

## LETTERS

**Argument About Race of Victim Is Overstated**

To the editor:

David Cole's piece in support of the Racial Justice Act, passed by the House of Representatives on April 20, 1994, overstated the race-of-victim effect on the likelihood of a death sentence that was

found in the study upon which Cole relied ["A Fear of Too Much Justice," May 9, 1994, Page 26]. The study, which formed the basis for an unsuccessful effort to overturn a death sentence for the murder of a white police officer in *McCleskey v.*

*Kemp*, 481 U.S. 279 (1987), was principally authored by Professor David C. Baldus of the University of Iowa. It had sought to control for 39 race-neutral factors that might account for the fact that, in Georgia, death sentences were imposed far more often when victims were white than when victims were black.

As described by Professor Cole, even controlling for these factors, a defendant who killed a white person was "4.3 times more likely" to be sentenced to death than a defendant who killed a black person. Cole's formulation of the race-of-victim effect—"4.3 times more likely"—technically means an increase of 430 percent in the likelihood of a death sentence. As the *McCleskey* case wound its way through the courts, however, the judges generally described the Baldus study as showing that a death sentence was 4.3 times as likely when the victim was white as when the victim was black—in other words, an increase of 330 percent.

But even the statement that a death sentence is 4.3 times as likely when the victim is white greatly distorts the actual increase in likelihood of a death sentence that was revealed in the Baldus study. As Professor Baldus has himself pointed out in a number of places, the 4.3 figure does not reflect the increase in likelihood of a death sentence. The figure is an "odds ratio" or "odds multiplier." (Technically, it is the antilogarithm of the coefficient yielded by a logistic regression analysis studying a race-of-victim effect on murders involving a range of levels of aggravation.) Statisticians find such figures useful in a variety of ways, but they mean

quite different things from increases in the likelihood (or chance or probability) of a particular outcome.

In the supplement to his treatise *Statistical Proof of Discrimination*, Professor Baldus has estimated that the average increase in the likelihood of a death penalty when the victim is white is between 60 and 70 percent. The difference between an increase of 60 to 70 percent and an increase of 330 (or 430) percent is of some consequence for evaluating the findings of the Baldus study. Ordinarily, in evaluating the results of a study that seeks to determine whether various factors can explain all or part of a large disparity, one is left with trying to divine whether factors not considered or not adequately considered are responsible for a residual disparity. Determining whether a certain residual disparity should be deemed large or small in a particular setting is itself seldom an easy task. But usually one is left with less concern about the validity of a study's basic findings when a residual disparity is several hundred percent than when it is 60 or 70 percent.

The 60 to 70 percent differential may well be sufficient to persuade observers of the validity of the basic findings of the Baldus study, partly because of the intuitive plausibility of the race-of-victim thesis. Even so, the race-of-victim effect would seem much less pervasive than the mistaken interpretation of the 4.3 odds multiplier yielded by the Baldus study suggests.

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