

Proportionality Review and the Military Death Penalty



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Research Question

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**Did race play a significant factor in the
administration of the death penalty
by the United States Armed Forces
between 1984 and 2005 ?**

Summary of Findings

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Our study reports evidence of systematic racial disparities in the charging and sentencing decisions of convening authorities and court-martial members that non-racial characteristics do not explain.

- (1) Minority accuseds faced odds of receiving a death sentence that were 5.2 times higher than the odds faced by similarly situated white accuseds.**
- (2) Cases involving at least one white victim faced odds of receiving a death sentence that were 12.5 times higher than the odds faced by similarly situated cases with no white victims.**
- (3) Minority accuseds who killed at least one white victim faced odds of receiving a death sentence that were 6.6 times higher than the odds faced by all other cases.**

Presentation Overview

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1. Research Design and Methodology

What did we study?

Where did we get the data?

How did we know enough about the military capital punishment system to begin the inquiry and to analyze with precision?

2. System-wide Analyses

“Death Sentencing Among All Death Eligible Cases”

3. Stagewise Analyses, focused on racial subgroups

Three subgroups: minority accused cases, white victim cases, and minority accused/white victim cases

Three stages: charging, guilt verdict, and sentencing verdict

Presentation Overview

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1. **Research Design and Methodology**
2. **System-wide Analyses**
3. **Stagewise Analyses, focused on racial subgroups**

A Death-Eligible Murder

7

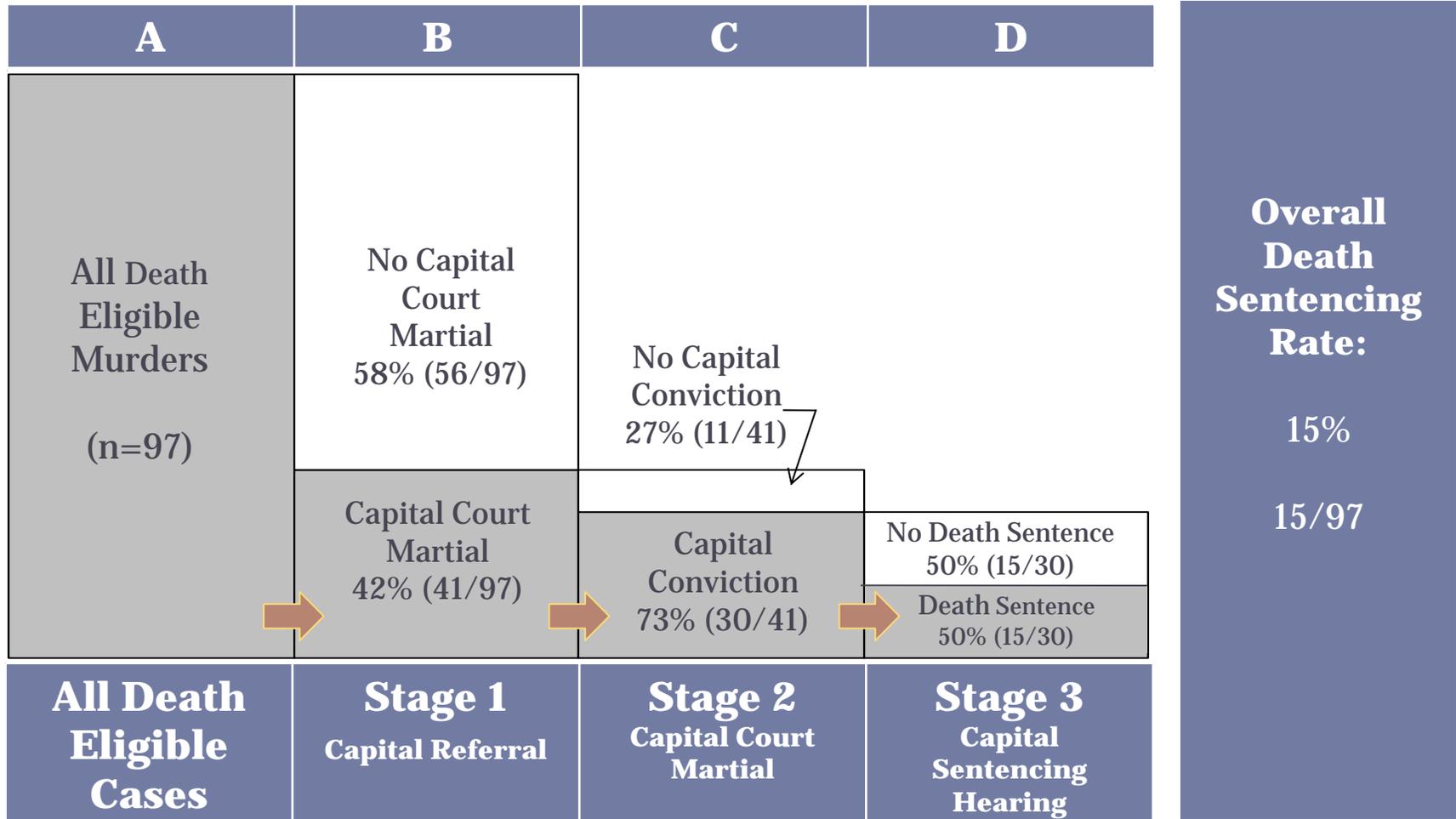
1. Premeditated murder or felony murder
2. At least one aggravating factor
3. Aggravation “substantially outweighs” mitigation

Sample Aggravating Factors from Rule 1004

- Multiple victims
- Victim under 15 years of age
- Prison murder
- Concurrent felony
- Pecuniary motive
- Officer victim
- Murder for Hire
- Murder committed to avoid arrest or effect an escape
- Murder preceded by intentional infliction of substantial mental or physical pain and suffering to the victim.

Figure 1.
Overview of Decisionmaking and Outcomes

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Sample of Information Coded on Each Case

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Charges and Convictions

Procedural History

Aggravating Factors

Mitigating Circumstances

Accused's Demographics and Background

Accused's Mental Health, Drug, and Alcohol History

Accused's Military Background

Victim's Background

Circumstances of Victim

Characteristics of the Homicide

Accused's Motives

Role of Co-Perpetrators

Defense to Charges

Strength and Type of Evidence

Overview of Cases in Study (Part 1)

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- **Race of Accused**

- White – 57 (7 Hispanic)
- Black – 34
- Other – 6 (*Asian, Native American, Pacific Islander*)

- **Race of Victims**

- White – 89
- Black – 17
- Asian – 6
- Native American – 1

- **Gender**

- Male – 95
- Female – 2

- **Location of Crime**

- United States – 56
- Western Europe – 24
- Asia – 13
- Other – 4 (*Central Asia, Middle East, Latin America*)

- **Armed Force**

- Army – 46
- Navy – 13
- Marine Corps – 25
- Air Force – 13

- **Accused Rank**

- Enlisted – 95
- Commissioned Officer – 2

A Few More Variables (with % coded yes)

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Variable Label	%
Accused Arrived Armed	44
Accused Attacked Dying Victim	19
Accused Showed No Remorse	17
Accused Expressed Pleasure	12
Accused Has Family who Loves Him or Her	60
Accused is a Parent	39
Accused is a Provider	39
Slashed Throat	10
Severe Pain from Multiple Wounds	50

Variable Label	%
Brutal Clubbing	17
Multiple Gunshot Wounds	12
Multiple Stab Wounds	28
Victim Strangled	23
History of Assaultive Conduct or Prior Attempt to Kill	14
Homicide Planned for More than Five Minutes	37
Prior Announced Intent to Kill Victim to Third Party	23
Hatred or Revenge Motive	24
Execution Style Homicide	13

Table 1

Death-Sentencing Rates, Overall and by Key Characteristics

A	B	C	D
Description		Rate	Detail
I.	All Cases	15%	15/97
II.	Number of Statutory Aggravating Factors		
A.	Two or More	23%	11/48
II.	Very Important Characteristics		
A.	Military Implicated	41%	7/17
B.	Multiple Victims	50%	8/16
IV.	Other Case Characteristics		
A.	Rape or Sodomy Involved	9%	1/11
B.	Robbery or Burglary Involved	29%	7/27
C.	One or More Female Victims	13%	7/52

Presentation Overview

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1. Research Design and Methodology
2. **System-wide Analyses**
3. Stagemwise Analyses, focused on racial subgroups

Figure 4. Presence of Sub-Populations Among Cases, Before First Charging Decision (Death Eligible) and After Sentencing (Death Sentenced)

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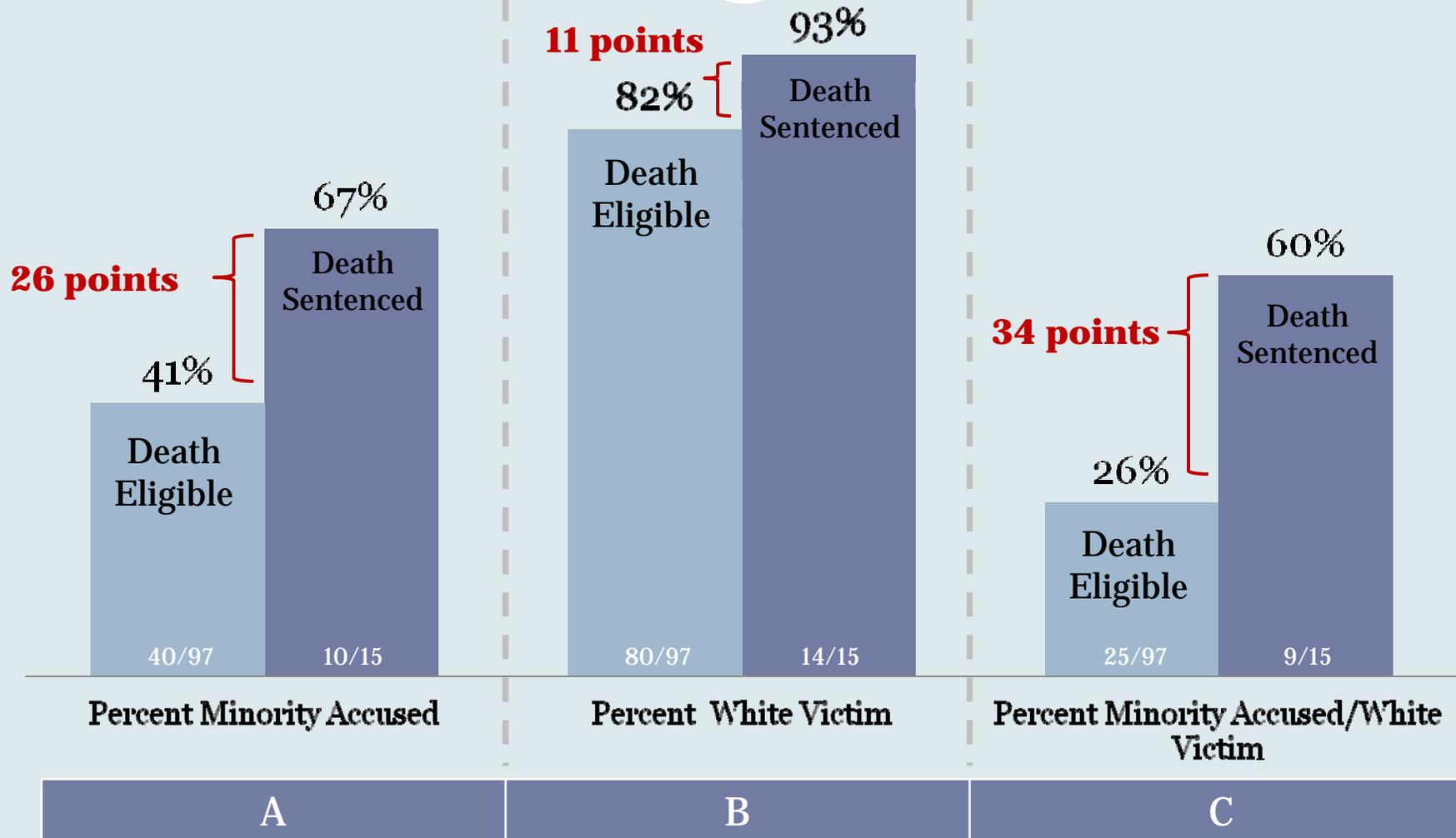
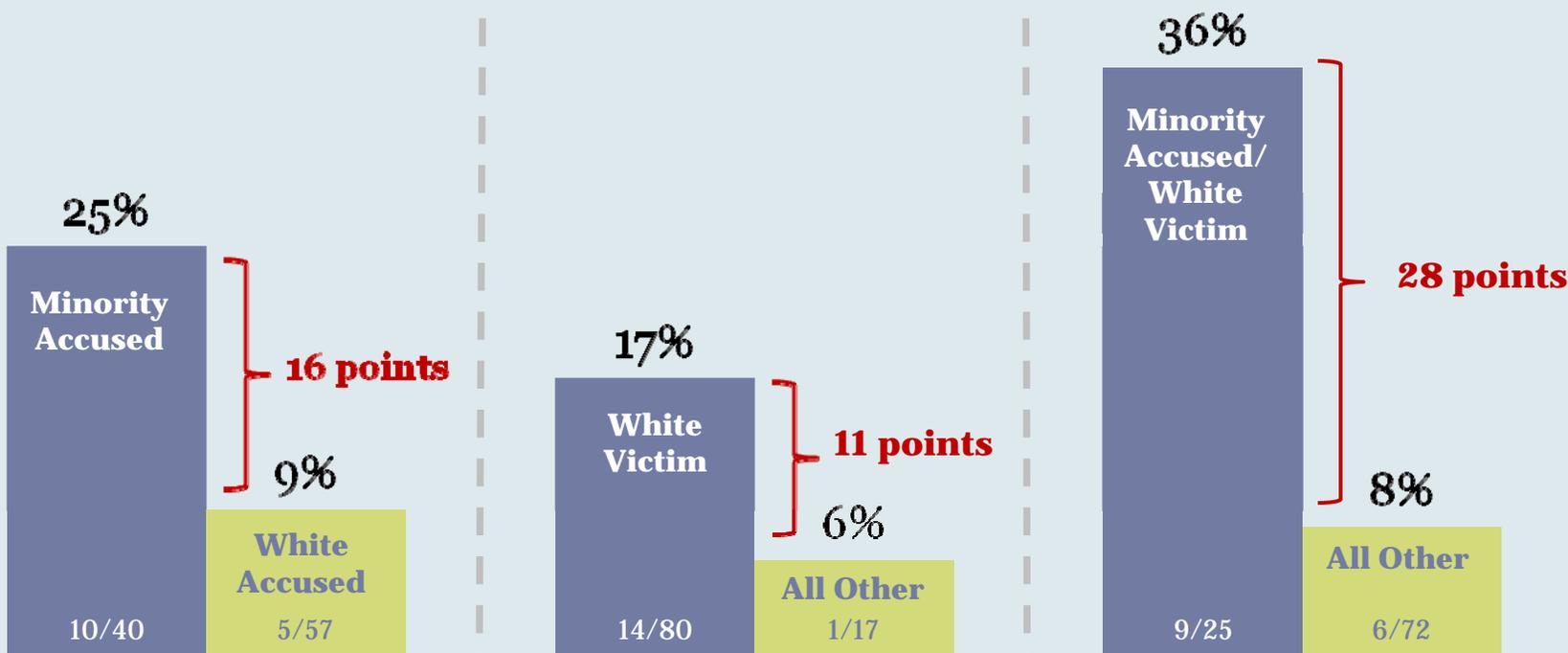


Figure 5. Racial Disparities in the Imposition of Death Sentences Among All Death-Eligible Cases, No Controls

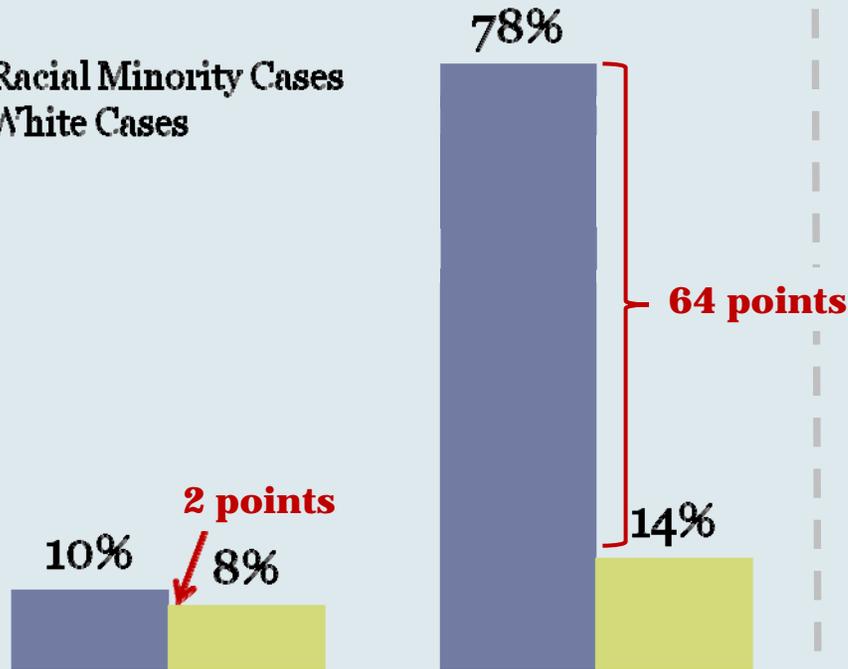


Relative Risk: 2.8	Relative Risk: 2.8	Relative Risk: 2.8
<i>p</i> -value: .05	n.s.	<i>p</i> -value: .01
A	B	C

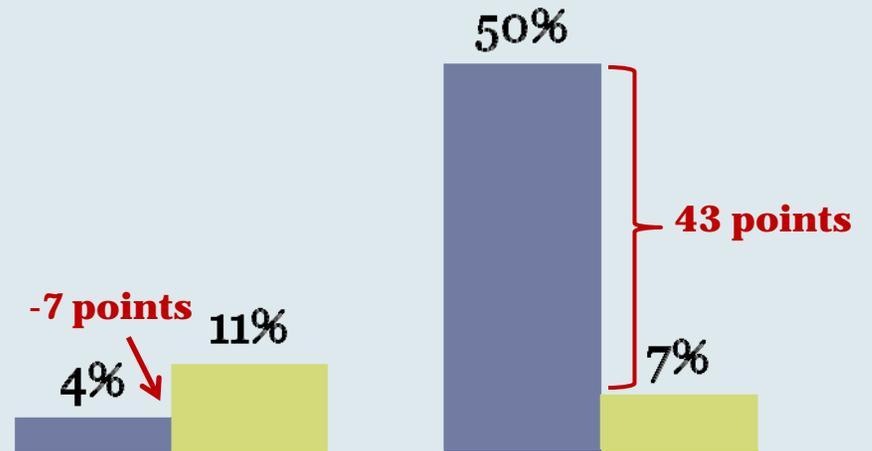
Figure 6. Racial Disparities in the Imposition of Death Sentences Among All Death-Eligible Cases, Single Controls

Part I. Number of Victims

■ **Racial Minority Cases**
■ **White Cases**

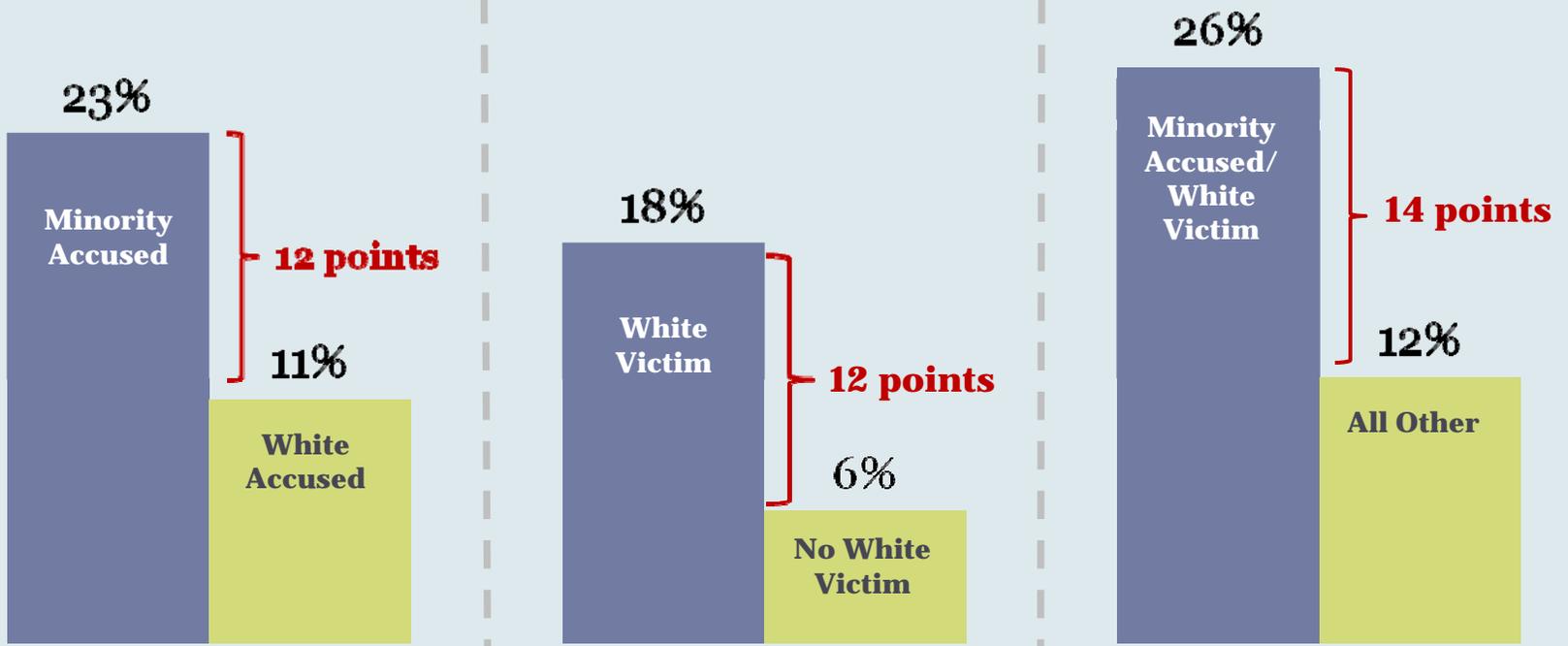


Part II. Number of Aggravators



One Victim	Two or More Victims	One Aggravator	Two or More Aggravators
<i>n.s.</i>	<i>p</i> -value: .05	<i>n.s.</i>	<i>p</i> -value: .05
A	B	C	D

Figure 7. Racial Disparities in the Imposition of Death Sentences Among All Death-Eligible Cases, Fully Controlled



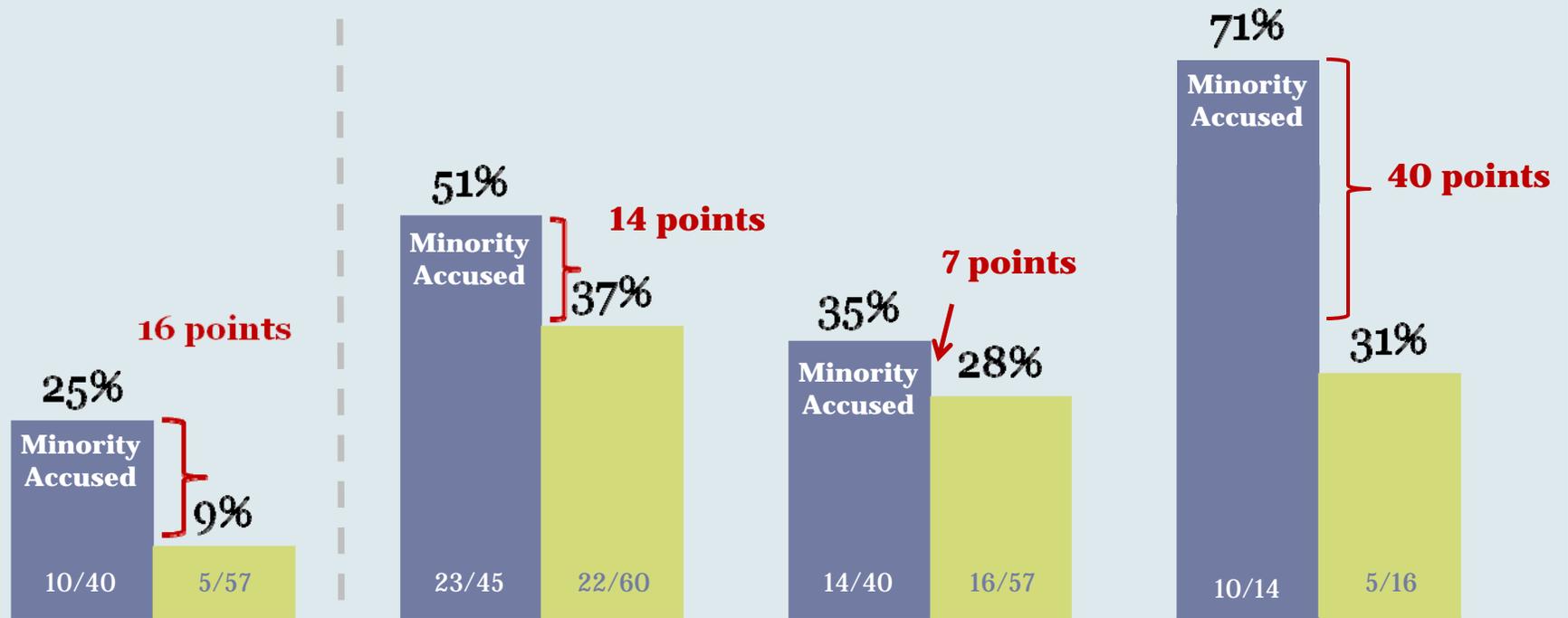
Relative Risk: 2.1	Relative Risk: 3.0	Relative Risk: 2.2
Odds Multiplier: 5.2	Odds Multiplier: 12.5	Odds Multiplier: 6.6
p-value: .15	p-value: .11	p-value: .09
A	B	C

Presentation Overview

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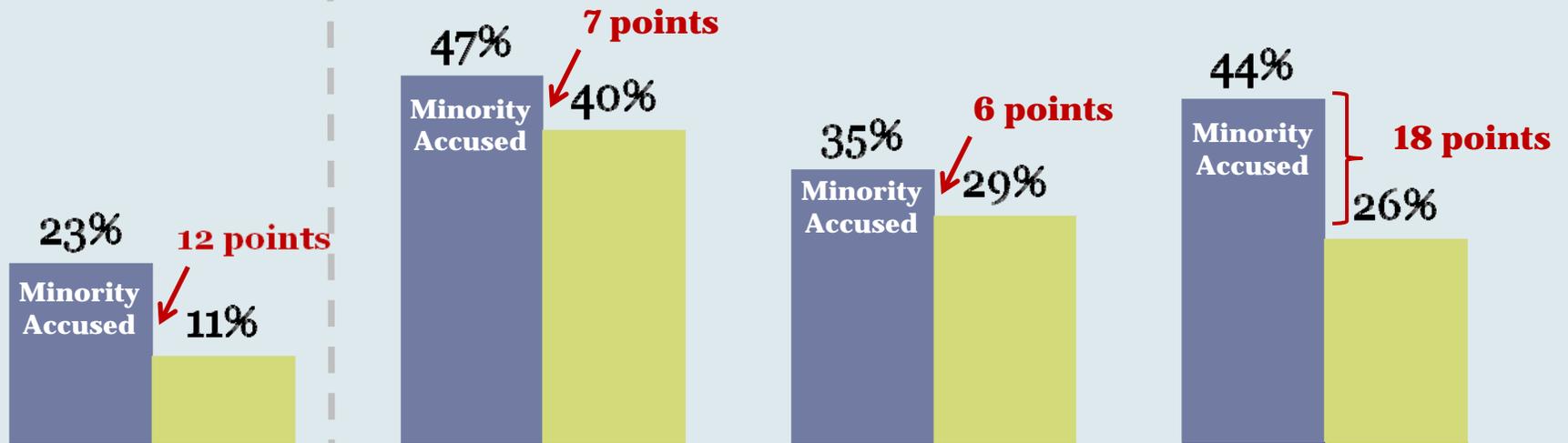
1. Research Design and Methodology
2. System-wide Analyses
3. **Stagewise Analyses, focused on racial subgroups**
 1. **Minority Accused Disparities**
 2. **White Victim Disparities**
 3. **Minority Accused/White Victim Disparities**

Figure 8. Stagewise Race of Accused Disparities, No Controls



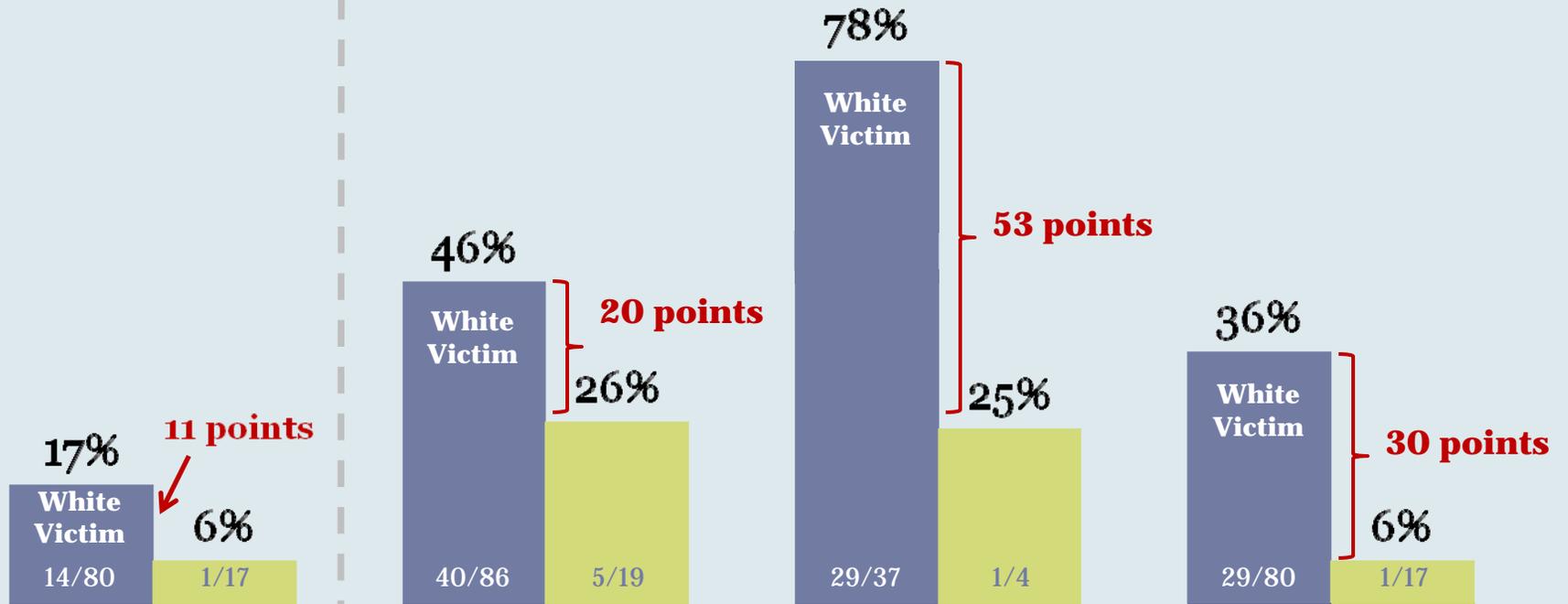
Overall	Charging Decisions	Charging & Guilt	Sentencing Decisions
Relative Risk: 2.8	Relative Risk: 1.4	Relative Risk: 1.2	Relative Risk: 2.3
<i>p</i> -value: .05	<i>n.s.</i>	<i>n.s.</i>	<i>p</i> -value: .10
A	B	C	D

Figure 9. Stagewise Race of Accused Disparities, Fully Controlled



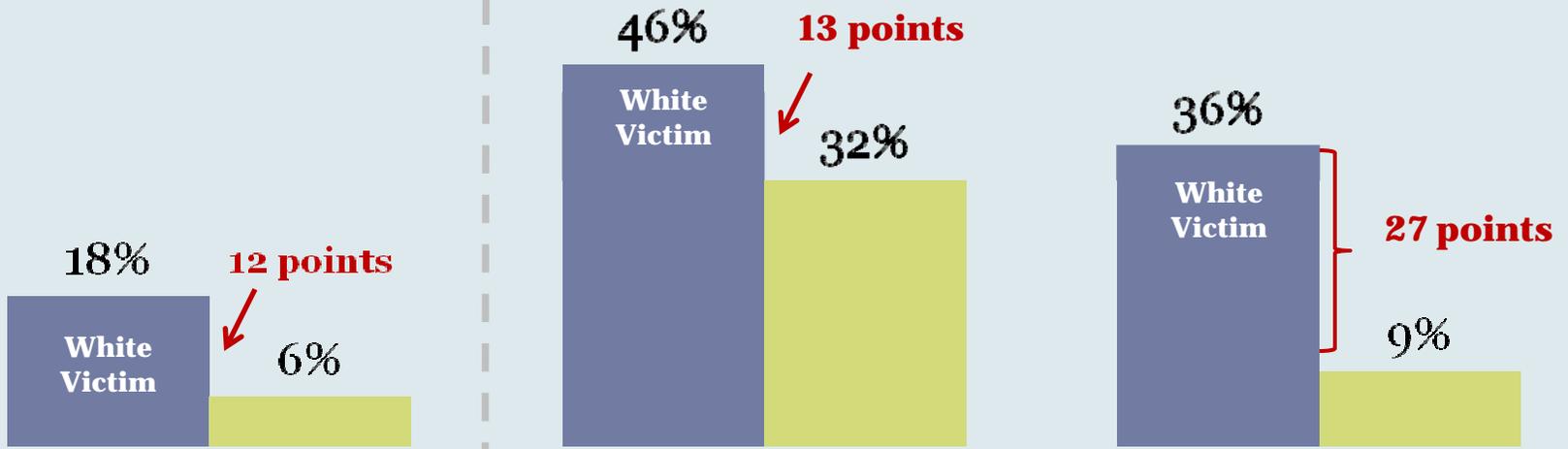
Overall	Charging Decisions	Charging & Guilt	Sentencing Decisions
Relative Risk: 2.1	Relative Risk: 1.2	Relative Risk: 1.2	Relative Risk: 1.4
Odds Multiplier: 5.2	Odds Multiplier: 2.1	Odds Multiplier: 1.8	Odds Multiplier:
<i>p</i> -value: .15	<i>p</i> -value: .35	<i>p</i> -value: .48	<i>n.s.</i>
A	B	C	D

Figure 10. Stagewise White Victim Disparities, No Controls



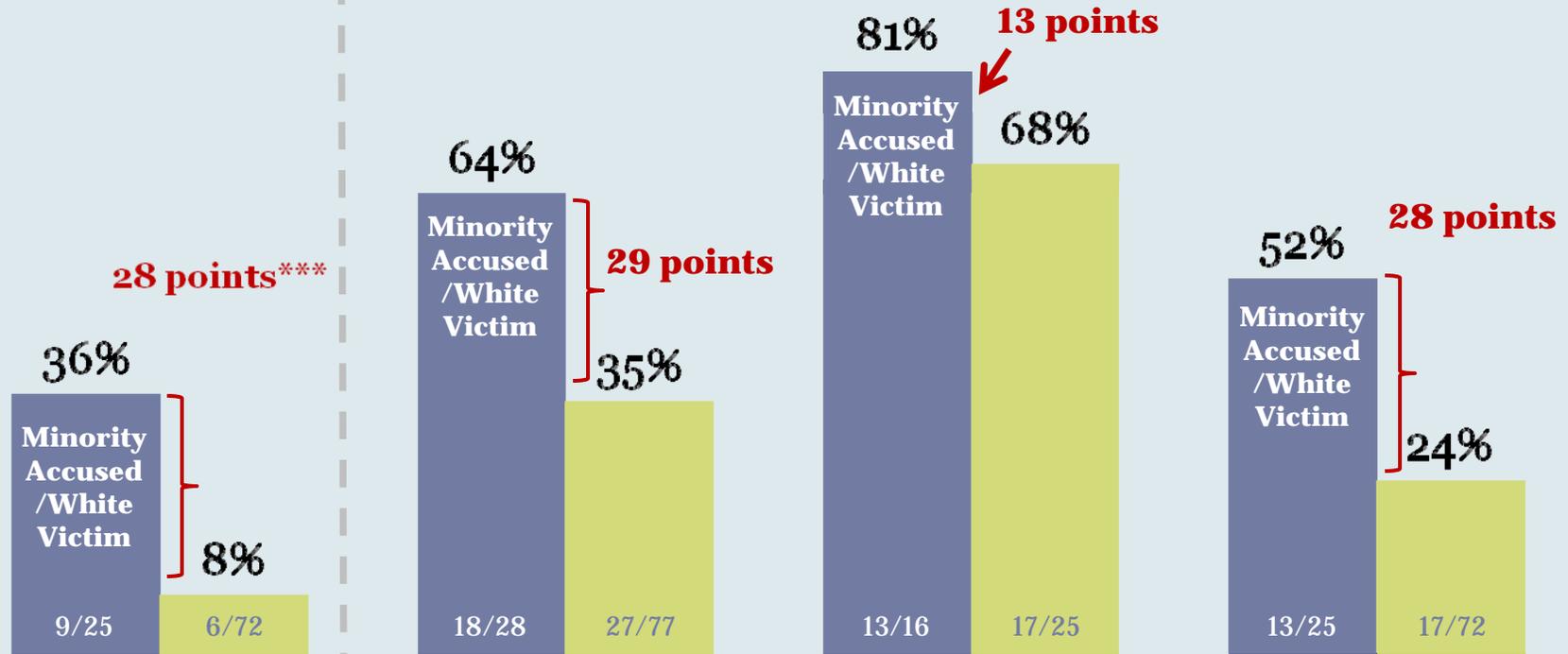
Overall	Charging Decisions	Unanimous Guilt	Charging & Guilt
Relative Risk: 2.8	Relative Risk: 1.8	Relative Risk: 3.1	Relative Risk: 6.0
<i>n.s.</i>	<i>n.s.</i>	<i>p</i> -value: .05	<i>p</i> -value: .05
A	B	C	D

Figure 11. Stagewise White Victim Disparities, Fully Controlled



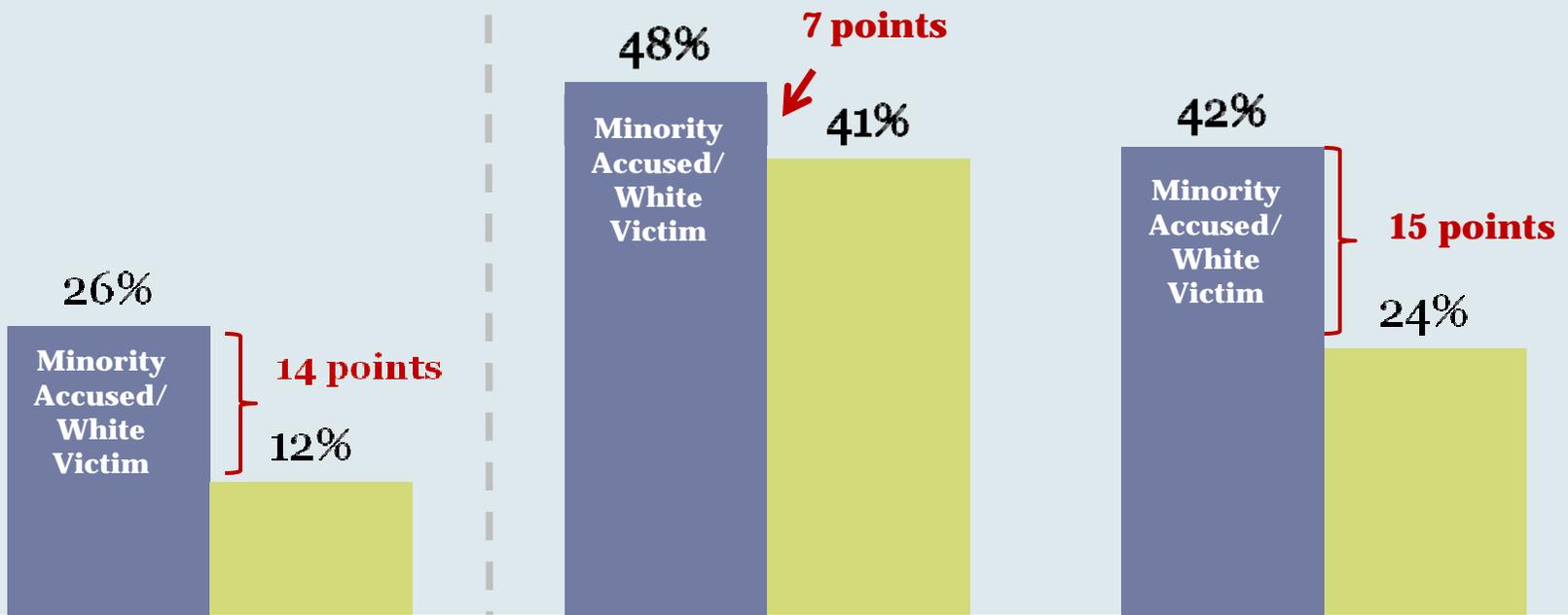
Overall	Charging Decisions	Charging & Guilt
Relative Risk: 3.0	Relative Risk: 1.4	Relative Risk: 4.0
Odds Multiplier: 12.5	Odds Multiplier: 4.1	Odds Multiplier: 28.1
<i>p</i> -value: .11	<i>p</i> -value: .14	<i>p</i> -value: .03
A	B	C

Figure 12. Stagewise Minority Accused/White Victim Disparities, No Controls



Overall	Charging Decisions	Unanimous Guilt	Charging & Guilt
Relative Risk: 4.5	Relative Risk: 1.8	Relative Risk: 1.2	Relative Risk: 1.9
<i>p</i> -value: .01	<i>p</i> -value: .05	<i>n.s.</i>	<i>p</i> -value: .01
A	B	C	D

Figure 13. Stagewise Minority Accused/White Victim Disparities, Fully Controlled



Overall	Charging Decisions	Charging & Guilt
Relative Risk: 2.2	Relative Risk: 1.2	Relative Risk: 1.6
Odds Multiplier: 6.6	Odds Multiplier: 2.0	Odds Multiplier: 3.4
p-value: .09	p-value: .39	p-value: .13
A	B	C

