

Letters to Boger and Unah

Letter to Boger and Unah
April 22, 2001

Thank you for giving me a copy of your report. As you recall I contacted you shortly after the March 7 Spectator article on the Death Penalty and sent you information about the difference between odds ratio and probability. Had you shown me a draft of your report, I would have been happy to give you the benefit of my criticisms before you went public with the report.

Looking over the report now, I see a number of inconsistencies.

I would like to see the complete SPSS printout for the death-eligible cases, since this is the analysis on which you based your 3.5 odds multiplier.

In view of the various inconsistencies and misstatements and Cris Fitzsimon's statement that "the study's critics are welcome to review the data", I would also like a copy of the data for these cases since the conclusions you made public are based on them.

Cramer to Unah:
September 7, 2001

You had indicated that your data would be available after your paper was accepted for publication and that the report would be available when submitted for publication. I would appreciate learning what the current status is. I haven't heard of anything being released beyond the preliminary report which you gave to me. Is that the latest version which is publicly available?

Elliot

From: Elliot Cramer <cramer@EMAIL.UNC.EDU>
Date: Tue, 1 Apr 2003 23:08:02 -0500 (EST)
Subject: your death penalty papers
To: Isaac Unah <unah@unc.edu>

what is the status of your two papers

On Wed, 2 Apr 2003, Isaac Unah wrote:

Our paper is still under consideration but we remain very optimistic it will be published soon.

From cramer@email.unc.edu Mon Sep 12 14:58:09 2005
Date: Thu, 15 May 2003 12:54:58 -0400 (EDT)
From: Elliot Cramer <cramer@email.unc.edu>
To: Isaac Unah <unah@unc.edu>
Cc: Jack Boger <jcboger@email.unc.edu>
Subject: Re: your death penalty papers

Would you please clarify the situation for me. I have two copies of different versions of a paper dated April 16, 2001 and titled "preliminary report on the findings of the North Carolina Death Penalty study 2001".

Was a final report produced?
May I have a copy?
Was it submitted to a journal?
Is it still under consideration for publication?

I have a different paper titled "Race and the process of capital punishment in the new south" dated September 9, 2002. This is in a form suggesting that it has been submitted to a journal. It uses the same data as the previous paper but uses a completely different statistical analysis and reaches different conclusions.

Is this paper being considered by a journal?

Have you written anything explaining the justifications for these two different types of analyses?

Thank you

Date: Thu, 15 May 2003 14:53:41 -0400 (Eastern Daylight Time)
From: Isaac Unah <unah@unc.edu>
To: Elliot Cramer <cramer@EMAIL.UNC.EDU>
Subject: Re: your death penalty papers

Hello Elliot, Our paper is under consideration for publication. I shall notify you after this process is complete. We do hope to issue a final report, which is in progress. Our data has been analyzed via a

variety of methods and the core results regarding the influence of race in capital sentencing remains the same.

Date: Thu, 15 May 2003 15:56:42 -0400 (EDT)
From: Elliot Cramer <cramer@email.unc.edu>
To: Isaac Unah <unah@unc.edu>
Cc: Jack Boger <jcboger@email.unc.edu>
Subject: Re: your death penalty papers

which paper is under consideration the first or the second?
Is there a final version of the first paper you can send me

What I am thinking of is that the primary conclusion of your first paper was that there was a strong race of victim effect. You found NO white kills non-white effect. In your NEW analysis, you no longer have a race of victim effect because you didn't include it in the model but you now have a non-white kills white effect How do you justify this?

Elliot

To Unah Aug 8, 2005
Have they been published?

Elliot

Date: Tue, 09 Aug 2005 11:50:07 -0400
From: iunah@email.unc.edu
To: Elliot Cramer <cramer@email.unc.edu>
Subject: Re: death penalty papers

They are under review. Isaac.

To Unah
9/13/2005 9:40 PM

I was just looking at your web site and saw your (undated) paper "Electoral Incentives and Prosecutorial Decision to Seek the Death Penalty" which bears a striking resemblance to your February 2003 paper "Race, Politics, and the Process of Capital Punishment in the South". The data seem to be the same and the variables are virtually identical

The conclusion of the later paper is stated to be

"Due to political empowerment of nonwhites, local prosecutors in the South, who once made race-conscious decisions concerning whom to prosecute for the death penalty, now appear race-neutral. Our findings point to jurors rather than to elected prosecutors as the political actors most culpable for racial bias in capital sentencing."

The conclusion of the former paper is stated to be

"Prosecutors are less likely to seek the death penalty as electoral competition increases in their district. I conclude that the democratic process shapes prosecutorial strategy and that efforts to influence the incidence of capital prosecutions should be concentrated there."

You then make the statement "While legal factors do contribute positively to the decision to seek the death penalty, they are not nearly as influential as substantive political factors." I see nothing in your paper that would lead to that conclusion. How do you justify this statement? This seems contrary to what has historically been shown to be the case.

You make reference to three anonymous reviewers; Is this paper being resubmitted to a journal or has it been accepted for newspaper.

Elliot

Subject: Re: your paper
Date: Wed, 14 Sep 2005 12:44:19 -0400
From: iunah@email.unc.edu
To: Elliot Cramer <cramer@email.unc.edu>
CC: jcboger@email.unc.edu

Hello Elliot,

As I indicated in my recent email, my paper with Professor Jack Boger is being considered for publication at a journal (a social science journal). As you well know, the review process in social science journals takes time. We shall let you know as soon the paper is accepted for publication and in press.

From Jack Boger
September 20, 2006

Dear Dr. Cramer,

Isaac Unah has been responsible for all drafting and publication plans for our study for a number of years. I do not have either the underlying data or the drafts of the scholarly paper[s] he may be currently submitting to publishers. Let me recommend that you contact him directly at the UNC Department of Political Science. Best regards.

Jack Boger

Unah, Isaac wrote:

Hi Elliot, Nice to hear from you. I will make the NC death penalty study data available to you soon, hopefully sometime this summer after our paper is published in a journal. Cheers, ---Isaac.

From: Elliot M. Cramer [mailto:Cramer@email.unc.edu]
Sent: Tuesday, May 29, 2007 12:13 PM
To: Unah, Isaac
Cc: Jack Boger
Subject: Re: [Fwd: [Fwd: Re: status of your study?]]

I have the following in my notes from our correspondence indicating your revised statement that the data would after your paper had been accepted. Has it been accepted? May I have a copy of the final paper? I don't even know what the title is.

Thanks,

Elliot

Subject: RE: [Fwd: [Fwd: Re: status of your study?]]
Date: Tue, 29 May 2007 13:08:01 -0400
From: Unah, Isaac <iunah@nsf.gov>
To: Elliot M. Cramer <Cramer@email.unc.edu>

Paper is on revise and resubmit status. ---Isaac.

June 2007
To Jack Boger

Elliot M. Cramer wrote:
Just wanted to remind you that you were going to speak to Isaac
about getting me the data

From Jack Boger
June 29,2007
Dear Elliot,

Isaac Unah has been at the National Science Foundation this past year. His address is: iunah@nsf.gov . You should try to contact him directly, since I have been traveling a great deal and will have an extremely busy June (I'm in Colorado all this week at a conference). I did manage to get a hardcopy version of the statistical experts' amicus curiae brief in McCleskey which I can send along to you on my return. What is your mailing address?

Jack Boger

Subject: Re: status of your study?]]]
Date: Wed, 04 Mar 2009 10:36:56 -0500
From: Elliot Cramer <cramer@email.unc.edu>
Organization: University of North Carolina at Chapel Hill
To: unah@unc.edu

What is the current status of your paper

Race and the Death Penalty in North Carolina: An Empirical Analysis
(1993-1997), with
John Charles Boger. Funded by the Common Sense Foundation and the North
Carolina
Council of Churches. September 16, 2001

I see that it is no longer listed on your website except as a research
report; Is it no longer being considered for publication?

Subject: Re: status of your study?]]]
Date: Wed, 04 Mar 2009 10:45:15 -0500
From: Isaac Unah <iunah@email.unc.edu>
Reply-To: unah@unc.edu
Organization: University of North Carolina at Chapel Hill

To: Elliot Cramer <cramer@email.unc.edu>

Thank you for your continued interest in this study. The paper is under review for journal publication. ---Isaac.

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Elliot M. Cramer

Subject: data file for 2001 study
Date: Sun, 15 Mar 2009 19:28:31 -0400
From: Elliot Cramer <cramer@email.unc.edu>
Organization: University of North Carolina at Chapel Hill
To: jcboger@email.unc.edu

As you know I have been seeking the data for your North Carolina Death Penalty study since April 22, 2001 when I wrote

"In view of the various inconsistencies and misstatements and Cris Fitzsimon's statement that "the study's critics are welcome to review the data", I would also like a copy of the data for these cases since the conclusions you made public are based on them."

Isaac wrote me on March 4 that "The paper is under review for journal publication." This seems unlikely, eight years later, since he no longer lists it as under review on his website. If it is so, there are three papers under review, all using the same data, but with somewhat different variables and drawing different conclusions. This seems to me to be a violation of professional ethics if the editors have not been told about this as indicated below. I believe that it is a violation of University ethics as well. It appears that these papers have been submitted to several journals and rejected. All three papers are so flawed that it is unlikely that they will ever be accepted by any journal some eight years after the study was done.

You will recall that we discussed my getting the data at the Raleigh meeting and I understood that you would see that I got the data. I do have the data now as a result of discovery in a Durham murder trial but I am limited to using it only for the current hearing. I would like you to get me an independent copy

of the SPSS data file as has been repeated promised to me.

Thank you

Elliot

A Guide to Professional Ethics in Political Science
Second Edition, Revised 2008
The American Political Science Association

<http://www.apsanet.org/imgtest/ethicsguideweb.pdf>

17. When a piece of writing is jointly authored, it is presumed to be the intellectual product of the authors collectively, not individually, and this fact should govern its further use including its use by any of the original authors.

17.1 Passages of text and major themes and ideas used in subsequent work by any of the authors should be attributed to the original source following accepted standards for quotation and citation. Exceptions to this practice should occur only if a portion of the jointly authorized work has been clearly attributed in the original work to one of the authors.

18. Authors who submit manuscripts to more than one professional journal at the same time are obligated to inform each editor of the fact.

Subject: Re: data file for 2001 study
Date: Wed, 18 Mar 2009 09:06:44 -0400
From: Jack Boger <jcboger@email.unc.edu>
Organization: University of North Carolina at Chapel Hill
To: Elliot Cramer <cramer@email.unc.edu>
References: <49BD8F1F.40306@email.unc.edu>

Dear Elliot,

Thank you for your email. I do not now possess and indeed, have never possessed, the North Carolina data set for which you've asked me. I assisted Isaac Unah with legal and constitutional dimensions of the research project on which he and I worked jointly in the early 2000s, but I never received, possessed, or independently analyzed the data set

that Dr. Unah built. The physical data files were given to him for coding upon their completion by the student coders. The electronic data files were developed and maintained by Dr. Unah. I did no independent analyses of those data, but instead commented on various data runs that Dr. Unah made and provided to me during our work. I don't know the whereabouts either of the physical files that were created or of the data sets, although I presume they are in Dr. Unah's possession. Best regards.

Jack Boger

Subject: data for your 2001 study
Date: Mon, 01 Jun 2009 12:41:06 -0400
From: Elliot Cramer <cramer@email.unc.edu>
Organization: University of North Carolina at Chapel Hill
To: Jack Boger <jcboger@email.unc.edu>
CC: unah@unc.edu, ehuber@unc.edu

You had indicated that you would speak to Isaac about my getting the data. It is now almost eight years since the press conference at which it was announced that "the study's critics are welcome to review the data". You are listed as the co-author of a second paper using the same data but drawing different conclusions --

Race, Politics, and the Process of Capital Punishment in the South February 4, 2003

"Due to political empowerment of nonwhites, local prosecutors in the South, who once made race-conscious decisions concerning whom to prosecute for the death penalty, now appear race-neutral. Our findings point to jurors rather than to elected prosecutors as the political actors most culpable for racial bias in capital sentencing."

Ironically, this is just the opposite of what Isaac is claiming in the Durham case. These papers have supposedly been under editorial evaluation for years and have evidently been submitted to a number of journals without success. There is even a third paper, again using the same data: Electoral Incentives and Prosecutorial Decision to Seek the Death Penalty September 3, 2003. This paper draws still different conclusions. I do not see the justification for keeping the data confidential; what do you have to hide, other than incompetence?

no response

----- Original Message -----

Subject: data for your 2001 study
Date: Mon, 01 Jun 2009 12:41:06 -0400
From: Elliot Cramer <cramer@email.unc.edu>
Organization: University of North Carolina at Chapel Hill
To: Jack Boger <jcboger@email.unc.edu>
CC: unah@unc.edu, ehuber@unc.edu

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No response

Subject: data for your 2001 study
Date: Fri, 07 Aug 2009 15:39:05 -0400

From: Elliot Cramer <cramer@email.unc.edu>
Organization: University of North Carolina at Chapel Hill
To: Jack Boger <jcboger@email.unc.edu>
CC: Paul.Stam@ncleg.net

I have been organizing my files in anticipation that we will be seeing some Court cases filed under the Racial Justice Act. Your 2001 study seems to be the main justification given for this Act and you included a "Preliminary Report" in your statement to the House Select Committee in 2006. I have a number of different versions of this report, all dated April 16, 2001 and titled "PRELIMINARY REPORT ON THE FINDINGS OF THE NORTH CAROLINA DEATH PENALTY STUDY 2001." None of these are in a form for submission to a Journal. I have a note from Isaac Unah dated April 2, 2003 saying "Our paper is still under consideration but we remain very optimistic it will be published soon. That was over six years ago so I presume it was rejected by that journal and resubmitted to other journals. Evidently, it was rejected again. You will recall that the sponsor of the study announced at your 2001 press conference that critics were free to examine the data. A later version of the paper has a footnote saying:

"After our analysis is accepted for publication in a refereed journal, we will make the data available to interested parties. We also plan to deposit the data with the Inter-University Consortium for Political and Social Research (ICPSR) for full public access."

There are two other papers from 2003 which are in a form for publication with different methods of analysis and different conclusions but you did not refer to those in your presentation nor have they ever been cited in connection with the Racial Justice Act. I presume that they have not been accepted for publication either although, after six years, Isaac tells me that they are "under consideration".

Exactly what are you referring to when you say "our analysis is accepted for publication"? Is there a paper using your original analysis that has been submitted to a journal? If so, why is it not on the Website with the other papers that have evidently been submitted. If not, what are you planning to do about making the data public as promised at your press conference? The data are now nine to fifteen years old. If the results that you presented to the Select Committee are valid, you should have nothing to hide.

Subject: Re: data for your 2001 study
Date: Thu, 13 Aug 2009 09:24:27 -0400
From: Jack Boger <jcboger@email.unc.edu>
Organization: University of North Carolina at Chapel Hill
To: Elliot Cramer <cramer@email.unc.edu>
CC: Paul.Stam@ncleg.net
References: <4A7C82D9.1040300@email.unc.edu>

Dear Elliot,

Let me suggest that you direct your questions to Professor Isaac Unah, the principal author of the 2001 study in which I took part. It is Professor Unah who drafted various versions of the paper for publication in social scientific journals and who has submitted those articles for review. I myself have neither attempted to write drafts nor been in direct contact with any social scientific journal editors, nor have sought publication of the data in any law review. I did speak at a December, 2006 House Select Committee hearing on the Racial Justice Act, as you note, shortly after becoming Dean of the UNC School of Law. Since that time, however, the demands of that position have required me to devote myself to its many responsibilities almost exclusively. Although I remain interested in these issues and supportive of the conclusions we reached and reported in 2001, I do not anticipate playing a major litigation role in future consideration of the application of the North Carolina statute while serving as dean. As for the underlying data, my information is that you have now received it during a 2009 hearing in Durham County. If that is true, you now have the full basis for assessing the evidence of racial bias in the 1994-1997 period that we gathered during 2000 and 2001. I am sure that many will be interested in the results of any analysis you conduct. Very best regards.

Jack Boger

Dear Jack;

It's very good to hear from you. I do understand that Isaac is primarily responsible for the various draft papers but as co-author you certainly have equal responsibility with Isaac for the data. You are aware that I have asked Isaac for the data many times and have been repeatedly told since 2001 that the paper is "under consideration" by a journal.. I doubt that the

2001 paper has ever been submitted to a journal since no such paper has ever been distributed or posted in journal form. You will recall that at the Select Committee hearing, you told me that you would speak to Isaac about giving me the data. I have never heard the results of that request. It is true that I was provided the data at the Durham hearing but it was provided with the stipulation that it is "confidential and proprietary" and "should be protected from public disclosure" (see attached order).

The conclusions of this study have been widely distributed and promoted by advocates of the "Racial Justice Act" and was certainly influential in its passage. It is obvious that the advocates of this bill are Death Penalty opponents who wish to make it more expensive for the State. I respect your opposition to the Death Penalty and one may reasonably question its utility, given that there is now the possibility of sentences of life without parole. This reform has had its desired effect of reducing the number of executions from 13.4 per year in 1992-2000 to 4.4 per year since. I personally think that the death penalty should be reserved for particularly atrocious cases where there is no doubt as to guilt such as Kenneth Rouse where the Appeals Court described the circumstances as

"Defendant had blood on him, especially on the front of his shirt, his pants, his hands, his waist, his legs and his underwear. There were abrasions on his knees. His pants were unzipped but fastened at the top. His belt was hanging off. . On the floor of the storage room was Hazel Colleen Broadway, lying in a pool of blood. She tried to tell Hinshaw something but soon died. Broadway was covered in blood. There were handprints on her body. She was wearing a blouse, and her pants had been pulled down to her feet.... [She had] a knife in [her] neck. The blade part of the knife was bent in a ninety-degree angle just below the handle. . [The medical examiner] concluded that the victim died as a result of blood loss caused by a stab wound to the left neck, severing the carotid artery and jugular vein. A person could live ten to fifteen minutes after being stabbed in that location. In addition to the lethal knife wound, there were numerous other wounds to the victim including bruises, stab wounds and abrasions to her neck, chest, stomach, arms, shoulders, thighs, knee, palm, thumb, back, and elbow. Many of these were consistent with a sharp cutting instrument. Other injuries were consistent with a blunt instrument."

You should have a copy of the data or should be able to obtain a copy. I will appreciate your providing me with an independent

copy of what was provided in Durham which I may use without restriction. I will be happy to discuss any conclusions with you and to provide you with an advance copy of anything I write using your data, excepting only Court filings. If you have any other concerns about the use of your data, I will be happy to discuss them with you.

Thank you for your consideration.

Elliot

Subject: Re: status of your study?
Date: Sat, 24 Jul 2010 11:39:34 -0400
From: Elliot Cramer <cramer@email.unc.edu>
Organization: University of North Carolina at Chapel Hill
To: unah@unc.edu
CC: Jack Boger <jcboger@email.unc.edu>

I presume that your paper is no longer under review and that it has not been published. As you know, your data file was given to me under a confidentiality agreement but could be used in further litigation which is certainly forthcoming. In view of this, may I have your permission to use your data file

Elliot

Subject: Happy Anniversary
Date: Tue, 01 Mar 2011 08:34:20 -0500
From: Elliot M. Cramer <elliottcramer@bellsouth.net>
Reply-To: ecramer@alum.mit.edu
To: unah@unc.edu, Jack Boger <jcboger@email.unc.edu>

Jack and Isaac:

As you you know, the tenth anniversary of your press conference is coming up in April. It was announced at that press conference that critics were free to review the data from your death penalty study. Has an article been published ANYWHERE based on the data?

May I now have a copy of the data for my own use?

Thank you,

Elliot