

Executing the Vulnerable Among Us: An Analysis of Mental Capacity, Mental Illness
and the Death Penalty in North Carolina

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Introduction

Capital punishment as an institution in the United States has evolved substantially over the past century. The trend throughout history has been one of increased limitation in the application of the death penalty. There have been significant limitations placed on exactly who the state can kill. In the past a plethora of crimes were punishable by death, but the changing standards of capital punishment have eliminated all but those who commit murders from execution¹. One of the most recent and significant changes in the application of the death penalty in the United States is the Supreme Court *Atkins v. Virginia* (2002) ruling that the execution of the mentally retarded as unconstitutional. Citing “evolving standards of decency” the Supreme Court looked towards the movement within the states to prevent the execution of the mentally retarded in its decision to further limit the application of the death penalty. Notably, North Carolina banned the execution of the mentally retarded in 2001, before the Supreme Court *Atkins v. Virginia* decision, and has been on the forefront of reforming the institution of capital punishment within the state.

The current movement in North Carolina aims to prevent the executions of the severely mentally ill. This divisive issue is being addressed in the North Carolina General Assembly, where legislation has been introduced that would effectively abolish the application of the death penalty in cases where the defendant suffers from a severe mental illness. Bills H137 and S309, “Capital Procedure/Severe Mental Disability,” were proposed by mental health advocates in North Carolina and introduced by several supporters in the legislature on February 12, 2009. Although the current political climate

¹ One notable exception is “Felony Murder” in which a person is accomplice to the murder, but does not commit the actual murder.

in North Carolina does not favor the adoption of the bills, if history is any indication, the movement to cease the execution of those with severe mental illness will prevail in coming years.

This thesis examines the execution of those with diminished mental capacity and severe mental illness in North Carolina from 1900 to the present. There are historical considerations to take into account when studying the application of the death penalty. The history of the death penalty in North Carolina is described in Chapter One and provides context and background for my analysis. I am particularly interested in investigating the application of the death penalty on those with mental retardation and severe mental illness, and in Chapter Two I define both diagnoses both from a medical perspective and a legal perspective.

My analysis relies on data from Raleigh News and Observer articles that span over a century. In Chapter Three I describe the characteristics of these articles throughout the 20th and 21st century: their similarities, their differences, as well as the content of the information found within the articles. Consistency is central to my methodology and coding, and in Chapter Four I describe how the information from the Raleigh News and Observer articles is coded in a reliable manner over the lengthy period of my analysis.

In the final portion of my thesis I focus on the data on the execution of inmates with diminished mental capacity and mental illness. Chapter Five focuses on both the diminished mental capacity and mental illness in turn, and includes analysis on the racial dimension often present within the targeting of the death penalty on both populations. Finally, in Chapter Six I examine the parallel evolution in the practice of executing those with mental retardation and severe mental illness. I illustrate the analogous relationship

between mental retardation and severe mental illness through representative articles on inmates from both populations, supported by data from my analysis.

North Carolina is a leading death penalty state, a Southern state, and yet has had a perhaps surprisingly high degree of institutional reform within its system of capital punishment. My thesis is an analysis of the targeting of the death penalty on vulnerable populations over a century in North Carolina, whose eligibility for the gravest punishment in the United States has been called into question in recent years. This examination of the trends in the application of the death penalty on inmates with diminished mental capacity and mental illness illuminates the ever-changing nature of the death penalty. I focus on historical and recent trends to help understand the current debate surrounding the execution of persons with severe mental illness.

Historical Overview of Capital Punishment in North Carolina

Presently North Carolina has one of the most progressive capital punishment legal frameworks of all states that employ the death penalty, but the fact remains that North Carolina's history of applying the death penalty in the pre-modern period did not significantly deviate from other southern states. The precedent for capital punishment in North Carolina dates back to the colonial period when English Common Law provided the foundation for the legislation passed by the North Carolina Colonial Assembly instituting capital punishment.² Author Trina Seitz provides a comprehensive historical account of the death penalty in North Carolina in *The Killing Chair: North Carolina's Experiment in Civility and the Execution of Allen Foster*. I will rely on much of her research when summarizing the historical application and trends of the death penalty as it relates to my thesis. This brief history begins in 1900 where my analysis begins.

The Historical Period

From 1900 to 1909 all executions in North Carolina were public hangings. Executions were a local matter and administered by sheriffs and local law enforcement. Public executions were major public events and attracted many observers. During this time period there were many instances of "mob justice," and lynchings occurred frequently.³

² "History of Capital Punishment in North Carolina." North Carolina Department of Correction. Accessed on March 24, 2010. <http://www.doc.state.nc.us/DOP/deathpenalty/DPhistory.htm>

³ Kotch, Seth. 2008. "Unduly Harsh and Unworkably Rigid: The Death Penalty in North Carolina, 1910-1961." Ph.D. diss. University of North Carolina at Chapel Hill.

However, in this analysis I will only include legally held executions as reported on by the Raleigh News and Observer and will not include lynchings.

In 1909 North Carolina centralized the administration of the death penalty in Raleigh, the state's capital. From 1909 on executions were held within the confines of Central Prison and were no longer open to the public. Yet this did not detract from the public's attraction to executions, and many articles during this period note the crowds around Central Prison clamouring to try to view the executions. This also marked the beginning of the transition from hangings to electrocution and in March 1909 the North Carolina General Assembly voted to adopt the "humane" process of electrocution as the sole means of execution in the state. However, all inmates sentenced prior to the adoption of the electric chair were executed by hanging. On March 18, 1910 North Carolina executed Walter Morrison, the first man to be executed by electric chair.⁴ This transition from hanging to electrocution in search for a more "humane" application of the death penalty has been an integral part of North Carolina's death penalty history as the state has sought to better the application of the death penalty.

In the first three decades of the 20th century the number of executions was steady, with an average of 49 inmates executed per decade. In the following decades from 1920 to 1949 a record number of inmates were executed at rates not previously seen in the state's history with 131 inmates executed from 1930-1939 and 113 inmates executed from 1940-1949. Along with the substantial increase in executions there was noticeable bias in the application of the death penalty, "Of the fifty-five men executed between 1920 and 1929, forty-eight were black, under thirty years of age, and by and large, 'wholly

⁴ Seitz, Trina N. 2004. "The Killing Chair: North Carolina's Experiment in Civility and the Execution of Allen Foster." *The North Carolina Historical Review* 81: 38-72.

illiterate.”⁵ My analysis will further examine this trend with actual data on all inmates executed in North Carolina in this period and in the modern period of the death penalty.

The increase in executions corresponds with an increase in the availability of newspapers and their increased circulation. In the 1920's the newspaper readership expanded greatly. Seitz attributes this expansion primarily to “the advent of rural free delivery, improved roads, and widespread availability of courier vehicles” and notes the relationship between the “privatization of executions by electric chair” and the “expanding space devoted to the death penalty.” This led to articles that sought to replicate the visual spectacle of executions into written, often very detailed, descriptions of the executions; the appearance of the inmate being executed was of particular interest to the readership. The progression in the documentation of the death penalty in the Raleigh News and Observer is examined in depth later in Chapter Three and provides the foundation for my analysis.

By the 1930's public awareness concerning the application of the death penalty was increasing. The public's growing unease about the use of the electric chair prompted action by the North Carolina General Assembly. In May 1935 the General Assembly voted unanimously to adopt the gas chamber as a more humane mode of execution and the first execution by lethal gas occurred on January 24, 1936 when Allen Foster was executed.⁶ Allen Foster's execution was described in detail in the Raleigh News and Observer, and vilified in the media due to appalling nature of his death. His execution was a spectacle as the witnesses saw him struggle for three minutes until he finally lost consciousness and was not pronounced dead until eleven minutes after the gas was

⁵ *Ibid.*

⁶ *Ibid.*

applied. Throughout the year there was much public scrutiny and debate surrounding the application of lethal gas, as many advocated for a switch back to electrocution.

In the 1940s the public continued to disfavour electrocution, yet there was no change in the manner of applying the death penalty. Public discontent increased after several questionable executions where witnesses to the gassings observed inmates struggling against the gas for over fifteen minutes in some executions. The gas chamber began to be referred to as the “torture chamber” prompting legislative action.

In January of 1943 the Chaffin bill which proposed a return to electrocution was proposed. The bill was ultimately voted down. This ended the debate surrounding the application of death penalty in North Carolina as the nation’s involvement in World War II overshadowed the dilemma concerning the death penalty. Throughout the 1940s and 1950s the number of executions steadily decreased and the public attention paid to the death penalty and executions diminished significantly. With the rise of the civil rights movement articles concerning the executions of inmates were less prominent and descriptive in nature.⁷

The tide had turned and there was significantly less attention given to the death penalty. The death penalty came back into the spotlight nationally once the moratorium on the death penalty was instated in 1972 based on the Supreme Court decision *Furman v. Georgia*. All executions in the United States ceased until states began enacting legislation that ensured, to the best of their abilities, that the death penalty was not applied in an arbitrary manner. North Carolina did not execute another inmate after the

⁷ This is an important feature discussed later in Chapter Four.

reinstatement of the death penalty until the 1984 execution of James Hutchins, ushering in a new modern period of capital punishment in the state.

The Modern Period

North Carolina reinstated the death penalty on June 1st, 1977.⁸ Since the reinstatement of the death penalty North Carolina has executed 43 inmates. North Carolina ranks 8th in the number of executions in the United States. Table 1.1 contains data on all executions from 1976 to January 26, 2011 when Georgia executed its 48th inmate as reported by the Death Penalty Information Center.

Table 1.1 Executions by state since 1976, source: Death Penalty Information Center

<i>State</i>	<i>Total</i>
Texas	464
Virginia	108
Oklahoma	96
Florida	69
Missouri	67
Alabama	50
Georgia	48
North Carolina	43

There has been significant attention to the application of the death penalty in North Carolina in the modern period. The Raleigh News and Observer is no exception and the

⁸ Death Penalty Information Center. "State by State Database." Accessed December 5, 2010 at http://www.deathpenaltyinfo.org/state_by_state

newspaper covers all aspects of capital punishment cases, as well as public opinion pieces on the current status of the death penalty in North Carolina.

In recent years North Carolina has instituted several major progressive death penalty reforms. The North Carolina General Assembly can be credited with passing key reforms that have transformed the capital process in North Carolina. These reforms include the creation of the Office of Indigent Defense Services under the “Indigent Defense Services Act of 2000” (“IDS Act”).⁹ This piece of legislation guarantees a standard of service of defendants in capital cases who otherwise may not receive adequate representation. In addition, the General Assembly passed the Racial Justice Act (RJA) on August 6, 2009 and was signed by the Governor on August 11, 2009.

The first of its kind, the RJA acknowledges the inherent racial bias of the death penalty in North Carolina and makes it illegal to execute inmates who can provide evidence, including statistics, that their sentencing was influenced by racial bias. The following chapter addresses the legality of executing other vulnerable populations in North Carolina, those with mental capacity concerns and severe mental illness. My analysis will investigate the execution of both populations in the historical and modern period of the death penalty in North Carolina.

A Historical Perspective on North Carolina as a “Progressive Southern State”

V.O. Key Jr.’s influential work, “Southern Politics,” provides keen insight into North Carolina’s history as a progressive southern state. In the chapter titled, “North Carolina: Progressive Plutocracy,” Key outlines the historical basis of North Carolina’s unique

⁹ Indigent Defense Services. “The IDS Commission and IDS Office.” Accessed 1/15/2011 at <http://www.ncids.org/>

progressive nature. Key points to North Carolina's "regional self-examination," that has made it famous for "academic freedom and for tolerance," which is promoted in part by the state university¹⁰. He points to North Carolina's unwillingness in 1861 to call a secession convention by popular vote, further differentiating North Carolina from the other southern states; Key notes that "large land- and slave-holdings played a less-important part [in state dynamics] than in other states."¹¹

In addition to inherent differences given the presence of North Carolina's state university, the lessened importance of large land-holdings and slave-holdings, Key describes North Carolina's progressive position within the South as a matter of inertia:

The causal influences in any social gestation are elusive. What moves a people to action, what gets the ball of social inertia rolling one direction instead of another, or rolling at all, is a pretty question. Yet once a trend starts, it is strongly disposed to persist, difficult to reverse. A sequence of historical events often stimulates a social organism to a particular line of action. Those events are sometimes manifestations of deep evolutionary processes and may give the impression that they are the prime movers themselves.¹²

North Carolina's early qualities differentiated it from other southern states, eventually giving way to differences in policy and a more progressive dynamic within the state. Progressive precedents in race-relations, education, democratic reform, among other aspects, have enabled North Carolina to continue to enact progressive policies, built upon a rich progressive history.

¹⁰ Key, V.O., Jr. *Southern Politics*. New York: Alfred A. Knopf, 1950.

¹¹ *Ibid.*

¹² *Ibid.*

Race and the Death Penalty

There has been considerable evaluation of the capital punishment system in the United States. The Supreme Court has been involved in actively critiquing the application of the death penalty. In the landmark case, *Furman v. Georgia* (1972), the Supreme Court ruled “that the imposition and carrying out of the death penalty... constitute[s] cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.”¹³ In his concurring opinion Stewart forcefully states his objection to the constitutionality of the death penalty: “I simply conclude that the Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed.”¹⁴ Justice Douglas directly addressed one element of the arbitrary nature of the death penalty- the racial bias implicated in the application of the death penalty:

But the words, at least when read in light of the English proscription against selective and irregular use of penalties, suggest that it is ‘cruel and unusual’ to apply the death penalty -- or any other penalty -- selectively to minorities whose numbers are few, who are outcasts of society, and who are unpopular, but whom society is willing to see suffer though it would not countenance general application of the same penalty across the board.¹⁵

Justice Douglas goes further in asserting the inclination towards bias in the capital punishment system:

¹³ 408 U.S. 238 (1972)

¹⁴ *Ibid.*

¹⁵ *Ibid.*

Yet we know that the discretion of judges and juries in imposing the death penalty enables the penalty to be selectively applied, feeding prejudices against the accused if he is poor and despised, and lacking political clout, or if he is a member of a suspect or unpopular minority, and saving those who by social position may be in a more protected position.¹⁶

In the following sections I will examine two seminal studies conducted on racial bias in the application of the death penalty, both in terms of the defendant and the victim of the crime. In closing I will include discussion of the relevance to populations with mental retardation and severe mental illness, as well as the racial dimension of both populations, which I explore in my analysis.

Racial Bias

Much has been written on the racial bias evident in the application of the death penalty. In particular there has been much scholarly attention devoted to jury selection and prosecutorial decisions to seek the death penalty. In his seminal work on racial bias in capital punishment, David Baldus et al. conducted a comprehensive study of racial bias in Georgia's capital punishment system. The Baldus study found racial inequality in the application of the death penalty in Georgia.¹⁷ Baldus et al. found that racial bias in Georgian prosecutors' decision to seek the death penalty to be the primary factor in the inequity of the application of the death penalty in Georgia.¹⁸

¹⁶ *Ibid.*

¹⁷ David Baldus, George Woodworth and Charles A. Pulaski, Jr. *Equal Justice and the Death Penalty: A Legal and Empirical Analysis*. Boston: Northeastern University Press, 1990.

¹⁸ *Ibid*

Additional large studies on the death penalty also find racial bias. Michael Radelet and Glenn Pierce's study of over 1,000 death penalty cases in Florida also found that race is a significant factor on several levels, including the race of the defendant.¹⁹ Yet, the most significant factor found within the study is the race of the murder victim.²⁰ These two large studies both found racial bias, and provide a background for my analysis of diminished mental capacity and severe mental illness along the dimension of race.

Explanations for the racial bias evident in the application of the death penalty vary. Accounts of stereotyping of African-Americans in capital trials are described by Jennifer L. Eberhardt et. al, a study which also underscores the importance of the race of the victim as noted in the above studies by Baldus et al. and Radelet and Pierce²¹. In addition Charles R Lawrence discusses the unconscious racial prejudice not often taken into account in judicial proceedings that may have an impact in the implementation of the death penalty on racial minorities²². The aforementioned studies on racial bias evident in the capital punishment system and scholarship on the psychology that accompanies such findings informs much of my analysis on the targeting of the death penalty on those with diminished mental capacity and severe mental illness and the racial dimension that accompanies my analysis.

¹⁹ Radelet, Michael and Pierce, Glenn. Choosing Those Who Will Die: Race and the Death Penalty in Florida. Florida Law Review. V43 1 1991.

²⁰ *Ibid.*

²¹ Eberhardt, Jennifer L. et al. Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital-Sentencing Outcomes. Psychological Science. V17 383 2005.

²² Lawrence, Charles R. The Id, The Ego, and Equal Protection: Reckoning with Unconscious Racism. Stanford Law Review. V39, 317, 323 1987.

Medical and Legal Definitions of Mental Retardation and Mental Illness

This chapter outlines the definitions of mental retardation and severe mental illness that are applied in the North Carolina judicial system. It provides background information on the status of the two populations that I analyze in the final fifth chapter. The definitions of mental retardation and severe mental illness have evolved over time. This chapter will address the current accepted definitions of mental retardation and severe mental illness that I use as a guideline throughout my analysis and become central features in my coding.

Defining Mental Retardation

The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (hereafter referred to as the DSM IV-TR) diagnoses mental retardation in persons with "significantly subaverage intellectual functioning." This is defined as persons with an "IQ of approximately 70 or below," with "concurrent deficits or impairments in present adaptive functioning... in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health and safety."²³

An important stipulation of the diagnosis is the age requirement- all aforementioned characteristics must be evident before the age of eighteen. In addition, the severity of

²³ American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders. 4th ed. text revision. Washington, D.C.: American Psychiatric Association: 2000. Accessed from Psychiatry Online: March 26, 2010.

mental retardation depends on the IQ level of the individual. The diagnosis increases in severity as IQ decreases. In addition to the scale of severity, the DSM IV-TR allows for a condition “mental retardation severity unspecified” where the individual is presumed to be mentally retarded but IQ testing is not possible. In such cases it is suggested that other tests be employed in order to assess the severity of mental retardation in an individual.²⁴ This is the basis of legally defining mental retardation, and is the basis for the metric of my coding.

The American Association on Mental Retardation (hereafter referred to as the AAMR) has a separate definition for mental retardation. Mental retardation is defined as a “disability characterized by significant limitations both in intellectual functioning and adaptive behavior as expressed in conceptual, social and practical adaptive skills.”²⁵ This definition has the identical stipulation that the behaviors of mental retardation must be present before the age of 18 years. Additionally the AAMR states that the diagnosis should take into consideration the “context of community environments typical of the individual’s age, peers, and culture... and consider [sic] cultural and linguistic diversity and communication, sensory, motor and behavioral factors.”²⁶ This definition is broader in scope than the DSM IV definition and I incorporate contextual cues within my coding given the historical context of my research.

As evidenced by the two varying definitions of mental retardation in the discipline of psychiatry, there has been understandable difficulty arriving at a consensus of what

²⁴ *Ibid.*

²⁵ American Association on Mental Retardation. Mental retardation definition, classification, and system of supports. 10th ed. Washington, D.C: American Association on Mental Retardation: 2002.

²⁶ *Ibid.*

constitutes a diagnosis of mentally retarded. The law in North Carolina has defined mentally retarded as those with an IQ below 70, but there is considerable disagreement at how accurate IQ tests are and the absolute validity of such tests. These considerations have bearing on the constitutionality of executing the mentally retarded, addressed in the following section.

Constitutionality and Mental Retardation

Penry v. Lynaugh (1989) was a landmark case that was directly involved in the first ruling concerning the constitutionality of executing the mentally retarded. Penry involved a defendant who admittedly brutally attacked a woman in her home, beating, raping and stabbing her, causing her death shortly thereafter. He was charged with capital murder and adopted an insanity defense. However, the defendant's mental capacity was significantly below average, and consequently his culpability remained questionable: "He was found competent to stand trial, but a clinical psychologist testified that the inmate was mentally retarded, having an IQ between 50 and 63 and possessing the ability to learn of a 6 1/2-year-old and the social maturity of a 9 or 10-year old," this however did not prevent a jury from returning a guilty verdict and ultimately sentencing him to death.²⁷ The case was appealed and was eventually put before the United States Supreme Court. The Supreme Court was charged with resolving one main issue central to the imposition of capital punishment on the mentally retarded; the Supreme Court had to decide "whether it was cruel and unusual punishment to execute a mentally retarded

²⁷ 832 F.2d 915; 1987, U.S. App. LEXIS 15569. Case Summary. LexisNexis.

person with the inmate's reasoning ability.”²⁸ The decision found “that the Eighth Amendment did not prohibit the execution of mentally retarded offenders in light of a lack of consensus. At the time of Penry, only two states prohibited the execution of mentally retarded persons.”²⁹ This decision remained the standing ruling on the execution of the mentally retarded for thirteen years, until it was overturned in 2002 by *Atkins v. Virginia*.

In 2001 the Supreme Court granted a petition for writ of certiorari for a North Carolina case involving Ernest McCarver. The Supreme Court was to address one question: "Whether significant objective evidence demonstrates that national standards have evolved such that executing a mentally retarded man would violate the Eighth Amendment prohibition against cruel and unusual punishment.”³⁰ Many amicus briefs were filed in support of McCarver and ultimately the North Carolina legislature enacted a statute that prohibits the execution of the mentally retarded. The North Carolina statute (§15A-2005) follows the DSM definition of mental retardation and applies the 70 IQ cut off for those deemed to be mentally retarded and ineligible for the death penalty. In September 2001 the Supreme Court dismissed the McCarver case as moot and granted a petition for writ of certiorari for *Atkins v. Virginia*.

In *Atkins v. Virginia* (2002) the United States Supreme Court overturned their previous ruling in *Penry v. Lynaugh*, subsequently ending the execution of the mentally retarded. The defendant was described as “mildly mentally retarded” (*Atkins*). When

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ American Psychological Association. “McCarver v. North Carolina, 533 U.S. 975.” Accessed January 25, 2011 at <http://www.apa.org/about/offices/ogc/amicus/mccarver.aspx>

ruling on the case the Supreme Court found that there had been significant changes in the application of the death penalty to the mentally retarded on the state level; including fourteen state legislatures outright banning the execution of the mentally retarded. “It was not so much the number of these states that was significant, but the consistency of the direction of change... the large number of states prohibiting the execution of mentally retarded persons (and the complete absence of legislation reinstating such executions) provided powerful evidence that today society viewed mentally retarded offenders as categorically less culpable than the average criminal (Atkins).”³¹ In addition, the Supreme Court ruled that the “punishment was ‘excessive,’ and therefore prohibited by the Eighth Amendment, if it was not graduated and proportioned to the offense”; thus, overturning *Penry* and providing amnesty for the mentally retarded on a national level.³²

Defining Severe Mental Illness

Although the DSM IV- TR does not have a singular broad definition of severe mental illness, it does provide an outline of different levels (axes) which include illnesses that can be definitively included in the definition of severe mental illness. I rely on the following definitions in my coding which will be described further in Chapter Four.

Axis I is comprised of all the disorders that are not personality related. Axis I includes Delirium, Dementia, Amnestic, Schizophrenia, mood disorders, dissociative disorders, other psychotic disorders, as well as other cognitive disorders. Axis II is comprised of personality disorders and the aforementioned diagnosis of mental

³¹ *Atkins v. Virginia*: Case in Brief. LexisNexis.

³² 536 U.S. 304 (2002)

retardation. Included in Axis II are Paranoid Personality Disorder, Schizoid Personality Disorder, Schizotypal Personality Disorder, Antisocial Personality Disorder and Borderline Personality Disorder, as well as “prominent maladaptive personality features that do not meet the threshold for a Personality Disorder.”³³ These disorders are associated with various behaviors that are observable. In my analysis I include all inmates who are described as having behavior or traits associated with the aforementioned illnesses.

In addition to the DSM IV-TR definition of mental illness, there are federal definitions of severe mental illness (SMI) and Serious Emotional Disability (SED). These conditions are defined by the Center for Mental Health Services (CMHS) in the Federal Register. The CMHS definition of SMI has two components:

- (1) adults with a serious mental illness are persons 18 years and older who, at any time during a given year, had a diagnosable mental, behavioral, or emotional disorder that met the criteria of DSM III-R and... that has not resulted in functional impairment which substantially interferes with or limits one or more major life activities...
- (2) adults who would have met functional impairment criteria during the referenced year without the benefit of treatment or other support services are considered to have serious mental illnesses... DSM III-R ‘V’ codes, substance use disorders, and developmental disorders are excluded from this definition.³⁴

The CMHS definition of SED includes children with “serious emotional disturbance” from birth until the age of 18 “who currently or at any time during the past year have had

³³ American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders. 4th ed. text revision. Washington, D.C.: American Psychiatric Association: 2000. Accessed March 26, 2010 at Psychiatry Online.

³⁴ Substance Abuse and Mental Health Services Administration Estimation Methodology for Adults with Serious Mental Illness (SMI): 1994. Center for Mental Health Services, HHS 64: 33890-33897. Accessed on March 26, 2010.

a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified within DSM III- R that resulted in functional impairment, which substantially interferes with or limits the children's role or functioning in family, school, or community activities.”³⁵ It is important to note that the CMHS definitions have not been updated since 1994 and consequently references the DSM III-R; however, it is presumed that the current version of the DSM applies. The CMHS definition of SED informs my coding of cases where there is evidence of childhood mental illnesses during within the article.

The legality of executing the severely mentally ill has been questioned by medical authorities as well as legal authorities. The question of culpability of the defendant is arguable in the case of severe mental illness, and as there is no umbrella definition adopted by the court system the legality of executing the severely mentally ill, at the moment, is addressed on a case-by-case basis on a state level. In North Carolina there are several different manners in which a defendant's mental health can be factored into the legal process, and the possibility of capital punishment dismissed. I will address these instances next.

Legality and Mental Illness

The Charlotte School of Law in their work, “Mental Illness and the Death Penalty in North Carolina: A Diagnostic Approach,” lays out the several different “legal considerations of Mental Illness in North Carolina Capital Cases” that are particularly

³⁵ *Ibid.*

relevant to my discussion concerning the execution of the mentally ill.³⁶ There are several different circumstances where a defendant's mental condition can influence the legality of execution: the insanity defense, the diminished capacity defense, defendant competence, and during the period of penalty phase mitigation.

In North Carolina it is possible to make an insanity defense, in which case the death penalty is not applicable. The insanity defense in North Carolina "is an affirmative defense... meaning that a defendant's culpability can be excused or limited even if the factual allegations of the crime are admitted or proved. A possible verdict of Not Guilty by Reason of Insanity (NGRI) may be rendered either by a judge or a jury."³⁷ North Carolina does not have a definition of insanity and relies on previous case law. The legal assessment of insanity relies on the M'Naghten Rule. The North Carolina Court of Appeals reaffirmed the M'Naghten Rule in 1996:

A defendant in North Carolina can be exempt from criminal responsibility for an act by reason of insanity, if he is able to prove at the time of the offense, 'he was laboring under such a defect of reason from disease or deficiency of mind as to be incapable of knowing the nature and quality of his act or if he did know this or distinguishing between right and wrong in relation to the act.'³⁸

However, the reliability of the M'Naghten Rule is debated among psychiatric and legal professionals alike.

³⁶ Mental Illness and the Death Penalty in North Carolina: A Diagnostic Approach. 2007. Charlotte School of Law: 1-76. Accessed on March 15, 2010.

³⁷ *Ibid.*

³⁸ *Ibid.*

Second, defendants in North Carolina are able to make a diminished capacity defense, which was recognized in North Carolina in 1988. A diminished capacity defense “is raised by defendants whose mental disabilities are not severe enough to serve as the basis for an insanity defense but may be sufficient to raise questions about their ability to form the requisite specific intent necessary to commit particular crimes.”³⁹ The standard for evaluating the grounds for a diminished capacity defense depends on reasonable doubt which is defined as “whether the evidence of defendant’s mental condition is sufficient to cause a reasonable doubt in the mind of a rational trier of fact as to whether the defendant was capable of forming the specific intent to kill the victim at the time of the killing.”⁴⁰

Third, the question of defendant competence can be affected by a defendant’s mental state throughout the legal process. It is noted in “Mental Illness and the Death Penalty in North Carolina” that North Carolina has several areas in which defendant competence (as legally determined in *Dusky v. United States*) must be met:

- (1) Competence of a defendant to waive interrogation rights, such as the right to have assistance of a lawyer or to remain silent;
- (2) Competence of a defendant to stand trial;
- (3) Competence of a defendant to waive his right to counsel and to act as his own lawyer;
- (4) Competence of a defendant to plea guilty,
- (5) Competence of a defendant to proceed during post-conviction appeals;

³⁹ *Ibid.*

⁴⁰ *Ibid.*

- (6) Competence of a defendant to drop his appeals against his conviction and death sentence; and
- (7) Competence of a defendant to be executed

If at any time a defendant is found to be incompetent they are deemed to be protected from legal proceedings against them. Questions of capacity may be challenged in court and the various IQ aptitude tests to determine legal competence are much debated.⁴¹

The final way in which North Carolina considers capital cases occurs during penalty phase mitigation where the defendant's mental illness can be taken into consideration. There are two specific circumstances where North Carolina allows juries to take into consideration a defendant's mental or emotional state:

- (1) N.C.G.S. 15A-2000 (f) (2): The capital felony was committed while the defendant was under the influence of mental or emotional disturbance.
- (2) N.C.G.S. 15A-2000 (f) (6): The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired.

These considerations under North Carolina law all affect the legality of executing defendants with mental illnesses, but neither of the aforementioned considerations have led to prohibiting outright the execution of defendants with severe mental illness. As evidenced by the requirements to be considered ineligible for the death penalty in North Carolina on grounds of mental illness, it is very difficult to secure such a ruling. In my analysis I utilize these medical and legal definitions to guide and standardize the coding. The following chapter details the methodology employed in my analysis.

⁴¹ *Ibid.*

Chronicling the death penalty in North Carolina: The News and Observer

The Raleigh News and Observer provides the most comprehensive catalogue of executions in North Carolina since 1900. Virtually all inmates executed since 1900 are the subject of at least one article on or following the day of their execution, and several have multiple articles. In total there are 572 Raleigh News and Observer articles for the 443 inmates executed from 1900 to 1976, an average of 1.3 articles per inmate. Out of the 443 inmates executed there are only 10 inmates that have no article in the Raleigh News and Observer. For these reasons the Raleigh News and Observer is the primary source for this analysis, providing the best scope and depth of the chronology of the execution of inmates in North Carolina.

General factors affecting the length of the articles

The articles written on the day of execution of inmates in Central Prison are particularly “newsworthy” and include many details concerning all particular matters relevant to the application of capital punishment. The lengths of the articles vary historically. However, there are some consistent factors that affect the length of any given article. Inmates whose crimes were especially heinous and gruesome often have articles that detail their crime extensively. These articles often include commentary by officials, such as police officers, sheriffs, the prosecutor and victims’ family members or acquaintances. Inmates whose innocence or culpability is questionable also have longer articles. These articles

present the judicial processes relevant to the inmate's case and statements from those involved in the case concerning the inmate's possible innocence or guilt.

Pre-Execution Articles

Articles written the day before the execution tend to focus on the inmate, his or her crime and the judicial process. Many articles that were written the day before the scheduled execution include a history of the inmate, such as prior criminal history and the inmate's behavior while in prison. In addition, these articles detail whether or not there were legal pleas for clemency or insanity pleas entered on the inmate's behalf.

Post Execution Articles

Articles written post-execution focus mainly on the execution and the crime. The majority of the articles written on the day after the execution are long descriptions of the execution. Articles detail the mechanism of execution, the witnesses in attendance and the execution itself. In virtually all articles the author describes the inmate's entrance into the death chamber, their behavior immediately before the execution, their final words and their actual execution. The descriptions of the actual execution vary in length depending on several factors. Executions that used new methods of execution tend to have very detailed descriptions. Executions where the mechanism faltered or the execution otherwise did not go smoothly also tend to have detailed and lengthy descriptions. In these cases there are often detailed descriptions of the witnesses' reactions to the execution and often quotes from the witnesses as well. These quotations often have useful

descriptions of the inmate's mental condition and detail any erratic behavior as the execution approaches.

A Chronology of Articles

Articles from 1900 to 1910: Early Implementation

Articles written in this period are notably different from articles written in later periods. These articles chronicle executions before the centralization of the death penalty in Raleigh, shortly after the discontinuation of public executions. These articles tend to be lengthy, with whole sections devoted to the inmate's background and a detailed explanation of the crime. Authors of the articles in this period recount in vivid detail the each inmate's execution and pay close attention to the inmate's composure throughout the proceedings. Many articles in this time period note the mental condition of the inmate at the time of the execution or any pertinent historical information that include instances of mental illness or diminished mental capacity. These characteristics contributed to the newsworthiness of the article. Figure 3.1 is a typical article written from the 1900 to 1910 period. The article is comprised of long paragraphs and several headlines which describe the main characteristics and the location of the execution. The author describes in detail the events approaching the execution, the execution itself, Walter Partridge, the inmate, and the crime for which Walter Partridge was being executed. Articles in this time period tend to be comprehensive and authors provided many details that are not fully described in later articles.



Figure 3.1 The execution of Walter Partridge of Fayetteville. *News and Observer*, April 4, 1905

Articles from 1910 to 1930s: The Early Use of the “Humane” Electric Chair

Articles written after the centralization of the death penalty to Raleigh, N.C. were the first articles to be very concerned with the mode of execution. Articles meticulously described the execution. This provides a good detailed account of the inmate’s behavior when entering the death chamber and during the execution proceedings. Articles written in this time period were lengthy and involved details of the inmate’s personal history, as well as the crime. The development of psychiatry and psychology during this time period contributed to an increase in the descriptions of the inmates’ mental conditions by experts. Figure 3.2 is an excellent representation of the articles written between 1910 and 1930. The article’s main headline reads “Electric Chair Claims Murderer,” with the

inmates name following and several key aspects of the crime. Headlines of this time period often emphasized the electric chair and then later described the inmate who was executed, where any newsworthy mental competency concerns would be addressed. The author outlines the testing of the electric chair, the moments approaching the execution and the execution itself, in great detail. The article also gives a brief history of the crime committed by L.M. Sandlin and commentary from several public officials.



Figure 3.2 The execution of L.M. Sandlin. News and Observer, December 30, 1911

Articles from the mid-1930s: Execution by Gas

Articles written in the mid-1930s focused on change in the mode of execution. In 1936 North Carolina executed the first inmate by asphyxiation. Authors focused on the new technology and the public and official favor or disfavor of the method. Articles focused

mainly on the execution and provided details of the inmates before the execution and in their dying moments. The articles from this time period mention mental condition in the inmates' history if there is any relevant information. Statements about the inmates' mental conditions are usually given in relation to judicial processes such as court appeals or clemency. Figure 3.3 is an article that describes the asphyxiation of two inmates and the electrocution of a third inmate. The article gives a detailed account of the execution preparation and the execution. The inmates' behavior leading up to the execution is described, as well as the gruesome details of their actual deaths.

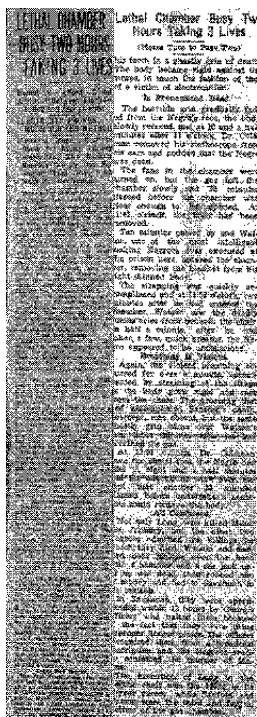


Figure 3.3 The execution of William Long, Thomas Watson and J.T. Sanford. News and Observer, February 8, 1936

Articles from the Late 1930s and 1940s: World War II

The articles written during World War II diminished in length. Articles from this time period are shorter in length and have less information relevant to the inmates' mental condition. Authors focus on the bare bones of the crime, the execution and often include a long list of official witnesses to the execution. Some articles, however, do include relevant information about the inmate's mental condition when there are appeals or requests for clemency that involve insanity or low mental capability. The question of culpability due to mental competency was newsworthy and included in instances where there was significant doubt. Figure 3.4 is a representative article from the WWII era. The article is very short and does not provide many details. There is only relevant information about the crime and a quote from the inmate provided. There is no description of the execution, as was customary in earlier years.

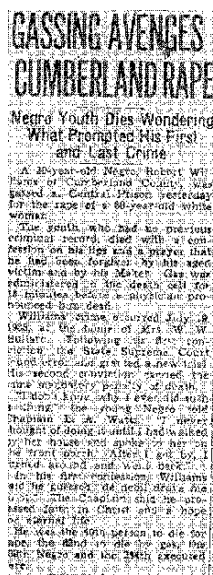


Figure 3.4 The execution of Robert Williams of Cumberland County. Raleigh News and Observer, March 15, 1940

Characteristics of Modern Period Articles

There was a significant shift in coverage of death penalty cases from the historical period to the modern period of capital punishment. Throughout the historical period there was often a single article written and at most three articles written (the day before the execution, the day of the execution, and the day following the execution). In the modern period there were multiple articles written detailing all facets of the death penalty process including the trial, sentencing, the appeals process, the mitigation hearings, and the execution. For example the first execution after the reinstatement of the death penalty in North Carolina (James Hutchins, executed in 1984) had 33 articles in the Raleigh News and Observer. The following section includes three articles that are representative of modern period articles and descriptions of their respective traits.

Pre-Execution Articles

Modern period pre-execution articles in the News and Observer are significantly broader in scope than the historical articles. There is a significant increase in the amount of attention paid to death penalty cases in the News and Observer and articles cover all facets of the death penalty: the crime, the judicial processes, the execution and public opinion.

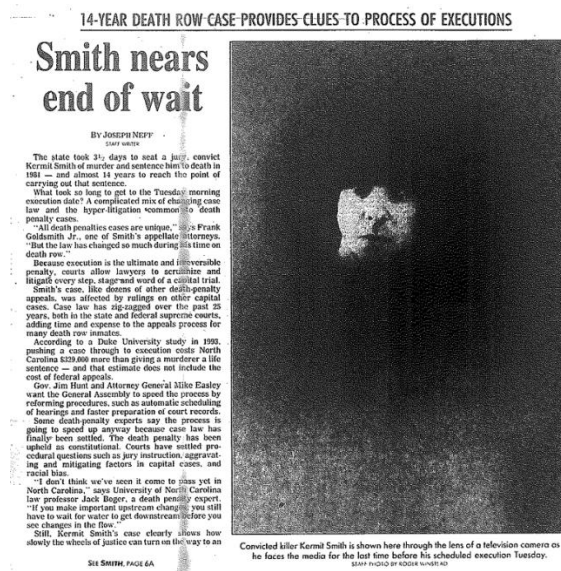


Figure 3.6 The progression of Kermit Smith's death penalty case, News and Observer, January 23, 1995 (Page 1 of 3)

Figure 3.6 is an article that describes the progression and particulars of Kermit Smith's death penalty case. This article features an abundance of information typical of modern period articles, including information on the crime, the judicial process (the initial trial, appeals, and request for clemency) and specific information about inmate. Descriptions of the inmate include any evidence brought forth in mitigation such as mental health. In Smith's case there was no such evidence presented.

Execution Articles

There is still substantial interest in the actual execution of inmates in the modern period of the death penalty. Often whole articles will be dedicated to the description of the execution in vivid detail. Witnesses from the media are allowed to observe the execution and the News and Observer has a journalist attend and report on executions.

'Then there was silence,' witness says of Barfield death

Ramona Jones, a staff writer for *The Raleigh Times*, was one of the witnesses to the execution of Margie Velma Barfield. Following is her account.

The first 10 minutes in the tiny, dark room were interminable. Maybe it was the heat, maybe it was the solemn expectation of the execution.

Sixteen witnesses assembled in the room next to Central Prison's death chamber early Friday to watch as the state executed convicted murderer Margie Velma Barfield.

Guards escorted the witnesses into the dark room about 1:40 a.m. The only light came through the large window in the lighted death chamber. Inside the chamber, a straight-backed wooden chair — a reminder of past gas-chamber deaths — seemed to stare back at the witnesses.

Three women and 13 men waited in the witness room for Central Prison guards to roll the 52-year-old woman into the chamber. The only sounds were a brief whisper, a few shuffling feet, the jingling of change in someone's pocket.

About 1:50 a.m., the latch on the heavy steel door to the chamber moved, and the door swung open. Mrs. Barfield glanced into the chamber as two uniformed guards rolled her gurney toward the open door. She

turned her head away from the witnesses and closed her eyes as the gurney was moved in front of the window. The double-paned glass and about 3 feet were all that separated Mrs. Barfield from the first row of witnesses.

Her brown hair was freshly curled.

She was wearing tortoise-shell glasses and her favorite pair of pink pajamas. Only the embroidered collar was visible from under a blue-green sheet. Bags of saline solution dripped slowly into the intravenous tubes in both of her arms.

The two guards pulled a beige plastic curtain closed lengthwise across the narrow chamber, sandwiching the gurney between the curtain and the window. The curtain moved slightly as the intravenous lines were attached to the lethal solutions, which were set up out of sight.

The hands of the witnesses' watches moved slowly toward 2 a.m. Central Prison Warden Nathan Rice came into the witness room, his deep voice breaking the silence. Everything was in order, he said. After a phone call to the state secretary of correction, the execution would begin.

One witness dropped his head. Another whispered a prayer. Most looked on without expression.

Mrs. Barfield's breath was shallow and rapid when she was rolled into the chamber.

Her lips moved, as if speaking to the guards before they left. Two other times, while waiting for the execution to begin, Mrs. Barfield's mouth moved as if she were speaking or praying. Her tongue wet her lips several times. Her eyes blinked once, maybe twice; otherwise they were closed.

Eight law enforcement personnel, who were official witnesses, sat in two rows in front of the window. A uniformed guard stood by the door, and another stood by the wall near the window. Three media witnesses stood, and one sat behind the men.

Mrs. Barfield's attorney, James D. Little, and her friend Ann Graham Lotz of Raleigh, the daughter of evangelist Billy Graham, also stood behind the law enforcement personnel. They held hands and smiled at Mrs. Barfield, although she couldn't see them.

A few moments after the warden announced that the execution would begin, Little got a chair from across the small room, and Mrs. Lotz sat down. Little stood behind her with his hands on her shoulders. His expression was resigned but not mournful.

A few minutes after 2 a.m., Mrs. Barfield's breathing became deeper and more regular. She

neither smiled nor frowned. She didn't try to fight off the deadly sleep but seemed to slip peacefully into unconsciousness.

At that time, the sleeping agent — sodium thiopental — probably had been injected. The killing agent — procureonium bromide — followed. A few minutes later, the sheet that had been rising and falling slightly moved no more. The warm color in Mrs. Barfield's face began to pale slightly, almost imperceptibly.

From somewhere, a fly buzzed by her head, made one loop and was gone.

Then there was silence.

Suddenly the gurney moved, and a stocky man in a white coat — the prison doctor — entered the chamber. He moved between Mrs. Barfield and the window. He listened to her chest with a stethoscope, then pulled back her glasses and checked her pupils for dilation. He turned and closed another beige curtain, covering the window to the witness room.

Someone flipped a switch, and the room was flooded with sharp light, more like the end of a movie than the end of a life.

Rice returned to the witness room to announce the time of death — officially 2:15 a.m.

Figure 3.5 The execution of Velma Barfield, *News and Observer*, November 3, 1984

Figure 3.5 is an article written by a *Raleigh News and Observer* reporter who was witness to the execution of Velma Barfield. It is an example of an article written solely on the execution. Modern period *Raleigh News and Observer* articles on the actual execution provide detailed descriptions of the inmate that provide information concerning the mental condition of the inmate. This particular article parallels the articles written in the historical period that were written the day after the execution. It includes a very detailed description of the Barfield's physical appearance and her behavior throughout the execution process.

Description of the Judicial Process

Many articles written in the modern period focused specifically on the judicial processes of the death penalty. The central focus of many articles involved pleas for clemency, mitigation hearings, and detailed accounts of the complex appeals process.

Chronology of Rook case, appeals of death penalty

May 12, 1960 — Ann Marie Roche, 25, was kidnapped, beaten, raped, cut with a knife, run over with a car and left to bleed to death in a field near Dorothea Dix Hospital.

May 15, 1960 — John William Rook was arrested on two misdemeanor charges and later confessed to the kidnapping, rape and murder.

Oct. 23, 1960 — A Wake Superior Court jury found Rook guilty of rape, kidnapping and first-degree murder and four days later recommended that he be sentenced to death. Execution was scheduled for Jan. 9, 1961, but was automatically postponed pending appeal.

Nov. 3, 1961 — N.C. Supreme Court affirmed Rook's conviction and sentence. Execution was later rescheduled for Feb. 19, 1962, but was postponed pending appeal.

March 22, 1962 — U.S. Supreme Court declined to review Rook's case. Execution date was later set for Oct. 1, 1962, but was postponed pending appeal.

Oct. 27, 1963 — Superior Court Judge John C. Martin denied motions to overturn Rook's conviction or sentence.

July 6, 1964 — N.C. Supreme Court refused to review Martin's decision.

Dec. 10, 1964 — U.S. Supreme Court refused to review Rook's case.

Feb. 19, 1965 — U.S. Supreme Court denied Rook's request for a rehearing. Execution was later set for June 23, 1965, but was postponed pending appeal.

Oct. 18, 1965 — U.S. District Judge W. Earl Britt denied Rook's request to overturn his conviction or sentence. Execution date later was set for Feb. 14, 1966.

Jan. 31, 1966 — Fourth U.S. Circuit Court of Appeals affirmed Britt's decision and refused five days later to postpone execution.

Feb. 10, 1966 — U.S. Supreme Court postponed execution, giving Rook's lawyers time to submit a request for review of his case.

July 7, 1966 — U.S. Supreme Court refused to review case.

July 15, 1966 — Execution date was set for Sept. 19.

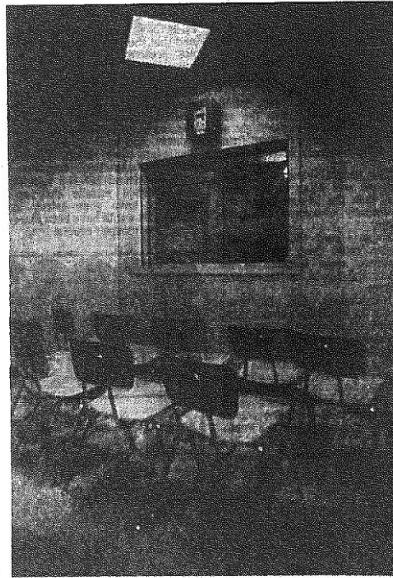
Aug. 20, 1966 — Superior Court Judge D. Marsh McClelland of Burlington refused to postpone execution or grant a hearing.

Sept. 9, 1966 — N.C. Supreme Court refused to postpone execution or review case.

Sept. 12, 1966 — Britt refused to postpone execution or overturn conviction or sentence.

Sept. 15, 1966 — Rook's attorneys asked Gov. James G. Martin to postpone execution.

Sept. 16, 1966 — Fourth Circuit Court of Appeals affirmed Britt's ruling and refused to postpone execution.



Observation room outside the execution chamber

Staff photo by Gene Furr

Figure 3.7 The chronology of John Rook's death penalty case, Raleigh News and Observer, September 18, 1986

Figure 3.7 is an article focused on the judicial aspects of John Rook's death penalty case. There is a brief description of his crime and a lengthy description of the appeals process. This article contains little information about Rook's mental condition. In the modern period many articles focus on particular aspects of the judicial process and do not involve any description of the inmate. There is considerable attention paid to judicial processes, especially the appeals process, in the modern period. These articles rarely include significant description of the inmate unless there is specific mitigating evidence or hearings on competence to stand trial where descriptions of the inmate are necessarily included.

The Raleigh News and Observer articles provide reliable and consistent descriptions of inmates across time, from 1900 to the present. All articles are from a

single news source, the newspaper of record for North Carolina and include descriptions of almost all inmates executed since 1900. The main limitation of the Raleigh News and Observer is the short length of the articles written during World War II. Although articles written during World War II are shorter in length, they still include relevant information about the inmates, and articles written during that time period include inmates described as having indications of diminished mental capacity and mental illness.

Methods and Coding

The Raleigh News and Observer provides a comprehensive catalogue of articles on all of the executions in North Carolina from 1900 until the present. Virtually all inmates executed since 1900 have at least one article accompanying their execution, and several have multiple articles. Only ten out of 455 inmates do not have articles accompanying their execution. In this thesis I analyze all 445 articles for the inmates' mental condition, coding for levels mental capacity and mental illness in the articles' descriptions of the inmates.

Database

Using a list of all inmates executed in North Carolina and their respective execution dates we used the North Carolina Historical Collection to search the Raleigh News and Observer for all articles directly related to the execution of inmates in North Carolina. We searched for articles in newspapers that were written the day before the execution, the day of the execution and the day after the execution for inmates executed before 1972. We used a one week window for inmates executed after 1976 due to the increase in coverage of the death penalty and executions. We included any additional articles about executed inmates that were not on the list, which totaled two inmates. In total the database includes 572 articles for the pre-modern era (before 1972) and 340 articles in the modern era (1976-present).

The full article was read and all information was entered verbatim from the article into a database. The database includes a descriptive section with the inmate id number, the inmate's name, the date of the execution and identifying information from the article, such as the date of the article, the page number and the article title so that the article can be easily located. The database also includes fields for different specific topics: of interest to my thesis are all of the fields pertaining to the mental condition of the inmate.

Coding

From the main database a smaller form was created for each specific area of interest. The form used to code the inmates included all of the fields that have relevant information about the inmate's mental condition. The relevant fields for my analysis are as follows: "intelligence/mental capacity," "Discussion of not understanding pending execution," "humanizing comments," "demonizing comments," "animal references," "physical description," and "other." All of the aforementioned fields include pertinent information concerning the mental condition of the inmate. In many instances the field was left blank when there was not any relevant information in the article. The form that I used to code inmates' mental condition included eight check boxes in total: one for no indication of issues with mental capacity and one for no indication of mental illness, and checkboxes for both mental capacity and mental illness levels of mild (1), moderate (2) and severe (3).

I coded inmates using the DSM IV – TR diagnoses of mental retardation and Axis I and II diagnoses of severe mental illness described in Chapter Two as a guide. I used descriptions of IQ, "mental age," and descriptions of diagnoses by psychiatrists whenever

they were included in the article. When direct statements of an inmate's IQ or psychiatric diagnosis were not mentioned I used the descriptions of the inmate's behavior in the article. Some inmates were coded in both categories, mental capacity *and* mental illness, if there were descriptions of both conditions in the article. Thus it is possible for an inmate to be coded mild (1) for mental illness and severe (3) for mental retardation or any other variation of both mental illness and mental retardation.

In many articles there were multiple and sometimes contradictory statements about the inmate's mental condition. In each case I coded the inmate by the highest level statement or description concerning the inmates' mental condition. For example, an article may state the mental age of the inmate to be that of a nine-year old but the inmate would be found competent by a psychiatrist to be executed and the court to support that diagnosis. In that case the inmate would be coded at the highest level as "severe" due to the mental age of the inmate. These instances were not uncommon, and given the prosecutions efforts to downplay issues surrounding inmates' competency to stand trial. I coded using the highest degree to which questions of mental competence were raised, even if there were dissenting opinions mentioned within the article. The use of the maximum level of description when coding articles included the maximum number of cases where any mental capacity or mental illness issues were in doubt.

Mental Capacity

In simple terms mental capacity is widely acknowledged to describe the intelligence of an individual. In the case of the mentally retarded there is variation in definitions and diagnoses. The American Psychiatric Association's Diagnostic and Statistical Manual of

Mental Disorders (hereafter referred to DSM IV-TR) diagnoses mental retardation in persons with “significantly subaverage intellectual functioning,” which is defined as persons with an “IQ of approximately 70 or below,” with “concurrent deficits or impairments in present adaptive functioning... in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health and safety.”⁴² I coded all the inmates with mental capacity issues using the DSM IV – TR as my guide.

Inmates were coded as “mild” if the inmate’s IQ was between 70 and 75 or if there was one of the impairments listed in the DSM IV – TR definition for mental retardation present in the description of the inmate. The “mild” level also includes inmates whose articles indicate that there was a plea for commutation based on mental retardation that did not include a formal evaluation or additional statements testifying to the inmate’s mental condition. Descriptions of the inmate’s lack of education or low level of education were also coded as “mild.” These descriptions often included statements such as “unlettered,” and “ignorant.”

Inmates were coded as “moderate” if the inmate has an IQ at or below 70 or had more than one of the impairments listed in the definition for mental retardation. Descriptions of “moderate” mental retardation included phrases that indicated that the inmate was mentally impaired like: “mentally weak,” “feeble minded,” “slightly subnormal” and “simple.” These phrases evolve over time and my coding reflects the change in terminology over the decades.

⁴² American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders. 4th ed. text revision. Washington, D.C.: American Psychiatric Association: 2000. Accessed on March 26, 2010 at Psychiatry Online.

Inmates were coded as “severe” if there was a formal evaluation of the inmate with and IQ below 70 and descriptions of more than one of the impairments listed in the DSM IV – TR definition of mental retardation. Descriptions by psychiatrists often included direct statements of the inmate’s “mental age” which was used in place of IQ when coding if the inmates IQ was not specified. Inmates were also coded as “severe” if there were descriptions in the article that indicated that the inmate had no understanding of the execution or the crime. These descriptions were consistent over time and included indications that the inmate “did not know right from wrong,” or “could not understand the crime or the punishment.”

Table 3.1 Excerpts from articles with typical phrases used in the three levels of mental capacity: mild (1), moderate (2) and severe (3)

<i>Level</i>	<i>Code</i>	<i>Typical Phrases</i>
No indication	0	--
Mild	1	“decidedly ignorant in type” “unlettered”/“ignorant” “amiability that was pathetic”
Moderate	2	“mentally weak”/“low mentality” “sub-normal”/“feeble-minded” “obviously confused by questions” ”mentally deficient”
Severe	3	“too much of a brute to realize” “has no conception of the enormity of the crime” “mentality of a nine-year-old child” “Though evidence at trial showed Moody had an IQ of 81, his attorneys say he had scored in the mid-60s on previous tests.”

Table 3.1 illustrates how inmates were coded from mild to severe on the mental capacity scale. The phrases in the table are consistent with how all of the inmates with mental capacity issues were coded. Descriptions of the inmate range from illiteracy and vague descriptions of the inmate as being below average intelligence, coded as mild (1), to inmates that have no understanding of the crime or the punishment and have recorded IQs less than 70, who were coded as severe (3).

Articles often contain multiple statements concerning the mental capacity of the inmate. In many instances News and Observer articles contain quotations from friends, family and others familiar with the inmate that are not medical professionals. These descriptions are informative and assumed to be factual. Table 3.2 below contains three different inmates and excerpts from the Raleigh News and Observer articles that accompanied their executions. I include an inmate from each level: mild (1), moderate (2) and severe (3).

Table 3.2 Example article excerpts and respective coding for mental capacity for mild (1), moderate (2) and severe (3)

<i>Name</i>	<i>Execution</i>	<i>Description</i>	<i>Level</i>
Robert Messer	10/4/1947	“Messer, an unmarried farm hand who worked periodically, was listed on his prison record as having a fourth-grade education but residents from Jackson County, who had known him all his life, said "he's never been to school a day in his life.”	1
Larry Newsome	9/28/1928	“While officials admitted the man was not fully developed mentally, it was held that he knew right from wrong and no intervention was made.”	2
Willie Massey	11/7/1930	“Killing him was like sticking a lamb as it looked with trusting eyes in the butcher’s face.”/ “His rotund and blanched face was abeam in a childlike smile.”	3

Each inmate in Table 3.2 was coded based on the description of the inmate’s mental capacity. Inmate Robert Messer (ID 370736), executed in 1947, is coded as mild (1).

Messer is coded as mild (1) based on descriptions of his educational status. Although the article mentions that his prison record states that he obtained a “fourth-grade education” this fact is later contradicted by those acquainted with him. He is described by people familiar with him as “never having been to school,” and “never [having] had a chance.” Messer never attended school, was uneducated, and since there was no formal discussion of mental retardation he is coded as mild (1).

Inmate Larry Newsome (ID 370517), executed in 1928, is coded as moderate (2). The description of Newsome in the Raleigh News and Observer describes him as “not fully developed mentally.” This description indicated that his mental condition was subaverage. It is noted that Newsome “knew right from wrong.” This description indicates that although he was considered to be of below average intelligence he still could make decisions with an understanding of right and wrong. Base on the description of Newsome’s below average mentality, and his ability to know right from wrong, Newsome is coded as moderate (2). There is no indication that he was severely mentally retarded.

Inmate Willie Massey (ID 370530), executed in 1930, is coded as severe (3). The News and Observer article describes Massey as an inmate that has no conception of his punishment. Massey is described as a “lamb,” looking “with trusting eyes in the butcher’s face,” and as “childlike” and smiling. This is a clear indication that Massey was not an inmate of normal intelligence when facing his execution. The author of the article clearly describes Massey’s lack of understanding his own execution, an indication of severe mental retardation, and therefore Massey was coded as severe (3).

Mental Illness

Although the DSM IV- TR does not have a broad definition of severe mental illness, it does provide an outline of different levels, or axes which consist of illnesses that can be definitively included in the definition of severe mental illness. Axis I is comprised of all the disorders that are not personality related. Axis I includes Delirium, Dementia, Amnestic, Schizophrenia, mood disorders, dissociative disorders, other psychotic

disorders, as well as other cognitive disorders. Axis II is comprised of personality disorders and the aforementioned diagnosis of mental retardation. Included in Axis II are Paranoid Personality Disorder, Schizoid Personality Disorder, Schizotypal Personality Disorder, Antisocial Personality Disorder and Borderline Personality Disorder, as well as “prominent maladaptive personality features that do not meet the threshold for a Personality Disorder.”⁴³

Mental illness was coded using the same methodology as mental capacity, using DSM IV – TR as a guideline. Inmates were coded as “mild” if there were descriptions of the inmate or the inmate’s behavior that infer that the inmate was not mentally well and were acknowledged by the author to be abnormal. These were usually descriptions that the inmate was “odd” or “strangely without friends,” and other descriptions of antisocial behavior, depression and moderate anxiety.

Inmates were coded as “moderate” if there were descriptions of bizarre behavior typical of someone with a mental illness (i.e. Schizophrenia, Bi-polar disorder, etc.) but there was no formal investigation into the mental condition of the inmate. Mentions of suicidal ideation that were not accompanied by a formal evaluation or an actual attempt and moderate depression were also coded as “moderate.”

Inmates were coded as “severe” if there was a formal evaluation of the inmate that found them to be mentally insane. This includes inmates that were previously committed to mental institutions whether or not they were found to be mentally insane by the courts. If there were descriptions of the inmate’s behavior or mental health consistent with the DSM IV – TR definition of an Axis I or Axis II disorder (which can also include mental

⁴³ American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders. 4th ed. text revision. Washington, D.C.: American Psychiatric Association: 2000. Accessed from Psychiatry Online: March 26, 2010.

retardation) then the inmate was coded as “severe.”

Table 3.3 Excerpts from articles with typical phrases used in the three levels of mental illness: mild (1), moderate (2) and severe (3)

<i>Level</i>	<i>Code</i>	<i>Typical Phrases</i>
No indication	0	--
Mild	1	“an odd kind of negro” “the negro was peculiarly without friends” “there was a sickly smile on his face” “always an outcast”
Moderate	2	“afflicted with a nervous disease” “contemplated suicide” “As a young adult, White was gang-raped while in prison, and that event made him fearful and violent, court records showed.”
Severe	3	“[he was] kept in the ward for the criminal insane” “he is subject to fits” “a state court ordered Noland committed to a state hospital, finding him ‘mentally ill’ and ‘dangerous to himself.’”

Table 3.3 illustrates the different levels of mental illness and the typical phrases used in the News and Observer articles ranging from mild to severe. The spectrum moves from mild (1) includes inferences that the inmate has poor mental health and mild depression all the way to court records stating that the inmate is insane and the institutionalization of inmates in the severe level (3).

Articles from the Raleigh News and Observer describe inmates' mental capacity as well as the inmates' mental health. The authors of the articles describe any abnormal behavior, generally indicating mental illness. Given the interest in executions authors generally describe any notable characteristics of the inmates. The table below includes excerpts of articles for all three levels mild (1), moderate (2) and severe (3) of mental illness.

Table 3.4 Article examples and respective coding for mental illness for mild (1), moderate (2) and severe (3)

<i>Name</i>	<i>Execution</i>	<i>Description</i>	<i>Level</i>
Wiley Perry	5/29/1923	“...the negro was peculiarly without friends.”	1
John Breeze	1/16/1948	“...[he] had done all that he could to lead prison officials to believe that he was mentally unbalanced...” “Breeze, who did not have full use of his legs and left arm because of a blow that he had received on the head several years ago...”	2
Phillip Ingle	9/22/1995	“Ingle, who was released from a state mental hospital only days before the Willis slayings, has said that the two couples appeared to him as demons with red eyes, horns, and tails. Ingle has a long history of mental illness. As a small child, he watched his mother, also a paranoid schizophrenic, try to kill herself. At ages 5 and 7, Ingle tried to hang himself and had to be cut down. His demonic hallucinations began when he was 10, after he was hit in the head with a baseball bat. As a teenager, he began abusing alcohol and drugs. At 19 he deliberately shot himself in the stomach.”	3

The first inmate, Wiley Perry (ID 370486), executed in 1923, is coded as mild (1). The author describes the inmate as “peculiarly without friends.” This description is indicative of an antisocial behavioral disorder or another form of mild mental illness. I assume that the author includes this description because it indicates a factual abnormal mental

condition important enough to be reported within the article. Perry is coded as one because there is no additional description of his mental condition that would indicate a higher moderate or severe level of mental illness.

John Breeze (ID 370748), executed in 1948, is coded as moderate (2). The description of Breeze in the article indicates that he tried to convince officials that he was “mentally unbalanced,” a claim that was often made by the prosecution in cases where inmates are actually suffering from mental illnesses in order to support their case. A description of Breeze includes a “blow to the head” which diminished control of his limbs. These two descriptions together indicate that Breeze’s mental condition is abnormal and more severe than a mild mental illness and warrants a moderate classification (2).

Inmate Phillip Ingle (ID 1035), executed in 1995, is coded as severe (3). Several News and Observer articles describe his mental condition. Descriptions of Ingle clearly indicate that he has severely mentally ill. The articles describing Ingle include various accounts of his psychotic ideations and suicidal behaviors. The authors of the articles written discussing Ingle’s history of severe mental illness include not only biographical information, but also psychiatric evaluations concluding that Ingle suffers from severe mental illness which contribute to his classification as severely mentally ill (3).

The classification of inmates was standardized to the best of my ability, but in certain instances inferences of diminished mental capacity or severe mental illness had to be interpreted. I only interpreted statements directly written in the article. I took into account contextual cues. My coding assumed that all statements written by the author were factual

in nature and all behaviors actually observed. The following section contains an analysis of the data gathered and coded using the methodology described within this chapter.

Analysis

I. Targeting of the Death Penalty

The overall racial disparity in the application of the death penalty in North Carolina provides relevant background information on the discriminatory application of the death penalty by race. The general characteristics of those executed in North Carolina do not vary from previous accounts⁴⁴. Table 5.1 illustrates the racial composition of those executed from 1900 to the present in North Carolina.

Table 5.1 North Carolina executions by race, 1900 to present

<i>Period</i>	<i>Total Executions</i>	<i>Black Executions</i>	<i>Percent Black</i>
Historical	411	311	76%
Modern	43	13	30%
Total	454	324	71%

African-Americans account for 76% of all executions in the historical era⁴⁵. In the modern era there was a significant decline in the proportion of African-Americans executed. Of the 43 inmates executed in the modern era (post 1974) 13 were African-

⁴⁴ Kotch, Seth and Mosteller, Robert P. The Racial Justice Act and The Long Struggle with Race and the Death Penalty in North Carolina. North Carolina Law Review. V 88. 2010.

⁴⁵ This percentage does not include inmate, Bricey Hammons (Inmate No. 370644), a Native American inmate executed on July 7th, 1939, since I am not concerned generally with *all* minorities executed.

American, accounting for 30% of all executions. In my analysis I focus on two populations: inmates with low mental capacity and inmates with mental illness, and I focus on the racial targeting of the death penalty on both populations.

Mental Capacity

Historically in North Carolina African-Americans have been targeted on two levels by the application of the death penalty. First on a basic level uneducated, illiterate African-Americans with little or no education have been executed in higher proportions than their Caucasian counterparts. Additionally on a higher level, the death penalty has been imposed disproportionately on African-Americans with moderate to severe diminished mental capacity.⁴⁶ In the modern period this trend vanishes: After the reinstitution of capital punishment in North Carolina in 1977, not a single African-American executed is described or characterized as having any indication of diminished mental capacity⁴⁷. This is a profound change in the application of the death penalty that will be investigated further in this section and revisited in the final chapter.

This section of the analysis will look at the unequal application of the death penalty on African-Americans, already a historically vulnerable population in the capital punishment system, through the lens of low mental capacity. It is clear that historically in North Carolina the death penalty has targeted African-Americans. My findings show that in addition to the racial bias of the death penalty in North Carolina, historically there was also significant bias in the disproportionate execution of African-Americans executed

⁴⁶ Moderate and severe diminished mental capacity includes inmates described as:

- (1) “mentally weak,” “low mentality,” “sub-average mentality,” “simple”
- (2) having no understanding of the crime/punishment
- (3) low IQ in a formal evaluation

⁴⁷ Mental capacity does not include mental illness, which is addressed in the following section.

with little or no education and African-Americans with moderate to severe diminished mental capacity. Table 5.2 illustrates this finding.

Table 5.2 North Carolina executions by race and *any* indication of low mental capacity, 1900 to present

<i>Period</i>	<i>Total No.</i>	<i>Black</i>		<i>Indication of Mental Capacity</i>		
		<i>No.</i>	<i>Pct.</i>	<i>Total No.</i>	<i>Black No.</i>	<i>Black %</i>
Historical	411	311	76%	48	38	79%
Modern	43	13	30%	4	0	-
Total	454	324	71%	52	38	73%

The table above includes the total number of inmates executed and percent black executed. More importantly, Table 5.2 includes all inmates executed with *any* indication of low mental capacity, by race. The table is comprised of both the historical and modern period. Not only are African-Americans disproportionately targeted by the death penalty on a basic level, but the data show that African-Americans with any indication of low mental capacity are targeted as well. Almost 80% of inmates with any indication of low mental capacity were African-American. It is evident that the imposition of the death penalty in North Carolina has not only discriminated on basis of race, but has also targeted the most vulnerable of the African-American community, those with diminished mental capacity. African-Americans who are already part of a targeted population, with a greater difficulty aiding in their defense.

In the modern period the execution of African-Americans with low mental capacity disappears. Of the four inmates executed from 1984 to the present, all were

white. In the modern period many articles are written for a single inmate, and coverage of all dimensions of the death penalty increased.⁴⁸ There was not a single description in the Raleigh News and Observer of an African-American inmate executed in the modern period that included any description of illiteracy, lack of formal education, moderate or severe mental retardation. This dramatic change will be discussed further in Chapter Six, where I look at likely explanations for this transformation in the practice of applying the death penalty in North Carolina.

Now, I will focus on two levels diminished mental capacity: the uneducated and illiterate, and the moderate and severely mentally retarded. Table 5.2 shows both levels by race, including the total number executed in each level, the number of African-Americans in each level, and the percentage of African-Americans of the total within each level of low mental capacity.⁴⁹

Table 5.3 North Carolina executions by race and level of diminished mental capacity, 1900 to present

<i>Period</i>	<i>Uneducated/Illiterate</i>			<i>Moderate or Severe</i>		
	Total No.	Black No.	Black %	Total No.	Black No.	Black %
Historical	23	17	74%	25	19	76%
Modern	0	0	-	4	0	-
Total	23	17	74%	29	19	66%

⁴⁸ For example, John Rook (Inmate No. 1040) executed in 1986, was included in 8 articles written within a two week range of his execution.

⁴⁹ Moderate and severe diminished mental capacity includes inmates described as:
 (1) “Mentally weak,” “low mentality,” “sub-average mentality,” “simple”
 (2) Having no understanding of the crime/punishment
 (3) Low IQ in a formal evaluation

Historically, uneducated and illiterate blacks were executed at a higher level than uneducated whites. This is logical given the targeting of the death penalty on vulnerable populations: Of the twenty-three uneducated and/or illiterate inmates executed from 1900-1961, seventeen were African-American or 74%.⁵⁰ This targeting trend also exists in African-American inmates with moderate or severe diminished mental capacity. In the historical period, African-Americans with moderate or severe diminished mental capacity were also executed in disproportionately higher numbers. African-Americans account for 76% of all inmates with indications of moderate or severe diminished mental capacity.

In the modern period however this trend vanishes, as discussed earlier. Notably, in the modern period no inmates described as uneducated or illiterate are executed. It appears that the death penalty, post reinstatement in 1977, did not target and execute uneducated and illiterate African Americans or whites. This is most likely due in part to the improvement in access to education nationwide and in the South in particular. Also, attention to the biased application of the death penalty increased post *Furman*, which may have contributed to the decrease in the execution of those who are illiterate or have little formal education.

Interestingly, while the execution of inmates described as purely uneducated or illiterate decreased to zero, the execution of inmates with moderate or severe diminished mental capacity still occurred. In the modern period four inmates with indications of moderate or severe diminished mental capacities were executed, all of whom were white,

⁵⁰ This data only includes inmates with direct descriptions within the Raleigh News and Observer of an inmate's lack of formal education or illiteracy. In early years where descriptions of the inmates did not always include extensive background on the inmate there may be inmates who were illiterate or uneducated and are not included in this analysis.

and all of whom were executed post *Atkins*. Table 5.4 includes descriptions of the inmates' diminished mental capacity.

Table 5.4 All executions in North Carolina of inmates with moderate or severe diminished mental capacity, from 1984 to present

Inmate Name, Date of Execution

Joseph Earl Bates, 9/26/2003

"[He is] now a man with a minimal IQ and mental problems."

"Bates became increasingly anxious, agitated, paranoid, aggressive, and alcoholic after the 1987 car wreck, which mangled his right arm and leg and injured the front of his brain."

Joseph Timothy Keel, 11/7/2003

"Keel's attorneys argue in federal filings that he has the mental ability of a fifth-grader and that they want a review of his mental state in state court."

"Joseph Timothy Keel, 39, has suffered significant brain injury, endured chronic mental illness and been plagued with sub-average intellectual functioning his entire life, yet, a jury of his peers has never heard this evidence. Sadly, almost all of these facts were either overlooked trial or not available to defense counsel."

Kenneth Lee Boyd, 12/2/2005

"His IQ was on the low side, suggesting judgment that was less than razor-sharp."

Patrick Moody, 3/17/2006

"Moody's attorneys say he had very limited mental skills and was manipulated by Wanda Robbins. Though evidence at trial showed Moody had an IQ of 81, his attorneys say he had scored in the mid-60s on previous tests. That would exempt him from the death penalty under state law."

It is evident, that although the North Carolina statute (§15A-2005) and *Atkins v. Virginia* have stated that the mentally retarded are ineligible for the death penalty, under the DSM definition of mental retardation (IQ less than 70), the state of North Carolina has

executed inmates with questionable characteristics of diminished mental capacity. Noticeably absent are executions of African-Americans with moderate or severe diminished mental capacity. I believe this to be in part due to the public scrutiny around the racially biased application of the death penalty, and the evolution of the concern surrounding the execution of inmates with diminished mental capacity. This development is examined in the Chapter Six, alongside mental illness which is addressed in the following section.

Mental Illness

The application of the death penalty on those with mental illness is significantly less racialized than diminished mental capacity. The following section looks at the application of the death penalty in the historical and modern period. Table 5.4 includes the total number of inmates executed and percent black executed, as well as all inmates executed with *any* indication of mental illness, by race. The table includes both the historical and modern period.

Table 5.4 North Carolina executions by race and *any* indication of mental illness, 1900 to present

<i>Period</i>	<i>Total No.</i>	<i>Black</i>		<i>Indication of Mental Illness</i>		
		<i>No.</i>	<i>Pct.</i>	<i>Total No.</i>	<i>Black No.</i>	<i>Black %</i>
Historical	411	311	76%	34	17	50%
Modern	43	13	30%	11	2	18%
Total	454	324	71%	45	19	42%

Table 5.4 illustrates a significant decrease in the discriminatory application of the death penalty on African-Americans with any indication of mental illness in comparison with the discrimination evident in African-American inmates with diminished mental capacity. Also, there is a decline both in the application of the death penalty on inmates with mental illness from the historical to the present period, as well as a significant decline in the execution of African American inmates with mental illness. I will examine this further and examine the execution of inmates with moderate or severe mental illness in particular. This does not include inmates described as having mild depression or merely antisocial behavior⁵¹.

Whereas the historical period involved definite targeting of African-Americans with diminished mental capacity, targeting of African-Americans with indications of moderate or severe mental illness is not evident. Table 5.5 includes data on all executions of inmates with moderate or severe mental illness in both the historical and modern period.

⁵¹ Moderate mental illness includes inmates described as:

- (1) presenting suicidal ideation (without attempts)
- (2) having anxious/nervous behaviors
- (3) having traumatic events that contributed to their mental illness

Severe mental illness includes inmates described as:

- (1) having been institutionalized
- (2) diagnosed as mentally ill by a mental health professional
- (3) behavioral indications of a severe mental illness

Table 5.5 North Carolina executions of inmates with moderate and severe mental illness by race, from 1900 to present

<i>Period</i>	<i>Indication of Moderate or Severe Mental Illness</i>		
	Total No.	Black No.	Black %
Historical	24	11	46%
Modern	9	2	22%
Total	33	13	39%

In the historical period in North Carolina the death penalty executed roughly equally both black and white inmates with indications of moderate or severe mental illness. However, in the modern era the majority of inmates executed with moderate or severe mental illness are white: Of the nine inmates with indications of moderate or severe mental illness executed from 1984 to the present, only two were African-American. Both African-American inmates were described as moderately mentally ill, whereas all inmates with severe mental illness were white. These four cases are described in Table 5.6.

Table 5.6 All executions in North Carolina of inmates with severe mental illness, from 1984 to present

Inmate Name, Date of Execution

Phillip Ingle, 9/22//1995

“Ingle has a long history of mental illness. As a small child, he watched his mother, also a paranoid schizophrenic, try to kill herself. At ages 5 and 7, Ingle tried to hang himself had to be cut down. His demonic hallucinations when he was 10, after he was hit in the head with a baseball bat.”

“One psychiatrist, Clabe Lynn of Dorthea Dix said Ingle hallucinated and was periodically out of touch with reality. Dr. Henry Horacek, a Charlotte psychiatrist, testified that Ingle was a paranoid schizophrenic. Lynn and Horacek said Ingle was prone to psychotic breaks and wouldn't know right from and wouldn't remember his actions.”

John Noland, 11/20/1998

“All evidence in the case, both from the state and defendant, demonstrates without contradiction that these tragic killings were the result of the defendant's ‘mental illness exacerbated by the loss through separation of his wife and children.’ Justice Jim Exum wrote in the dissent.”

“On May 21, a state court ordered Noland committed to a state hospital, finding him ‘mentally ill and a danger to himself.’”

James Rich, 3/26/1999

“Rich, who had a long history of mental problems, including three stays in a hospital...”

“Only 26 years old, Rich has a history of mental illness that stretches back at least to when he was 12, and includes diagnoses of schizophrenia and manic-depressive illness.”

Joseph Keel, 11/7/2003

“Joseph Timothy Keel, 39, has suffered significant brain injury, endured chronic mental illness and been plagued with sub-average intellectual functioning his entire life, yet, a jury of his peers has never heard this evidence.”

Notably all of the inmates executed with severe mental illness are white. Furthermore, all of the inmates with indications of severe mental illness have significant psychiatric

histories that call in to question their culpability under the legal standards in North Carolina.⁵²

It is clear that the application of the death penalty in North Carolina is inconsistent over time in both populations of those with diminished mental capacity and mental illness. As different aspects of society change so too does the institution of capital punishment. In the final chapter I examine the evolving nature of the death penalty with respect to those with mental retardation and severe mental illness. I trace their respective and often parallel histories over time, and look at the future implementation of the death penalty in North Carolina.

⁵² These standards are described in detail earlier in Chapter Two.

II. Parallel Stories: Mental Retardation and Severe Mental Illness

Capital punishment is a mutable institution. As such, its capacity for “progress” has been closely observed in recent times by scholars and historians alike⁵³. The analysis in the previous chapter highlights two areas of change within the application of the death penalty in North Carolina: mental capacity and mental illness. There are striking parallels between the application of the death penalty on those with diminished mental capacity and those with mental illness. As medical and societal understandings of mental retardation and mental illness have evolved, so too has the application of the death penalty on these particular populations.

There have been several significant shifts in focus and understanding concerning those with mental retardation and, or severe mental illness. These changes in societal and medical perspectives have had an important impact on the application of the death penalty on both populations. In the early 20th century there was little general understanding of those with mental retardation and mental illness. Descriptions in the Raleigh News and Observer of inmates with indications of mental retardation and mental illness during this time were vague and often relied on derogatory statements concerning the inmate’s mental condition. In later years as the medical profession formally recognized mental retardation and to a lesser extent, mental illness, the introduction of “expert” psychiatric opinions are found in the Raleigh News and Observer articles detailing the execution of an inmate.

In the early part of the 20th century the culpability of a defendant is not questioned regardless of his mental condition. It is only once credible medical

⁵³ Kotch, Seth and Mosteller, Robert P. The Racial Justice Act and The Long Struggle with Race and the Death Penalty in North Carolina. North Carolina Law Review. V 88. 2010.

“professionals” enter into the discourse on capital punishment, particularly in an inmate’s defense or appeal for clemency, that true questions of culpability arise. Once the question of culpability is introduced by medical experts, it appears that societal concern about the execution of inmates with mental retardation, and in some circumstances severe mental illness, increases and is present within articles written in the Raleigh News and Observer. Articles in the Raleigh News and Observer begin to show public discontent with the execution of inmates with diminished mental capacity or severe mental illness that had not been previously addressed.

Yet, it is not until the modern era that concerns progress to policy action on the execution of inmates with mental retardation. Inmates with severe mental illness are still executed in the modern era, as evidenced in the previous chapter, and legislation making the execution of inmates with severe mental illness has not yet been passed in North Carolina. The following sections will address the three parallel shifts in the execution of inmates with mental retardation and severe mental illness: the early understandings, the increased medical and societal recognition and finally, societal concern with the application of the death penalty on those with mental retardation and mental illness, which in the case of mental retardation translated into legislative action declaring those with mental retardation ineligible for execution.

Early Notions of Mental Retardation and Severe Mental Illness

There was little formal acknowledgment of mental retardation and mental illness in the early part of the 20th century. Articles written during this time period in the Raleigh News and Observer about the execution of inmates with mental retardation do not include any

medical observations or opinions. Articles provide descriptions of inmates' inability to understand the crime committed or their subsequent punishment. Table 6.1 provides several early descriptions of inmates with mental retardation typical of the early 20th century.

Table 6.1 Descriptions in the Raleigh News and Observer of inmates with mental retardation, from the early 20th century

<i>Name, Date of Execution</i>
<i>Description</i>

Reuben Ross, 2/9/1900

"He was too much of a brute to realize what crime he had committed."

Thomas Jones, 8/13/1900

"Stolid and stunned, a brother to the ox, he started at the wall, seeing nothing—a dumb beast, with the 'emptiness of the ages on his face.'"

Walter Partridge, 4/6/1905

"Rev. Mr. Hall, in speaking to me of Partridge, said today that he had no idea that the boy had any conception of the enormity of the crime for which he was hung."

Sidney Finger, 6/19/1914

"... [a] negro of the lowest order of intellect. He looks upon his punishment in the vaguest sort of way. He hasn't understood the part that the law is playing."

"He is the typical dullard of his race with mind enough to know the right thing but without mind to understand the punishments for wrong."

It is clear in these early articles that the inmate is mentally retarded: he does not understand the crime committed, does not understand the punishment, his own execution, and although there are derogatory racial descriptions included, there is a clear statement concerning the mental condition of the inmate to be executed. The early articles do not

place focus on the culpability of the inmate, nor do they involve medical opinions concerning the mental condition of the inmate. This particular portrayal and description of inmates is parallel to the portrayal and description of inmates with mental illness.

Inmates with mental illness in the early 20th century are identified through the Raleigh News and Observer articles' descriptions of their behavior, or by accounts of their behavior by those in close contact with the inmate. In several instances inmates' institutionalization is mentioned, but these descriptions are not usually accompanied by a medical opinion by a psychiatrist or other mental health professional. Table 6.2 provides several descriptions of inmates with severe mental illness in the early part of the 20th century from the Raleigh News and Observer.

Table 6.2 Descriptions in the Raleigh News and Observer of inmates with severe mental illness, from the early 20th century

<i>Name, Date of Execution</i>	<i>Description</i>
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<i>Tom Walker, 4/15/1907</i>	<p>“During the talk, which was at times rambling, he expressed great sorrow for what he had done and advised his hearers to take warning from his example.”</p> <p>“Here he bowed his head and pointed to the top of it. It was an awful bad fix, pounded and bloody, but now nearly healed up.”</p>
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<i>Churchill Godley, 1/16/1920</i>	<p>“Professing confusion at the many dogmas that are offered believers, Godley summoned four ministers, of as many denominations, yesterday to inquire of them the plan of salvation.”</p>
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<i>Luke Frazier, 5/27/1921</i>	<p>“Apparently consciousness snapped under the strain...”</p> <p>“Screaming in mad hysteria...”</p>
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Although in two cases a request for review or clemency by a mental health professional is provided, there is little description aside from the mention of institutionalization. Both in cases of the mentally retarded and the severely mentally ill, the identification of an inmate as either mentally retarded or severely mentally ill, comes from rather vague, behavioral observations and descriptions, and the culpability of the inmate is never discussed. It is clear in these early articles that the execution will take place regardless of the inmates' mental condition. It is not until the introduction of medical opinions, and the significance of a medical opinion is acknowledged does an inmates' culpability due to their mental condition come into question.

Medical Recognition and Understandings of Mental Retardation and Severe Mental Illness

An important shift in the application of the death penalty on the mentally retarded and those with severe mental illness occurs with the increased medical understanding of both mental retardation and severe mental illness. Although medical histories of inmates with mental retardation and, or severe mental illness is included in the Raleigh News and Observer articles starting around the 1920s and 1930s, there is still minimal discussion surrounding culpability. This is especially true of inmates with severe mental illness, both in the historical period and the modern period today.

Mental retardation is directly addressed by medical professionals from the 1920s on. Descriptions of inmates with mental retardation include medical opinions concerning the mental condition of the inmate, but rarely include recommendations for commutation. Table 6.3 provides descriptions of inmates with mental retardation, including medical

observations and opinions.

Table 6.3 Descriptions in the Raleigh News and Observer of inmates with mental retardation including medical diagnoses

<i>Name, Date of Execution</i>	<i>Description</i>
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<i>Leo McCurrie, 4/26/1929</i>	
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	“Dr. K.R. Adams, one of the mental experts who had examined the Negro and pronounced him of the mentality of a nine-year-old child, inspected the corpse.”
--	--

	“Four experts have tested his mental capacity. Two pronounced him mentally irresponsible. Two pronounced him mentally responsible.”
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<i>Robert Dunlap, 1/17/1936</i>	
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	”Pleas of the Negro's counsel that he is of subnormal mentality also were rejected after he had been examined by alienists.”
--	--

	“‘The Negro is undoubtedly of low mentality,’ said Commissioner Gill, ‘but he is sufficiently intelligent to come within our standards and there is no doubt that he knows right from wrong. His sanity cannot be questioned, in my opinion.’”
--	--

<i>John Kinyon, 8/21/1936</i>	
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	“The old Negro, who, psychiatrists say, has the mind of a seven-year-old child, did not deny the crime, but contended he was ‘led on’ by the young girl.”
--	---

	“... his heavily-mustached face dull with the solemnity of the simple-minded...”
--	--

	“Counsel for the defense claimed Kinyon was mentally incompetent and psychiatric tests showed him to have the mind of a child.”
--	---

Similarly, accounts of inmates with severe mental illness in later years include diagnoses by medical professionals, but rarely include recommendations for commutation or objections based on the culpability of the inmate due to their mental health. Also, in many instances mental illness is still inferred in the Raleigh News and Observer articles, based on descriptions of the behavior of the inmate. Inmates’ mental health histories are

often described but there is no argument within the article for commutation, and medical diagnoses are absent of arguments of culpability.

Table 6.4 provides descriptions of inmates that include medical diagnoses, as well as descriptions that are accounts of inmates' behavior that indicate mental illness that do not include a formal medical evaluation. In this respect, the medical diagnosis and recognition of mental retardation outpaces that of severe mental illness in the historical period, and medical opinions are not always present in News and Observer articles on inmates who have a severe mental illness.

Table 6.4 Descriptions in the Raleigh News and Observer of inmates with severe mental illness, post 1920

<i>Name, Date of Execution</i>	<i>Description</i>
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Fred Jones,

"Jones had served a five-year prison sentence in Connecticut State prison and while there was kept in the ward for the criminal insane, it had been pointed out in support of the insanity plea."

Asbury Respus,

"In 1913 he was confined in the ward for criminal insane while serving a sentence for manslaughter."

"The little Negro conversed freely with Warden H.H. Honeycutt about his victims, contending that he did not know why he killed them. At times he professes ignorance of them, however and assumes a blank expression when questioned. He is also subject to fits."

Lee Flynn,

"Evidence at the trial was brought out that Flynn had spent some time at the Morganton institution for insane, and his attorneys appealed that he was not in his right mind."

The articles in Table 6.4 contain typical descriptions of inmates with severe mental illness. These articles include descriptions of institutionalization and state the implementation of an insanity plea if there was one, but there is no discussion of advocacy on behalf of the inmate outside of his attorney. Until the modern period there is little discussion of advocacy on behalf of the inmate; this is true of both inmates with mental retardation and severe mental illness. It is not until the modern period that notions of advocacy are found within Raleigh News and Observer articles, along with a dramatic increase in attention paid to the defendant's mental condition.

The Modern Period: The Parallel Stories of Mental Retardation and Severe Mental Illness

After the reinstatement of capital punishment in North Carolina in 1977 there was a significant increase in attention surrounding executions. Articles in the Raleigh News and Observer in the modern period are more in depth, and often have a central focus on particular aspects of the crime, the judicial process, the inmate's personal history and the actual execution. Importantly, the more detailed descriptions within the modern period articles provide descriptions of the inmate's life and any mitigating factors present in the case, including possible mitigating factors that were not presented by defense attorneys.

There are only four inmates with any indication of diminished mental capacity in the modern period. Every inmate's mental health is described in detail in the Raleigh News and Observer articles. These descriptions are matter-of-fact and in several cases include sympathetic descriptions. There is a consistent lack of demonization within these articles, which was notably not present in the historical period. For example, the article written about Joseph Timothy Keel's execution in 2003 is decidedly sympathetic:

Joseph Timothy Keel, 39, has suffered significant brain injury, endured chronic mental illness and been plagued with sub-average intellectual functioning his entire life, yet, a jury of his peers has never heard this evidence. Sadly, almost all of these facts were either overlooked at trial or not available to defense counsel.⁵⁴

The article includes such sympathetic descriptions as “endured chronic mental illness” and laments the exclusion of these facts at trial. This article is clearly sympathetic toward the inmate in a way that is not present in historical period articles. In another article written about inmate Patrick Moody in 2006, the article describes the conflicting accounts and Moody’s possible ineligibility due to his IQ. The following is an excerpt from the article detailing Moody’s mental capacity:

Moody's attorneys say he had very limited mental skills and was manipulated by Wanda Robbins. Though evidence at trial showed Moody had an IQ of 81, his attorneys say he had scored in the mid-60s on previous tests. That would exempt him from the death penalty under state law.⁵⁵

Previous articles written in the historical period discussed inmates’ IQ, but never included any in-depth discussions concerning possible ineligibility. Unlike modern period articles, articles written in the historical period did not advocate on behalf of the inmate nor did the articles suggest that an inmate could be ineligible for the death penalty. In several articles there were descriptions of various people advocating for commutation, but never any insinuation on behalf of the author within the article that commutation should or will occur.

⁵⁴ Article excerpt can be found in Appendix 1.

⁵⁵ Article excerpt can be found in Appendix 1.

Articles within the Raleigh News and Observer written in the modern period also provide a different account of inmates with severe mental illness. Typical articles in the modern period provide detailed accounts of the inmates' mental health history, including any patterns of illness or bizarre behavior. The descriptions are straightforward and do not demonize the inmates, as articles written in the historical period often did. There is a marked increase in attention paid to inmates' mental health and modern Raleigh News and Observer articles are written in vivid detail and at times contain overt sympathy towards the inmate.

In one such instance, an article written about inmate Clifton White, executed in 2001, includes statements from the inmate's sister on his behalf. The article includes descriptions of the inmate's victimization.

As a young adult, White was gang-raped while in prison, and that event made him fearful and violent, court records showed... She said that she called his probation officer in County as well as county mental health officials but that no one answered her plea to help her brother.⁵⁶

Articles written in the historical period rarely contain statements by the inmates' family members on their behalf. There are also no articles written that include descriptions of an inmate's victimization as a mitigating factor on the inmate's behalf. There is a clear shift in tone in the articles from the historical period to the modern period.

Another inmate, William Quentin Jones, executed in 2003, also had a history of mental illness. The main article describing his mental illness and childhood clearly advocates for "mercy" in his sentencing.

⁵⁶ Article excerpt can be found in Appendix 2.

Yet jurors never heard from a jailer who logged Jones as a suicide risk the next morning. His current legal team found that jail log entry and talked to the officer, then hired an expert in childhood trauma to conduct a mental health evaluation. The hair raising family history compiled by psychologist John Fairbank could well have inclined a fair minded jury toward mercy sentencing.⁵⁷

Articles, such as the one above, clearly indicate a shifting perspective in the chronicling of executions in North Carolina. Articles written in the modern era describing both inmates with diminished mental capacity and severe mental illness are more sympathetic in tone. There is much more detail of the inmates' mental condition, and includes suggestions that the inmate should be ineligible for execution. Real questions and discussion of culpability are first introduced in articles written in the modern period. These discussions of culpability found within the articles parallel discussions surrounding the policy of executing inmates with mental retardation and severe mental illness.

⁵⁷ Article excerpt can be found in Appendix 2.

Conclusion

The modern era of capital punishment has been marked by the significant reformation of the death penalty. North Carolina has been on the forefront in death penalty reform and has instituted several key reforms on the imposition of the death penalty. Key among those reforms has been the creation of the Indigent Defense Services (IDS), the Racial Justice Act (RJA), and legislation barring the execution of the mentally retarded. These reforms have limited the application of the death penalty, and serve to improve its application within North Carolina. The Indigent Defense Services was created in 2000 under the “Indigent Defense Services Act,” which mandated that IDS be responsible for the legal representation of indigent defendants, and provided resources to defendants who had previously lacked sufficient support within the legal system in North Carolina. It is a notable service that is not matched in any single other state with the death penalty. The Racial Justice Act is another important reform that is unique to North Carolina. The RJA aims to alleviate the prevalent racial bias in the application of the death penalty in North Carolina. It allows defendants to present evidence of bias, including statistical evidence, to support the commutation of their sentence to life without parole. Finally, in 2001 North Carolina legislation to prevent the execution of the mentally retarded predated the Supreme Court ruling that extended that protection to all states. Given North Carolina’s status as a fairly active death penalty state in the South, it is perhaps surprising that it is a leader in the nation in death penalty reform. North Carolina has successfully narrowed the focus of the application of the death penalty and has provided institutional measures that safeguard those who are most vulnerable within the system of capital punishment.

Once North Carolina halted the execution of inmates with mental retardation in 2001 attention turned to another vulnerable population targeted by the death penalty- the severely mentally ill. Moving forward, advocates within the medical and legal fields, and abolitionists, have focused their attention on the execution of those with severe mental illness. Advocates raise concerns about inmates' culpability and capability to aid in their defense, as well as their lack of protection in the current legal system. This issue is being addressed in the North Carolina General Assembly, where legislation has been introduced that would effectively abolish the application of the death penalty in cases where the defendant has a history of severe mental illness. Bills H137 and S309, "Capital Procedure/Severe Mental Disability," were proposed by mental health advocates in North Carolina and introduced by several supporters in the legislature on February 12, 2009. Currently with both Houses of the General Assembly controlled by Republicans neither bill has adequate support for passage. Although the climate is not favorable for passage in the current session, undoubtedly the bills in some form will be reintroduced in the future.

There is forward motion in the reformation of capital punishment, as the institution evolves through advocacy on behalf of those targeted by the death penalty. North Carolina has instituted significant reforms to the death penalty that protect the most vulnerable within the system. History shows increased concern surrounding the death penalty, as well as a narrowing of the application of the death penalty. If history is any indication, the application of the death penalty will be restricted further. It remains to be seen whether capital punishment, as it is instituted, can reserve the harshest penalty in the United States for the most heinous crimes committed by persons who are considered truly culpable.

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Appendix 1: Mental Capacity

The following table includes all inmates with *any* indication of diminished mental capacity, from mild (uneducated/illiterate) to severe (severe mental retardation). The table includes verbatim descriptions excerpted directly from the Raleigh News and Observer, and the level of diminished mental capacity given the inmate's description in the article.

<i>Year</i>	<i>Name</i>	<i>Race</i>	<i>Level</i>
1900	Reuben Ross	B	3
"He was too much of a brute to realize what crime he had committed."			
1900	Thomas Jones	B	3
"Stolid and stunned, a brother to the ox,' he stared at the wall, seeing nothing—a dumb beast, with the 'emptiness of ages on his face.'"			
1905	Walter Partridge	B	3
"Rev. Mr. Hall, in speaking to me of Partridge, said today that he had no idea that the boy had any conception of the enormity of the crime for which he was hung."			
1906	Harry Scott	B	2
"The remarkable nerve displayed by Scott leads some to the conclusion that the negro must have been mentally weak."			
1907	James Rucker	B	1
"No plea has been made to the Governor asking commutation of sentence except that he was of a very low order of intelligence."			
"Not wanting to make any mistake, the Governor visited the defendant in prison, and found that he has sufficient capacity to know right from wrong: in fact he has as much intelligence as the ordinary negro."			
1911	Phillip Mills	B	3
"It was on this matter of mental irresponsibility that an application for commutation was made, the Judge, the Solicitor and many citizens of Transylvania endorsing the application."			

1911 Allison James B 2

"It was urged that he acted in fear, that he is a man mentally weak, who loses reason under excitement."

1914 Sidney Finger B 3

"... [a] negro of the lowest order of intellect. He cannot read or write and to him the day and what it means [illegible]. He looks upon his punishment in the vaguest sort of way. He hasn't understood the part that the law is playing."

"He is the typical dullard of his race with mind enough to know the right thing but without mind to understand the punishments for wrong."

"He is the most illiterate of all the men in death row."

1914 Howard Craig B 1

"I can't read at all, but the bible is read to me. I believe every word of it."

1918 Cain Baxter B 1

"Cain was 33 years old, decidedly ignorant in type and of a physique which one time had been powerful."

1920 Andrew Jackson B 3

"... he stumbled to his death, a great, stupid, unlettered animal too dense to know why a victim of the instinct... [indistinguishable] ...was too strong for him."

"... his senseless, reasonless fight."

1921 Frank Henderson B 1

"Henderson's last statement was written in pencil on eight sheets of tablet paper, with badly spelled words and composition that at times left the meaning vague."

1921 Harry Caldwell B 1

"It was without incident, Caldwell, a stupid, unlettered Negro, went to his death without a word save that he had assurance of his soul's future."

1925 Jim Collins B 1

"Collins, whose mother died when he was quite small and who never knew who his father was, has learned to read since being in the Prison and officials, impressed by his attitude, have been friendly."

1926 *John Williams* *B* 1

"The association had telegraphed a protest against the electrocution on the ground that the convicted man was a 'poor, ignorant and friendless negro who was the victim of cruel circumstances.'"

1928 *Larry Newsome* *B* 3

"Efforts were made to prevent the Negro's execution on the ground that he was insane. While officials admitted the man was not fully developed mentally, it was held that he knew right from wrong and no intervention was made."

"The doomed Negro, classified by experts as sub-normal, but capable of knowing right from wrong..."

1929 *Leo McCurrie* *B* 3

"Dr. K.R. Adams, one of the mental experts who had examined the Negro and pronounced him of the mentality of a nine-year-old child, inspected the corpse."

"Four experts have tested his mental capacity. Two pronounced him mentally irresponsible. Two pronounced him mentally responsible."

1930 *John Macon* *B* 1

"Macon told of his lack of education and home training."

1930 *James Spivey* *W* 3

"Commutation pleas were made on the grounds that he was feeble-minded."

"Spivey could not read or write but early yesterday morning dictated this message to his family to Rev. Mr. Denton."

1930 *Willie Massey* *B* 3

"Killing him was like sticking a lamb as it looked with trusting eyes in the butcher's face."

"His rotund and blanched face was abeam in child-like smile."

1932 *Asbury Respus* *B* 3

"The determining factor in such an examination, however, is whether the subject has sufficient mentality to distinguish right from wrong and Mr. Taylor has demonstrated this capacity despite the apparent fact that his mentality is far below normal."

"The little Negro conversed freely with Warden H.H. Honeycutt about his victims, contending that he did not know why he killed them. At times he professes ignorance of them, however and assumes a blank expression when questioned. He is also subject to fits."

"[A] 56-year old mental deficient."

1934 *James Johnson* *B* *1*

“Their pleas for mercy were based on claims of insanity.”
“[They] were examined and were ‘normal in intelligence.’”

1934 *Jesse Brooks* *B* *1*

“Their pleas for mercy were based on claims of insanity.”
“[They] were examined and were ‘normal in intelligence.’”

1934 *Theodore Cooper* *B* *3*

“Dr. Kephart based his protest on the ground that Cooper is of low mentality and could not know right from wrong”

1934 *Johnny Hart* *B* *3*

“Never having seen an electrocution, but knowing that his two companions in the Sampson County murder of filling station operator Howard Jernigan had preceded him into the death chamber, yet finding no trace of them when he arrived to take his seat, Hart evidently feared that the lethal current destroyed all it came in contact with, and his last act was to preserve the last of his worldly possessions.”
“Waller issued a ‘formal’ statement, in which there was a touch of pathetic elegance, thanking ‘most much’...”

1935 *Robert Thomas* *W* *2*

“...uneducated mountain boys...”
“‘I don’t know what the name of the town where we was caught; I hadn’t never been that far away,’ Thomas said yesterday.”
“His weak face displaying no emotion but considerable bewilderment as he admitted his guilt. ‘I don’t think straight,’ he said. ‘If somebody would ask me some questions--no, I know what I want to say. I didn’t do the actual crime, but I was there and I was a partaker of the fruits of it, I guess if I got to go, I’m ready and it’s all right.’”

1935 *Oris Gunter* *W* *1*

“All of them had started to school, but none of them could grasp the fundamentals of learning presented to first grade pupils.”

1935 *Arthur Gosnell* *W* *3*

“... the third [Gosnell] is of such low mentality that he has never learned to read or write or count to 10.”
“All of them had started to school, but none of them could grasp the fundamentals of learning presented to first grade pupils. Gosnell, for instance, spent five years in the first grade, but still cannot sign or read his own name or count his fingers.”
“Gosnell Grins Foolishly”

1936 *Robert Dunlap* *B* 3

"Mentality is Low"

"Pleas of the Negro's counsel that he is of subnormal mentality also were rejected after he had been examined by alienists."

"The Negro is undoubtedly of low mentality,' said Commissioner Gill, 'but he is sufficiently intelligent to come within our standards and there is no doubt that he knows right from wrong. His sanity cannot be questioned, in my opinion.'"

1936 *John Kinyon* *B* 3

"The old Negro, who, psychiatrists say, has the mind of a seven-year-old child, did not deny the crime, but contended he was 'led on' by the young girl.'"

"... his heavily-mustached face dull with the solemnity of the simple-minded."

"Counsel for the defense claimed Kinyon was mentally incompetent and psychiatric tests showed him to have the mind of a child."

1937 *Robert Brown* *B* 3

"The jury that heard the evidence recommended mercy on the grounds that the defendant was mentally deficient. Gill said yesterday that State mental experts have given the prisoner a thorough mental examination and reported him sufficiently normal to meet the requirements."

"Dr. J. W. Ashby, Superintendent of the State Hospital for the Insane, said Brown was slightly subnormal, but 'I found no psychosis.' The Negro told prison officials he had attended school for only three months, and had started to drink liquor regularly at the age of ten."

1939 *Clarence Bracy* *B* 1

"Bracy's only plea was one of low mentality."

1938 *Baxter Parnell* *W* 2

"Evidence was introduced at the trial purporting to show that Parnell once suffered a head injury which affected his mentality and that he was unable to get passing marks in the first grade at school although he repeated several times."

1939 *Willie Richardson* *B* 1

"The Rev. Mr. Watts said the Negro had some difficulty in participating in Death Row religious services because he does not read very well, but that he joined heartily in the singing."

1941 *James Shaw* B 2

“Considering the prisoner's low mentality and the fact that his mind was befuddled with alcohol and being stung and humiliated with the beating that he had received at the hands of the deceased. I doubt seriously if he could coolly and with preciseness, deliberate over this fatal act...”

1943 *James Utley* B 3

“The Negro James Utley of Montgomery County, then took his seat, smiling. Burley Evans of 105 Georgetown Road, who said he had witnessed 53 executions at Central Prison since 1918, declared Utley ‘took his execution the cheerfulest’ of any he had seen.”

“S.F. Woodell, guard who directs admission of witnesses at all executions and works on Death Row, said that Utley had been ‘happy’ ever since he entered Central Prison last fall. As he entered the gas chamber Utley smiled almost gleefully at Woodell and pointed his finger at the guard.”

1943 *Clyde Grass* B 1

“He said he had failed to obtain an education as a youth and that he also had failed to attend church services.”

1946 *Alligood King* B 2

“Described by physicians as ‘simple...’”

1947 *Willie Cherry* B 1

“Cherry, listed on the prison records as having gone as far as the fourth grade in school, could neither read nor write, and had not communicated with his mother and sister in Portsmouth, Va., Cherry's legal residence.”

1947 *Robert Messer* W 1

“Messer, an unmarried farm hand who worked periodically, was listed on his prison record as having a fourth-grade education but residents from Jackson County, who had known him all his life, said ‘He’s never been to school a day in his life.’”

1947 *Ralph Letteral* W 3

“Ten psychiatrists had examined Letteral and six of them had said he didn't know right from wrong.”

1950 *Jack Bridges* W 1

“Upon admission to Death Row, he was given a psychometric examination, revealing a mental age of 15 years and six months. His I.Q. was determined to be 97 percent...was considered mentally and emotionally stable and well knew right from wrong.”

1950 *Covey Lamm* W 1

“Lamm’s classification records show that he had an intelligence quotient of 75 percent. His mental age was recorded as 12 years.”

1952 *John Roman* B 1

“The doctors pronounced dead John Andrew Roman, a man who never got beyond the second grade.”

1953 *Bennie Daniels* B 1

“Bennie attended school for one year, and Lloyd Ray not at all.”

1953 *Llyod Daniels* B 1

“Bennie attended school for one year, and Lloyd Ray not at all.”

2003 *Joseph Earl Bates* W 3

“[He is] now a man with a minimal IQ and mental problems.”

“Bates became increasingly anxious, agitated, paranoid, aggressive, and alcoholic after the 1987 car wreck, which mangled his right arm and leg and injured the front of his brain.”

2003 *Joseph Keel* W 3

“Keel’s attorneys argue in federal filings that he has the mental ability of a fifth-grader and that they want a review of his mental state in state court.”

“Joseph Timothy Keel, 39, has suffered significant brain injury, endured chronic mental illness and been plagued with sub-average intellectual functioning his entire life, yet, a jury of his peers has never heard this evidence. Sadly, almost all of these facts were either overlooked at trial or not available to defense counsel.”

2005 *Kenneth Boyd* W 2

“His IQ was on the low side, suggesting judgment that was less than razor-sharp.”

2006 *Patrick Moody* W 3

“Moody’s attorneys say he had very limited mental skills and was manipulated by Wanda Robbins. Though evidence at trial showed Moody had an IQ of 81, his attorneys say he had scored in the mid-60s on previous tests. That would exempt him from the death penalty under state law.”

Appendix 2: Mental Illness

The following table includes all inmates with *any* indication of mental illness from mild (depression/anti-social behavior) to severe (severe mental illness; e.g. schizophrenia). The table includes verbatim descriptions excerpted directly from the Raleigh News and Observer, and the level of mental illness given the inmate's description in the article.

<i>Year</i>	<i>Name</i>	<i>Race</i>	<i>Level</i>
1904	Jabel Register	W	1
"No one in Whiteville speaks ill of Jabel Register, from the fact that it is believed he was under the hypnotic influence of his father since childhood."			
1907	Tom Walker	B	3
"During the talk, which was at times rambling, he expressed great sorrow for what he had done and advised his hearers to take warning from his example." "Here he bowed his head and pointed to the top of it. It was an awful bad fix, pounded and bloody, but now nearly healed up."			
1909	William Ward	B	3
"...on the trial Ward stated that he was born in Oklahoma, that his name was Jackson Palmer, that he was drinking and knew nothing about the crime. He since told Sherriff McPhail that he was born near Goldsboro and that he never heard of Oklahoma."			
1911	Norvell Marshall Jr.	B	1
"...described as an odd kind of negro."			
1915	Charles Trull	W	1
"Governor Craig had twice reprieved Trull: first to hear the arguments of his attorneys for commutation of the sentence, and second for the examination of Trull by a sanity commission."			
1917	Jerry Terry	W	3
"With Justices of the Supreme Court and the superintendent of the State Hospital for the Insane expressing belief that the man was unbalanced at the time of killing, Governor Bickett nevertheless could not find it in his heart to interfere with the course of the law."			

1920 *Churchill Godley* W 3

“Professing confusion at the many dogmas that are offered believers, Godley summoned four ministers, of as many denominations, yesterday to inquire of them the plan of salvation.”

1921 *Luke Frazier* B 3

“Apparently consciousness snapped under the strain...”
“Screaming in mad hysteria...”

1921 *J.T. Harris* W 3

“Standing out among these was Dr. J. K. Hall noted alienist, of Richmond, Va., who recommended a reprieve and a final hearing... ‘I am afraid epileptic fits in childhood have been replaced by violent and uncontrollable outbursts. I know many such cases. I appreciate your responsibility and sense of duty but hope a reprieve and final hearing may be granted.’”

1923 *Wiley Perry* B 1

“... the negro was peculiarly without friends.”

1923 *D.M. Nobles* W 3

“He has assumed during the past few weeks something of the attitude of a martyr, superior and even patronizing. His keepers believe that he will keep the pose until he is dead.”
“Sometimes he drops into Biblical English even when he is not quoting. He uses ‘thee’ and ends verbs with ‘eth’ instead of the modern ‘es.’”

1923 *Ed Dill* B 3

“Chanting wildly incoherent incantation that must have echoed the savage death-madness of his tribal ancestors, Ed Dill stumbled into the execution chamber at the State Prison yesterday morning, lapsed briefly into coherence to protest again his innocence, sat down in the chair and died for a criminal assault committed upon a white woman in Beaufort county fifteen months ago.”

1926 *Fred Jones* B 3

“Jones had served a five-year prison sentence in Connecticut State prison and while there was kept in the ward for the criminal insane [sic], it had been pointed out in support of the insanity plea.”

1926 *John Williams*

B 1

"The association had telegraphed a protest against the electrocution on the ground that the convicted man was a 'poor, ignorant and friendless negro who was the victim of cruel circumstances.'"

1927 *Ernest Walker*

B 1

"He pleaded insanity at the trial in October."

1928 *Larry Newsome*

B 1

"Efforts were made to prevent the Negro's execution on the ground that he was insane."

1931 *Wilson Autry*

B 2

"...and Autry's trembling was not from fright; it was because he was afflicted with a nervous disease."

1932 *Asbury Respus*

B 3

"In 1913 he was confined in the ward for criminal insane while serving a sentence for manslaughter."

"The little Negro conversed freely with Warden H.H. Honeycutt about his victims, contending that he did not know why he killed them. At times he professes ignorance of them, however and assumes a blank expression when questioned. He is also subject to fits."

1935 *Sidney Etheridge*

W 3

"... went to his death in the electric chair yesterday with a grotesque figure of a black cat as his only symbol of comfort."

"Senator Lloly Griffin, who knew Etheridge and his family for years and who also served in the 81st spent an hour with the condemned man during the afternoon. He said Etheridge always had a twisted brain."

1936 *Marvin Batten*

W 2

"Batten was unlucky--he recalled yesterday. The '13' jinx was on him. His name has 13 letters, mother died 13 days after he was born, and he killed Lydia on Friday the Thirteenth of December, 1935."

1936 *John Horne*

W 2

“The alienists’ report, which found no insanity, said: ‘He fluctuated between the emotions of hate and love and with the conjunction of self-pity was actuated to murder his wife and attempt suicide.’”

“Whether Horne actually remembered killing his wife was a secret that he kept unto death. During his stay on Death Row, condemned man told psychiatrists and Warden Honeycutt he did not remember slashing his wife’s throat. ‘He stuck to it until the last,’ the warden said.”

1936 *Henry Grier*

B 1

“‘He was a nervous Negro,’ the warden said—‘always twitching his lips and hands.’”

1938 *Baxter Parnell*

W 2

“At his trial last August, Parnell did not deny the slaying, but claimed he was ‘hexed’ by a Negro woman, whom he described as a witch doctor. The woman, he testified gave him a root to chew and ‘my mind commenced swimming. I don’t remember a thing.’

Evidence was introduced at the trial purporting to show that Parnell once suffered a head injury which affected his mentality...”

1939 *James Godwin*

W 2

“Thus ended a life that strangely mingled high intelligence with uncurbed impulse. Long acquaintances were at a loss to explain it as was Godwin himself. Described by physicians as having an intelligence quotient bordering on genius...”

“Frequently jailed for petty larceny, forgery and automobile theft and from Eastern Carolina Training School as an ‘incorrigible’...”

1940 *Lee Flynn*

W 3

“Evidence at the trial was brought out that Flynn had spent some time at the Morganton institution for insane, and his attorneys appealed that he was not in his right mind.”

1942 *Roland Wescott*

W 2

“Prison Chaplain L.A. Watts said Wescott claimed to the last that he did not remember killing the girl, that he was deranged at the time because of a blow on the head he received shortly before...”

“His round, full face was pale and twitching.”

1943 *Daniel Phillips*

B 2

“The husband still maintained that the woman went to South Carolina to have a ‘root doctor’ put a spell on me and make marry her.”

1944 *Andrew Farrell* W 2

“Last week Governor Broughton refused to intervene, after Farrell had been declared sane by two State psychiatrists. Wednesday, a delegation from Columbus County, where Farrell was born, asked the Governor to reconsider the case on what the Columbus men termed Farrell's ‘mental instability,’ but the Governor declined to intervene.”

1946 *Calvin Williams* B 2

“William looked as if he was too dazed to be frightened.”

1947 *Robert Messer* W 1

“‘The boy has always been an outcast,’ said one Sylva man, and never had a chance.”

1948 *John Breeze* B 2

“...[he] had done all that he could to lead prison officials to believe that he was mentally unbalanced...”

“Breeze, who did not have full use of his legs and left arm because of a blow that he had received on the head several years ago...”

1949 *Monroe Medlin* B 2

“Prison officers say his mother is a patient of the State mental hospital at Goldsboro.”

“Prison Chaplain William H.R. Jackson stated that Medlin revealed to him Thursday that he had contemplated suicide and had written a note to his wife who is serving a prison term in South Carolina for larceny.”

1950 *Jack Bridges* W 2

“...described the crime to Scott as a case of temporary insanity. They said they did not believe he realized at the time what he was doing. Following the hearing, Paroles Commissioner T.C. Johnson, who had sat in with the Governor, reported his findings.”

1950 *Covey Lamm* W 1

“Lamm’s attorneys had pleaded their client was insane and held there was no evidence of premeditation to support a verdict of first degree murder.”

1984 *James Hutchins* W 1

“I peeked back in because I wanted to see him without me there. I wanted to see how much of this he really felt and how much of it he was playing with me and getting me to beg him [to resume his appeals]. When I looked back in he was... banging his head against the wall- hard.”

1994 *David Lawson*

W 1

“Lawson has enlisted Phil Donahue in an effort to spread the story of his depression and how it affected him. Lawson said he didn’t receive treatment for depression until he was sent to prison.”

1995 *Phillip Lee Ingle*

W 3

“Ingle, who was released from a state mental hospital only days before the Willis slayings, has said that the two couples appeared to him as demons with red eyes, horns, and tails. Ingle has a long history of mental illness. As a small child, he watched his mother, also a paranoid schizophrenic, try to kill herself. At ages 5 and 7, Ingle tried to hang himself and had to be cut down. His demonic hallucinations when he was 10, after he was hit in the head with a baseball bat. As a teenager, he began abusing alcohol and drugs. At 19 he deliberately shot himself in the stomach.”

“One psychiatrist, Clabe Lynn of Dorthea Dix said Ingle hallucinated and was periodically out of touch with reality. Dr. Henry Horacek, a Charlotte psychiatrist, testified that Ingle was a paranoid schizophrenic. Lynn and Horacek said Ingle was prone to psychotic breaks and wouldn't know right from wrong and wouldn't remember his actions. During these episodes...Ingle hallucinated, saw people as devils, and heard the voice of Lucifer speaking to him.”

1998 *Ricky Lee Sanderson*

W 2

“Sanderson has told his lawyers and counselors he wants to die in the gas chamber. That’s because Hugh Holliman, Suzi’s father, will witness the death and death by gas is regarded as more painful than by lethal injection. ‘His response is that the Holliman’s deserve to see him, said Gary Hoover, a psychologist who has examined Sanderson.”

1998 *John Thomas Noland*

W 3

“All evidence in the case, both from the state and defendant, demonstrates without contradiction that these tragic killings were the result of the defendant's mental illness exacerbated by the loss through separation of his wife and children.' Justice Jim Exum wrote in the dissent.”

“On May 21, a state court ordered Noland committed to a state hospital, finding him ‘mentally ill and a danger to himself.’ The court record doesn't indicate when he was released.”

1999 *James Rich*

W 3

“Rich, who had a long history of mental problems, including three stays in a hospital, spent his last day visiting with his mother and stepfather, a brother, and other relatives.”

“Only 26 years old, Rich has a history of mental illness that stretches back at least to when he was 12, and includes diagnoses of schizophrenia and manic-depressive illness.”

2001 *Clifton White*

W 2

“As a young adult, White was gang-raped while in prison, and that event made him fearful and violent, court records showed.”

“She said that she called his probation officer in County as well as county mental health officials but that no one answered her plea to help her brother.”

2003 *William Quentin Jones*

B 3

“Yet jurors never heard from a jailer who logged Jones as a suicide risk the next morning. His current legal team found that jail log entry and talked to the officer, then hired an expert in childhood trauma to conduct a mental health evaluation. The hair raising family history compiled by psychologist John Fairbank could well have inclined a fair minded jury toward mercy sentencing.”

2003 *Joseph Earl Bates*

W 3

“[He is] a man with a minimal IQ and mental problems.”

“Bates became increasingly anxious, agitated, paranoid, aggressive, and alcoholic after the 1987 car wreck, which mangled his right arm and leg and injured the front of his brain. ‘His personality changed,’ she said. ‘He was no longer a happy-go-lucky, easy-going guy.’ After someone fired shots at his trailer, Bates grew increasingly paranoid that friends of his estranged wife were out to kill him, Godwin said. He set boobytraps at home and began sleeping in cars and trees, she said.”

2003 *Timothy Keel*

W 3

“Keel’s attorneys argued in federal filings that he has the mental ability of a fifth-grader and that they want a review of his mental state in state court.”

“Joseph Timothy Keel, 39, has suffered significant brain injury, endured chronic mental illness and been plagued with sub-average intellectual functioning his entire life, yet, a jury of his peers has never heard this evidence. Sadly, almost all of these facts were either overlooked at trial or not available to defense counsel.”

2003 *John Dennis Daniels*

B 2

“When Daniels later tied a cord around his neck in front of police officers, he was trying to get attention as part of an antisocial personality disorder, White told jurors, adding that it wasn’t a real suicide attempt. White’s affidavit said she didn’t know Daniels had tried to burn himself after the killing or that he was drunk. She said she would have made a different diagnosis had she known that.”

Appendix 3: Selected Full Articles

The following table includes selected articles from *Chapter 3: Chronicling Capital Punishment in North Carolina, The News and Observer*. The table includes the full articles, as printed originally in the Raleigh News and Observer.

Figure 3.1 Walter Partridge of Fayetteville
Raleigh News and Observer, Published on April 4, 1905; Page 1, 6

<h1>BOY RAVISHER DIES ON GALLOWS</h1> <h2>Walter Partridge Hung at Fayetteville Yesterday</h2> <h3>A SILENT STRUGGLE</h3> <p>Dying, the Doomed Man Gets a Partial Fooling On a Steam Pipe in the Jail From Which He Has to Be Torn Away--Day Be- fore the End.</p> <p>By R. L. GRAY.</p> <p>Fayetteville, N. C., April 6.—Walter Partridge, the young negro who criminally assaulted Mrs. Lillie Hales near Hope Mills on February first, was hanged in the jail here today in the presence of some fifty or sixty witnesses.</p> <p>Although the doctors agreed after the body had been taken from the gallows, that the neck had either been broken or dislocated, it was evident that death resulted from strangulation.</p> <p>Sheriff Marsh sprang the trap at eight minutes after ten; and life was pronounced extinct at ten-twenty-eight.</p> <p>The scenes in the first few moments after the body of the negro dropped were most harrowing and not a few of the amateur witnesses were deeply affected.</p>	<p>Partridge made the orthodox confession and farewell address to the crowd, and beyond the incident of the feet of the condemned man catching in the pipes running along the sides of the cell, there was nothing of specially dramatic interest about the execution.</p> <p>The hour for the hanging was ten o'clock. At that hour a hundred or so people had gathered outside the pillbox of the jail, gazing with staring eyes at the grated windows of the third story where it was known the condemned man was confined. There was no disorder. It was merely the typical crowd of people whom a gallows attracts. In the jail Partridge, surrounded by the deputies and the few who had been admitted before the half-hundred visitors, maintained the same cool and unconcerned attitude which has distinguished him during his last days. From the streets below negro boys and men took off their hats and waved them at the building.</p> <p>"Hello, Walter!" they shouted and Partridge, released for a few moments from his cell, looked at them greedily from the window. In the crowd below was an old negro woman, recalling Raleigh's "Aunt Hetsy of the Market Horse," in an old calico polk bonnet, who announced that she was the grandmother of the prisoner. According to this distinction the crowd stood back and the old darkey gazed her fill at the top windows which shielded the man about to die from the view of the curious crowd.</p> <p>Previously to this Partridge had prayed with Rev. Hall, to whom he had made his confession, had eaten the usual "heartly breakfast" of the condemned which was topped with a bottle of ginger ale by special request, and when I visited the jail was engaged in admiring his photograph which had been taken the preceding evening. Partridge was pathetically interested in his photographic presentation. As I have already indicated, he had taken a consuming pride in sitting before the photographer. Fifteen minutes before his hanging today, he fingered the photograph with hands reluctant to let it go and gave to the sheriff a list of his relatives and friends to whom he wished copies sent.</p>
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The crowd having been admitted the people swarmed in the narrow confines of the upper story of the jail. The gallows, arranged over the staircase, with the iron trap on a level with the top of the row of steel cages, was in the line of vision of several prisoners, two of whom occupied the cell almost underneath it. From a hook above the trap depended the rope and as the deputies busied themselves in waxing the rope and tying the knot the operation was watched by those confined in the jail as well as the spectators who crowded the corridors and climbed upon the roof of the cells for a better view. While the preliminaries were being arranged, the two negroes in the cell adjacent to the gallows commenced to cry, begging to be taken to another cell, which was done.

Partridge, however, loose in the corridor, stood leaning against the grating, looking with fascinated eyes at the preparations for his death.

Finally he was lead out, hauled up the step-ladder to the level of the trap and stood a mute figure in his new clothes before the crowd that had come to see him die. Among the big men who surrounded him, the prisoner gave even more than ordinarily the impression of being a boy—a young criminal caught in the meshes of a strange noose. At first he was abashed. There was no fear in his face, apparently no realization of the moments that were to succeed. Before the staring people, he was merely ashamed, as it were, stricken with stage fright. He hesitated, some one prompted him. He cleared his throat:

"I did all they said I did, this is my full confession; I hope to meet you all in heaven."

Rev. Mr. Hall had prayed before this, fervently, his black ringed eyes and the deep furrows in his face showing the strain that he was under for the alien man of alien race who had called on him in his extremity:

Boy Ravisher Dies on the Gallows.

(Continued from Page One.)

a moment, but only for a moment the strain of that strangling rope was partially relieved. County Physician Rose tore the gripping feet from their anchorage. Again the convulsion, again the blind feet reaching for their desperate hold upon the ledge, again the restraining hands against that futile hope. Slowly the body swung to and fro. The deputy sheriff, his face drawn and fingers clenched, swung his body through the trap, placed his feet, one on either edge of the knot that had slipped from behind the ear to beneath the chin and rested his weight upon the rope. Still the body shook and swayed from side to side and the groping feet reached blindly for the friendly comfort of the sustaining pipes.

All this lasted possibly two minutes. The curiosity-loving visitors shuddered. Some of them deserted their posts. Some puffed violently on cigars, their faces white and seamed with the strain. There was silence in the jail that spoke eloquently of the power of death on a human imagination.

Presently the convulsions ceased. The doctors commenced their examinations. The body swayed like a dead weight at the end of the rope, a grim reminiscence. Somebody threw open the window at the left of the gallows. The light of the brilliant day came flaring onto the dangling lump of flesh. The murmur of voices came from without. The rope was loosened from the top. Deputy Monaghan called for a cigarette, lighting it with shaking hands. The body was lowered and taken down past gaping prisoners to the waiting coffin. The company in the jail followed slowly out of the doors into the bracing freshness of the morning. Outside the pallsades, their faces livid with interest, stood a conglomerate crowd of white and black, eager with questions, insatiable for detail.

But the white-faced crowd—those envied among the ones who were eager to see—went silently away with something more and a great deal less than satisfaction in their breasts.

Partridge committed a criminal assault on Mrs. Lillie Hales, a factory operative on Feb. 21st. He was at once captured and identified. A bill was passed by the Legislature giving him a quick trial. No appeal was taken from the verdict of the jury. His counsel, ex-Representative Bolton, saw that he had a fair trial and was at the death today.

There seems to have been a sentiment here that the hanging should have been public as an object lesson to the negroes. From the way in which the execution has been made the common topic however, it would seem that the end desired has been obtained.

Partridge's victim was a woman of 125 pounds weight. Partridge was very small, weighing possibly not more than 110 pounds. His arms and shoulders, however, showed remarkable physical development. In addition he used as a weapon a pair of scissors with which he lacerated Mrs. Hales' breast before he accomplished his crime.

Rev. Mr. Hall, in speaking to me of Partridge, said today that he had no idea that the boy had any conception of the enormity of the crime for which he was hung.

Partridge was nineteen years old and would have had his twentieth birthday in August.

Figure 3.2 The Execution of L.M. Sandlin.
 Raleigh News and Observer, Published on December 30, 1911; Page 5

ELECTRIC CHAIR, CLAIMS MURDERER

L. M. Sandlin Forfeited His Life Yesterday at the State Prison

PUT TO DEATH FOR THE MURDER OF HIS WIFE

**Three Currents Turned Into His
Body and He Was Pronounced
Dead at 10:42—Made No Public
Statement, But Said He Was Sorry
—He Was Tenth Man to Die in
Electric Chair.**

The electric chair at the State Prison claimed its tenth subject yesterday morning when L. M. Sandlin, a white man of Wilmington, expiated his life for the crime of murdering his wife, which occurred last June.

The electrocution in detail was performed without a hitch and was like all of the others that have been carried out at the prison. Sandlin was the second white man to be put to death in the electric chair, the first one being J. B. Allison, of Asheville. In many respects it was the most pathetic of all the executions, inasmuch as the condemned man had high hopes until the very last that the Governor would take some action in his behalf. His brother, Mr. J. E. Sandlin, who arrived in the city early yesterday morning, together with Rev. S. J. Betts, went to the Governor and made a personal appeal in the prisoner's behalf, but the Governor refused to interfere with the case.

Test Made.

The invited witnesses began to gather in the death chamber shortly after 10 o'clock, and about fifteen minutes after the attendants began the usual preparations of the chair and its apparatus. In this more care than usual was taken on account of the fact that Sandlin was a large man, the largest one yet to be electrocuted. The large motor was set in motion at 10:23 and the first test of the electrical effects was made at 10:23 1-2, a second at 10:25 and the third at 10:29. Everything was found to be in readiness and Warden Sale ordered the prisoner to be brought from his cell.

Enters Death Chamber.

The prisoner entered the death chamber at 10:32 and was accompanied by guards, one of whom had to help support him as he, with faltering steps, entered the chamber. He was very weak and nervous. As he almost sank into the chair he remarked that "I never thought this would ever happen to me." As the guards were fastening the straps about his ankles and body he was continually saying, "Oh God" and "Oh, Father, have mercy on me."

Current Turned On.

After adjusting the straps and electrodes the attendants stepped from the chair and, at the word from Dr. Jordan, Warden Sale administered the first shock at 10:35. As the current entered his body there was a straining and tightening of the straps and his face and neck became very red and bulged. After the first current was turned off Drs. T. M. Jordan, R. S. Stevens and Jack H. Harris examined the heart with the testing instrument and a second shock was ordered. This was given at 10:37, and still another given at 10:39 1-2. At 10:42 he was pronounced dead by the attending physicians.

Remains Taken to Wilmington.

His body was then unstrapped and removed to an adjoining room, where it was taken in charge by H. J. Brown Undertaking Company. It was prepared for burial and left Raleigh on the 12:30 Southern train for Wilmington. Mr. J. E. Sandlin, a brother, accompanied the remains to Wilmington.

Was Sorry For Act.

The prisoner made no statement to the public, but told Deputy Sheriff and Jailer J. M. Branch, of Wilmington, that he killed his wife, but was insane at the time and did not know anything about it. He also said that he was very sorry for his act.

Witnesses Who Signed Papers.

The law requires that the verdict of death shall be signed by twelve witnesses, and the following attached their names to the certificate of Sandlin's death:

Dr. J. H. Harris, of Jefferson Medical College, Philadelphia; Dr. R. S. Stevens, G. W. Mumford, C. F. Koonce, Paul Pittenger, Gordon Harris, Sheriff J. J. Harward, G. C. Hayes, G. B. Heilen, I. M. Cheek, of The News and Observer; C. B. Taylor, of the Daily Times, and Jailer J. M. Branch, of Wilmington.

His Crime.

The crime for which Sandlin forfeited his life was deliberately murdering his wife and was committed on Tuesday night of June 27, 1911. She was keeping a boarding house at the time and the husband fired at her four times as she was running from him, twice in the back, once in the neck, and one shot going in the air. He was tried at the fall term of New Hanover court and sentenced to death for the foul crime. An appeal was taken, and the Supreme Court denied the motion for new trial.

The evidence introduced on behalf

of the State showed that for some time prior to the homicide the defendant and his wife did not get along well. There were frequent quarrels between them, and on one occasion the defendant beat his wife, and their son interfered. These quarrels finally resulted in the wife leaving her husband, and moving to another house, where she kept boarders. She kept boarders while living with her husband. After his wife left, the defendant repeatedly threatened to kill her and then kill himself. On the day of the homicide defendant went to his wife's house. He went in the house and stayed about ten minutes and when he came out the door slammed behind him and he turned and said, "Dora," meaning his wife, "don't slam the door on me like that." He then went off, and after some minutes returned and entered the house again. He went into the dining room and told his wife that he wanted to see the children. She told him she did not object to his seeing the children, but not to come there. He then said: "Dora, you are my wife, and I love you, and expect to protect you, and you have got to stay with me." There was some more talk which the witness could not hear, and presently the defendant commenced beating his wife. The wife screamed and ran from the dining room into the parlor. The defendant followed, beating her. She ran from the parlor into the hall, and the defendant still followed her. When she got into the hall the defendant pulled his pistol and shot her three times, twice in the back and once in the neck. The doctor testified that either shot would have killed her. The woman fell and defendant stepped over her body and out onto the porch, and shot himself in the head. He fell down on his knees and said: "For God's sake, somebody come and help me." One Morse, who occupied adjoining rooms, then said to him: "Throw that pistol down." He threw it down on the porch and Morse picked it up. Defendant then said: "I killed her and I intended to kill her. She drove me to it, and she kept a woman (meaning a bad woman) in the house." Witness told him that he would "have to cut that out; that he had his family in the house." Defendant replied he did not care; that it was dark for him, and he did not care what happened to him.

Remarks on Crime.

Attorney General Bickett, in his remarks when the appeal was heard before the Supreme Court, had the following to say of the crime:

The record in this case registers another victim to that dark spirit of crime which is stalking through the land, slaying our women or dragging them down to a ruin that is worse than death. The supreme tragedy of life is the immolation of a woman. With a heavy hand nature wrings from her a high tax of blood and tears. Have men become brutes to know no pity? Is chivalry dead? Is motherhood no longer holy? Is our civilization to go down in a carnival of crime where women are butchered like sheep in the shambles? Verily, I take no pleasure in the death of the wicked, but it seems to me that to this man the electric chair would hold the least of terrors. As he sits in his lonely cell can he banish the vision of the woman who in the days of her youth, put her hand in his and with a faith that knew no fear, forsook all and followed him? Can he ever forget that momentous hour when this woman, with a smile of ineffable tenderness, went down into the valley of the shadow of death in order that his child might live? And then can he, for one second, cease to hear her screams of terror as she fled from his bloody hand?

"O, ill-starr'd wench!

Fare as thysmock when we shall meet
at compt,

This look of thine will hurl my soul
from heaven,

And fiends will snatch at it.

Figure 3.3 The execution of William Long, Thomas Watson and J.T. Sanford.
Raleigh News and Observer. Published February 8, 1936; Page 1-2.

LETHAL CHAMBER BUSY TWO HOURS TAKING 3 LIVES

Executions Afford Direct Contrast Between Electro- cution and Asphyxiation

ELECTRICITY PROVES MUCH QUICKER METHOD

Alamance Negro Dies in Chair For Killing Factory Watchman; Two Durham Negroes Die By Gas For Slaying Taxi Driver; All Make Full Confessions

Three young Central North Carolina Negroes who had killed members of their own race and robbed their dead bodies yesterday paid the highest penalty of the law as the State of North Carolina pressed into service both its old electric chair and its new gas chamber to take their lives.

From the time the first Negro, William Long, entered the death chamber and sat down to die in the electric chair, until the body of the third, Thomas Watson, was removed from the gas chamber, exactly two hours and nine minutes elapsed. Between the two, J. T. Sanford had been asphyxiated.

Of the total elapsed time, however, only 23 minutes was devoted to the actual business of killing the Negroes. The remainder of the long performance was devoted to the multiplicity of mechanical details attending asphyxiations.

Dead In 4 Minutes

Exactly four minutes of high voltage current was required to burn the life out of Long, a 19-year old Mehane Negro who shot and beat to death Sam Minor, nightwatchman at a furniture factory.

Thirteen minutes after the little Negro had walked into the death chamber, his body had been removed and was on its way to the undertaker.

Sixteen minutes later, Sanford, a 23-year-old Negro who killed, with Watson, Nathan Malone, a Durham taxi driver, entered the chamber. It took only ten and one-half minutes of gas to take his life, but he had been in the chamber 45 minutes before his body was removed.

Ten minutes afterward, Sanford's 30-year-old companion in the Durham murder, Watson, entered the chamber. Although it took only eight and one-half minutes of the gas to extinguish the spark of life in Watson, it was another 45 minutes before the body had been claimed by the undertaker.

Electrocution Favored

Because of the dispatch with which it was accomplished and all its traces removed, electrocution spoke silently for itself in the minds of witnesses who, faced with the direct comparison of the two methods, were close to unanimity in preferring electrocutions to asphyxiations, although the principal criticism of the latter was its obvious clumsiness, for apparently the two Negroes died painlessly under the gas.

Long, who had joined the Catholic Church confessed during the week for the first time that he killed Minor and robbed him of \$14 and a watch, entered the death chamber at 10:27 o'clock, accompanied by Father McMillan of the North Carolina Apostolate at Nazareth, and was quickly strapped in the chair.

Two minutes later, after he had thanked the priest for attending him, Long became rigid against the heavy leather straps as Executioner R. L. Bridges threw the big switch that sent 2,300 volts of electricity coursing through the brown body at 10:29 o'clock.

Takes Two Shocks.

The first shock lasted two and one half minutes and was followed, after an examination by Dr. George S. Coleman, prison physician, by a second shock which lasted for a minute and a half. Long's body was immediately removed, claimed by a Durham undertaker, to begin its journey back to Mebane.

A quarter of an hour then ticked off, while prison attendants removed the electrical equipment from the chamber and attended to the details of filling the acid container with sulphuric acid and water, filling the cyanide container with 15 one-ounce pellets and setting it for action.

Sanford entered the chamber, removing the blanket which covered his well-built body, nude except for trunks, at 10:58 o'clock and was quickly strapped in the chair, with stethoscopes taped to his chest.

Mechanism Falters.

The doors were closed, but something went wrong with the mechanism dropping the cyanide into the acid and his life was prolonged for a few seconds, during which he sat in the chair, alternately smiling through the double windows at witnesses and frowning in a puzzled sort of fashion as he looked for the gas, which finally began to rise at 11 o'clock sharp.

The Negro took a couple of quick breaths and apparently was unconscious in slightly more than 20 seconds, but his breathing for more than a minute was rapid and violent, accompanied by groans and grunts so loud they could be heard through the concrete-covered steel walls of the chamber.

At the end of a minute and a half, the labored breathing had gone, replaced by spasmodic contractions of the diaphragm, and the Negro's legs drew back over

Lethal Chamber Busy Two Hours Taking 3 Lives

(Please Turn to Page Two)

his teeth in a ghastly grin of death. The body became rigid against the straps, in much the fashion of that of a victim of electrocution.

Is Pronounced Dead.

The horrible grin gradually faded from the Negro's face, the body slowly relaxed, and at 10 and a half minutes after 11 o'clock, Dr. Coleman removed his stethoscope from his ears and nodded that the Negro was dead.

The fans in the chamber were turned on, but the gas left the chamber slowly and 25 minutes elapsed before the chamber was clear enough to be opened. At 11:41 o'clock, the body had been removed.

Ten minutes passed by and Watson, one of the most intelligent looking Negroes ever executed at the prison here, entered the chamber, removing the blanket from his light-skinned body.

The strapping was quickly accomplished and at 11:53 o'clock, two minutes after he had entered the chamber, Watson saw the deadly fumes arise from beneath the chair. In half a minute, after he had taken a few, quick breaths, the Negro appeared to be unconscious.

Breathing Is Violent.

Again, the violent breathing occurred for over a minute, accompanied by straining at the straps as the body grew rigid and rose from the chair. The groaning that had accompanied Sanford's death, however, was absent, but the same ghastly grin came over Watson's face three minutes after he had breathed the gas.

At 12:01 o'clock, Dr. Coleman gave the signal that the Negro had died in eight and a half minutes and the executions were over, except that another 35 minutes elapsed before undertaker's assistants could remove the body.

All Confessed.

Not only Long, who killed Miner last January, but the other two Negroes admitted the killings, for which they died. Watson and Sanford beat Malone over the head with a hammer and a car jack until he was dead, then robbed him of money and fled to Savannah in his taxicab.

In Savannah, they were apprehended within 12 hours by Georgia officers who halted them because of the fact that they were using improper license plates. The officers recognized them from a broadcast description and the Negroes readily confessed the murder of Malone.

The execution of Long in the electric chair was the 163rd in its 26-year career, while Sanford and Watson were the third and fourth victims of the gas chamber.

Figure 3.4 The execution of Robert Williams of Cumberland County.
Raleigh News and Observer. Published March 16, 1940; Page 7

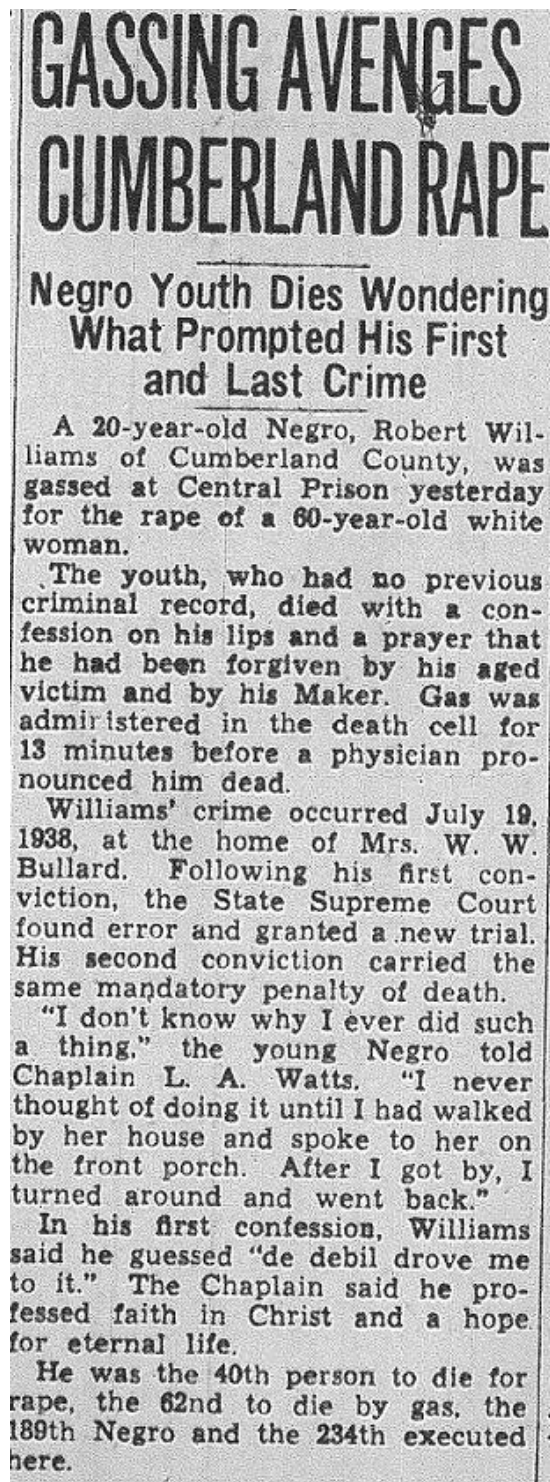


Figure 3.5 The progression of Kermit Smith's death penalty case.
Raleigh News and Observer. Published January 23, 1995; Page 1, 6A

14-YEAR DEATH ROW CASE PROVIDES CLUES TO PROCESS OF EXECUTIONS

Smith nears end of wait

BY JOSEPH NEFF
STAFF WRITER

The state took 3½ days to seat a jury, convict Kermit Smith of murder and sentence him to death in 1981 — and almost 14 years to reach the point of carrying out that sentence.

What took so long to get to the Tuesday morning execution date? A complicated mix of changing case law and the hyper-litigation common to death penalty cases.

"All death penalties cases are unique," says Frank Goldsmith Jr., one of Smith's appellate attorneys. "But the law has changed so much during this time on death row."

Because execution is the ultimate and irreversible penalty, courts allow lawyers to scrutinize and litigate every step, stage and word of a capital trial.

Smith's case, like dozens of other death-penalty appeals, was affected by rulings on other capital cases. Case law has zig-zagged over the past 25 years, both in the state and federal supreme courts, adding time and expense to the appeals process for many death row inmates.

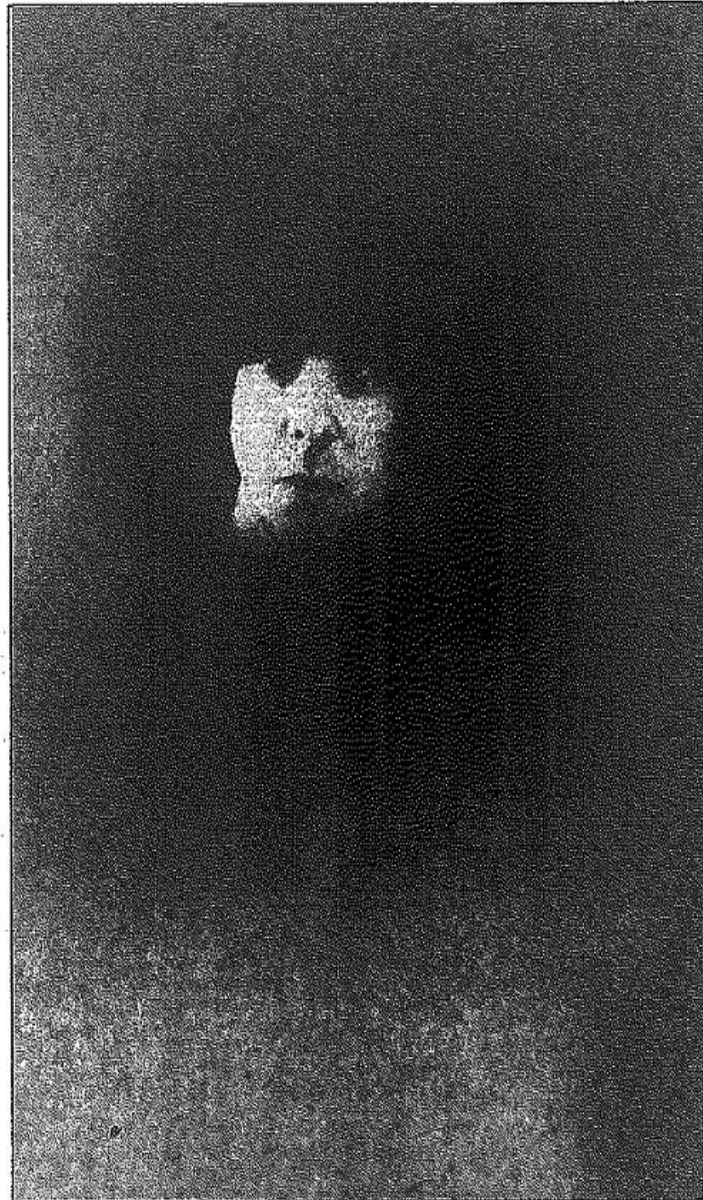
According to a Duke University study in 1993, pushing a case through to execution costs North Carolina \$329,000 more than giving a murderer a life sentence — and that estimate does not include the cost of federal appeals.

Gov. Jim Hunt and Attorney General Mike Easley want the General Assembly to speed the process by reforming procedures, such as automatic scheduling of hearings and faster preparation of court records.

Some death-penalty experts say the process is going to speed up anyway because case law has finally been settled. The death penalty has been upheld as constitutional. Courts have settled procedural questions such as jury instruction, aggravating and mitigating factors in capital cases, and racial bias.

"I don't think we've seen it come to pass yet in North Carolina," says University of North Carolina law professor Jack Boger, a death penalty expert. "If you make important upstream changes, you still have to wait for water to get downstream before you see changes in the flow."

Still, Kermit Smith's case clearly shows how slowly the wheels of justice can turn on the way to an



Convicted killer Kermit Smith is shown here through the lens of a television camera as he faces the media for the last time before his scheduled execution Tuesday.

STAFF PHOTO BY ROGER WINSTAD

SEE SMITH, PAGE 6A

SMITH

CONTINUED FROM PAGE 1A

execution. The process started in December 1980, when Smith carried out a murder he had long fantasized about.

The trial

Smith, 37, kidnapped three cheerleaders from N.C. Wesleyan College. While two of them were locked in the trunk of his car, he raped and killed Wheette Collins. ~~Collins' body was found at the bottom of a rock quarry, her feet jammed in a cinder block and her head smashed in. The other two women escaped, and Smith was arrested within hours.~~

Smith's trial moved quickly. On the third day, the jury deliberated for 72 minutes before finding him guilty. On the fourth day, psychiatrists testified that Smith was socially inept, a slight man with a high IQ who had been picked on as a youth and in prison, an ineffective creature who messed up most things he attempted, including a 1978 suicide attempt.

Unswayed, the jury handed down the death penalty.

State appeals

Smith lost his direct appeals in the state Supreme Court and the U.S. Supreme Court, a process that took 19 months. Two new lawyers then volunteered to handle his case: Goldsmith and Melinda Lawrence of Raleigh.

The two started filing appeals in state court, using what they believed were unconstitutional errors during the trial. Lawrence and Goldsmith brought up issues

they would continue to pursue for the rest of Kermit Smith's life:

■ One potential juror raised her hand when asked in open court whether anyone was incapable of giving Smith a fair trial, but Smith's lawyers never questioned her about her ability to be fair. She was seated and voted for the death penalty.

■ The judge gave vague jury instructions about what constitutes the aggravating factor of "especially heinous, atrocious or cruel."

■ The judge erroneously instructed the jury that it would only recommend a sentence, when their death sentence actually was binding.

■ Ineffective assistance of counsel at trial.

During this hearing, one of Smith's previous lawyers attempted to answer the ineffectiveness charge. He gave prosecutors some of Smith's diaries to show why he hadn't called Smith's mother to testify at his trial.

In them, Smith fantasized about going to the lovers' lane near the rock quarry. He would toss a smoke bomb in a couple's car, disable the boy and kidnap the girl. Smith fantasized about torturing, raping and killing the girl.

Smith wrote that he went to the lovers' lane several times and put smoke bombs in cars at the lovers' lane several times. Smith also wrote about other escapades, such as cruelty to animals, peeping tom incidents and a stabbing.

The jury had not seen the diaries. They showed intent and premeditation, and they helped kill Smith's shot at clemency

before the governor, and tainted Smith in the mind of any judge reviewing the case.

Smith lost every count in the motion for appropriate relief. First, Superior Court Judge Frank Brown tossed out every claim except one — before the judge had even heard the state's arguments for tossing them out.

Four months later, a different judge conducted a two-week hearing solely on the issue of ineffective counsel. Again, he ruled against Smith, and was upheld by the U.S. Supreme Court.

Another try

Smith's lawyers then took a second bite at the apple, re-entering state courts through a door opened by a recent N.C. Supreme Court decision known as *State vs. Harbison*.

The court had ruled that it was reversible error when a defense attorney conceded guilt to a lesser offense without the permission of the defendant.

Smith's trial lawyers had conceded that Smith committed second-degree murder and had admitted to aggravating circumstances, his appellate lawyers said, all without Smith's permission.

Superior Court Judge I. Beverly Lake Jr. ruled against Smith, saying the trial lawyers had engaged in permissible defense tactics. Smith lost his appeals in the higher courts.

On to federal court

After seven years in state courts, Smith's case moved into federal court in April 1988. His lawyers challenged the constitu-

tionality of his sentence and verdict. But before this appeal started, Smith's case was put on hold for a year while the U.S. Supreme Court decided the *McKoy* case.

The case reversed 45 North Carolina death sentences, but it didn't help Smith.

Smith's federal appeal focused on the instructions on the aggravating factor of "especially heinous, atrocious and cruel." The U.S. Supreme Court had struck down identical instructions in an Oklahoma case.

Using this case, U.S. District Judge W. Earl Britt ruled in 1991 that Smith deserved a new sen-

tencing hearing. This would have sent Smith back to where he was on the morning of April 30, 1981 — guilty and awaiting sentencing.

But Smith's good fortunes were not to last. All 14 members of the 4th Circuit U.S. Court of Appeals decided to review Britt's decision, and the court reversed Britt's ruling by a 9-5 vote.

That critical vote put Smith back on the fast track to the death chamber. Defense lawyers say the reversal was extraordinary — such rehearings are very rare.

"It was unprecedented for the Fourth Circuit to put itself in the jury's place and decide," Goldsmith says. "Had Kermit come along at different time, the courts never would have found an unconstitutional aggravating factor to be harmless error. They would give it to a jury for resentencing."

In October, the U.S. Supreme Court declined to hear Smith's appeal — the fourth time the nation's high court turned Smith down.

A new execution date was set: Jan. 24, 1995.

The legal life of Kermit Smith

A timeline of the man scheduled to be the next prisoner executed in North Carolina.

THE CRIME

1980 Dec. 3: Kermit Smith abducts Whelette Collins and two other N.C. Wesleyan College cheerleaders. Smith rapes Collins and bludgeons her to death.

THE TRIAL

1981 April 27: Jury selection begins in Halifax County.

April 30: Jury sentences Kermit Smith to death for rape and murder of Whelette Collins.



Whelette Collins

DIRECT APPEAL

1981 Jan. 29: Dwight Cranford, one of Smith's trial lawyers, challenges verdict and death sentence in N.C. Supreme Court.

June 2: N.C. Supreme Court rules that Smith has a fair trial and upholds death sentence.

Aug. 22: Smith appeals June 2 ruling to U.S. Supreme Court.

Nov. 29: U.S. Supreme Court declines to hear the case.

STATE HABEAS PROCEEDINGS, PART I

1983 June 6: Smith's appellate lawyers, Melinda Lawrence and Frank Goldsmith, file an 80-page motion for appropriate relief in Halifax County. Among other claims, they argue that part of the judge's instructions to the jury — concerning an aggravating factor that the murder crime was "especially heinous, atrocious or cruel" — was unconstitutional.

Aug. 19: Superior Court Judge Frank Brown summarily tosses out the bulk of the June 6 motion, saying the issues should have been raised on direct appeal to the N.C. Supreme Court.

Dec. 5: Superior Court Judge Donald Smith holds hearing on claim that Smith's trial counsel was ineffective.

Dec. 16: Judge Smith denies claim and sets execution date of March 9, 1984.

1984 Jan. 30: N.C. Supreme Court stays execution.

Aug. 14: Smith's lawyers ask for a new hearing in the N.C. Supreme Court. They challenge the denial of psychiatric expert at trial and charge that Smith's trial lawyer improperly gave the court diaries in which Smith fantasized about kidnapping, raping and killing women.

1985 Aug. 13: N.C. Supreme Court refuses to rehear the case.

Oct. 12: Smith's lawyers appeal to U.S. Supreme Court.

Dec. 9: U.S. Supreme Court declines to hear the case.

1986 Jan. 30: Smith renews request for hearing in N.C. Supreme Court.

Feb. 11: N.C. Supreme Court dismisses Jan. 30 request.

STATE HABEAS PROCEEDINGS, PART II

April 4: Citing 1985 N.C. Supreme Court case, Smith files second motion for appropriate relief in Superior Court in Halifax County, charging that Smith's trial lawyer was ineffective by allegedly conceding Smith's guilt and admitting to aggravating circumstances.

1987 March 2: Superior Court Judge I. Beverly Lake Jr. holds evidentiary hearing on ineffectiveness-of-counsel claims.

March 6: Lake denies April 4 request for appropriate relief.

June 1: Smith's lawyers appeal Lake's March 6 ruling to N.C. Supreme Court.

1988 Feb. 5: N.C. Supreme Court refuses to hear the case.

Feb. 25: Execution scheduled for April 26, 1988.

April 15: Smith appeals Lake's order to U.S. Supreme Court.

April 21: Execution stayed pending U.S. Supreme Court decision and filing of writs of habeas corpus in U.S. District Court.

April 27: U.S. Supreme Court refuses to hear the case.

FEDERAL HABEAS PROCEEDINGS

May 20: Smith's lawyers challenge death sentence in a petition for writ of habeas corpus in U.S. District Court in Raleigh. They allege jury instructions on the aggravating factor of "especially heinous, atrocious or cruel" were unconstitutionally vague.

1989 Oct. 11: District Court postpones the case pending a U.S. Supreme Court decision in a related case, known as *McKoy vs. North Carolina*.

1990 July 6: Smith asks N.C. Supreme Court to send the case to Superior Court in Halifax County for imposition of life sentence.

Oct. 3: N.C. Supreme Court turns down Smith's *McKoy* claim.

1991 June 8: In 55-page decision, U.S. District Judge W. Earl Britt grants habeas writ, ruling that unconstitutionally vague jury instructions failed to limit jury's discretion in applying the "especially heinous, atrocious or cruel" aggravating factor.

Aug. 14: Britt denies the state's request to reconsider order.

Nov. 15: N.C. Supreme Court declines to review the error that Britt found.

Dec. 2: Britt orders that Smith's death sentence be vacated unless state gives him new sentencing hearing within 180 days.

1992 June 11: Panel of Fourth Circuit U.S. Court of Appeals affirms Britt's ruling in 2-1 decision.

July 23: Fourth Circuit vacates June 11 decision and grants hearing to entire Fourth Circuit.

1994 Jan. 21: Fourth Circuit, in 9-5 decision, reverses Britt's decision, ruling that vague heinous instructions were harmless error. Chief Judge William Wilkins Jr., who dissented in June 11 decision, writes majority decision.

Feb. 4: Smith's lawyers ask for rehearing in Fourth Circuit.

Feb. 28: Fourth Circuit denies rehearing.

May 27: Smith asks U.S. Supreme Court to overturn Fourth Circuit's decision and uphold Britt's order.

Oct. 3: U.S. Supreme Court declines to hear appeal.

Oct. 27: Superior Court Judge James Spencer sets execution date as Jan. 24, 1995.

Dec. 19: Smith files third motion for appropriate relief in Halifax County Court, raising five issues previously rejected in state and federal court. The issues include the "heinous" jury instruction, the *McKoy* issues and the claim of ineffective counsel.

1995 Jan. 3: Superior Court Judge J.B. Allen denies third motion for appropriate relief.

Jan. 5: Gov. Jim Hunt denies clemency.

Jan. 19: N.C. Supreme Court upholds Allen's ruling.



Kermit Smith



W. Earl Britt

Figure 3.6 The execution of Velma Barfield.
Raleigh News and Observer. Published November 3, 1984; Page 10A

10A The News and Observer, Raleigh, N.C., Sat., November 3, 1984

'Then there was silence,' witness says of Barfield death

Ramona Jones, a staff writer for *The Raleigh Times*, was one of the witnesses to the execution of Margie Velma Barfield. Following is her account.

The first 10 minutes in the tiny, dark room were interminable. Maybe it was the heat, maybe it was the solemn expectation of the execution.

Sixteen witnesses assembled in the room next to Central Prison's death chamber early Friday to watch as the state executed convicted murderer Margie Velma Barfield.

Guards escorted the witnesses into the dark room about 1:40 a.m. The only light came through the large window in the lighted death chamber. Inside the chamber, a straight-backed wooden chair — a reminder of past gas-chamber deaths — seemed to stare back at the witnesses.

Three women and 13 men waited in the witness room for Central Prison guards to roll the 52-year-old woman into the chamber. The only sounds were a brief whisper, a few shuffling feet, the jingling of change in someone's pocket.

About 1:50 a.m., the latch on the heavy steel door to the chamber moved, and the door swung open. Mrs. Barfield glanced into the chamber as two uniformed guards rolled her gurney toward the open door. She

turned her head away from the witnesses and closed her eyes as the gurney was moved in front of the window. The double-paned glass and about 3 feet were all that separated Mrs. Barfield from the first row of witnesses.

Her brown hair was freshly curled.

She was wearing tortoise-shell glasses and her favorite pair of pink pajamas. Only the embroidered collar was visible from under a blue-green sheet. Bags of saline solution dripped slowly into the intravenous tubes in both of her arms.

The two guards pulled a beige plastic curtain closed lengthwise across the narrow chamber, sandwiching the gurney between the curtain and the window. The curtain moved slightly as the intravenous lines were attached to the lethal solutions, which were set up out of sight.

The hands of the witnesses' watches moved slowly toward 2 a.m. Central Prison Warden Nathan Rice came into the witness room, his deep voice breaking the silence. Everything was in order, he said. After a phone call to the state secretary of correction, the execution would begin.

One witness dropped his head. Another whispered a prayer. Most looked on without expression.

Mrs. Barfield's breath was shallow and rapid when she was rolled into the chamber.

Her lips moved, as if speaking to the guards before they left. Two other times, while waiting for the execution to begin, Mrs. Barfield's mouth moved as if she were speaking or praying. Her tongue wet her lips several times. Her eyes blinked once, maybe twice; otherwise they were closed.

Eight law enforcement personnel, who were official witnesses, sat in two rows in front of the window. A uniformed guard stood by the door, and another stood by the wall near the window. Three

media witnesses stood, and one sat behind the men. Mrs. Barfield's attorney, James D. Little, and her friend Ann Graham Lotz of Raleigh, the daughter of evangelist Billy Graham, also stood behind the law enforcement personnel. They held hands and smiled at Mrs. Barfield, although she couldn't see them.

A few moments after the warden announced that the execution would begin, Little got a chair from across the small room, and Mrs. Lotz sat down. Little stood behind her with his hands on her shoulders. His expression was resigned but not mournful.

A few minutes after 2 a.m., Mrs. Barfield's breathing became deeper and more regular. She

neither smiled nor frowned. She didn't try to fight off the deadly sleep but seemed to slip peacefully into unconsciousness.

At that time, the sleeping agent — sodium thiopental — probably had been injected. The killing agent — procainolone bromide — followed. A few minutes later, the sheet that had been rising and falling slightly moved no more. The warm color in Mrs. Barfield's face began to pale slightly, almost imperceptibly.

From somewhere, a fly buzzed by her head, made one loop and was gone.

Then there was silence.

Suddenly the gurney moved, and a stocky man in a white coat — the prison doctor — entered the chamber. He moved between Mrs. Barfield and the window. He listened to her chest with a stethoscope, then pulled back her glasses and checked her pupils for dilation. He turned and closed another beige curtain, covering the window to the witness room. Someone flipped a switch, and the room was flooded with sharp light, more like the end of a movie than the end of a life.

Rice returned to the witness room to announce the time of death — officially 2:15 a.m.

Figure 3.7 The chronology of John Rook's death penalty case.
Raleigh News and Observer. Published September 18, 1986; Page 8A

Chronology of Rook case, appeals of death penalty

May 12, 1980 — Ann Marie Roche, 25, was kidnapped, beaten, raped, cut with a knife, run over with a car and left to bleed to death in a field near Dorothea Dix Hospital.

May 15, 1980 — John William Rook was arrested on two misdemeanor charges and later confessed to the kidnapping, rape and murder.

Oct. 23, 1980 — A Wake Superior Court jury found Rook guilty of rape, kidnapping and first-degree murder and four days later recommended that he be sentenced to death. Execution was scheduled for Jan. 9, 1981, but was automatically postponed pending appeal.

Nov. 3, 1981 — N.C. Supreme Court affirmed Rook's conviction and sentence. Execution was later rescheduled for Feb. 19, 1982, but was postponed pending appeal.

March 22, 1982 — U.S. Supreme Court declined to review Rook's case. Execution date was later set for Oct. 1, 1982, but was postponed pending appeal.

Oct. 27, 1983 — Superior Court Judge John C. Martin denied motions to overturn Rook's conviction or sentence.

July 6, 1984 — N.C. Supreme Court refused to review Martin's decision.

Dec. 10, 1984 — U.S. Supreme Court refused to review Rook's case.

Feb. 19, 1985 — U.S. Supreme Court denied Rook's request for a rehearing. Execution was later set for June 28, 1985, but was postponed pending appeal.

Oct. 18, 1985 — U.S. District Judge W. Earl Britt denied Rook's request to overturn his conviction or sentence. Execution date later was set for Feb. 14, 1986.

Jan. 31, 1986 — Fourth U.S. Circuit Court of Appeals affirmed Britt's decision and refused five days later to postpone execution.

Feb. 10, 1986 — U.S. Supreme Court postponed execution, giving Rook's lawyers time to submit a request for review of his case.

July 7, 1986 — U.S. Supreme Court refused to review case.

July 15, 1986 — Execution date was set for Sept. 19.

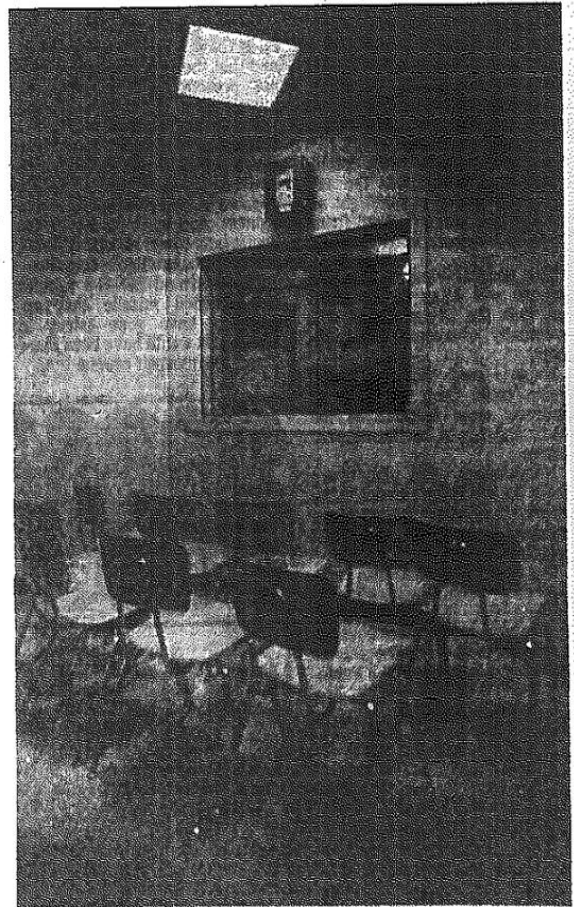
Aug. 20, 1986 — Superior Court Judge D. Marsh McClelland of Burlington refused to postpone execution or grant a hearing.

Sept. 9, 1986 — N.C. Supreme Court refused to postpone execution or review case.

Sept. 12, 1986 — Britt refused to postpone execution or overturn conviction or sentence.

Sept. 15, 1986 — Rook's attorneys asked Gov. James G. Martin to postpone execution.

Sept. 16, 1986 — Fourth Circuit Court of Appeals affirmed Britt's ruling and refused to postpone execution.



Staff photo by Gene Furr

Observation room outside the execution chamber