to victims based on perceived culpability (Donovan, 2007; St George, 2021).

While prior studies have shown that extra-legal factors related to both victims and offenders influence court actor decision-making (Freiburger & Hilinski, 2010; Steffensmeier et al., 1993), the attributes of bias homicide victims have not been explored in relation to legal outcomes. Extralegal background factors, along with prosecutorial (Hartley, et al., 2007) and judicial discretion (Hartley & Tillyer, 2019), provide supplementary information about the victim and offender that, in turn, is utilized in legal decision-making. Bias-motivated homicides are relatively rare as a crime type and policy makers, law enforcement, and court actors have a wide range of opinions on how these often high-profile and influential crimes should be handled in the criminal justice system. Given this, tenets of bounded rationality, focal concerns theory, and blame attribution theory may shed light on the variations seen in court responses to bias crime.

CHAPTER THREE

Literature Review

In response to the wide-ranging disparities experienced by defendants - who were by all measurable criminal justice criteria, identical – U.S. Congress passed the Sentencing Reform Act of 1984 (SRA). The sentencing commission established the following goals for the SRS: “1) the reduction of unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors, 2) truth in sentencing by removing parole, 3) transparency in sentencing by creating a detailed, rational process for determining a sentence” (Sessions, 2012, p. 89). Given these guidelines, criminal justice outcomes are partially constrained by crime type, the criminal code, and other legal factors. Ideally, these guidelines liberate court actors from discretionary decision-making (Kalven & Zeisel, 1996). Nonetheless, Hauser and Peck (2017) have found that racial and gender disparities persist and are even more pronounced for more serious crime types. These findings suggest that we can expect some variation in case dispositions and sentence severity, even in especially severe forms of violent crime. Chapter Three provides a review of scholarly literature on factors that influence justice outcomes. First, this chapter begins by examining literature on so-called normal crimes, typical offenders, and how bias homicides diverge to more common forms of crime. Second, Chapter Three examines prior research on the relationship between justice outcomes and individual and case attributes. Third, legal consequences of victim blaming based on identity characteristics and social status are addressed. Fourth, the existing literature on legislative and judiciary responses to bias crime is reviewed. Finally, this chapter concludes by first examining the gaps in prior literature and then by describing the goals of the current study.

Normal Crimes, Typical Offenders and Bias Homicides

Sudnow (1965) defines normal crimes as "those occurrences whose typical features, e.g., the ways they usually occur and the characteristics of persons who commit them (as well as typical victims and typical scenes), are known and attended to by the public defender" (p. 260). A vast literature illustrates the features of normal homicides – including who offends and who is victimized. Prior research suggests that a typical homicide occurs between an intraracial dyad (Becker, 2007; Wadsworth & Kubrin, 2004) of an offender and victim who are known to each other either through personal relationships or shared illicit activity (Moffatt & Hersey, 2010). Neither Whites nor non-Whites have a strong propensity to commit violence against those outside of their racial groups (Becker, 2007). These findings imply that most homicides occur at a local, community level with limited crossover between racial and social groups.

Contrastingly, high-profile incidents of bias-motivated violence have disrupted communities both locally and nationally in the United States. Research on two of these infamous acts of violence, the Pulse nightclub shooting (see Stults et al., 2017) and the Charlottesville car attack (see Peters & Besley, 2017), has shown that the damage inflicted by bias homicides goes far beyond the initial victimization (Burks et al., 2015; Disha et al., 2011; Stohr et al., 2006). With an increase in bias-motivated attacks (Sutton, 2019), prior studies have begun to examine how bias homicides differ from parallel (non-bias) crimes. In particular, prior research has found that bias homicide offenders are most likely to be young White males (Gruenewald, 2012), while persons most often targeted are those who belong to historically vulnerable and marginalized groups. One study found that the fundamental relational characteristics of the victim and offender, combined with the specified situational context of the bias homicide, made these criminal acts unique in contrast to non-bias homicides (Klein & Allison, 2018). Although

comparative studies on bias and parallel homicides point to the uniqueness of these fatal incidents, less is known about criminal justice responses to this unique form of violence.

Effects of Extra-legal Variables on Court Outcomes

The question as to why similar offenses receive a dissimilar criminal justice response has long been of interest to criminologists (Kremer, 2016; Nowacki, 2018; Starr & Rehavi, 2013). Prior studies have focused especially on factors related to offenders (or defendants) (Demuth, 2003; Chen, 2008; Curry et al., 2004). Research on offender characteristics, for example, has found that racial minority males are the most likely to receive a harsher punishment net the effects of other factors (Curry & Corral-Camacho; Schlesinger, 2005; Steffensmeier et al., 2000). According to focal concerns theory, these findings suggest that racial minorities are considered more blameworthy and are deemed as greater threats to communities. Furthermore, prior research has found that racial and ethnic disparities in justice outcomes are also present in homicide convictions, as minority offenders receive more severe sentences than their White counterparts (Pierce et al., 2017; Stauffer, 2015).

Other studies have focused on the intersectionality of victim and offender characteristics, for example, finding that gender plays a part in judicial decision-making (Freiburger & Hilinski, 2010; Steffensmeier et al., 1993). Specifically, findings indicate that the victim-offender dyad of female victim and male offender is associated with more severe sentencing (Doerner, 2012; Sommers et al, 2014). Additionally, Spears and Spohn (1997) found that in sexual assault cases victim characteristics were relevant to prosecutorial decisions and conviction rates despite available evidence supporting the victim's case. The outcomes of these studies generally suggest that victim attributes matter in regard to the judicial decision-making, including for more serious types of crime.

Victim Blameworthiness and Court Outcomes

Other studies have found that court actor perceptions of victims as blameworthy, or as a deserving participant in the crime committed against them, can have significant impacts on the case outcomes of offenders (Dawtry et al., 2019; Puckett, 2020). The exploration of victim blameworthiness in cases of bias homicide is especially relevant considering what types of victims are targeted and who is most likely to offend. Given that the victim-offender dyad in a bias homicide is most likely to involve a minority victim (non-White, non-cis gender, non-heterosexual, non-Christian, or non-American citizen) and a White male offender, the role of victim blame in these cases needs to be explored further.

Research on victim blameworthiness has to date focused primarily on incidents of sexual violence and morality-based defense strategies used to reconstruct perceptions of offenders while diminishing the credibility of victims (Beichner & Spohn, 2005; Menaker & Franklin, 2013; Voogt, et al., 2017). According to Harsey and Freyd (2020), victims can lose credibility by being portrayed as more blameworthy through a reverse of victim and offender positions. In other words, a victim's character is scrutinized by referencing behaviors tangential or unrelated to the incident in question, such as alcohol consumption, drug use, and sexual activity. In doing this, the victim is depicted as culpable in the violence perpetrated against them. One recent study found that the perceptions of victim blameworthiness have been employed as a defense strategy in crimes against the LGBTQ+ community (Michalski & Nunez, 2020). The 'gay panic' defense is used to portray victims as predatory and offenders as acting in self-defense. These findings are relevant to the current study as sexual violence and bias violence are comparable types of crime in that they both receive special attention due to their disproportionate impact on victims and their communities (Dunbar, 2006).

A smaller body of literature has explored how victim criminality, especially in the case of Black male victims, is portrayed in the media coverage of fatal incidents. Dukes and Gaither (2017) found that when Black shooting victims were depicted using negative racial stereotypes, the study participants attributed more blame to the victim and held shooters as less responsible for the killing. These findings indicate that media portrayals may influence public opinion, with a potential to also sway court opinions. Prior literature on media portrayals of homicides have examined which cases are more likely to be covered and how are offenders and victims described. In a study on the newsworthiness of homicide incidents, the authors found that Black women, as both victims and perpetrators, were least likely to be covered by news media (Gruenewald et al., 2009). Other studies have found that transgender victims, especially racial minority women, have historically been portrayed in the media as deviant, deceptive and criminal (Williams, 2009; Wood et al., 2019). These findings suggest the need to empirically investigate how ideas about victim blameworthiness and other attributes might shape prosecutorial and judicial decision-making when the victim is selected based on perceived identity, social status, or group membership.

Gaps in Research

The legal implications of victim attributes functioning as extra-legal factors have been explored across studies (Martin, 2014; Phillips, 2009; Steffensmeier & Motivans, 2000; Turner & Johnson, 2005). However, there is no research to date on how legal and extralegal attributes of victims in bias homicide cases shape prosecutorial and judicial decision-making. Recent research on bias homicide victims have concentrated primarily on the differences in incident characteristics (e.g., weapon type, location, mode of selection, etc.) across victim group (Charkaborti & Garland, 2012; Gruenewald & Kelley, 2014; Gruenewald, 2012). Additionally,

there are few studies on court responses to bias crime, with none focusing exclusively on bias homicide. As a result, we know little about court responses to crimes in which victims are targeted because of their social status/identity.

CHAPTER FOUR

The Current Study

These gaps in research are likely due in part to the lack of official data on hate crimes. Fortunately, new data on bias homicide and legal outcomes for bias homicide offenders targeting victims because of their race, ethnicity, nationality, religion, sexual orientation, gender identity or status of homelessness have recently become available from the open-source database known as the Bias Homicide Database (BHDB) (see Terrorism Research Center, 2019). The current study contributes to the existing body of literature on legal decision-making and case outcomes in the context of bias homicide by drawing from the tenets of bounded rationality, blame attribution theory, and focal concerns theory. Derived from prior understanding on legal decision-making (Guevara & Spohn, 2008; Harmon, 2011; Helfers, 2016; Kautt & Spohn, 2002) and theoretical explanations for choices made in courtrooms (Guevara & Spohn, 2008; Jensen, 2003; Langlais, 2010; Tsaoussi & Zervogianni, 2009), the broad research question for this study is: *How do race, gender, and social group attributes of bias homicide victims affect how harshly defendants are treated by the justice system?* This includes both victim attributes that influenced the offender's selection of the victim (i.e., victim race in an anti-Black homicide) and those not indicated in the offender's selection of the victim (i.e., victim race in an anti-gay homicide).

Utilizing available data from the BHDB, this study seeks to explain how bias homicide victim characteristics (race, ethnicity, nationality, sexual orientation, gender identity, religion, and home status) are associated with the prosecution and sentencing of bias homicide offenders. This study hypothesizes that bias homicides targeting White victims (**H₁**) and those targeting female victims (**H₂**) will result in harsher treatment by the justice system in comparison to non-White and male victims, respectively, because White female victims are considered less

blameworthy. Conversely, bias homicides targeting LGBTQ+ victims will result in more lenient punishments (**H₃**) than those targeting other victim groups because they are seen as a greater risk to the community, and more culpable in the crimes committed against them.

CHAPTER FIVE

Data and Methods

The data for this study are derived from the Bias Homicide Database (BHDB), an open-source database that contains information on homicides in which the victim is targeted in part or wholly due to their membership in a particular social group. The BHDB was initially formed as a subset of the Extremist Crime Database (ECDB), a similarly structured open-source dataset on crimes perpetrated by those affiliated with an extremist movement (Freilich et al., 2014). This database has been used to examine bias homicides and other forms of deadly violence in the past (Gruenewald & Allison 2017; Gruenewald & Kelly, 2014; Hayes, Freilich, & Chermak, 2016). While official crime statistics have long been relied on to study crime in the United States, open-source databases are developing as prominent sources of data on relatively rare but serious and especially impactful forms of violence to fill in the gaps left by official crime data sources (Parkin et al., 2014; Greenbaum, Dugan, & LaFree, 2006; Gruenewald, 2012). Importantly, emergent research in criminology suggests that open-source data use can be a valid methodological approach to studying violent crime (Chermak, et al., 2011; Parkin & Gruenewald, 2017).

The BHDB currently includes incident, victim, offender, and legal data for 358 fatal attacks - including 47 anti-homeless, 171 anti-race/ethnicity, 38 anti-nationality/immigrant, 206 anti-sexual orientation/gender identity, and 35 anti-religion homicides occurring between 1990 and 2019. This dataset relies on an established set of bias indicators¹ derived from open-source materials to determine that offenders selected victims based on their social group. More

¹ Bias Indicators are coded as measures that support the inclusion of the homicide in the BHDB. These include verbal harassment prior, during, and following the homicide; location of homicide; official hate crime charge filed by prosecutor; police/prosecutor labeling; offender admission; prior violence toward social minorities; mode of victim identification or selection; symbolic manipulation of victim body.

specifically, for a homicide to be included in the BHDB, there must be concrete, observable evidence in open-source materials that one or more offenders selected one or more victims based on their real or perceived social status or identity markers, including their race, ethnicity, nationality, religion, sexual orientation, gender identity, or homed status.

Dependent Variables

The dependent variables for this study capture two justice outcomes for offenders accused of committing a bias-motivated homicide. The first dependent variable, *case disposition* ($0=trial$, $1=plea\ agreement$), establishes whether an offender accepted a plea agreement or went to trial. Since plea agreements tend to result in lesser charges and reduced sentences, going to trial is considered a harsher case disposition for the purposes of this study. Of the 652 offenders coded for *case disposition* in the BHDB, 400 (61%) went to trial, and 252 (39%) took a plea agreement (see Table 1). The second dependent variable, *sentence severity* ($0=parole\ eligible$, $1=not\ parole\ eligible$), captures whether an offender is eligible for parole or not. Of the 608 offenders coded for *sentence severity*, 470 (77%) were parole eligible and 138 (23%) were not parole eligible (see Table 1). A defendant's eligibility for parole is considered a more lenient sentence due to the possibility of less time served in prison. It is recognized that decisions impacting *sentence severity* measure is based in part on contextual factors. Therefore, this study includes variables *homicide decade* and *victim group protected by state statute to account for variations in crime legislation* (see Table 3 for full list of context and control variables).

Table 1. Dependent Variable Descriptive Statistics

	n	%
Variables		
Case Disposition		
Trial	400	61%
Plea Agreement	252	39%
Sentence Severity		
Parole Eligible	470	77%
Not Parole Eligible	138	23%

Independent Variables

The independent variables for this study are those related to victim attributes, victim social status, and victim (real or perceived) group membership. The first variable of interest, *basis of victim selection*, describes the perceived social group or identity marker that motivated the targeting of each victim in the BHDB. The most frequent victim selection category is race/ethnicity/nationality (51%), with sexual orientation/gender identity as the second most frequent (34%) bias motivation category (see Table 2). Additionally, victim demographics are captured as possible factors influencing case outcomes. In particular, *victim race/ethnicity* (0=non-White, 1=White) and *victim gender* (0=female, 1=male) are considered. As shown in Table 2, most of the victims killed are non-White (69%) and male (89%), with an average victim age of 37 years old.

Table 2. Independent Variable Descriptive Statistics

	n	%/Mean
Variables		
Basis of Victim Selection		
Race/ethnicity/nationality	331	51%
Homed status	78	12%
LGBTQ+ identity	225	34%
Religious membership	18	3%

Table 2. Independent Variable Descriptive Statistics Continued.

	n	%/Mean
Victim Race/Ethnicity		
Non-White Victim	399	69%
White Victim	182	31%
Victim Gender		
Male	579	89%
Female	72	11%
Victim Age	636	37.33

Context and Control Variables

This study controls for potential confounding factors at the offender and incident levels that could influence court actor decision-making, as well contextual variables to account for geospatial, temporal, and legal variations. The first three variables listed in Table 3 represent offender demographics and ideological affiliation. *Offender gender* (0=female, 1=male) is consistent with victim representation, with most offenders in the BHDB being identified as male (95%). Ideologically (*far-right affiliation*: 0=not far-right, 1=far-right), bias homicide offenders are more likely to be unaffiliated with the extreme far-right movement (67%). The next seven variables shown in Table 3 capture incident characteristics. Bias homicide incidents are less likely to involve the use of a gun (42%) as opposed to other weapons (*gun used*: 0=no gun, 1=gun), and are more likely to include multiple offenders (68%) and single victims (77%). As far as incident location, bias homicides are less likely to occur in private residences (25%) as opposed to public spaces (75%). These homicides also occur more between strangers (65%) and are less likely to include a robbery (70%). Finally, most of the incidents do not result in an official hate crime charge (68%). To account for changes in criminal codes, sentencing guidelines, and hate crime legislation over time, this study includes *decade of homicide* (1990s=1990-1999, 2000s=2000-2009, 2010s=2010-2019) and whether a *victim group was*

protected by state statute (0=not protected, 1=protected). Most bias homicides occurred between 1990 and 1999 (42%) and most victims (59%) were protected by a state statute at the time of the incident.

Table 3. Control and Contextual Variable Descriptive Statistics

	n	%/Mean
<u>Variables</u>		
Far Right		
Not far right	438	67%
Far right	213	33%
Offender Gender		
Male	617	95%
Female	35	5%
Offender Age		
	650	41.58
Gun Used		
Not a gun	379	58%
Gun	272	42%
Multiple Offenders		
Single offender	208	32%
Multiple offender	443	68%
Multiple Victims		
single victim killed	504	77%
Multiple victims killed	148	23%
Homicide Location		
Not a private residence	487	75%
Private residence	162	25%
Victim/Offender Relationship		
Known victim	221	35%
Strangers	409	65%
Robbery		
No robbery	424	70%
Robbery	179	30%
Hate Crime		
Not an official hate crime	442	68%
Official hate crime	210	32%
Decade of Homicide		
1990s	277	42%
2000s	221	34%
2010s	154	24%

Table 3. Control and Context Variable Descriptive Statistics Continued.

	n	%/Mean
Victim Group Protected By State Statute		
Not protected	144	41%
Protected	256	59%

Analytic Strategy

In the first stage of the analysis, this study employs bivariate analyses using Chi square tests to examine how *case disposition* and *sentence severity* compare across victim attributes, offender and incident characteristics, and other situational factors. To answer the research question of how victim characteristics influence justice outcomes, this study then conducts a series of binary logistic regression models predicting the likelihood of bias homicide offenders, 1) going to trial vs receiving a plea agreement, and 2) the likelihood of parole eligibility, net the effects of other potential confounding factors. For the sake of model parsimony, non-significant control variables in the initial bivariate chi square test are excluded from the multivariate analysis.

CHAPTER SIX

Results

Bivariate and multivariate findings are presented in this chapter. Statistical relationships between independent variables and the two outcome variables, case disposition ($0=trial$, $1=plea\ agreement$) and sentence severity ($0=parole\ eligible$, $1=not\ parole\ eligible$), are described. For each dependent variable, results of bivariate analyses using Chi square tests and multivariate analysis using binary logistic regression models are presented. Support, or lack of support, for each hypothesis is noted.

Case Disposition

As shown in Table 4, defendants' case dispositions vary across categories of victim selection ($p \leq .001$). While defendants who targeted victims based on their homed status were the least likely to go to trial (33%), those targeting victims based on their perceived sexual orientation or gender identity were proportionately less likely (59%) to go to trial than the other types of bias homicide. In other words, defendants targeting LGBTQ+ victims were less likely to go to trial than those who targeted victims based on their race, ethnicity, nationality, or religion. The bivariate findings presented in Table 4 did not provide support for Hypotheses 1 and 2, showing no significant differences in case dispositions for defendants who targeted Whites or females, in comparison to non-Whites and males, respectively.

Several other variables were significantly related to case disposition at the bivariate level. In particular, homicide cases from earlier decades (1990-199 and 2000-2009) go to trial more often than homicide cases in later years (2010-2019), perhaps suggesting judicial views of marginalized victims as blameworthy has increased in recent years. In addition, cases in which a

victim's group is protected by state hate crime statutes at the time of the homicide are significantly more likely to go to trial as opposed to entering a plea deal, compared to cases in which the victim's group is not protected by any state hate crime statutes. This suggests that prosecutors making decisions in these contexts may be more hesitant to offer leniency when the victim has been targeted due to a protected status.

Table 4. Bivariate Findings by Case Disposition

	Trial		Plea Agreement		Total	Chi2/T-Test (p value)
	n	%/Mean	n	%/Mean	n	
Basis of Victim Selection						.000***
Race/ethnicity/nationality	227	68.6%	104	31.4%	331	
Homed status	26	33.3%	52	66.7%	78	
LGBTQ+ identity	133	59.1%	92	40.9%	225	
Religious membership	14	77.8%	4	22.2%	18	
Homicide Decade						.000***
1990-1999	182	65.7%	95	34.3%	277	
2000-2009	151	68.3%	70	31.7%	221	
2010-2019	67	43.5%	87	56.5%	154	
Victim Group Protected By State Statute						.000***
Not protected	144	53.3%	126	46.7%	270	
Protected	256	67.0%	126	33.0%	382	
Defendant Gender						.001**
Male	388	62.9%	229	37.1%	617	
Female	12	34.3%	23	65.7%	35	
Defendant Age						.021*
	398	61.2%	252	38.8%	650	
Gun Used						.001**
Not a gun	212	55.9%	167	44.1%	379	
Gun	187	68.8%	85	31.2%	272	
Multiple Defendants						.000***
Single defendant	151	72.6%	57	27.4%	208	
Multiple defendants	248	56.0%	195	44.0%	443	
Hate Crime						.036*
Not an official hate crime	259	58.6%	183	41.4%	442	

Official hate crime	141	67.1%	69	32.9%	210
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Table 4. Bivariate Findings by Case Disposition Continued.

	Trial		Plea Agreement		Total	Chi2/T-Test (p value)
	n	%/Mean	n	%/Mean	n	
Victim Race/Ethnicity						.132
Non-White Victim	252	63.2%	147	36.8%	399	
White Victim	103	56.6%	79	43.4%	182	
Victim Gender						.132
Male	349	60.3%	230	39.7%	579	
Female	50	69.4%	22	30.6%	72	
Victim Age	393	61.8%	243	38.2%	636	.693
Far Right						.479
Not far right	265	60.5%	173	39.5%	438	
Far right	135	63.4%	78	36.6%	213	
Multiple Victims						.167
single victim killed	302	59.9%	202	40.1%	504	
Multiple victims killed	98	66.2%	50	33.8%	148	
Homicide Location						.199
Not a private residence	291	59.8%	196	40.2%	487	
Private residence	106	65.4%	56	34.6%	162	
Victim/Defendant Relationship						.290
Known victim	144	65.2%	77	34.8%	221	
Strangers	249	60.9%	160	39.1%	409	
Robbery						.136
No robbery	269	63.4%	155	36.6%	424	
Robbery	102	57.0%	77	43.0%	179	

*p<.05, ** p<.01, ***p<.001

Defendants who are charged with an official hate crime are also more likely to go to trial than those not charged with an official hate crime. As with cases in which the victim's status is protected, harsher case dispositions associated with hate crime charges may suggest that prosecutors want to avoid being perceived as lenient on hate crimes. Another interpretation is

that defendants do not want to be associated with committing hate crimes and are more likely to take their chances by going to trial. Consistent with focal concerns theory, and as shown in Table 4, male defendants are significantly more likely to go to trial (63%) as opposed to pleading guilty, compared to female defendants (34%) who are more likely to take a plea agreement as opposed to going to trial. This could be due to higher levels of risk, community harm, and culpability being attributed to male defendants by court actors. Single offenders are also significantly more likely to go to trial than plead guilty. This could be because accessory defendants are often offered plea deals in exchange for information on the defendant who is seen as the most culpable in the homicide. Thus, a higher percentage of defendants who committed homicides with others may be more likely to plead guilty. Bivariate findings (see Table 4) also indicate that defendants who used a gun to commit the homicide are more likely to go to trial than enter into a plea agreement. This is not surprising as cases involving guns are viewed as more serious than other types of violent crimes. None of the other variables listed in Table 4 are shown to be significantly associated with case disposition.

This study also quantitatively examines the relationships between independent variables and case disposition using (multivariate) binary logistic regression. The independent variables included in multivariate models are those either related to the stated hypothesis or shown to be statically significant in previous bivariate analyses (see Table 4). This study finds that defendants who select victims based on homed status are significantly more likely to plead guilty than take their case to trial, net the effects of other potential factors. Drawing from focal concerns theory, this could be due to the perceived blameworthiness and community harm attributed to homeless victims from court actors.

Table 5. Findings from Multivariate Logistic Regression Predicting the Likelihood of Going to Trial

Variables	B	S.E.	Exp(B)
Basis of Victim Selection (defendant Perception)			
Race/ethnicity/nationality	---	---	---
Homed status	-1.35	.431	.259**
LGBTQ+ identity	-.437	.306	.646
Religious membership	.664	.777	1.94
Homicide Decade			
2010-2019	---	---	---
1990-1999	.913	.314	2.50**
2000-2009	1.104	.298	3.02***
Defendant Gender (1=Female, 2=Male)	-1.10	.437	.335*
Multiple Defendants (0=single defendant, 1=multiple defendants)	-.683	.263	.505**
Victim Age	.001	.004	1.00
Victim Gender (1=Female, 2=Male)	.369	.415	1.45
Victim Race/Ethnicity (0=nonwhite, 1=white)	.144	.252	1.15
Defendant Race/Ethnicity (0=nonwhite, 1=white)	-.109	.253	.897
Far Right Affiliation (0=not far right, 1=far right)	-.029	.266	1.03
Defendant Age	.003	.005	1.00
Hate Crime (0=no hate crime, 1=hate crime)	.315	.249	1.37
Gun Use (0=no gun, 1=gun)	.008	.253	1.01
Multiple Victims (0=single victim, 1=multiple victims)	.713	.360	2.04
Victim Group Protected By State Statute (0=not protected, 1=protected)	-.046	.251	.955

Table 5. Findings from Multivariate Logistic Regression Predicting the Likelihood of Going to Trial Continued.

Variables	B	S.E.	Exp(B)
Constant	.921	.819	2.51
-2 Log Likelihood	563.274		
Chi Square	69.129***		
Nagelkerke R ²	.185		

Biased heuristics about persons without housing, especially those with mental illness and addictions, as predatory and culpable in their homicide could lead to more blame attribution resulting in relatively more lenient treatment for the defendants in comparison to defendants who target other victim groups. Similar to bivariate findings, multivariate findings suggest that when other factors are considered, defendants are more likely to go to trial between 1990-1999 and between 2000-2009, than between 2010-2019. Multivariate findings support bivariate findings suggesting that male defendants are significantly more likely to go to trial than female defendants. Additionally, multiple defendants are less likely to go to trial than single defendants.

Sentence severity

As shown in Table 6, for the second dependent variable, *sentence severity* (0=*parole eligible*, 1=*not parole eligible*), this study finds that 95 percent of defendants who target victims experiencing homelessness and 80 percent of defendants who target LGBTQ+ victims are parole eligible. In other words, defendants who target victims based on their sexual orientation, gender identity or homed status are sentenced relatively more leniently than those who target victims based on race and religion. These findings provide preliminary support for Hypothesis 3 and suggest that attributed responsibility for LGBTQ+ victims’ homicide may be reduced for defendants in comparison to defendants who target other victim groups. Providing support for

Hypothesis 1, 79 percent of defendants who target non-White victims are proportionately more likely to receive less severe sentences as opposed to 71 percent of those who target White victims. One interpretation of this is that non-White victims are relatively devalued, viewed by court actors as more blameworthy and threatening to the community than White victims, and thus the defendants in these cases more likely to be treated more leniently in that they are parole eligible. Defendants who target male victims are relatively more likely to receive a less severe sentence compared to defendants who target female victims (80% vs. 20%), providing initial support for H2. This may be due to gendered heuristics of female victims as more innocent than male victims who are deemed more culpable for their own victimization.

Table 6. Bivariate Findings by Sentencing Severity

	Parole Eligible		Not Parole Eligible		Total	Chi2/T-Test (p value)
	n	%/Mean	n	%/Mean	n	
Variables						
Basis of Victim Selection						.000***
Race/ethnicity/nationality	224	72.3%	86	27.7%	310	
Homed status	70	95.9%	3	4.1%	73	
LGBTQ+ identity	166	80.2%	41	19.8%	207	
Religious membership	10	55.6%	8	44.4%	18	
Victim Race/Ethnicity						.034*
Non-White Victim	299	79.3%	78	20.7%	377	
White Victim	120	71.0%	49	29.0%	169	
Victim Gender						.000***
Male	428	80.2%	106	19.8%	534	
Female	42	57.5%	31	42.5%	73	
Far Right						.000***
Not far right	329	81.8%	73	18.2%	402	
Far right	140	68.3%	65	31.7%	205	
Homicide Decade						.005**
1990-1999	186	77.8%	53	22.2%	239	
2000-2009	155	71.1%	63	28.9%	218	
2010-2019	129	85.4%	22	14.6%	151	

Table 6. Bivariate Findings by Sentencing Severity Continued

	Parole Eligible		Not Parole Eligible		Total	Chi2/T-Test (p value)
	n	%/Mean	n	%/Mean	n	
Multiple Defendants						.000***
Single defendant	132	66.0%	68	34.0%	200	
Multiple defendants	337	82.8%	70	17.2%	407	
Gun Used						.000***
Not a gun	308	87.5%	44	12.5%	352	
Gun	161	63.1%	94	36.9%	255	
Multiple Victims						.000***
Single victim killed	390	84.4%	72	15.6%	462	
Hate Crime						.016*
Not an official hate crime	321	80.3%	79	19.7%	400	
Official hate crime	149	71.6%	59	28.4%	208	
Victim Group Protected By State Statute						.335
Not protected	194	79.2%	51	20.8%	245	
Protected	273	75.8%	87	24.2%	360	
Defendant Gender						.326
Male	443	76.9%	133	23.1%	576	
Female	27	84.4%	5	15.6%	32	
Defendant Age	470	77.6%	136	22.4%	606	.717
Victim Age	459	77.4%	134	22.6%	593	.482
Homicide Location						.366
Not a private residence	350	78.5%	96	21.5%	446	
Private residence	120	75.0%	40	25.0%	160	
Victim/ Defendant Relationship						.953
Known victim	166	77.2%	49	22.8%	215	
Strangers	288	77.4%	84	22.6%	372	
Robbery						.169
No robbery	300	76.9%	90	23.1%	390	
Robbery	138	82.1%	30	17.9%	168	

*p<.05, ** p<.01, ***p<.001

Also shown in Table 6, defendants associated with extreme far-right ideology are more likely to receive harsher sentences (32%) compared to those not affiliated with extreme far-right ideology (18%). This could be because court actors feel pressured to sentence these defendants more harshly due to the national security implications associated with the threat of domestic violent extremism. In addition, defendants are proportionately less likely to receive the most severe sentences during 2010-2019 in comparison to other time periods. This is consistent with bivariate findings on case disposition and decade of homicide – suspects were also more likely to receive a plea deal during the 2010-2019 timeframe. This study also finds that defendants who kill victims with co-offenders are more likely to be parole eligible (83%) as opposed to those who kill on their own (66%). The bivariate findings on case disposition also supports that suspects who killed with co-defendants are less likely to go to trial than those who killed alone. Defendants who kill multiple victims are proportionately more likely to receive a less severe sentence (84% vs. 16%) than those who kill single victims (55% vs. 45%). Conversely, this study finds no significant relationship between number of victims killed and case disposition in a bivariate analysis. Additional bivariate findings suggest that defendants who are not charged with an official hate crime tend to be parole eligible (80%) in contrast to those charged with a hate crime (72%). These findings are consistent when case disposition is compared to whether or not a hate crime charge is brought. All other variables included in this bivariate analysis were found to not be significantly associated with sentence severity at the bivariate level.

Multivariate binary logistic regression results (see Table 7) indicate that defendants who target victims because of their homed status get relatively less severe sentences than those who target victims based on the reference category (i.e., race/ethnicity/nationality), net the effects of other factors. These findings also suggest that defendants targeting White victims receive more

severe sentences than those targeting non-White victims, providing support for Hypothesis 1. In contrast to bivariate findings, defendants who killed their victim between 2000 and 2009 are significantly more likely to be parole eligible than those who killed their victims between 2010 and 2019.

Table 7. Findings from Multivariate Logistic Regression Predicting Sentence Severity

Variables	B	S.E.	Exp(B)
Victim Group Protected By State Statute (0=not protected, 1=protected)	-.596	.338	.551
Homicide Decade			
2010-2019	---	---	---
1990-1999	.376	.494	1.46
2000-2009	1.27	.457	3.54**
Basis of Victim Selection (Defendant Perception)			
Race/ethnicity/nationality	---	---	---
Homed status	-2.76	1.13	.063**
LGBTQ+ identity	-.138	.429	.871
Religious membership	.668	.820	1.95
Victim Race/Ethnicity (0=nonwhite, 1=white)	.789	.363	2.20**
Far Right Affiliation (0=not far right, 1=far right)	1.37	.383	3.95***
Multiple Defendants (0=single defendant, 1=multiple defendants)	-1.03	.332	.357**
Multiple Victims (0=single victim, 1=multiple victims)	1.70	.408	5.46***
Hate Crime (0=no hate crime, 1=hate crime)	.502	.323	1.65

Table 7. Findings from Multivariate Logistic Regression Predicting Sentence Severity Continued.

Variables	B	S.E.	Exp(B)
Victim Age	-.023	.011	.977*
Victim Gender (1=male, 2=female)	.131	.441	1.14
Defendant Age	.000	.003	1.00
Defendant Gender (1=male, 2=female)	-1.01	.789	.365
Defendant Race/Ethnicity (0=nonwhite, 1=white)	-.146	.380	.864
Gun Use (0=no gun, 1=gun)	.489	.339	1.63
Constant	-.672	1.27	.511
-2 Log Likelihood	326.712		
Chi Square	100.619***		
Nagelkerke R ²	.330		

*p<.05, ** p<.01, ***p<.001

Also consistent with bivariate analyses, this study finds that a far-right affiliation, multiple homicide victims, and a single homicide defendant are all significant predictors of more severe sentence outcomes.

CHAPTER SEVEN

Discussion

This primary focus of this study is the role victim attributes play in court actor decision-making in the context of bias homicide cases in the United States over the last three decades. This is the first study to date to examine the topic of bias homicide case outcomes through the perspective of victim characteristics and court actor biases. This study also extends the use of focal concerns theory, bounded rationality, and blame attribution theory to a novel crime type. Finally, this study utilized open-source data available in the Bias Homicide Database to fill in the gaps of official crime sources.

The findings of this study indicate justice disparities among differing victim characteristics, suggesting that some victims may be regarded as comparatively more blameworthy and culpable for the crimes committed against them, and these distinguishing identities and/or statuses are viewed as posing a greater risk to the community. One of the most notable findings from the current study found that which victim groups are targeted significantly influences defendants' justice outcomes, controlling for other potentially relevant variables. Defendants who target a victim based wholly or in part on their homed status receive more lenient case dispositions and less severe sentencing, as compared to the more common cases in which defendants target victims based on their race, ethnicity, or nationality. This could indicate that victims without stable housing are seen as posing a greater risk to the community and are seen as blameworthy in their homicides. This could indicate that the criminalization of homelessness (Craven et al., 2021), as well as the higher rates of alcoholism and drug addiction (National Coalition for the Homeless, 2009) informs judicial decision-making in the deaths of this vulnerable population. These results support the claim that prosecutors and judges consider,

at least partially, victim attributes when making decisions in homicide cases. These findings are consistent even when accounting for contextual factors, such as hate crime charges brought by the prosecution, the victim group being protected by a state statute, and the decade that the homicide occurred. Since the typical defendant in homeless homicides are young, White males, these findings could also suggest that the defendants are given leniency due to these identity characteristics. This is consistent with prior research that shows that as compared to their Black and Latino counterparts, young White males face less severe punishments in the criminal justice system (Chen, 2008; Curry & Corral-Camacho, 2008; Steffensmeier et al., 1998; Steffensmeier & Demuth, 2000).

Another important finding that aligns with prior literature on this topic for other forms of crime is that victim race is a significant predictor of sentence severity. However, contrary to expectations, victim race was not a statistically significant predictor of whether a defendant goes to trial or reaches a plea agreement, net the effects of factors. This could indicate that the racialized notions of blameworthiness attributed to victims is context specific - meaning that these disparities may be mitigated or exacerbated based on political climate, parole eligibility guidelines, and legislation at the state level. Victim gender, also surprisingly, was not a significant factor in shaping legal outcomes for defendants when included in the multivariate models. This may be due to the stronger influence of other victim attributes, such as home status and race, on case disposition and sentence severity in bias homicides specifically.

The findings from this study also support prior research on incident characteristics as predictors of legal outcomes. In particular, defendants who kill multiple victims are more likely to go to trial and more likely to receive severe sentences by the courts. This provides support for prior research that suggests that more severe crimes lead to harsher sentences. Consistent with

focal concerns theory, these defendants may be seen as posing a relatively higher risk to the community. Another interpretation is that bias homicide cases with multiple victims, such as in the case of mass shooting or bombings, may receive more attention from the public, and thus place more pressure on court actors to pursue harsher punishments. Homicides with multiple defendants, on the other hand, receive more lenient treatment. Contrary to previous criminological research, the findings for this study suggest that in bias homicides the defendants' age and gender are not statistically significant factors in determining case disposition type or sentence severity, suggesting that influences on court actor decision-making are crime specific.²

Limitations and Future Research

Since most of the homicide cases included in the analyses are charged at the state level, the current study is limited by the wide variation in criminal justice laws and the political context for each respective homicide. Future research should control for potential state-level factors that may influence how cases of bias homicide proceed through localized legal systems. It is also beyond the scope of this study to examine how the intersectionality of victim attributes may influence court responses to bias crime. Given the evidence of diverging justice outcomes along the lines of both suspect and victim identity characteristics, examining intersectionality in the context of bias homicides may be an important factor in accessing court-actor biases in their decision-making processes due to the compounded weight of oppressed identities. Future research should explore case disposition type and sentence severity disparities within each victim group. For example, how do case outcomes compare across different perceived victim races for homicides in which the victim is targeted due to their homed status. The findings for this study

² Defendant race, and victim/defendant racial dyads were examined, but were found to have no statistical significance during initial bivariate analyses.

could also be expanded by including other forms of bias violence to mitigate concerns about the lack of sentencing variation in homicide cases.

Conclusion

The inherent discriminatory nature of bias homicides necessitates a further examination of how these cases are handled in the United States, especially given the evidence of inequitable outcomes experienced in the criminal justice system. The results of this study expand a growing body of literature on the role of extra-legal factors on case outcomes, the perceptions of certain victims as blameworthy and culpable, and on how biased heuristics reinforce negative stereotypes about particular types of victims. It is my hope that this study informs the national debate on how cases involving marginalized victims should be handled by the American court system.

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