STATE OF NORTH CAROLINA COUNTY OF STANLY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 95 CRS 567

STATE OF NORTH CAROLINA)
)
v.)
)
GUY TOBIAS LEGRANDE,)
)
Defendant.)

****

MOTION FOR APPROPRIATE RELIEF
PURSUANT TO THE RACIAL JUSTICE ACT

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Defendant, Guy Tobias LeGrande, through counsel, files this Motion for Appropriate Relief pursuant to the Racial Justice Act (RJA), N.C. Gen. Stat. §§ 15A-2010 to 15A-2012, the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Art. I, §§ 1, 19, 24, 26, and 27 of the North Carolina Constitution. Under the RJA and constitutional law, Defendant, who is currently under a sentence of death, is entitled to a sentence of life imprisonment without parole.

INTRODUCTION

1. The evidence set out in this Motion establishes that race is a significant factor in North Carolina's system of capital punishment. The comprehensive, scientific study presented here demonstrates that race is a significant factor in capital proceedings. Prosecutors across the state strike eligible black and other racial minority venire members at double the rate they strike eligible white venire members and individuals who kill whites have significantly increased odds of receiving a death sentence than those who kill blacks or other racial minorities.

2. The evidence set out in this Motion also establishes that race is an extraordinarily significant factor in capital proceedings in the 20th Prosecutorial District. The disparity seen between the prosecutors' strikes of eligible black and other racial minority venire members compared to eligible white venire members is the highest of any district in North Carolina that has more than one person currently on death row.

3. Racial minority capital defendants prosecuted in Stanly County face an uphill battle – they are more likely to face a capital trial and more likely to receive a death sentence than similarly situated white defendants. Also, at the capital trial, the prosecutors have systematically excluded racial minority jurors to secure all-white juries for deciding the fate of these defendants.

4. In addition to the comprehensive, statistical study presented herein, this motion explores the dark history of racial tension and discrimination in the 20th District since this history

is relevant to whether race was a significant factor in the charging and sentencing decisions at the time Mr. LeGrande was tried.

5. While the RJA does not require a showing of racial discrimination in a particular case, Mr. LeGrande can demonstrate that race discrimination infected his trial. Specifically, race was a significant factor in the prosecutors' decisions to (i) charge Mr. LeGrande with a capital offense; (ii) advance Mr. LeGrande's case to a capital trial; (iii) strike 100% of the black venire members; and (iv) repeatedly introduce race in the trial.

PROCEDURAL HISTORY

6. On January 21, 1995, Guy LeGrande, a black male, was arrested and charged with the first degree murder of Ellen Munford, a white female. On March 13, 1995 superseding indictments were returned by the Stanly County Grand Jury for murder and conspiracy to commit murder. Howard Thomas (Tommy) Munford, the estranged husband of Ellen Munford and a white male, was also charged in her death with first degree murder.

7. Mr. LeGrande was initially represented by Walter Johnson and Ronald Barbee both of whom were retained by Mr. LeGrande's family members to represent him. Mr. LeGrande subsequently fired his retained counsel, refused the assistance of court-appointed counsel and was appointed two standby attorneys. Mr. LeGrande proceeded to trial *pro se* on April 15, 1996. At that trial an all-white jury found Mr. LeGrande guilty of first degree murder and conspiracy to commit murder. The jury found that Tommy Munford hired Mr. LeGrande to kill his estranged ex-wife, Ellen Munford. (Mr. Munford pled guilty to second degree murder, conspiracy to commit first degree murder and received a life sentence plus a consecutive twenty year sentence in exchange for his testimony against Mr. LeGrande.) Mr. LeGrande also represented himself at his sentencing hearing wherein the jury sentenced him to death on April 26, 1996.

8. The North Carolina Supreme Court affirmed Mr. LeGrande's conviction and sentence on July 24, 1997. *State v. LeGrande*, 346 N.C. 718, 487 S.E.2d 727 (1997). His execution was set for May 15, 1998. When it was clear that Mr. LeGrande would not personally take action to stay his execution, the Appellate Defender sought a stay in the North Carolina Supreme Court. The Court stayed the execution and remanded the matter to the Superior Court of Stanly County to give Mr. LeGrande an opportunity to pursue a motion for appropriate relief. *State v. LeGrande*, 348 N.C. 287, 502 S.E.2d 849 (1998).

9. On September 8, 1998, Mr. LeGrande's sister and cousin sought to intervene as next friends to file a motion for appropriate relief on his behalf. The Superior Court of Stanly County dismissed the next friends motion for appropriate relief and subsequently dismissed a *pro se* motion filed by Mr. LeGrande. *Thomas v. State*, 351 N.C. 115, 541 S.E.2d 470 (1999); *State v. LeGrande*, 351 N.C. 115, 541 S.E.2d 465 (1999). The North Carolina Supreme Court declined to review the two orders. *State v. LeGrande*, 351 N.C. 189, 541 S.E.2d 722 (1999).

10. Thereafter, Mr. LeGrande sought habeas review in Federal Court which was ultimately denied by the United States Supreme Court on October 2, 2006. *LeGrande v. Polk*, 75

U.S.L.W. 3168 (2006). On October 16, 2006, the State of North Carolina set an execution date of December 1, 2006.

11. On November 16, 2006, Mr. LeGrande, through counsel, filed a Motion to Stay Proceedings due to Mr. LeGrande's incapacity to proceed. The trial court entered an order temporarily staying Mr. LeGrande's execution to allow time for further psychiatric evaluation on November 27, 2006. After a subsequent evidentiary hearing, the Honorable W. Robert Bell found Mr. LeGrande incompetent to be executed in an order entered on June 27, 2008. Mr. LeGrande currently remains on death row and remains incompetent to proceed. While it is highly doubtful Mr. LeGrande will regain his capacity to proceed due to his severe mental illness, this motion is filed within the time allowed by law in order to preserve his claims under the RJA.

THE RACIAL JUSTICE ACT

12. In enacting the Racial Justice Act (RJA), the North Carolina General Assembly made clear that the law of North Carolina rejects the influence of race discrimination in the administration of the death penalty. In so doing, the General Assembly accepted the challenge issued by the United States Supreme Court in *McCleskey v. Kemp.* Addressing the state legislatures, the *McCleskey* Court ruled that it was the duty of the states "to respond to the will and consequently the moral values of the people" when addressing the difficult and complex issue of racial prejudice in the administration of capital punishment. 481 U.S. 279, 319 (1987).

13. Under the RJA, a capital defendant shall prevail if there is evidence proving that "race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, *or* the State at the time the death sentence was sought or imposed." N.C. Gen. Stat. § 15A-2012(a)(3) (emphasis added).

14. The RJA identifies three different categories of racial disparities a defendant may present in order to meet the "significant factor" standard. Evidence establishing any one of these categories is sufficient to establish an RJA violation:

> (a) Death sentences were sought or imposed significantly more frequently upon persons of one race than upon persons of another race.
>
> (b) Death sentences were sought or imposed significantly more frequently as punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race.
>
> (c) Race was a significant factor in decisions to exercise peremptory challenges during jury selection.

N.C. Gen. Stat. § 15A-2011(b)(1)-(3).

15. If a defendant is able to "state with particularity how the evidence supports a claim that race was a significant factor" in any of these three categories, the RJA provides that

"[t]he court *shall* schedule a hearing on the claim and shall prescribe a time for the submission of evidence by both parties." N.C. Gen. Stat. §§ 15A-2012(a) and (a)(2) (emphasis added).

16. Once the defendant has established a *prima facie* case of significant racial disparities, the State has the opportunity to respond with its own statistical evidence. Because the RJA mandates relief upon a showing of racial disparities in the judicial division or the state, *see* N.C. Gen. Stat. § 15A-2012(a)(3), if the defendant's case is based on a showing of statewide or division-wide discrimination, the State's rebuttal cannot be based simply upon a showing that no disparities occurred in the county or prosecutorial district.

17. If the defendant ultimately proves an RJA violation, the remedy is the imposition of a sentence of life imprisonment without the possibility of parole. N.C. Gen. Stat. § 15A-2012(a)(3); *compare Batson v. Kentucky*, 476 U.S. 79, 100 (1986) (holding that a defendant's conviction will be reversed under the Equal Protection Clause if there is evidence that the State exercised peremptory strikes based on race). Proof of an RJA violation does not entitle the defendant to a new trial or a new sentencing hearing.

18. For the reasons stated below, Defendant is entitled to relief under the RJA, N.C. Gen. Stat. §§ 15A-2010 to 15A-2012.

STATISTICAL STUDIES

MSU Peremptory Strike Study

19. In support of these claims, Defendant relies on several statistical studies. The first is an extensive study of capital charging, sentencing, and jury selection in North Carolina conducted in 2009 and 2010 by Catherine Grosso and Barbara O'Brien, professors at Michigan State University's College of Law (MSU Study).[1] In conducting their study, Professors Grosso and O'Brien collaborated with a statistician named George Woodworth, University of Iowa Professor of Statistics and Actuarial Science. *See* Exhibit 2, Woodworth Affidavit.

20. The MSU Study shows that, statewide for the past two decades, prosecutors have struck qualified black and racial minority[2] venire members at more than twice the rate at which they struck other venire members.[3]

21. The MSU Study also shows that prosecutors are even more race-conscious in cases involving black or racial minority defendants. In those cases, prosecutors struck qualified black and racial minority venire members at an even higher rate.

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[1] All MSU Study data reported in this pleading is attached as Exhibit 1, Grosso-O'Brien Affidavit.

[2] The term "racial minority" includes black, Hispanic, Asian, and Native American persons, as well as persons of more than one race.

[3] Qualified venire members are those venire members who were not removed from the venire for cause or hardship and were thus eligible to serve on the jury.

22. This statistical analysis includes only those venire members found by the court to be legally eligible to serve on a capital jury. In other words, every venire member peremptorily struck by prosecutors had been "death-qualified." Thus, the statistics demonstrate that, across the State of North Carolina, a person of color who could follow the law and was willing to impose the death penalty was more than twice as likely to be struck by prosecutors as a similarly-situated white juror.

23. These findings are consistent with the body of published studies on the use of race and peremptory strikes. Those studies found that in Durham, North Carolina; Philadelphia, Pennsylvania; Dallas County, Texas; and the state of Louisiana, the prosecution strikes venire members of color at a higher rate than white venire members.[4] A study released by the Equal Justice Initiative in June 2010 also demonstrated that across the South—in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Tennessee—prosecutors exclude blacks from jury service at disproportionately high rates and use pretextual "race-neutral" explanations to mask their discrimination.[5] This body of research finding discrimination in jury selection across the country confirms the validity of the MSU Study's finding of racial disparities in North Carolina prosecutors' use of peremptory strikes in capital proceedings.[6]

MSU Charging and Sentencing Study

24. The MSU Study also shows that, statewide from 1990 through 2009, cases that involved white victims were far more likely to result in death sentences than cases that involved no white victims. The MSU Study found that in cases with at least one white victim, a defendant was 2.6 times more likely to be sentenced to death than if the case did not involve a white victim. This finding of racial disparities based on the race of the victim persisted even when other case-related factors, such as statutory aggravating and mitigating circumstances, were taken into account.

25. In short, the race of the victim—regardless of the aggravating or mitigating facts of a crime—is a significant factor in the imposition of death sentences in North Carolina.

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[4] David C. Baldus, *et al.*, *The Use of Peremptory Challenges in Capital Murder Trials: A Legal and Empirical Analysis*, 3 U. PA. J. CONST. L. 1, (2001) (Philadelphia, PA); Mary R. Rose, *The Peremptory Challenge Accused of Race or Gender Discrimination? Some Data from One County*, 23 LAW & HUM. BEHAV. 695, 698-99 (1999) (Durham County, NC); Steve McGonigle, *et al.*, *Jurors' race a focal point for defense; rival lawyers reject whites at a higher rate*, Dallas Morning News, (Jan. 24, 2006) (Dallas County, TX); Billy M. Turner, *et al.*, *Race and Peremptory Challenges during Voir Dire: Do Prosecution and Defense Agree?*, 14 J. CRIM. JUST. 61, 63 (1986) (Louisiana).

[5] The Equal Justice Initiative's report on race discrimination in jury selection can be found online at the following web address: http://www.eji.org (follow "Race and Jury Report" hyperlink; then follow "PDF: Read the Report" hyperlink).

[6] As noted in the *Reference Guide on Statistics*, "convergent results strongly suggest the validity of the generalization" when multiple statistical studies document the same effect. The *Reference Guide on Statistics* can be found online at the following web address: http://ftp.resource.org/courts.gov/fjc/sciam.0.stats.pdf.

Radelet-Pierce Study

26. The results of another recent analysis of race and the death penalty in North Carolina confirm the MSU Study's conclusion that race of the victim is a significant factor in the imposition of the death penalty.

27. Professors Michael L. Radelet of the University of Colorado and Glenn L. Pierce of Northeastern University examined capital sentencing in North Carolina between 1990 and 2007 and found that homicides against white victims were three times more likely to result in a death sentence (Radelet-Pierce Study).[7] The Radelet-Pierce Study determined that 3.9% of homicides against white victims resulted in death sentences, compared with only 1.2% of homicides against black victims.

28. The Radelet-Pierce Study also revealed disparities even after controlling for two statutorily significant factors: first, whether the homicide involved multiple victims, and second, whether the homicide was accompanied by another felony, e.g., robbery or rape.[8] Controlling for these two factors, the Radelet-Pierce Study showed that, statewide from 1990 to 2007, homicides of white victims faced odds of resulting in a death sentence that were nearly three times higher than other cases.

Other Studies

29. The results of both the Radelet-Pierce Study and the MSU Study are corroborated by numerous prior statistical analyses which have documented race of victim disparities in capital charging and sentencing decisions in North Carolina and other death penalty jurisdictions around the country.

30. For example, in North Carolina, a study of the years 1993 to 1997 was conducted by Isaac Unah, an Associate Professor of Political Science at UNC-Chapel Hill, and John Charles Boger, Dean and Professor of Law at UNC-Chapel Hill's School of Law. The Unah-Boger Study accounted for 33 non-racial factors that may have influenced case outcomes and nonetheless found disparities based on the race of the victim. The Unah-Boger Study analyzed all first degree homicides in which the defendant received a death or life sentence, a total of 402 cases. It also randomly sampled 100 other cases, including homicide cases that resulted in sentences in terms of years. Based on this universe of cases, the Unah-Boger Study found that a defendant's odds of receiving a death sentence are increased 3.5 times if the victim in the case is white.[9]

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[7] All Radelet-Pierce Study data reported in this pleading is attached as Exhibit 3, Radelet Affidavit.

[8] *See* N.C. Gen. Stat. § 15A-2000(e)(5) ("The capital felony was committed while the defendant was engaged, or was an aider or abettor, in the commission of" certain specified felonies"); N.C. Gen. Stat. § 15A-2000(e)(11) ("The murder for which the defendant stands convicted was part of a course of conduct in which the defendant engaged and which included the commission by the defendant of other crimes of violence against another person or persons").

[9] The Unah-Boger Study can be found online at the following web address: http://www.common-sense.org/pdfs/NCDeathPenaltyReport2001.pdf.

31. Other studies from North Carolina have reported similar results. In 2000, the CHARLOTTE OBSERVER conducted a study of 10,000 murder arrests in North and South Carolina. This study found that although only 40% of the states' murder victims are white, 66% of the victims in death row cases are white. It also found that black defendants who kill white victims are the defendants most likely to be sentenced to death. The *Observer*'s study found that even though black-on-white murders comprised only 7% of murders between 1987 and 1997, they comprised 26% of all death row cases. Similarly, white-on-white murders comprised 32% of the cases examined but 40% of all death row cases. Eric Frazier and Ames Alexander, *Disparities in death sentences raise concerns about racism*, CHARLOTTE OBSERVER, Sept. 13, 2000, at 1A.

32. A study of North Carolina data from 1977 to 1980 by Samuel R. Gross and Robert Mauro also found racial disparities based on race of the victim. Although defendants charged with killing white victims were sentenced to death in 14% of the cases, defendants charged with killing black victims were sentenced to death in only 4% of the cases. Samuel R. Gross & Robert Mauro, *Patterns of Death: An Analysis of Racial Disparities in Capital Sentencing and Homicide Victimization*, 37 STANFORD LAW REVIEW 27, 134 (1984).

33. Early North Carolina studies also documented racial disparities. Researchers Barry Nakell and Kenneth Hardy conducted a study of 600 homicide cases in 1977 and 1978 in North Carolina. They found that "a defendant charged with murder of a white was six times more likely to be convicted than a defendant charged with murdering a nonwhite." BARRY NAKELL & KENNETH A. HARDY, THE ARBITRARINESS OF THE DEATH PENALTY (Temple University Press 1987).

34. Sociologist Harold Garfinkel documented race of the victim disparities in the 1930s in North Carolina. He found that although there were only 51 cases with white victims and black defendants, 17 of those cases resulted in death sentences, or 31%. In contrast, there were 581 cases with black defendants and black victims and only 15, or 3%, resulted in death. Harold Garfinkel, *Research Note on Inter- and Intra-Racial Homicides*, 27 SOCIAL FORCES 369 (1949).

35. In 1941, another study found that among 330 murder cases in five North Carolina counties between 1930 and 1940, 32% of all black defendants, but only 13% of white defendants, received death sentences when the victims were white. Moreover, death sentences were imposed in 17.5% of all white victim cases, but only four-tenths of one percent of black victim cases. Guy B. Johnson, *The Negro and Crime*, 217 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 99 (1941).

36. In 1990, the United States General Accounting Office (GAO) reviewed 28 studies of racial disparities in capital punishment from across the country and found that, in 82% of those studies, the race of the victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty. The finding that the race of victims affects which defendants live and which die "was remarkably consistent across data sets, states, data collection methods, and analytic techniques. The finding held for high, medium, and low quality

studies."[10] These similar results, arrived at by independent studies, demonstrate the reality that the race of the victim matters greatly in determining whether a defendant is sentenced to death.[11]

FACTUAL BACKGROUND

PROSECUTORIAL DISTRICT 20 [12]

37. District 20 has long been a hotbed of racial tension in North Carolina, particularly with respect to its administration of the death penalty. In many respects, this prosecutorial district illustrates what has been described as North Carolina's "long struggle with race and the death penalty." Seth Kotch & Robert P. Mosteller, *The Racial Justice Act and the Long Struggle with Race and the Death Penalty in North Carolina*, 88 N.C. L. REV. ___ (forthcoming 2010). (A copy of this article is attached hereto as Exhibit 4.)

38. The arc of racial tension and discrimination within District 20 goes at least as far back as Cameron Morrison's reign as a leader of the "Red Shirts," which amounted to a campaign of violence that helped bring about the end to Reconstruction. Morrison, a Richmond County native and lawyer, helped launch a campaign of terror that intimidated blacks and burned polling places. Morrison's political star rose from there: he went on to serve as Mayor of Rockingham, Governor of North Carolina, U.S. Senator, and later returned to Congress as a U.S. Representative. Speaking as the executive leader of North Carolina, Governor Morrison's views on race were clear and disheartening: black progress "must be within the framework of the segregated society ordained by the white man."[13]

39. Other notable District 20 residents have included Jesse Helms, Jr., of Monroe (Union County), the longtime U.S. Senator who, among other things, used his vast political power to impede efforts to recognize Dr. Martin Luther King, Jr.'s birthday as national holiday.[14] The Senator's father, Jesse Helms, Sr., was a former chief of police and chief of the fire department for the City of Monroe—and a strident segregationist. Robert Williams, the black power activist, who famously advocated the use of violence during the Civil Rights struggle,[15] recalls as one of his first memories of racism, the sight of then-police captain Jesse Helms, Sr., punching a black woman about her face and head, and then dragging the woman, wearing a dress, painfully and immodestly by her ankles across the ground to the jail.

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[10] The GAO Study can be found online at the following web address: http://archive.gao.gov/t2pbat11/140845.pdf.

[11] As previously noted, the *Reference Guide on Statistics* states that "convergent results strongly suggest the validity of the generalization" when multiple separate, statistical studies document the same effect.

[12] Until 1996, District 20 was made up of Anson, Moore, Richmond, Stanly, and Union Counties. In 1996, Moore split off to become District 19. In 2006, Union split off to form its own prosecutorial district, 20B, while Anson, Stanly, and Richmond became 20A.

[13] Vann R. Newkirk, *Lynching in North Carolina, A History: 1865-1941* 65 (2009).

[14] Jesse Helms, *Here's Where I Stand: A Memoir* 162 (2005).

[15] Timothy Tyson, *Radio Free Dixie* 1 (1999).

40. The question under the RJA, of course, is whether this legacy of racial tension—in addition to the legacy of slavery, the race codes, and Jim Crow—remained so strong that even decades after passage of the Civil Rights Act of 1964, the institutions of justice in the state and in the local districts were significantly compromised by discriminatory policies, practices and/or procedures. The statistical evidence from the MSU Study provides strong evidence of discrimination against African American citizens who report for jury service in District 20. A review of practices in District 20 over the decades of North Carolina's modern death penalty statute supports a finding race discrimination continued to infect the policies and practices in District 20 at least until the election of District Attorneys in Prosecutorial Districts 20A and 20B who were not trained and mentored by District Attorneys Carroll Lowder and Kenneth Honeycutt.

The Racial Make-up of District 20

41. Before Moore County became part of District 19, the overall population of District 20 was 78% white, 18% black, and 4% made up of other races. Moore County was approximately 83.1% white, and 14.4% black, with Native Americans, Asians, and people of mixed race making up the majority of the rest of the population. After Moore split off, the makeup was 77% white, 19% black, and 4% other[16].

42. Anson County was 50% white, 48% black, with the remainder being mostly Native American, Asian, and mixed race. Richmond County was 65% white, 31% black, with the remainder being largely Native American. Stanly County was 85.5% white, 11.7% black, with the remainder being largely Asian. Union County had similar demographics to Stanly on a larger scale; 85% white, 12% black, with the remainder being largely Asian[17].

The Racial Make-up of Death Row

43. In the last thirty years, fifteen men have been sent to death row by District 20 prosecutors. Of the six who remain there, only one is white.

Name	Race	Victim(s)	Race	Status
Darrell Strickland	I[18]	Henry Brown	B	On Death Row
Lawrence Peterson	B	Jewel Braswell	W	On Death Row
Martin Richardson	B	Sharon St. Germain	W	On Death Row
Roger Blakeney	B	Callie Huntley	B	On Death Row
Ted Prevatte	W	Cindy McIntyre	W	On Death Row
Guy LeGrande	B	Ellen Munford	W	On Death Row (Incompetent for Execution)
David Brown	B	Diane Chalflinch Christina Chalflinch	WW	Executed 11/19/99

[16] Figures from the 1990 US Census; data for North Carolina is available at: http://quickfacts.census.gov/qfd/states/27000.html.

[17] Figures from the 2000 US Census; available at http://factfinder.census.gov/home/saff/,ain.html?_lang=en.

[18] The Department of Corrections uses "I" to denote American Indian. Elsewhere, "Native American" is used.

Dock McCoy	B	Kress Horne	W	Died of natural causes while waiting to be resentenced
Harold Quick	B	Charlie Quick	B	Resentenced to life
Henry Jackson	B	George MacAulay	W	Life sentence imposed
John Lee Conaway	B	Thomas Weatherfield Paul Callahan	WW	New trial ordered and pending
Johnathan Hoffman	B	Danny Cook	W	Charges dropped
Ronald Rogers	B	Ricky Thomas	B	New trial ordered; pled to second degree murder
Jerry Hamilton	W	Joy Goebel	W	New trial ordered; pled to second degree murder
George Franklin "Jeff" Heatwole	W	Alta Heatwole Edgar Garrison	WW	Died of natural causes while appeals pending

Race of Victims

44. There are currently six men on death row who were prosecuted by the District 20 District Attorney's Office. Of the six, four are black, one is white, and one is Native American. Four death sentences involve white victims. The remaining two death sentences involve black victims.

45. Counting double-homicides, the murders of 18 victims sent their perpetrators to death row. Of these victims, 4 were black (22 percent) and 14 were white (78 percent).

46. According to data compiled by the North Carolina Medical Examiner's Office, there were 651 homicides in District 20 between 1980 and 2009. Exhibit 5, North Carolina Medical Examiner's Office Data, District 20.[19] The data identify the race of 641 victims, of whom 299 are identified as White, 333 are identified as Black, 6 are identified as Native American, 2 are identified as Asian, and 1 is identified as Other Race. Thus, during this period, non-white victims constituted approximately 53.4 percent of all victims.[20]

47. These numbers are consistent when broken down by decade. For example, between 1990 and 1999, there were 306 homicide victims in District 20. Exhibit 5, North Carolina Medical Examiner's Office Data, District 20. The data identify the race of 304 victims, of whom 144 are identified as White, 157 are identified as Black, 2 are identified as Native

[19] The North Carolina Medical Examiner's Office provided homicide victim data to the Center for Death Penalty Litigation. These data are voluminous and available upon request. For purposes of this Motion, counsel have submitted a chart of data pertaining only to District 20 (Anson, Moore, Richmond, Stanly, and Union Counties from 1980-1996 and Anson, Richmond, Stanly, and Union Counties from 1996-2006) homicides from 1980 through 2009, which includes, *inter alia*, the name and race of the victim.

[20] The race for ten victims during this time period is designated as "unknown," although all are noted as Hispanic and have Latino surnames. Assuming these victims are non-whites, the percentage of non-white victims changes to 54.0 percent.

American, and 1 is identified as Other Race. Thus, during this period, non-white victims constituted approximately 52.6 percent of all homicide victims.[21]

48. Between 2000 and 2006, there were 134 homicides in District 20. Exhibit 5, North Carolina Medical Examiner's Office Data, District 20. The data identify the race of 126 victims, of whom 50 are identified as White, 73 are identified as Black, 1 is identified as Native American, and 2 are identified as Asian. Thus, during this period, non-white victims constituted approximately 60.3 percent of all homicide victims.[22]

Time Frame	Percentage of Homicide Victims in District 20 Identified as White	Percentage of Homicide Victims in District 20 Identified as Non-White
1990-1999	47.4	52.6
2000-2006	39.7	60.3

The Racial Make-up of Capital Juries

49. Prosecutors in the district have used their peremptory strikes disproportionately against blacks, resulting in five all-white juries, despite the fact that these counties have significant minority populations.

Case Name & County	White Jurors	Black Jurors	Indian Jurors	White Alternates	Black Alternates
Strickland – Union	12	0	0	2	0
Prevatte I – Anson	7	5	0	3	0
Prevatte II – Stanly	12	0	0	2	0
Peterson – Richmond	9	2	1	2	0
LeGrande – Stanly	12	0	0	2	0
Richardson – Union	12	0	0	2	0
Blakeney – Union	12	0	0	2	0

District Attorney Carroll Lowder

50. Carroll Lowder was the long-term elected District Attorney for District 20, serving from 1967 to 1995. Mr. Lowder was once described by a federal magistrate judge as follows:

[21] The race for two victims during this time period is designated as "unknown," although both are noted as Hispanic and have Latino surnames. Assuming these victims are non-whites, the percentage of non-white victims changes to 52.9 percent.

[22] The race for eight victims during this time period is designated as "unknown," although all are noted as Hispanic and have Latino surnames. Assuming these victims are non-whites, the percentage of non-white victims changes to 62.7 percent.

> District Attorneys like Mr. Lowder run the courts like their own private fiefdoms. This gamesmanship is especially abhorrent when a person's life is at stake.[23]

Magistrate Judge Max Cogburn was describing Mr. Lowder in the context of the death penalty case involving David Junior Brown. Mr. Brown, who was the last person executed from District 20, was convicted by an all-white jury of the murder of Diane Chalflinch, a 26-year-old white woman, and her young daughter Christina. The crime took place in Pinehurst, Moore County, but was tried in Union County.[24]

51. David Junior Brown was brought to trial three months after the crime. From the outset, Mr. Lowder engaged in conduct that, as Magistrate Judge Cogburn later described, provoked "disgust.[25]" Mr. Lowder sought to bar defense counsel from inspecting the crime scene; played cat-and-mouse games with witnesses so as to prevent the defense from interviewing key prosecution witnesses, and withheld exculpatory material.[26]

52. Mr. Lowder's own work product made clear that race—here, the race of the defendant—was significant. Discovered in the prosecutor's trial notes during post-conviction proceedings was a handwritten notation that referred to a piece of evidence with the racial slur "nigger." During post-conviction litigation, Magistrate Judge Cogburn expressed his "disgust with Mr. Lowder's behavior" and described the prosecutor's conduct as "inexcusable."[27] Judge Cogburn's order in *Brown* went on to challenge the North Carolina General Assembly to "review a system which allows the district attorney to create an advantage in a criminal case."[28]

53. Mr. Brown was executed on November 20, 1999.

54. Standing in stark contrast to his ultra-aggressive, unprofessional, and racially hostile handling of the David Junior Brown case is Mr. Lowder's response to the death of 25 workers, mostly black, at the Imperial Foods chicken processing plant in Hamlet, Richmond County. In 1991, following an explosion in the processing plant, workers were trapped after the processing plant's owners and managers sealed the exit doors from the outside with chain locks. Twenty-five workers were killed. Fifty-four workers survived the fire but sustained serious

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[23] *See Brown v. French,* 1996 WL 33170227 at *18 (W.D.N.C. 1996).

[24] *See State v. Brown* 306 N.C. 151, 157 (1982).

[25] *See Brown v. French, supra* at *33.

[26] District Attorney Lowder's outrageous conduct did not stop with the trial of Mr. Brown. In response to a post-conviction claim of prosecutorial misconduct, Mr. Lowder targeted defense counsel Bruce Cunningham of the Moore County Bar by instructing his assistant prosecutors not to engage in plea negotiations with Mr. Cunningham in any of his criminal cases. The effect of this directive was to preclude Mr. Cunningham from practicing criminal law in District 20. This misconduct was only stopped when Mr. Cunningham filed a complaint with the North Carolina State Bar. *See Brown v. French,* at *17.

[27] *See Brown v. French, supra* at *33

[28] *See Brown v. French, supra* at *56

smoke, burn, and psychological injuries; several of the surviving workers died from fire-related injuries within ten years of the blaze.[29]

55. The plant owner and senior management locked the doors in clear violation of the law and various regulatory provisions. The African American community urged the District Attorney to seek murder charges. District Attorney Lowder instead obtained indictments on 25 counts of involuntary manslaughter. No charges were brought with respect to the non-fatal injuries. As part of the plea negotiation, all charges were dismissed against two members of senior management and the owner entered guilty pleas to involuntary manslaughter. The owner spent less than five years in prison.[30]

56. The black community saw the actions of the plant owners and manager, in literally padlocking the factory doors to curtail employee theft as racist in nature. Similarly, the decision of Mr. Lowder to not prosecute the owners for the injuries to 54 workers and to accept a guilty plea from a single defendant to involuntary manslaughter in the deaths of 25 people as a devaluation of the lives of people who were overwhelmingly poor and/or black. When community members invited Rev. Jesse Jackson to speak at the memorial service for the deceased, the official response from the mayor and other elected officials was not to permit Rev. Jackson to participate in the "official" memorial service. Thus, a group of survivors were forced to hold its own service that included Rev. Jackson. Both services unveiled near-identical monuments, which are situated 50 yards from each other.[31]

57. The disparity in the treatment of white victim cases and black victim cases in District 20 was apparent long before the passage of the RJA. For example, in *State v. Heatwole*, defense counsel filed a *Motion to Declare Death Penalty Unconstitutional as Applied in the Twentieth Judicial District*, challenging a perceived pattern by Mr. Lowder in extending non-capital pleas in cases involving black victims while insisting on capital trials in white victim cases. Mr. Heatwole stood accused of killing two white victims, and the prosecution demanded a capital prosecution. In his motion, counsel for Mr. Heatwole cited *State v. (Victor) Patterson*, where Mr. Lowder, in violation of *State v. Case*, 330 N.C. 161, 410 S.E.2d 57 (1991), waived evidence of three aggravating factors in an effort to resolve that case, which involved the stabbing death of a black woman during an armed robbery. In *Patterson*, the trial court (Judge William Z. Wood, Jr.) accepted the District Attorney's Office's factual proffer and permitted the case to be resolved non-capitally. Defense counsel's motion in *Heatwole* was denied (Judge Joe Freeman Britt) and Mr. Heatwole was ultimately sentenced to death. In 2002 Mr. Heatwole died of natural causes.

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[29] Wil Haygood, *Still Burning: After a Deadly Fire, a Town's Losses Were Just Beginning, Washington Post* (Nov. 10, 2002) at:
http://web.archive.org/web/20061208182200/http:/www.fedlock.com/public_relations/Still_Burning.htm.

[30] Emmet Roe, Sr. was eligible for a sentence of up to ten years for each charge. However, he was sentenced to only 19 years, 11 months (less than a year per victim), possibly because if he had been sentenced to more than 20 years, he would not have been eligible for parole as soon. *The Encyclopedia of White Collar Crime* 138 (Jurg Gerber & Eric L. Jensen, eds. 2007).

[31] *See* Haygood, *supra.*

58. Two capital prosecutions from 1992 illustrate just how difficult the task of rooting out the vestiges of racial prejudice from the application of the death penalty is in District 20. Russell Brice Hinson, a former Exalted Cyclops in the Ku Klux Klan, used a cross-bow to kill a randomly selected 16 year-old black girl in Monroe, Union County in an apparently racially motivated murder. The North Carolina Supreme Court recounted part of the trial testimony as follows:

> Defendant told McCoy that "he wanted to deliver a message" because "a nigger had shit on him in a drug deal." McCoy testified that defendant told him that he "had already jumped a nigger at the basketball court and pulled a long knife on him because of the drug ripoff." McCoy asked defendant whether he was just going to "shoot the person in the leg and scare him," to which defendant replied that he was going "to shoot a nigger through the heart."

State v. Hinson, 341 N.C. 66, 72, 459 S.E.2d 261, 265 (N.C. 1995).

59. Hinson was convicted of capital murder, the jury deadlocked on sentencing, and he was sentenced to life without parole. Also in Union County, Martin Richardson was convicted of the rape and murder of a white woman. During jury selection two venire members admitted that they could not be impartial in a case where a black man had allegedly sexually assaulted a white woman.[32] Despite the race dynamics of the case, the court sustained two objections to the defense asking venire members if they would be offended if a black person moved in next door to them or if a black person socialized with them.[33] Meanwhile, the District Attorney peremptorily excused 100% of the eligible black venire members; Richardson was sentenced to death by an all-white jury.

District Attorney Kenneth Honeycutt

60. Kenneth Honeycutt replaced Carroll Lowder as District Attorney in 1996. Mr. Honeycutt became known for, among other things, wearing a lapel pin in the shape of a noose to court and presenting similar pins to his assistant district attorneys who secured death penalty convictions.[34] During his tenure, Mr. Honeycutt personally prosecuted three of six men currently on death row. In all three cases, he argued to an all-white jury.

61. The noose is a racially hostile symbol that is widely viewed as a direct link to the sordid role that lynching played throughout the South during the post-Reconstruction and Jim Crow eras. In the employment context, its presence constitutes an issue of material fact sufficient to survive summary judgment as to the first three elements of a racially hostile working environment. *See EEOC v. Crowder Const. Co.*, 2001 WL 1750843. *Accord Williams,*

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[32] *See Transcript, State v. Richardson*, 93-CRS-347, at 380.

[33] *See id* at 320-321.

[34] Tracy Hackney, *North Carolina needs to rethink the death penalty*, Carrboro Citizen (Feb. 6, 2008), http://www.carrborocitizen.com/main/2008/02/06/north-carolina-needs-to-rethink-the-death-penalty.

et al. v. New York City Housing Authority, 154 F.Supp 2d 820, 825 (S.D.N.Y. 2001) ("as for the display of a noose, there can be little doubt that such a symbol is significantly more egregious that (sic) the utterance of a racist joke no less than the swastika or the Klansman's hood, the noose in this context is to arouse fear.") The connection between the noose and racism was also recognized by the North Carolina Supreme Court. In *State v. Wynne*, 329 N.C. 507, 406 S.E.2d 812 (1991), the court ruled that a noose that a white defendant who had killed a black victim had hung outside his home was admissible as evidence that the defendant was racist. Further, legal scholarship has widely recognized the noose as a racially charged symbol, especially against blacks in the south. The association of the noose with systematic anti-black violence is neither obscure nor outdated.

62. As the elected official fully empowered with the discretion whether or not to seek the death penalty, Mr. Honeycutt's open and notorious display and use of the "noose" reflects, at best, gross insensitivity to the vestiges of extra-judicial and racially-motivated violence that permeated District 20 and North Carolina in past eras.[35] In light of Mr. Honeycutt's record in seeking the death penalty, however, his public embrace of the "noose"—in court, no less—suggests a more acute and pernicious motive.

63. In *State v. LeGrande*, Honeycutt purged the jury of all black venire members, and in opening statement again makes reference to this noxious symbology as he urged the all-white jury, to grab the "rope."

> And as the evidence mounted and became overwhelming, those strings were twisted and bound into a rope. A rope. A rope so strong that when this case is over, you will not have any reasonable doubt about this man's guilt.

Transcript, State v. LeGrande, No. 95-CRS- 567, at 836.

64. Mr. LeGrande, a black man, was ultimately sentenced to death for the 1993 contract killing of Ellen Munford, a white woman. Despite being severely delusional, LeGrande was allowed to represent himself during the trial.[36] Mr. Honeycutt sought the death penalty against LeGrande despite the fact that the murder was masterminded by the victim's husband, Tommy Munford, and his friend Greg Laton (both of whom were white). The trial testimony was replete with Munford's conversations with Laton to the effect that he got a "nigger from Wadesboro" to pull the trigger.[37] Munford was allowed to plead to second degree murder. Laton was never charged.[38]

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[35] *See generally* Newkirk *supra* note 3 (providing background on the use of hanging in systematic anti-black mob violence in North Carolina).

[36] LeGrande was prescribed antipsychotics by a state psychiatrist, which he refused to take. *See* Julian Bond, *Mental illness in blackface*, The Leader (N.C. Black Leadership Caucus), Nov. 2006 at 3.

[37] *See id.*

[38] N. Carnell Robinson, *Killing Justice: Guy LeGrande, a North Carolina Tragedy* The Leader, (N.C. Black Leadership Caucus), Nov. 2006 at 1.

65. In District 20 the death penalty, race and prosecutorial misconduct has had such a long and consistent association that it is often difficult to parse out the particular contribution of each toxin to the miscarriage of justice in a particular case. In 1993 a retired school teacher, Katherine Lynch, was killed in her Anson County home. Ms. Lynch was white. Detectives focused upon Floyd Brown, a mentally retarded man from Wadesboro, shortly after the killing and brought him in for questioning. Brown, who is black, has an IQ of 50 and the mental capabilities of a 7-year-old; he signed a confession to the killing.[39]

66. Defense lawyers protested that the confession is beyond Brown's capacity, referencing directions and details Brown doesn't understand. None of the evidence tested at the SBI linked Brown to the murder. Subsequently, the sheriff lost all of the physical evidence collected in the case. Mr. Brown was held as a prisoner at Dorothea Dix Hospital for 14 years on murder charges. Superior Court Judge Orlando Hudson (Durham) ordered Brown's release in 2007.[40] Arguably, the District Attorney is not responsible for the corruption and incompetence issues that led to Brown's initial arrest, the fabrication of a confession, and the destruction of evidence. Still, the prosecutor's inability to recognize the obligation to advocate for due process and fairness for Brown shocks the conscience. After prosecutors argued for 14 years with no credible evidence to keep Brown locked up because he was "too dangerous" to return to the community, they extended the campaign to deprive Mr. Brown, who is unable to care for himself, from being placed in a nursing care facility. As the *Charlotte Observer* opined:

> What Anson County District Attorney Michael Parker[41] is trying to do to Floyd Brown goes beyond unreasonable. It's unconscionable. A judge on Monday dismissed charges against Mr. Brown, who had spent 14 years locked up in a mental hospital for a murder charge he was never tried on, based on a confession experts say he couldn't have made. But now he has no suitable place to go. After a visit from the Anson County DA, a group home reneged on an agreement made months ago to take Mr. Brown when he was released.

Editorial, *Wrongheaded DA, Brown Case Highlights Need for State to Rein in Prosecutors,* Charlotte Observer at 14A (Oct. 7, 2007).

67. The capital prosecution of Jonathan Hoffman further establishes the role of race in capital prosecutions during Mr. Honeycutt's tenure. In November, 1995, Danny Cook, a Marshville jewelry storeowner was shot and killed. Mr. Cook was white. Friends and family of the deceased offered a substantial reward for information leading to the arrest and conviction of the person responsible for the killing. At the capital trial in 1996, Mr. Honeycutt peremptorily

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[39] *See* Susan Green and Miles Moffeit, *14 Years Later: Tell my story*, The Denver Post, July 26, 2007.

[40] *See* Estes Thompson, *Judge Releases Floyd Brown,* Associated Press, (Oct. 8, 2007).

[41] Mr. Honeycutt resigned his office in 2004 and recommended his chief deputy (Parker) replace him. Mr. Parker was appointed to succeed Honeycutt by Governor Easley.

excused all qualified black venire members and Mr. Hoffman, a black man, was convicted and sentenced to death by an all-white jury. The prosecution rested on the credibility of a single witness with a long history of criminal involvements. Evidence adduced in post-conviction proceedings established that Mr. Honeycutt and his assistant (Scott Brewer) lied, cheated, falsified testimony and altered documents to secure Mr. Hoffman's conviction and death sentence. Mr. Honeycutt tendered his resignation from office in 2004, after post-conviction proceedings were initiated. On April 28, 2004, Mr. Hoffman was granted a new trial at the conclusion of the MAR proceedings. The prosecutorial misconduct was so outrageous that the North Carolina State Bar initiated disciplinary proceedings against both Honeycutt and Brewer[42]. The substance of the charges in the Bar Complaint was not litigated due to a determination that the statute of limitations had expired.

68. It has been said that North Carolina history consists of "a blend, understood by some as a paradox, of the desire for progressive change that has given the state a reputation for moderation among southern states and of the less forward-thinking traditions and attitudes found in the South."[43] Frankly, the paradox that describes North Carolina's approach to race and the death penalty seemed to skip over District 20 through the Lowder and Honeycutt regimes. As the case discussions above demonstrate, prosecutors have been the most significant obstruction to the fair and non-discriminatory application of the death penalty in District 20.

69. In 2007, however, newly-elected Union County District Attorney John Snyder dismissed capital murder charges against Hoffman. Observers see in the election of John Snyder in 20B and the very recent election of Reece Saunders[44] in 20A a hopeful sign that the historic District 20 may finally be experiencing the "moderation" that aptly describes the advance of race relations and the development of criminal law elsewhere in North Carolina. This recent development, although mightily tempered by the history described above, was captured in the following public statement made by Jonathan Hoffman's attorney shortly after Mr. Snyder's decision to dismiss the murder charges:

> We are grateful Mr. Snyder had the integrity and courage to do the right thing, and to release Jonathan after years on death row for a crime he did not commit. It was the actions of the prior District Attorney that put Jonathon on death row in the first place. As a result of what the State Bar described as egregious misconduct by

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[42] The State Bar complaint alleged the prosecutors deliberately withheld exculpatory information from defense counsel in direct contravention to an explicit order of the court, 2) elicited testimony they knew to be perjurious, 3) in closing argument to the jury both prosecutors repeated the perjurious statements, and 4) redacted a submission to the trial judge to conceal evidence of their misconduct. Mr. Honeycutt's misconduct in Hoffman is exhaustively examined in Robert P. Mosteller, *Exculpatory Evidence, Ethics, and the Road to the Disbarment of Mike Nifong: The Critical Importance of Full Open-File Discovery*, 15 GEO. MASON L. REV. 257 (2008).

[43] Seth Kotch & Robert P. Mosteller, *The Racial Justice Act and the Long Struggle with Race and the Death Penalty in North Carolina*, 88 N.C. L. REV. ___ (forthcoming 2010).

[44] May 2010, Mr. Saunders won the Democratic primary for District Attorney in 20A, and stands unopposed in the general election in November 2010.

the prosecutors, the real killer was never caught. That's the lesson the public, and the prosecutors must recognize. Cheating to win a case doesn't protect the public. It hurts everyone.[45]

JUDICIAL DIVISION

Judicial Division History and Background

70. Throughout the 1990s, North Carolina was separated into four judicial divisions. Judicial Division 3 consisted of the following counties: Ashe, Alleghany, Surry, Stokes, Rockingham, Wilkes, Yadkin, Forsyth, Guilford, Alexander, Iredell, Davie, Rowan, Davidson, Randolph, Cabarrus, Stanly, Montgomery, Moore, Union, Anson, and Richmond.

71. Defendant was convicted and sentenced to death in 1996 in Stanly County, which was then part of Judicial Division 3. For purposes of this Motion, Judicial Division 3 as constituted before 2000 will be referred to as former Judicial Division 3.

72. Between 1990 and 1999, 76 death sentences were handed down in former Judicial Division 3. 40 (52.6%) of defendants were white, 33 (43.4%) were black, and 3 (3.9%) were of other races. Across the 76 cases, 53 (69.7%) had white victims while 18 (23.7%) had black victims and 5 (6.6%) had victims of other races.

NAME[46]	D RACE	CONV. COUNTY[47]	YEAR	V RACE
Tony Sidden	W	Alexander	1995	W
Ted Prevatte*	W	Anson	1995	W
Eric Call*	W	Ashe	1996	O
Eric Call	W	Ashe	1999	O
Ernest McCarver	W	Cabarrus	1992	W
Ricky Lee Sanderson*	W	Davidson	1991	W
Randy Joe Payne~~~	W	Davidson	1992	W
John Elliott	W	Davidson	1994	W
Patrick Moody#	W	Davidson	1995	W
Bernardino Zuniga@@	O	Davidson	1995	W
Ricky Lee Sanderson#	W	Davidson	1995	W
William Gregory*	B	Davie	1994	B
William Gregory	B	Davie	1996	B

[45] David Rudolf, *Charges Dismissed in Case of Wrongfully Convicted Death Row Inmate Jonathon Hoffman* http://deathwatch.files.wordpress.com/2007/12/hoffman-press-release.doc.

[46] The identities and races of death-sentenced persons were obtained from the Department of Corrections' list of current and former death row inmates (available online at: http://www.doc.state.nc.us/dop/deathpenalty/index.htm) and the inmate search system (available online at: http://webapps6.doc.state.nc.us/opi/offendersearch.do?method=view). The identities of victims were obtained from the appellate opinions in those defendants' cases. The race of victims was obtained from the Medical Examiner's data, which is voluminous but available upon request.

[47] Due to changes of venue, several individuals in this table were prosecuted by authorities from one county but convicted in another. All of these changes of venue occurred within the former Third Division except for Eric Murillo, who was prosecuted by Hoke County (former second division) but tried in Richmond County (former Third Division).

Jathiyah Al-Bayyinah*	B	Davie	1999	W
Blanche Moore	W	Forsyth	1990	W
Carl Moseley	W	Forsyth	1992	W
Willie Fisher#	B	Forsyth	1993	B
Robbie Lyons#	B	Forsyth	1994	W
Danny Frogge*	W	Forsyth	1995	W
Darrell Woods	B	Forsyth	1995	B
Samuel Flippen*	W	Forsyth	1995	W
T. Michael Larry	B	Forsyth	1995	O
George Page~	W	Forsyth	1996	W
Russell Tucker	B	Forsyth	1996	B
Alfred Rivera!!	O	Forsyth	1997	W, W
Erroll Moses	B	Forsyth	1997	B, B
Samuel Flippen#	W	Forsyth	1997	W
Danny Frogge	W	Forsyth	1998	W
Antoine Allen@	B	Forsyth	1999	O, O
Marshall Gillespie^	B	Forsyth	1999	O, O
Raymond Thibodeaux	W	Forsyth	1999	W
Dwight Robinson@	B	Guilford	1992	W
Robert Bunning@	W	Guilford	1992	B
Steven Bishop^	W	Guilford	1994	W
Charles Walker^	B	Guilford	1995	B
Walic Thomas	B	Guilford	1996	W
James King	B	Guilford	1998	B
Anthony Bone@	B	Guilford	1999	W
Rayford Burke	B	Iredell	1993	B
Thomas Adams@	W	Iredell	1995	W
George Heatwole~	W	Moore	1994	W, W
Kenneth Rouse	B	Randolph	1992	W
James Williams	W	Randolph	1993	W
Jeffrey Kandies	W	Randolph	1994	W
Gary Trull	W	Randolph	1996	W
Ronald Poindexter!!!	W	Randolph	1999	W
Harold Quick@	B	Richmond	1991	B
John Conaway!!!	B	Richmond	1992	W, W
Eric Murillo	W	Richmond	1996	W
Lawrence Peterson	B	Richmond	1996	W
Jerry Hamilton^	W	Richmond	1997	W
Ronald Rogers^	B	Richmond	1997	B
Clinton Rose	W	Rockingham	1991	W
Desmond Carter#	B	Rockingham	1993	W
Kenneth Boyd#	W	Rockingham	1994	W, W
Kenneth Neal	B	Rockingham	1996	B
James Campbell	W	Rowan	1993	W
Frank Chambers	B	Rowan	1994	W, W
Wendell Flowers~~	B	Rowan	1994	B
William Barnes	B	Rowan	1994	W
Anthony Hipps@	B	Rowan	1996	W
Gary Long@	W	Rowan	1999	W
Guy LeGrande	B	Stanly	1996	W
Ted Prevatte	W	Stanly	1999	W
Carl Moseley	W	Stokes	1993	W
Rex Penland^	W	Stokes	1994	B

Steven McHone#	W	Surry	1991	W, W
Frank Chandler#	W	Surry	1993	W
Keith East	B	Surry	1995	B, B
Martin Richardson	B	Union	1993	W
Darrell Strickland	O	Union	1995	B
Jonathan Hoffman^^	B	Union	1996	W
Roger Blakeney	B	Union	1997	B
Charles Munsey!	W	Wilkes	1996	W
Melanie Anderson@	W	Wilkes	1996	W
Joseph Bates#	W	Yadkin	1994	W

= executed
^ = conviction reversed, guilty of lesser offense
^^=conviction reversed, charges dropped
@ = sentence vacated, re-sentenced to life
@@ = sentence vacated, pending re-resentencing
! = new trial ordered, died of natural causes while awaiting retrial
!! = new trial ordered; acquitted at retrial
!!! = new trial ordered; still awaiting retrial
~ = died of natural causes
~~ = sentence commuted to life by governor
~~~ = suicide
* = relief but re-sentenced to death

73. Of the 34 inmates currently on death row pursuant to sentences obtained in the 1990s within former Judicial Division 3, 50% (17) are black, 47.1% (16) are white, and 2.9% (1) is other. The majority of cases – 64.7% (22) - involve white victims.

NAME	D RACE	COUNTY	YEAR	V RACE
Blanche Moore	W	Forsyth	1990	W
Clinton Rose	W	Rockingham	1991	W
Ernest McCarver	W	Cabarrus	1992	W
Carl Moseley	W	Forsyth	1992	W
Kenneth Rouse	B	Randolph	1992	W
Rayford Burke	B	Iredell	1993	B
James Williams	W	Randolph	1993	W
James Campbell	W	Rowan	1993	W
Carl Moseley	W	Stokes	1993	W
Martin Richardson	B	Union	1993	W
John Elliott	W	Davidson	1994	W
Jeffrey Kandies	W	Randolph	1994	W
Frank Chambers	B	Rowan	1994	W, W
William Barnes	B	Rowan	1994	W
Tony Sidden	W	Alexander	1995	W
Darrell Woods	B	Forsyth	1995	B
T. Michael Larry	B	Forsyth	1995	O
Keith East	B	Surry	1995	B, B
Darrell Strickland	O	Union	1995	B
William Gregory	B	Davie	1996	B
Russell Tucker	B	Forsyth	1996	B
Walic Thomas	B	Guilford	1996	W
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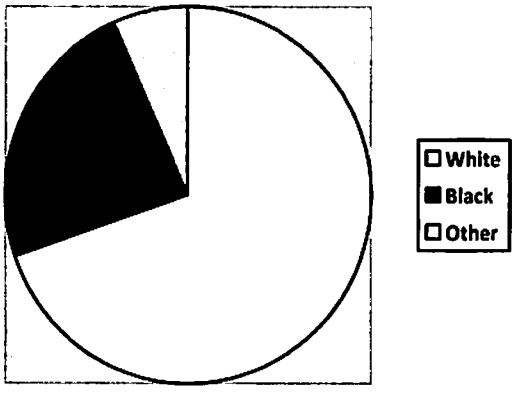
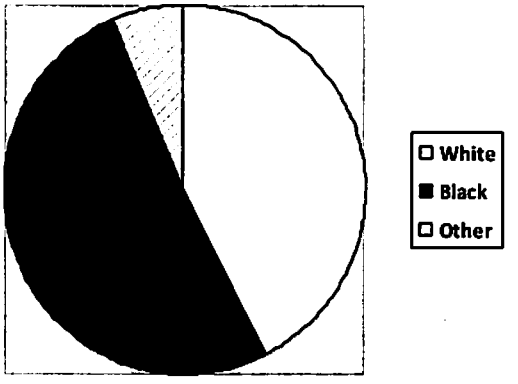
Gary Trull	W	Randolph	1996	W
Eric Murillo	W	Richmond	1996	W
Lawrence Peterson	B	Richmond	1996	W
Kenneth Neal	B	Rockingham	1996	B
Guy LeGrande	B	Stanly	1996	W
Erroll Moses	B	Forsyth	1997	B, B
Roger Blakeney	B	Union	1997	B
Danny Frogge	W	Forsyth	1998	W
James King	B	Guilford	1998	B
Eric Call	W	Ashe	1999	O
Raymond Thibodeaux	W	Forsyth	1999	W
Ted Prevatte	W	Stanly	1999	W

74. Data obtained from the Medical Examiner's Office identifies 1806 homicide victims in former Judicial Division 3 between 1990 and 1999. Of these victims, 51.2% (925) were black, 42.4% (766) were non-Hispanic white, and 115 (6.4%) were of other or unknown races, mostly "white/Hispanic." The absolute disparity between the proportion of white homicide victims overall and their representation in all death-sentenced cases in former Judicial Division 3 in the 1990s is more than 25%.

Former Judicial Division 3:



Race of Victim in Death-Sentenced Cases



Race of Victim in All Homicide Cases

Jury Selection

General

75. The United States Census for 1990 indicates that the total population of all counties in the former Third Judicial Division at that time was 1,797,393 people, of whom 81.5% were white, 17.4% were black, and 1.1% were of other or mixed races.

76. The United States Census for 2000 shows that the total population of the counties of the current Fifth Division at that time was 1,304,059, of whom 75.3% were white, 19.5% were black, and 5.2% were of other or mixed races.

77. The United States Census for 2000 shows that the total population of the counties of the current Sixth Division at that time was 853,363, of whom 81.9% were white, 14% were black, and 4.1% were of other or mixed races.

78. Combining the current Fifth and Sixth Judicial Divisions, the total population of the counties of the former Third Division in 2000 was 2,157,422, of whom 77.9% were white, 17.3% were black, and 4.8% were of other or mixed races.

79. A total of 58 juries were picked in the cases of the 52 men and women currently on death row from the former Third Judicial Division[48]. According to the MSU study, over 2300 potential jurors were questioned by the State across these 58 trials.

All-White Juries

80. Of the thirty-one current death row inmates sentenced to death by all-white juries, twenty-two (71%) were sentenced in the counties of the former Third Judicial Division. All-white juries returned 44% (23/52) of all current death sentences from Ashe, Alleghany, Surry, Stokes, Rockingham, Wilkes, Yadkin, Forsyth, Guilford, Alexander, Iredell, Davie, Rowan, Davidson, Randolph, Cabarrus, Stanly, Montgomery, Moore, Union, Anson, and Richmond Counties in the last 20 years.

81. In the Fifth Judicial Division between 2000 and the present, 29% (4/14) of the juries returning death sentences have not had any black deliberating members.

82. In the Sixth Judicial Division between 2000 and the present, 50% (2/4) of the juries returning death sentences have not had any black deliberating members.

83. All-White Juries in Former 3rd Judicial Division (1990-1999)

Roger Blakeney (Union)
Rayford Burke (Iredell)
Keith East (Surry)
Guy LeGrande (Stanly)
Thomas Larry (Forsyth)
Martin Richardson (Union)
Kenneth Rouse (Randolph)
Russell Tucker (Forsyth)
Darryl Strickland (Union)
Eric Call (Ashe)
Wayne Laws (Davidson)

[48] Jathiyah Al-Bayyinah (B), Eric Call (W), Danny Frogge (W), William Gregory (B), Carl Moseley (W), and Ted Prevatte (W) were each tried and sentenced to death twice within the 1990-2010 time period. Carl Moseley was tried and sentenced once for each of two separate murders, while the others were re-sentenced to death on appeal for the same killings.

Carl Moseley (Stokes)
Ted Prevatte (Stanly)
Tony Sidden (Alexander)
Gary Trull (Randolph)
James Williams (Randolph)

84. All-White Juries in Current 5th Judicial Division (2000-2009)

Cerron Hooks (Forsyth)
Alexander Polke (Randolph)
Chris Goss (Ashe)
George Wilkerson (Randolph)

85. All-White Juries in Current 6th Judicial Division (2000-2009)

Jathiyah Al-Bayyinah (Davie)
Andrew Ramseur (Iredell)

CLAIMS FOR RELIEF: PEREMPTORY STRIKES

I. AT THE TIME OF DEFENDANT'S TRIAL, RACE WAS A SIGNIFICANT FACTOR IN THE STATE'S DECISIONS TO EXERCISE PEREMPTORY STRIKES IN CASES THROUGHOUT NORTH CAROLINA.

86. The foregoing evidence and law with respect to the history and background of this state, division, district and county are incorporated herein by reference.

87. Defendant is entitled to relief under N.C. Gen. Stat. §15A-2011(b)(3) because, at the time of his capital trial, race was a significant factor in North Carolina prosecutors' decisions to exercise peremptory strikes during jury selection. *See also Ham v. South Carolina*, 409 U.S. 524, 526-27 (1973) (explaining that "a principal purpose of the adoption of the Fourteenth Amendment was to prohibit the States from invidiously discriminating on the basis of race"); *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974) (holding that once a state has created a right, the Fourteenth Amendment requires that state to provide "minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated"); *Clemons v. Mississippi*, 494 U.S. 738, 746 (1990) (same); *Hicks v. Oklahoma*, 447 U.S. 343, 346-47 (1980) (same). Statistical and other evidence demonstrates that, across the State of North Carolina, race was a significant factor in whom the State chose to exclude from capital juries.

All-White Juries

88. Since our country's earliest days, black American citizens have historically been excluded from participating in civic life through jury service. Slaves were prohibited from

serving on a jury even if the defendant was a slave who was charged with a crime against another slave. From North Carolina's inception as a state through the end of the Civil War, blacks were barred from serving on juries by the state constitution itself. The Reconstruction era, from 1868 to 1875, brought a brief period of black jury participation. After Reconstruction ended, however, historical evidence indicates that blacks continued to be excluded from juries in North Carolina. Statutory requirements for jury service in the early 1900s were vague and allowed local officials unlimited discretion to make racially discriminatory judgments about who was qualified to serve. *See* Exhibit 4, Seth Kotch and Robert P. Mosteller, *The Racial Justice Act and the Long Struggle with Race and the Death Penalty in North Carolina*, 88 N.C. L. REV. ___, 113, n. 44; 139-43 (forthcoming 2010).

89. While some black persons did begin to serve on juries by the middle of the twentieth century, they remained chronically under-represented in jury pools. In *State v. Price*, 301 N.C 437 (1980), the North Carolina Supreme Court approved an absolute disparity of 14% between the local black population and the black population in the jury pool. In *State v. Bowman*, 349 N.C. 459 (1998), the Court approved a disparity of nearly 15%.

90. Over the past twenty years, North Carolina prosecutors have continued the tradition of excluding black citizens from juries through the use of the peremptory strike. In today's capital trials, the prosecutor's peremptory strike serves the same discriminatory function as our old constitutional provisions barring black slaves from jury service or vague statutes permitting local officials to exclude black citizens from jury pools.

91. As documented by the MSU Study, 31 of North Carolina's current death row inmates were sentenced to death by all-white juries.[49] The MSU Study has also documented that 38 of North Carolina's current death row inmates were sentenced to death by juries with only one person of color.[50] Taken together, this means that over 40% of the defendants on North

[49] Wayne Laws (1985, Davidson County); Clinton Rose (1991, Rockingham County); Kenneth Rouse (1992, Randolph County); Carl Moseley (1992, Forsyth County); Carl Moseley (1993, Stokes County); James Williams (1993, Randolph County); Rayford Burke (1993, Iredell County); Martin Richardson (1993, Union County); Wade Cole (1994, Camden County); Thomas Larry (1995, Forsyth County); Darryl Strickland (1995, Union County); Keith East (1995, Surry County); Tony Sidden (1995, Alexander County); Eric Call (1996, Ashe County); Guy LeGrande (1996, Stanly County); Gary Trull (1996, Randolph County); Russell Tucker (1996, Forsyth County); Roger Blakeney (1997, Union County); Phillip Davis (1997, Buncombe County); Ted Prevatte (1999, Stanly County); Eric Call (1999, Ashe County); Andre Fletcher (1999, Rutherford County); James Jaynes (1999, Polk County); Jathiyah Al-Bayyinah (1999, Davie County); Cerron Hooks (2000, Forsyth County); Paul Brown (2000, Wayne County); Mitchell Holmes (2000, Johnston County); Quintel Augustine (2002, Cumberland County); Alexander Polke (2005, Randolph County); Chris Goss (2005, Ashe County); William Raines (2005, Henderson County); George Wilkerson (2006, Randolph County); Andrew Ramseur (2010, Iredell County).

[50] Michael Reeves (1992, Craven County); Edward Davis (1992, Buncombe County); James Jaynes (1992, Polk County); Nathan Bowie (1993, Catawba County); William Bowie (1993, Catawba County); John Burr (1993, Alamance County); Johnny Daughtry (1993, Johnston County); Randy Atkins (1993, Buncombe County); Eugene DeCastro (1993, Johnston County); James Campbell (1993, Rowan County); Vincent Wooten (1994, Pitt County); Frank Chambers (1994, Rowan County); Daniel Cummings, Jr. (1994, Brunswick); John Elliot (1994, Davidson County); William Gregory (1994, Davie County); Alden Harden (1994, Mecklenburg County); Marvin Williams, Jr. (1995, Wayne County); Danny Frogge (1995, Forsyth County); Malcolm Geddie, Jr. (1994 Johnston County); Darrell Woods (1995, Forsyth County); William Morganherring (1995, Wake County); Kenneth Neal (1996, Rockingham County); James Davis (1996, Buncombe County); Melvin White (1996, Craven County); William Gregory (1996, Davie County); Leroy Mann (1997, Wake County); John Williams, Jr. (1998, Wake County);

Carolina's 159-person death row were sentenced to death by a jury that included either one or zero persons of color.[51]

92. All-white capital juries are therefore a widespread and pervasive phenomenon in North Carolina. The current death row inmates sentenced by all-white or juries with only one person of color had trials that occurred in diverse counties across North Carolina. All-white juries have occurred even in counties with significant black populations, such as Forsyth, Cumberland, Camden, Johnston, and Wayne.

93. The problem of white capital juries in North Carolina spans not only place, but time as well. The oldest case on death row, originating in 1985, had an all-white jury, as did the newest case on death row, which concluded with a death sentence in June of 2010.

Statistical Evidence

94. Statistical evidence also demonstrates that race has been a significant factor in the State's exercise of peremptory strikes statewide over the last twenty years.

95. The MSU Study shows that, at the time of Defendant's trial in 1996, prosecutors statewide struck qualified black and racial minority citizens from service on death penalty juries at more than twice the rate they struck white citizens.

96. Statewide from 1995 through 1999, the State struck eligible black venire members at an average rate of 53.6% but struck all other venire members at an average rate of only 24.1%.[52] The probability of observing a statewide racial disparity of this magnitude in a race neutral peremptory strike system is less than 0.001.

97. Prosecutors have consistently discriminated against black venire members over the past twenty years. Statewide, from 1990 through 2010, prosecutors struck eligible black venire members at an average rate of 55.5% but struck other venire members at an average rate

Tilmon Golphin (1998, Cumberland County); James Morgan (1999, Buncombe County); Carlette Parker (1999, Wake County); Billy Ray Anderson (1999, Craven County); Marcus Jones (2000, Onslow County); Terry Hyatt (2000, Buncombe County); James Watts (2001, Davidson County); Jim Haselden (2001, Stokes County); Clifford Miller (2001, Onslow County); Terrance Campbell (2002, Pender County); Jathiya Al-Bayyinah (2003, Davie County); John Badgett (2004, Randolph County); Ryan Garcell (2006, Rutherford County); Jeremy Murrell (2006, Forsyth County).

[51] In reaching this conclusion, only the racial composition of the deliberating jury was considered. Black or racial minority alternates were not considered because they did not have an opportunity to participate in capital deliberations.

[52] Similarly, the MSU Study found that prosecutors struck qualified racial minority venire members at an average rate of 52.5% but struck qualified white venire members at an average rate of only 23.4%. This difference in strike levels is significant at the 0.001 level.

of only 24.8%.[53] The probability of observing a statewide racial disparity of this magnitude in a race neutral peremptory strike system is less than 0.01.

98. These disparities cannot be explained away by any suggestion that they resulted from non-racial factors that correlate with venire members' race. In cases with black or other minority defendants, the MSU Study shows that prosecutors are even more race-conscious in their use of peremptory strikes.

99. Specifically, the MSU Study found that in cases with black defendants, from 1990 through 2010, the State struck eligible black venire members at an average rate of 59.8% and struck other eligible venire members at an average rate of 23.1%. The probability of observing a statewide racial disparity of this magnitude in a race neutral peremptory strike system is less than 0.02.

100. Similarly, in cases with racial minority defendants, from 1990 through 2010, the State struck eligible minority venire members at an average rate of 57.6% and struck eligible white venire members at an average rate of 22.9%. The probability of observing a statewide racial disparity of this magnitude in a race neutral peremptory strike system is less than 0.02.

II. AT THE TIME OF DEFENDANT'S TRIAL, RACE WAS A SIGNIFICANT FACTOR IN THE STATE'S DECISIONS TO EXERCISE PEREMPTORY STRIKES IN CASES IN THE JUDICIAL DIVISION.

101. The foregoing evidence and law with respect to statewide disparities in jury selection is incorporated into this claim by reference.

102. Defendant is entitled to relief under the RJA because, at the time of his capital trial, race was a significant factor in the State's decisions to exercise peremptory strikes during jury selection in the Judicial Division.

103. The MSU Study shows that in former Judicial Division 3, from 1990 through 1999, prosecutors struck qualified black venire members at an average rate of 65.4% but struck qualified non-black venire members at an average rate of only 25.3%.[54] Thus, prosecutors were 2.6 times more likely to strike qualified venire members who were black. The probability of observing a racial disparity of this magnitude in a race neutral peremptory strike system is less than 0.001.

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[53] Similarly, the MSU Study found that prosecutors struck qualified racial minority venire members at an average rate of 54.1% but struck qualified white venire members at an average rate of only 24.5%. This difference in strike levels is significant at the 0.001 level.

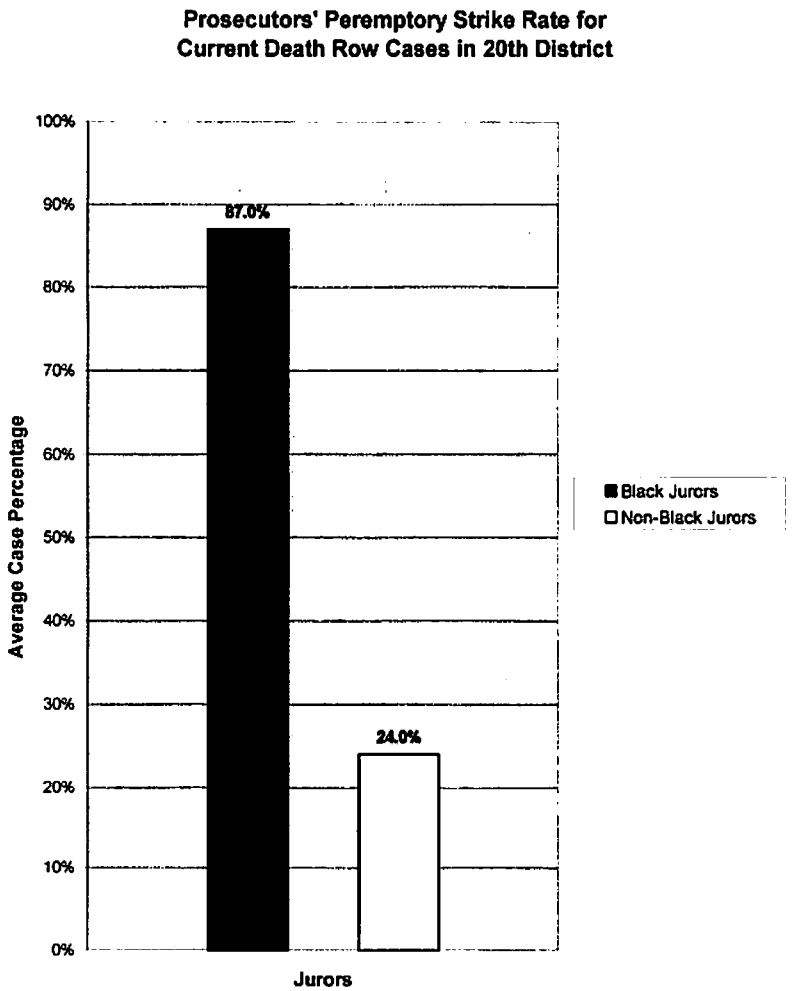
[54] In former Judicial Division 3, prosecutors struck qualified racial minority venire members at an average rate of 65.3% but struck qualified white venire members at an average rate of only 25.2%. This difference in strike levels is significant at the .001 level.

III. AT THE TIME OF DEFENDANT'S TRIAL, RACE WAS A SIGNIFICANT FACTOR IN THE STATE'S DECISIONS TO EXERCISE PEREMPTORY STRIKES IN CASES IN THE 20th PROSECUTORIAL DISTRICT.

104. The foregoing evidence and law with respect to statewide and division-wide disparities in jury selection is incorporated into this claim by reference.

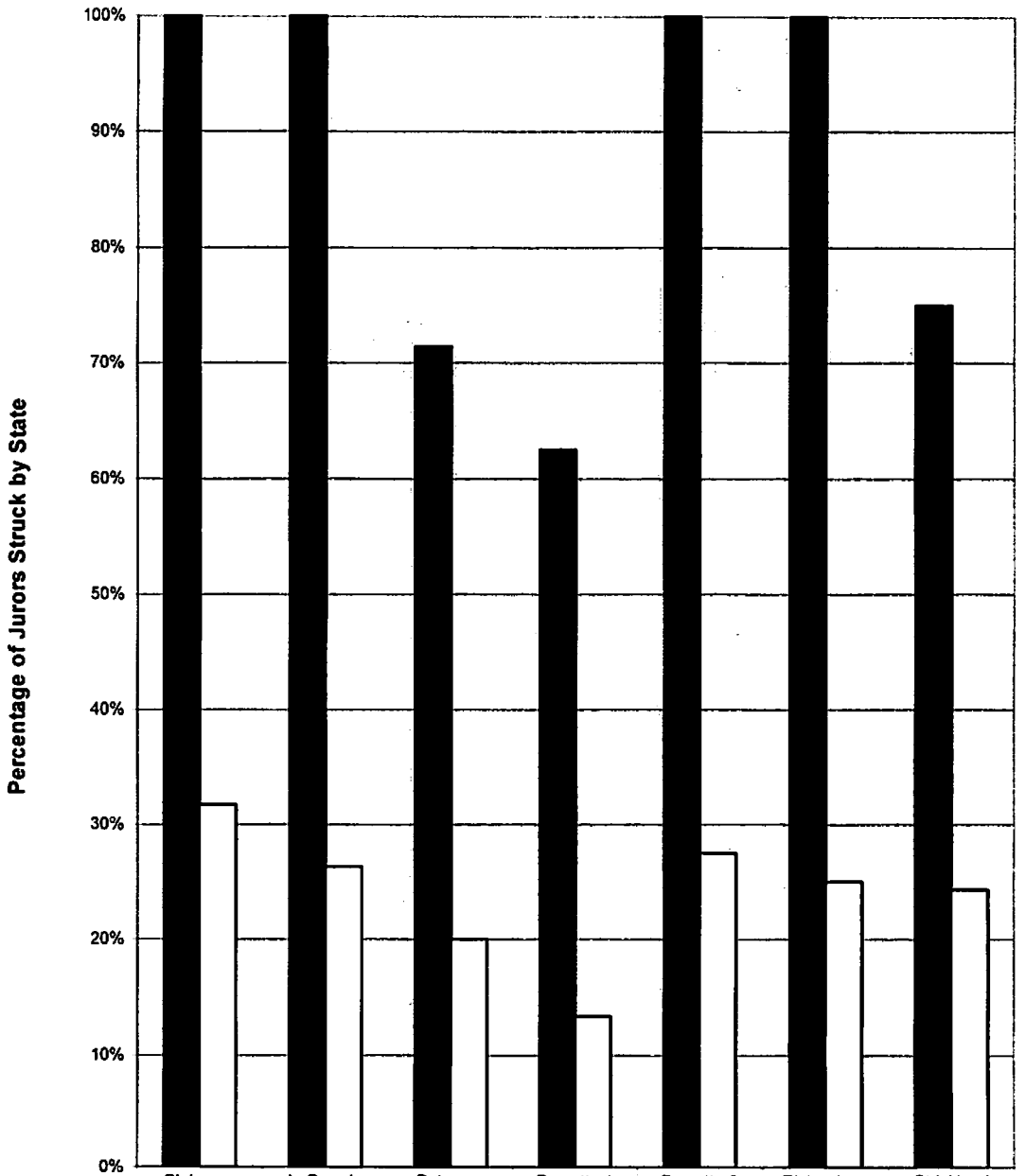
105. Defendant is entitled to relief under the RJA because, at the time of his capital trial, race was a significant factor in the State's decisions to exercise peremptory strikes during jury selection in the 20th Prosecutorial District.

106. The MSU Study shows that in Prosecutorial District 20, prosecutors struck qualified black venire members at an average rate of 87.0% but struck qualified non-black venire members at an average rate of only 24.0%. Thus, prosecutors were 3.6 times more likely to strike qualified black venire members.



107. For each current death row inmate prosecuted in the 20th District, the prosecutors struck a much higher percentage of black venire members than they did venire members who were not black. The lowest percentage of black venire members struck by the prosecution in any of these cases was 62.5%. This stands in stark contrast to the highest percentage of strikes of venire members who were not black in any case – 31.7%.

District 20 Prosecutors' Peremptory Challenges of Qualified Jurors for Current Death Row Inmates

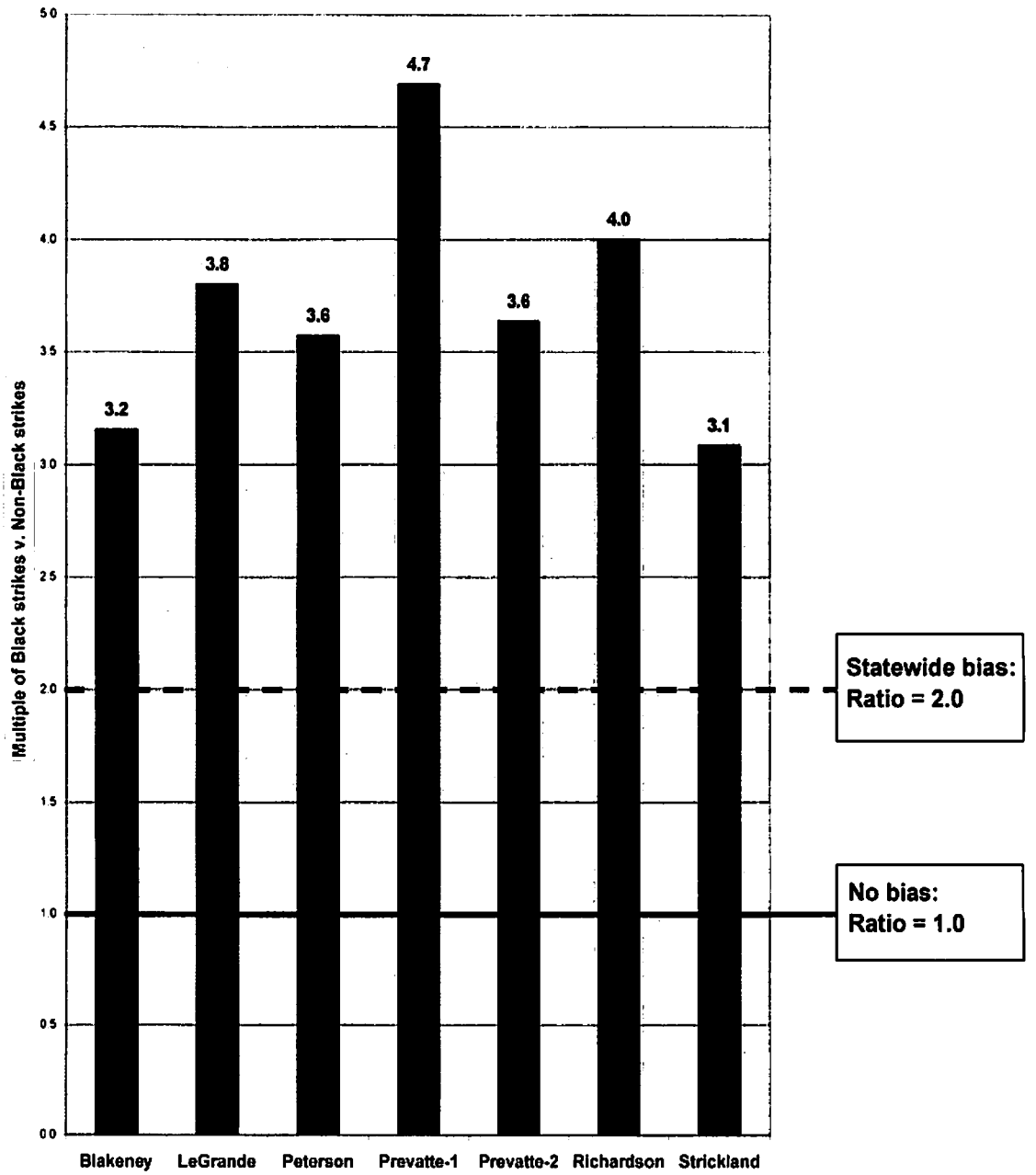


	Blakeney	LeGrande	Peterson	Prevatte-1	Prevatte-2	Richardson	Strickland
■ Black	100.0%	100.0%	71.4%	62.5%	100.0%	100.0%	75.0%
□ Non-Black	31.7%	26.3%	20.0%	13.3%	27.5%	25.0%	24.3%

108. The prosecutors' strike disparity in each current death row case from the 20th District greatly exceeds the average statewide disparity.

Juror Strike Rate Ratio by District 20 Prosecutors for Current Death Row Inmates

(3.0 means a Black juror is 3.0 times more likely to be struck than a Non-Black juror)



IV. AT THE TIME OF DEFENDANT'S TRIAL, RACE WAS A SIGNIFICANT FACTOR IN THE STATE'S DECISIONS TO EXERCISE PEREMPTORY STRIKES IN CASES IN THE COUNTY.

109. The foregoing evidence and law with respect to statewide, division-wide, and district-wide disparities in jury selection is incorporated into this claim by reference.

110. Defendant is entitled to relief under the RJA because, at the time of his capital trial, race was a significant factor in the State's decisions to exercise peremptory strikes during jury selection in Stanly County.

111. In Stanly County, the prosecutors struck qualified black venire members at an average rate of 100% but struck qualified non-black venire members at an average rate of only 26.9%. Thus, prosecutors were 3.7 times more likely to strike qualified black venire members.

V. AT THE TIME OF DEFENDANT'S TRIAL, RACE WAS A SIGNIFICANT FACTOR IN THE STATE'S DECISIONS TO EXERCISE PEREMPTORY STRIKES IN MR. LEGRANDE'S CASE.

112. The foregoing evidence that race was a significant factor in prosecutorial peremptory strike decisions on a statewide, division-wide, district-wide, and county-wide basis is incorporated into this claim by reference.

113. In addition to the statistical evidence set forth above demonstrating the disparate use of peremptory strikes against non-white venire members by the prosecution in the state, judicial division, prosecutorial district and county in which Mr. LeGrande was tried, there is also evidence that race was a factor in the prosecutors' use of peremptory strikes in Mr. LeGrande's case.

114. Mr. LeGrande was tried before an all-white jury. However, as set forth *supra*, this was not the result of coincidence, or a reflection on a lack of qualified minority jurors in the jury pool. Rather, statistical evidence from the 20th District shows a track record of Kenneth Honeycutt and other prosecutors eliminating minority jurors in capital cases.

115. In Guy LeGrande's case, the prosecutors used peremptory challenges to remove both of the two qualified black venire members who were called for jury duty despite the defendant's best efforts to pick a diverse jury. At one point during jury selection, the court said, "let the record show that only Caucasians are left in the jury pool." T. p. 579. Mr. LeGrande responded, "But there are no African Americans left." T. p. 579. When a black venire member was subsequently seated in the pool, the prosecutor promptly used his peremptory challenge to excuse her. T. p. 615.

116. Although Mr. LeGrande, representing himself, complained about the prosecutor's conduct, he failed to make the appropriate legal challenge to the exclusion of these jurors.

117. In addition to making sure there was no minority voice on the jury, the prosecutors' actions in striking every eligible black juror adversely affected Mr. LeGrande's conduct during the course of the trial and sentencing hearing.

118. During Mr. LeGrande's sentencing hearing, the record shows his mental state quickly deteriorated. The Court noted his agitation and asked him to take a few minutes to calm down before he made any statements to the jury and to confer with his counsel, reminding Mr. LeGrande that, "this is important to you." T. pp. 1421-1422. He then cursed the jurors and called them "Antichrists." T. p. 1424. Shamefully egged on by the prosecutor (after the court attempted to cut off Mr. LeGrande by telling him he could not make a statement, the prosecutor volunteered, "State has no objection to a statement, Your Honor" T. p. 1424.) Mr. LeGrande said to the jury:

> Hell ain't deep enough for you people. But you remember when you arrive, say my name, Guy Tobias LeGrande. For I shall be waiting. And each and every one of you will be mine for all eternity. And we shall dance in my father's house. And you will worship me and proclaim me Lord and master. But for right now, all of you so-called good folks can kiss my natural black ass in the showroom of Helig-Meyers. Pull the damn switch and shake that groove thing.

T. pp. 1425-1426. His closing argument secured his fate: "Pull the switch and let the good times roll....Do what you got to do." T. p. 1465. The jury sentenced Mr. LeGrande to death in less than an hour.

119. This statement was most certainly a product of his mental illness; however, the presence of the all-white jury exacerbated his mental status and contributed to his decompensation. Dr. George Corvin, a forensic psychiatrist who testified as an expert at the hearing to determine Mr. LeGrande's competency to be executed, noted in his affidavit prepared for the Court that:

> While Mr. LeGrande's history is replete with evidence of delusional thinking that adversely affected his judgment during the time in question, one of these delusional beliefs warrants specific comment due to the damaging effect this psychotic belief had upon his behavior during trial (particularly during the sentencing phase of the trial). At the time of trial, Mr. LeGrande was laboring under a delusion that he was being persecuted by white people, causing him to have a deep mistrust of all white people. This was not rational thinking; however, he was somehow tried before a jury consisting solely of white jurors. Furthermore, one of the key witnesses against him at trial referred to him in a pejorative manner through the use of a racial epithet. These factors served to reinforce and increase the intensity of his delusional ideation on the subject. His behavioral decompensation before the jury and challenge to the jury to kiss his ass and pull the switch was a product of his psychotic illness coupled with (i.e. exacerbated by) the finding of the all-white jury.

Exhibit 6, Corvin Affidavit.

120. As such, it is clear that not only did prosecutors in Mr. LeGrande's case use race as a significant factor in exercising peremptory challenges but in doing so adversely affected the proceedings.[55]

Conclusion of Peremptory Strike Claims

121. Discrimination against prospective jurors based on race undermines the integrity of the judicial system and our system of democracy. *See Taylor v. Louisiana*, 419 U.S. 522, 530 (1975) (explaining that "community participation [in the jury system] is not only consistent with our democratic heritage but is also critical to public confidence in the fairness of the criminal justice system").

122. Both defendants and society are injured by the use of peremptory strikes in a racially-biased manner:

> Defendants are harmed, of course, when racial discrimination in jury selection compromises the right of trial by impartial jury . . . but racial minorities are harmed more generally, for prosecutors drawing racial lines in picking juries establish "state-sponsored group stereotypes rooted in, and reflective of, historical prejudice."
>
> Nor is the harm confined to minorities. When the government's choice of jurors is tainted with racial bias, that "overt wrong . . . casts doubt over the obligation of the parties, the jury and indeed the court to adhere to the law throughout the trial . . . ."

Miller-El v. Dretke, 545 U.S. 231, 237-38 (2005) (internal citations omitted); *see also State v. Cofield*, 320 N.C. 297 (1987) (explaining that "the judicial system of a democratic society must operate evenhandedly . . . [and] be perceived to operate evenhandedly. Racial discrimination in the selection of grand and petit jurors deprives both an aggrieved defendant and other members of his race of the perception that he has received equal treatment at the bar of justice").

123. Defendant is therefore entitled under the RJA and constitutional law to a sentence of life imprisonment without parole based on evidence of racial disparities in the State's use of peremptory strikes during jury selection in the State of North Carolina, the 3rd Judicial Division, the 20th Prosecutorial District, Stanly County and in his case.

[55] While defendant has specifically alleged herein that he was harmed by the racial factors involved in his case, it is important to note that the defendant has no burden of proof to show he was prejudiced in order to obtain relief under the RJA.

CLAIMS FOR RELIEF: CHARGING AND SENTENCING DECISIONS

VI. AT THE TIME OF DEFENDANT'S TRIAL, AS A RESULT OF THE COMBINED EFFECT OF CHARGING AND SENTENCING DECISIONS, RACE WAS A SIGNIFICANT FACTOR IN THE IMPOSITION OF THE DEATH PENALTY THROUGHOUT NORTH CAROLINA.

124. The foregoing evidence and law with respect to the history and background of this state, division, district and county are incorporated herein by reference.

125. Defendant is entitled to relief under N.C. Gen. Stat. §15A-2011(b)(2) because, at the time of his capital trial, death sentences were imposed significantly more frequently as punishment for capital offenses against white victims than as punishment for capital offenses against victims who were not white. *See also Ham*, 409 U.S. at 526-27; *Wolff*, 418 U.S. at 557; *Clemons*, 494 U.S. at 746; *Hicks*, 447 U.S. at 346-47.

126. A 1995 survey of North Carolina attorneys showed that 40.8% of white attorneys and 35.8% of non-white attorneys reported hearing racist jokes made by other attorneys.[56] This constitutes some evidence that prosecutors make decisions on racially discriminatory bases. *See* N.C. Gen. Stat. § 15A-2001(b) (permitting "other evidence" to prove an RJA claim).

127. However, racially disparate outcomes are not necessarily a product of overt racial animus. This is why the RJA allows the use of statistics to reveal disparities even in the absence of direct evidence of racial bias. *Compare McCleskey*, 481 U.S. at 292 (holding that, to prevail on a federal constitutional claim of racial discrimination in the imposition of the death penalty, a defendant "must prove that decisionmakers in *his* case acted with discriminatory purpose") (emphasis in original).

White Victim Disparities

128. The MSU Study found significant disparities as a result of the combined effect of prosecutors' charging decisions and juries' sentencing decisions. The MSU Study shows that, at the time of Defendant's trial in 1996, death eligible defendants were significantly more likely to receive the death penalty if they were convicted of killing at least one white victim.

129. Statewide, from 1990 to 1999, 11.25% of death eligible cases with at least one white victim resulted in death sentences, while only 4.71% of death eligible cases without white victims resulted in death sentences. Thus, death eligible cases with at least one white victim were 2.4 times more likely to result in a death sentence than all other cases.

130. Even after controlling for statutory aggravating and mitigating circumstances in the statutory controls regression model, death eligible defendants in cases with at least one white

[56] This survey was a joint venture commissioned by the North Carolina Bar Association and the North Carolina Association of Black Lawyers. It is entitled, *North Carolina Survey of Attorneys, 1995*.

victim faced odds of receiving a death sentence that were 1.5 times higher than the odds faced by all other similarly situated defendants.

131. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors in the all meaningful controls regression model, death eligible defendants in cases with at least one white victim faced odds of receiving a death sentence that were 1.7 times higher than the odds faced by all other similarly situated defendants.

132. Statewide, from 1995 to 1999, 10.42% of death eligible cases with at least one white victim resulted in death sentences, while only 5.41% of death eligible cases without white victims resulted in death sentences. Thus, death eligible cases with at least one white victim were 1.9 times more likely to result in a death sentence than all other cases.

133. Even after controlling for statutory aggravating and mitigating circumstances in the statutory controls regression model, death eligible defendants in cases with at least one white victim faced odds of receiving a death sentence that were 1.4 times higher than the odds faced by all other similarly situated defendants.

134. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors in the all meaningful controls regression model, death eligible defendants in cases with at least one white victim faced odds of receiving a death sentence that were 2.2 times higher than the odds faced by all other similarly situated defendants.

135. This trend has been consistent over the past two decades. The MSU Study demonstrates that, statewide from 1990 through 2009, death eligible cases with at least one white victim were 2.6 times more likely to result in a death sentence.

136. Even after controlling for statutory aggravating and mitigating circumstances in the statutory controls regression model, statewide between 1990 and 2009, death eligible defendants in cases with at least one white victim faced odds of receiving a death sentence that were 2.1 times higher than the odds faced by all other similarly situated defendants.

137. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors in the all meaningful controls regression model, statewide between 1990 and 2009, death eligible defendants in cases with at least one white victim faced odds of receiving a death sentence that were 1.6 times higher than the odds faced by all other similarly situated defendants.

138. Thus, race of the victim disparities cannot be explained away by any suggestion that crimes against white victims are more heinous or death-worthy.

139. The Radelet-Pierce Study confirms the MSU Study's conclusions. The Radelet-Pierce Study demonstrates that, statewide between 1990 and 2007, homicides against white victims were three times more likely to result in a death sentence. Even after accounting for the impact of multiple victims and whether the homicide was accompanied by another felony, the Radelet-Pierce Study found that homicides of white victims were still three times more likely to result in a death sentence.

140. The MSU Study's conclusions about race of victim disparities can also be corroborated by comparing the racial makeup of the overall homicide victim population with the racial makeup of the victims of the people executed in North Carolina. Of the 56 victims of the people executed in North Carolina since 1976, 79% were white and 18% were black. In contrast, 54% of all homicide victims in North Carolina since 1976 were black while 42.3% were white.[57]

141. In other words, in North Carolina, capital cases in which defendants have been executed, black victims are vastly under-represented when compared to the proportion of black victims in the overall homicide population. This demonstrates that juries and prosecutors simply do not pursue the death penalty as aggressively in homicide cases involving black victims.

VII. AT THE TIME OF DEFENDANT'S TRIAL, AS A RESULT OF THE COMBINED EFFECT OF CHARGING AND SENTENCING DECISIONS, RACE WAS A SIGNIFICANT FACTOR IN THE IMPOSITION OF THE DEATH PENALTY IN THE JUDICIAL DIVISION.

142. The foregoing evidence and law with respect to statewide disparities in the imposition of the death penalty based on the combined effect of charging and sentencing decisions is incorporated into this claim by reference.

143. Thus MSU Study shows that in former Judicial Division 3, from 1990 to 1999, 11.13% of death eligible cases with at least one white victim resulted in death sentences, while only 4.37% of death eligible cases without white victims resulted in death sentences. Thus, death eligible cases with at least one white victim were 2.5 times more likely to result in a death sentence.

VIII. AT THE TIME OF DEFENDANT'S TRIAL, AS A RESULT OF THE COMBINED EFFECT OF CHARGING AND SENTENCING DECISIONS, RACE WAS A SIGNIFICANT FACTOR IN THE IMPOSITION OF THE DEATH PENALTY IN THE 20th PROSECUTORIAL DISTRICT.

144. The foregoing evidence and law with respect to statewide and division-wide disparities in the imposition of the death penalty based on the combined effect of charging and sentencing decisions is incorporated into this claim by reference.

145. The MSU Study shows that in Prosecutorial District 20, from 1990 to 2009, 11.92% of death eligible cases with at least one white victim resulted in death sentences, while only 4.73% of death eligible cases without white victims resulted in death sentences. Thus, death eligible cases with at least one white victim were 2.52 times more likely to result in a death sentence.

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[57] This data is available in a report produced by UNC-Chapel Hill Political Science Professor Frank R. Baumgartner. Professor Baumgartner's report can be found online at the following web address: http://www.unc.edu/~fbaum/Innocence/NC/Racial-discrepencies-NC-homicides-executions.pdf.

IX. AT THE TIME OF DEFENDANT'S TRIAL, RACE WAS A SIGNIFICANT FACTOR IN THE STATE'S CAPITAL CHARGING DECISIONS THROUGHOUT NORTH CAROLINA.

146. The foregoing evidence and law with respect to the history and background of this state, division, district and county and the disparities in the imposition of the death penalty based on the combined effect of charging and sentencing decisions is incorporated into this claim by reference.

147. Defendant is entitled to relief under N.C. Gen. Stat. §15A-2011(b)(2) because, at the time of his capital trial, prosecutors sought death sentences significantly more frequently as punishment for capital offenses against white victims than as punishment for capital offenses against any other race.

White Victim Disparities

148. The statistical results of the MSU Study show that at the time of Defendant's trial in 1996 North Carolina prosecutors were more likely to seek the death penalty in cases with at least one white victim.

149. Statewide, for the time period between 1990 and 1999, prosecutors brought 22.44% of death eligible cases with at least one white victim to capital trials, but brought only 11.36% of those cases without white victims to capital trials. Thus, prosecutors were 2.0 times more likely to bring a case to a capital trial if there was at least one white victim.

150. Even after controlling for statutory aggravating and mitigating circumstances in the statutory controls model, death eligible defendants in cases with least one white victim faced odds of advancing to a capital trial that were 1.5 times higher than the odds faced by all other similarly situated defendants.

151. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors in the all meaningful controls model, death eligible defendants in cases with at least one white victim faced odds of advancing to a capital trial that were 1.5 times higher than the odds faced by all other similarly situated defendants.

152. Statewide, for the time period between 1995 and 1999, prosecutors brought 20.98% of death eligible cases with at least one white victim to capital trials, but brought only 12.38% of those cases without white victims to capital trials. Thus, prosecutors were 1.7 times more likely to bring a case to a capital trial if there was at least one white victim.

153. Even after controlling for statutory aggravating and mitigating circumstances in the statutory controls model, death eligible defendants in cases with least one white victim faced odds of advancing to a capital trial that were 1.4 times higher than the odds faced by all other similarly situated defendants.

154. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors in the all meaningful controls model, death eligible defendants in cases

with at least one white victim faced odds of advancing to a capital trial that were 1.5 times higher than the odds faced by all other similarly situated defendants.

155. This trend has been consistent over the past two decades. Statewide from 1990 through 2009, prosecutors were 1.9 times more likely to bring a case to a capital trial if there was at least one white victim.

156. These disparities also persisted in regression models that account for the impact of non-racial statutory aggravating and mitigating circumstances in the cases. Even after controlling for statutory aggravating and mitigating circumstances in the statutory controls model, statewide from 1990 through 2009, death eligible defendants in cases with least one white victim faced odds of advancing to a capital trial that were 1.5 times higher than the odds faced by all other similarly situated defendants.

157. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors in the all meaningful controls model, statewide from 1990 through 2009, death eligible defendants in cases with at least one white victim faced odds of advancing to a capital trial that were 1.6 times higher than the odds faced by all other similarly situated defendants. Thus, the disparities based on race of the victim cannot be explained away by any suggestion that crimes against white victims are more heinous or death-worthy.

X. AT THE TIME OF DEFENDANT'S TRIAL, RACE WAS A SIGNIFICANT FACTOR IN THE STATE'S CAPITAL CHARGING DECISIONS IN THE JUDICIAL DIVISION.

158. The foregoing evidence and law with respect to statewide disparities in the State's capital charging decisions is incorporated into this claim by reference.

159. The MSU Study shows that in former Judicial Division 3, from 1990 to 1999, prosecutors brought 20.28% of death eligible cases with at least one white victim to capital trials, but brought only 10.28% of death eligible cases without white victims to capital trials. Thus, prosecutors were 2.0 times more likely to bring a case to a capital trial if there was at least one white victim.

XI. AT THE TIME OF DEFENDANT'S TRIAL, RACE WAS A SIGNIFICANT FACTOR IN THE STATE'S CAPITAL CHARGING DECISIONS IN THE 20th PROSECUTORIAL DISTRICT.

160. The foregoing evidence and law with respect to statewide and division-wide disparities in the State's capital charging decisions is incorporated into this claim by reference.

161. Data analysis for Prosecutorial District 20 reveals significant disparities based on race from 1990 to 2009.

162. The MSU Study shows that in Prosecutorial District 20, from 1990 to 2009, prosecutors brought 17.22% of death eligible cases with at least one white victim to capital trials,

but brought only 8.27% of death eligible cases without white victims to capital trials. Thus, prosecutors were 2.08 more times more likely to bring a case to a capital trial if there was at least one white victim.

XII. AT THE TIME OF DEFENDANT'S TRIAL, RACE WAS A SIGNIFICANT FACTOR IN THE STATE'S CAPITAL CHARGING DECISIONS IN THE COUNTY.

163. The foregoing evidence and law with respect to statewide, division-wide, and district-wide disparities in the State's capital charging decisions is incorporated into this claim by reference.

164. Data analysis for Stanly County reveals significant disparities based on race from 1990 to 2009.

165. The MSU Study shows that in Stanly County, from 1990 to 2009, prosecutors brought 9.86% of death eligible cases with racial minority defendants and at least one white victim to capital trials, but brought only 5.01% of all other death eligible cases to capital trials. Thus, prosecutors were 1.96 times more likely to bring a case to capital trial if there was a racial minority defendant and at least one white victim.

166. Furthermore, the MSU Study shows that in Stanly County, from 1990 to 2009, prosecutors brought 14.89% of death eligible cases with racial minority defendants to capital trials, but brought 0% white defendants to capital trials.

XIII. AT THE TIME OF DEFENDANT'S TRIAL, RACE WAS A SIGNIFICANT FACTOR IN THE STATE'S CAPITAL CHARGING DECISION IN MR. LEGRANDE'S CASE.

167. The foregoing evidence that race was a significant factor in capital charging decisions on a statewide, division-wide, district-wide, and county-wide basis is incorporated into this claim by reference.

168. Based on the evidence already set forth, the fact that Mr. LeGrande is black and the victim was white was a significant factor in the prosecutors' decision to seek the death penalty in this case.

169. In addition to the statistical evidence, there is also strong anecdotal evidence suggesting the lead prosecutor in Mr. LeGrande's case, Kenneth Honeycutt, may have sought the death penalty for Mr. LeGrande on the basis of race. (As set forth *supra*, this is the same Kenneth Honeycutt who wore a lapel pin in the shape of a noose to court, who presented similar pins to assistant district attorneys who obtained death penalty convictions and who tried three capital cases in front of all white juries.)

170. The State presented evidence at trial that in addition to Mr. LeGrande, two other persons, Tommy Munford and Greg Laton, were directly involved in the death of Ellen Munford. Both Mr. Munford and Mr. Laton were white males.

171. Specifically, Tommy Munford testified at trial that he hired Mr. LeGrande to kill his estranged wife in exchange for future payment to Mr. LeGrande from Ms. Munford's life insurance policy that named Tommy Munford as the beneficiary. T. pp. 878-879. Mr. Munford further testified that he planned the details of the murder, provided Mr. LeGrande with the murder weapon and dropped Mr. LeGrande off at Ms. Munford's house the morning of her death. T. pp. 880-883, 900-902. Mr. Munford was allowed to plead to second-degree murder, conspiracy to commit first degree murder and solicitation in exchange for his testimony against Mr. LeGrande.

172. Mr. Munford also testified that prior to hiring Mr. LeGrande he tried to hire Greg Laton to kill Ellen Munford. T. pp. 874-877. He testified that Mr. Laton agreed to kill Ms. Munford for $5000, helped him plan the details of the murder and provided him with the gun used to kill Ms. Munford the morning of the murder. T. pp. 874-877, 894-895. Mr. Laton, testifying without any immunity arrangement, admitted at trial that he provided the murder weapon to Mr. Munford. T. pp 1148-1151. The state did not charge Mr. Laton with any crime in connection with this murder. There has been no disclosure by the State of any deal with Mr. Laton that would explain such leniency for a man who, by his own testimony, acted in concert with Mr. Munford and knowingly provided the shotgun used to kill Ellen Munford.

173. While Mr. Honeycutt has never stated that he made charging decisions in Ellen Munford's death based on race this much is clear: There was ample evidence that Mr. Munford and Mr. Laton, two white males, were accomplices in the murder of Ellen Munford but Mr. Honeycutt ultimately chose not to seek the death penalty against either of them. In fact, Mr. Laton was never charged at all. However Mr. Honeycutt did proceed capitally against Mr. LeGrande, a black man whose mental health was questioned by more than one attorney prior to trial, who ultimately represented himself at trial and who has since been found to be incompetent to be executed due to his severe mental illness.

XIV. AT THE TIME OF DEFENDANT'S TRIAL, RACE WAS A SIGNIFICANT FACTOR IN CAPITAL SENTENCING DECISIONS BY JURIES IN THE JUDICIAL DIVISION.

174. The foregoing evidence and law with respect to disparities in the imposition of the death penalty based on the combined effect of charging and sentencing decisions is incorporated into this claim by reference.

175. Defendant is entitled to relief under N.C. Gen. Stat. §15A-2011(b)(2) because, at the time of his capital trial, race was a significant factor in juries' decisions to impose death sentences. The statistical results of the MSU Study demonstrate that these disparities existed in the Judicial Division at the time of Defendant's trial in 1996.

White Victim Disparities

176. The MSU Study shows that in former Judicial Division 3, from 1990 to 1999, juries imposed death sentences in 54.88% of all penalty phase trials with at least one white victim, but only 42.50% of penalty phase trials without white victims. Thus, juries were 1.3 times more likely to sentence a defendant to death if the case had at least one white victim.

Racial Minority Defendant/White Victim Disparities

177. The MSU Study also shows that in former Judicial Division 3, from 1990 to 1999, juries imposed death sentences in 64.00% of all penalty phase trials with racial minority defendants and at least one white victim, but only 47.42% of all other penalty phase trials. Thus, juries were 1.3 times more likely to sentence a defendant to death if the case had a racial minority defendant and at least one white victim.

XV. AT THE TIME OF DEFENDANT'S TRIAL, RACE WAS A SIGNIFICANT FACTOR IN CAPITAL SENTENCING DECISIONS BY JURIES IN THE 20th PROSECUTORIAL DISTRICT.

178. The foregoing evidence and law with respect to the fact that race was a significant factor in capital sentencing decisions by juries on a division-wide basis is incorporated into this claim by reference.

179. Data analysis for Prosecutorial District 20 reveals significant disparities based on race from 1990 to 2009.

180. The MSU Study shows that in Prosecutorial District 20, from 1990 to 2009, juries imposed death sentences in 69.23% of all penalty phase trials with at least one white victim, but only 57.14% of penalty phase trials without white victims. Thus, juries were 1.21 times more likely to sentence a defendant to death if the case had at least one white victim.

XVI. AT THE TIME OF DEFENDANT'S TRIAL, RACE WAS A SIGNIFICANT FACTOR IN CAPITAL SENTENCING DECISIONS BY THE JURY IN MR. LEGRANDE'S CASE.

181. The foregoing evidence that race was a significant factor in jury sentencing decisions on a division-wide and district-wide basis is incorporated into this claim by reference.

182. Based on the evidence already set forth, the fact that Mr. LeGrande is black and the victim was white was a significant factor in the jury's decision to impose the death penalty in his case.

183. In addition to the statistical evidence, there is also strong anecdotal evidence suggesting that after selecting an all-white jury, Mr. Honeycutt purposefully created an atmosphere at trial that was so tainted with an undercurrent of racism that it may have affected the jury's decision to impose the death penalty in Mr. LeGrande's case.

184. At the very beginning of the trial, Mr. Honeycutt invoked the unmistakable image of a noose in his opening statement. He told the jury that almost two years after Ellen Munford was killed, the threads of the plot to kill her began to unravel. He continued:

> And as those threads came out, those officers took those threads and they twisted them together and they made a string. And when some more pieces of the case came in, they twisted more strings together. And as the evidence mounted and became overwhelming, those strings were twisted and bound into a rope. A rope. A rope so strong that when this case is over, you will not have any reasonable doubt about this man's guilt.
>
> * * *
>
> [W]hen you take all of that evidence and each of their testimony like those strings that unravel from the alibi plan, and you twist them together, and the strings get twisted into a cord, and the cord gets twisted into a rope, it's an unbreakable, an unbreakable bundle of evidence.

T. pp. 836-838. The clear implication of this rope metaphor was that the evidence against Mr. LeGrande would become a noose with which the jury could hang him.

185. Furthermore, throughout the trial, Mr. LeGrande was referred to in testimony and in documents introduced into evidence by the prosecutor as a "nigger from Wadesboro." For example, in his testimony, Tommy Munford, who masterminded the murder of his wife, told the jury about a conversation he had with Greg Laton on the day Mr. Munford's wife was murdered. Mr. Munford said he did not tell Mr. Laton the name of the person who was going to kill his wife. Instead, he told him, "I got somebody to do it for me that lived in Wadesboro, or was from Wadesboro." T. p. 886. After this testimony, the prosecutor attempted to elicit the racial epithet used by Mr. Munford in his written statement to police by asking in follow-up, "You told Mr. Laton -- -- Greg Laton that you had a guy from Wadesboro to kill Ellen?" On cross-examination, however, Mr. LeGrande forced Mr. Munford to admit that in fact he had told Laton, "that I had a nigger that I had worked with at the fish house from Wadesboro to do it." T. p. 932. It is clear the prosecutor, in repeating the response from Mr. Munford was attempting to have Mr. Munford refer to the defendant in a pejorative manner with the racial epithet although the witness did not do so until cross-examination.

186. During his testimony, Mr. Laton also used the offensive racial epithet in describing his conversation with Mr. Munford on the day of Ellen Munford's murder. He corroborated that Mr. Munford did not tell him the name of the person who was going to use the murder weapon Mr. Laton provided, but instead Mr. Munford told him that "he had a nigger from Wadesboro." T. p. 1151.

187. The epithet was used again during the testimony of the SBI agent who took Mr. Munford's confession implicating Mr. LeGrande in the murder. He read to the jury that Mr.

Munford told the agents, "During one of those conversations with [Mr. Laton], I told him that I had a nigger that I had worked with at the fish house from Wadesboro to do it." T. p. 1267.

188. By carefully orchestrating a presentation to the jury that was replete with both racial allusions and racial epithets, Mr. Honeycutt made sure the jury was exposed to the sordid historical associations between the noose, the racial slur and a clearly mentally disturbed and perhaps scary-appearing defendant throughout the trial. These actions by Mr. Honeycutt were certain to tap into either the conscious or unconscious biases of an all-white jury sitting in judgment of a black man charged with killing a white woman in order to sway the jury's sentencing decision in Mr. LeGrande's case.

Conclusion of Charging and Sentencing Claims

189. The RJA addresses discrimination in the application of the death penalty by permitting defendants to demonstrate the existence of racial disparities in capital charging and sentencing decisions through the use of statistical evidence. This approach only makes sense given the historical context. While overtly racist sentiments were openly expressed by all components of our criminal justice system in the historical periods before *Furman v. Georgia*, 408 U.S. 238 (1972) (invalidating the death penalty in part due to racial disparities), the concerns that remain today are whether the legacy of those historical prejudices remain in North Carolina practices, procedures, and policies, even though they may not be openly expressed by individual actors. This very real concern has been recognized by the Supreme Court. *See Turner v. Murray*, 476 U.S. 28, 35 (1986) (explaining that "[m]ore subtle, less consciously held racial attitudes could . . . influence a juror's [capital sentencing] decision").

190. In *Rose v. Mitchell*, the Supreme Court explained that although racial discrimination may operate more subtly than in previous times, it remains potent:

> [W]e . . . cannot deny that, 114 years after the close of the War Between the States . . . racial and other forms of discrimination still remain a fact of life, in the administration of justice as in our society as a whole. Perhaps today that discrimination takes a form more subtle than before. But it is not less real or pernicious.

443 U.S. 545, 558-59 (1979).

191. As demonstrated above, racial disparities in charging and sentencing existed at the time of Defendant's trial. Although these disparities may be the product of unconscious racism, the legislature has devised a remedy for this discrimination. Defendant is entitled under the RJA and constitutional law to a sentence of life imprisonment without parole based on this evidence of racial disparities in capital charging and sentencing decisions.

CONCLUSION

190. In *McCleskey*, the United States Supreme Court made it clear that state legislatures were free to enact laws to provide relief to capital defendants on the basis of racial bias as deemed appropriate by the lawmakers. Our General Assembly and Governor have now responded with the enactment of the RJA. This law requires a careful, open-minded examination of race and the death penalty in North Carolina - every judicial division, every judicial district and every county. As North Carolinians, we may properly acknowledge significant progress in the development of our criminal justice system and in consigning to history the brutality of *de jure* race discrimination. The inescapable truth - that when it comes to the death penalty race matters - is revealed in the historical and statistical evidence presented above. In passing the Racial Justice Act, the North Carolina General Assembly took an important step towards breaking the arc of racial tension and discrimination in the most prominent aspect of our criminal justice system. The defendant respectfully contends that after a careful, open-minded examination of the process, this Court will be compelled to grant relief under the RJA and sentence him to life in prison without the possibility of parole.

WHEREFORE, defendant prays the court to grant this motion pursuant to the RJA and impose a judgment of life imprisonment without parole.

Respectfully submitted this the 2nd day of August, 2010.

COUNSEL FOR DEFENDANT

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STATEMENT OF COMPLIANCE WITH
N.C. Gen. Stat. § 15A-1420(a)(1)(c1)

There is a sound legal basis for this motion. This motion is being filed in good faith. Both the District Attorney's Office and trial counsel have been notified of the filing of this motion. The undersigned has in good faith determined that a full review of the trial transcript is not required in order to file this motion.

Respectfully submitted this the 2nd day of August, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to N.C. Gen. Stat. § 15A-1420(b1)(1), I caused to be served a copy of the foregoing Motion for Appropriate Relief Pursuant to the Racial Justice Act, by first class mail upon:

Honorable Michael D. Parker
District Attorney
P.O. Box 1241
Albemarle, NC 28002

Ms. Sandra Wallace-Smith
Mr. Barry S. McNeill
N. C. Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629

This the 2nd day of August, 2010.

Jay H. Ferguson

EXHIBITS

1. Affidavit of Catherine Grosso and Barbara O'Brien (Grosso-O'Brien Affidavit)

2. Affidavit of George C. Woodworth (Woodworth Affidavit)

3. Affidavit of Michael L. Radelet (Radelet Affidavit)

4. Kotch, Seth and Mosteller, Robert P., *The Racial Justice Act and the Long Struggle with Race and the Death Penalty in North Carolina,* N.C. L. Rev. ____ (forthcoming, 2010).

5. North Carolina Medical Examiner's Office Data, District 20

6. Affidavit of George Patrick Corvin, M.D. (Corvin Affidavit)

EXHIBIT 1

Affidavit of Catherine Grosso and Barbara O'Brien

1. Our names are Catherine Grosso and Barbara O'Brien. We are both professors at the Michigan State University (MSU) College of Law. Together we have undertaken an extensive study of capital charging, sentencing, and jury selection in North Carolina between the years of 1990 and 2009. Our statistical consultant is University of Iowa Professor of Statistics and Actuarial Science George Woodworth.

2. I, Catherine Grosso, graduated from the University of Iowa College of Law in 2001 with high distinction and was admitted to the *Order of the Coif*. I am currently an Assistant Professor of Law at the MSU College of Law where I teach courses in criminal procedure and corrections law. Prior to joining the faculty at the Michigan State University College of Law, I was a Visiting Assistant Professor of Law at the University of Illinois College of Law where I taught courses in criminal procedure, constitutional law, evidence, and capital punishment law. In my professional career, I have been involved in conducting research and empirical studies on race and the death penalty. My publications on race and the death penalty include: David Baldus, George Woodworth, Neil Alan Weiner, David Zuckerman, & Catherine M. Grosso, *Empirical Studies of Race and Geographic Discrimination in the Administration of the Death Penalty: A Primer on Key Methodological Issues, in* THE FUTURE OF AMERICA'S DEATH PENALTY: AN AGENDA FOR THE NEXT GENERATION OF CAPITAL PUNISHMENT RESEARCH (Charles S. Lanier, William Bowers, and James Acker eds., 2009); David C. Baldus, George Woodworth, & Catherine M. Grosso, *Race and Proportionality Since McCleskey v. Kemp (1987): Different Actors with Mixed Strategies of Denial and Avoidance*, 39 COLUM. HUM. RTS. L. REV. 143 (2007); David C. Baldus, George Woodworth, Catherine M. Grosso, & Aaron M. Christ, *Arbitrariness and Discrimination in the Administration of the Death Penalty: A Legal and Empirical Analysis of the Nebraska Experience (1973-1999)*, 81 NEB. L. REV. 486 (2002).

3. I, Barbara O'Brien, am an Associate Professor of Law at the MSU College of Law where I teach courses in criminal law and criminal procedure. I received my J.D. from the University of Colorado School of Law and was admitted to the *Order of the Coif*. I received a Ph.D. in social psychology from the University of Michigan. My doctoral training involved advanced courses in research methods and statistics. I have published several articles applying empirical methodology to legal questions, such as identifying predictors of false capital convictions and understanding prosecutorial decision making. Some of my publications include: Barbara O'Brien, *A Recipe for Bias: An Empirical Look at the Interplay Between Institutional Incentives and Bounded Rationality in Prosecutorial Decision Making*, 74 MO. L. REV. 999 (2009); Barbara O'Brien, *Prime Suspect: An Examination of Factors that Aggravate and Counteract Confirmation Bias in Criminal Investigations*, 15 PSYCHOL. PUB. POL'Y & L. 315 (2009); Barbara O'Brien, Samuel Sommers, & Phoebe Ellsworth, *Ask and What Shall Ye Receive? A Guide for Using and Interpreting What Jurors Tell Us*, forthcoming in the *University of Pennsylvania Journal of Law & Social Change;* Barbara O'Brien & Daphna Oyserman, *It's Not Just What You Think, But How You Think about It: The Effect of Situationally-Primed Mindsets on Legal Judgments and Decision-making*, 92 MARQ. L. REV. 149 (2008); Samuel R. Gross & Barbara O'Brien, *Frequency and Predictors of False Conviction: Why We Know So Little, and New Data on Capital Cases*, 5 J. EMPIRICAL LEGAL STUD. 927 (2008).

4. This affidavit presents our initial findings. We began data collection for the study in the fall of 2009 and completed it in the spring of 2010. Because of the broad scope of the study and the large amount of data involved, we have had time to perform only some of the relevant analyses. While our analysis is ongoing, we are highly confident in the accuracy of the findings reported here.

SUMMARY OF METHODOLOGY

Peremptory Strike Study

5. This study documented racial disparities in the prosecutorial use of peremptory strikes in the cases between the years of 1990 and 2010 of persons currently on death row.[1] Of the 159 defendants on death row, we obtained data to analyze strike patterns by race in 173 proceedings. The number of proceedings is higher than the number of defendants because some defendants had multiple trials, and one defendant had separate juries for the guilt and penalty phases of the trial. Our database contains information about 7,421 venire members, of whom 7,400 were qualified to be struck by the state.

6. We analyzed the prosecutors' strike patterns of all "qualified" venire members. A venire member was considered "qualified" if he or she was present at the *voir dire* selection and was not excluded for cause. Data collection and coding was performed by law graduates (herein "coders"), under our direct supervision. The coders determined the prosecution's strike patterns based on the venire members the prosecution either passed to the defense or removed with a peremptory strike. We collected strike data about these jurors by reviewing *voir dire* transcripts, court files, and jury seating charts.

7. We then collected information regarding the race of each venire member. We first relied on venire members' self-reported race in jury questionnaires and transcripts. When such information was not available, the coders with assistance from law students used a protocol to search for venire members' race in public record databases, including voter registration, motor vehicle, and death records. Unless a coder was relying on a transcript for identifying information about venire member, all coders searched for race information without knowing the strike information.[2] We are missing race information for only 4 venire members out of all qualified venire members present at all jury selection proceedings for the 159 current death row inmates.

8. We documented racial disparities in prosecution strike rates of venire members statewide, by judicial division, by prosecutorial district, and by county.

[1] The study also analyzed peremptory strike data from one 1985 capital proceeding. The defendant involved in this proceeding is currently on death row. Moreover, for current death row inmates with vacated convictions or sentences, peremptory strikes in the vacated proceeding were considered if the trial occurred in 1990 or later.

[2] In order to ensure that the race coders were blind to the strike information we used separate data collection questionnaires for the strike and race data and in no case did the same person who coded a case for strikes also search for race information except in those cases where consulting the transcript was necessary.

Charging and Sentencing Study

9. In conducting the charging and sentencing study, we reviewed thousands of murder cases in North Carolina. Based on this review we estimated that 5,775 cases were eligible for the death penalty in North Carolina between the years of 1990 and 2009.[3] All of the case screening work was done by graduates with law degrees and supervised by a full-time project manager who is also a trained lawyer and a member of the North Carolina bar. Retired North Carolina Superior Court Judge Melzer A. Morgan, Jr., reviewed all cases in which the only potential basis for death eligibility was a fact-intensive aggravating circumstance, such as the crime being especially heinous, atrocious, or cruel. For these cases, Judge Morgan made final determinations as to death eligibility under North Carolina law.

10. The charging and sentencing study includes detailed information from every death eligible murder case that was brought to a penalty trial, a total of 691 cases. Our study also includes detailed information from 871 death eligible murder cases that did not advance to a capital trial. These 871 cases are a random sample of the universe of death eligible cases. Thus, our study includes detailed information for a total of 1,562 cases. For each case, we collected information on the race of the defendant and victim and over 200 factors, including the statutory aggravating and mitigating factors, as well as numerous other factors identified in the case law and previous research as potentially relevant. Our sources of data included:

a. Superior Court files;
b. Appellate Court opinions and records on appeal;
c. Official Crime Versions prepared by the Department of Correction, obtained with the cooperation of the Department of Correction and Attorney General;
d. Homicide victim data obtained from the Office of the Chief Medical Examiner;
e. Department of Correction website;
f. Media reports;
g. Lexis Nexis;
h. Archived issues of the Capital Update, published by the Center for Death Penalty Litigation; and
i. In limited circumstances, conversations with attorneys involved in the case.

11. We analyzed the statewide evidence of disparities based on race of the victim in three ways. First, we used cross-tabular procedures to calculate racial disparities in capital charging or sentencing practices, without considering the impact of other potential explanatory factors ("unadjusted disparities"). Second, we constructed a logistic multiple regression model that analyzed the relationship between race and charging and sentencing, after accounting for the statutory aggravating and mitigating factors ("statutory controls regression model"). Third, we constructed a regression model that analyzed the role of race in charging and sentencing, after analyzing the importance of and where appropriate controlling for over 200 potentially

[3] The charging and sentencing study collected data and analyzed cases between 1990 and 2009. The study includes two additional cases that resulted in a death sentence in 2010: Michael Ryan and Andrew Ramseur.

explanatory variables in addition to the statutory aggravating and mitigating circumstances that might impact the outcome of a capital case ("all meaningful controls regression model"). The regression models have been "adjusted" by the controls to take into account potentially explanatory variables.

12. We analyzed four individual or combined charging and sentencing decision points: (1) the combined impact of the charging and sentencing decisions in the issuance of death sentences; (2) the prosecutor's decisions to seek death at any point in the charging process; (3) the prosecutor's decision to advance the case to capital trial; and (4) the jury's penalty trial sentencing decision.

ANALYSIS AND RESULTS: PEREMPTORY STRIKES

Statewide Evidence, 1990-2010

13. Our analysis revealed that statewide, from 1990 to 2010, North Carolina prosecutors exercised peremptory challenges at a significantly higher rate against black venire members than against non-black venire members. Statewide, prosecutors struck 52.5% of qualified black venire members but only 25.8% of qualified non-black venire members. Thus, prosecutors were more than twice as likely to strike qualified venire members who were black. *See* Table 1.

14. We observed a similar disparity in strike rates when we compared statewide the prosecution's strikes of white venire members to strikes of racial minority venire members.[4] Statewide, prosecutors struck 50.6% of qualified racial minority venire members but only 25.6% of qualified white venire members.[5]

15. We also found significant disparities when we calculated the average of the strike rates of each individual case during this period statewide ("average strike rates").[6] Of the 166 cases that included qualified black venire members, prosecutors struck an average of 55.5% of qualified black venire members compared to only 24.8% of all other qualified venire members. *See* Table 2.[7]

[4] Throughout our study, we have defined the term "racial minority" to include black, Hispanic, Asian, Native American persons and persons of more than one race.

[5] Of 1,353 minority jurors, the prosecution struck 685. In contrast, of the 6,043 white jurors, the prosecution struck 1,544. This difference in strike rates is significant at the $p < .001$ level.

[6] In contrast, Table 1 reports prosecutorial strikes by race of venire member aggregated across all cases in the database.

[7] Similarly, we find that prosecutors struck qualified racial minority venire members at an average rate of 54.1% but struck qualified white venire members at an average rate of only 24.5%. Thus, prosecutors were 2.2 times more likely to strike qualified racial minority venire members. This difference in strike levels is significant at the $P < .001$ level.

16. These disparities are even greater in cases involving black defendants. In cases with black defendants, the average strike rate is 59.9% against black venire members and 23.1% against other venire members. *See* Table 3. In contrast, in cases with defendants of other races, the average strike rate is 50.1% against black venire members and 26.9% against all other qualified venire members.[8] *Id.*

17. The probability of observing a statewide racial disparity of this magnitude in a race neutral peremptory strike system is less than .01.

18. Among the 173 cases analyzed, we found that, in 33 cases, all of the jurors who decided punishment were white.[9] *See* Fig. 1, below.

FIGURE 1
Current Death Row Inmates Sentenced to Death by All-White Juries
(by sentencing year and county)

Al-Bayyinah, Jathiyah	1999	Davie	LeGrande, Guy T	1996	Stanly
Augustine, Quintel	2002	Cumberland	Moseley, Carl S	1992	Forsyth
Blakeney, Roger M	1997	Union	Moseley, Carl S	1993	Stokes
Brown, Paul A	2000	Wayne	Polke, Alexander C	2005	Randolph
Burke, Rayford L	1993	Iredell	Prevatte, Ted A	1999	Stanly
Call, Eric L	1996	Ashe	Raines, William H	2005	Henderson
Call, Eric L	1999	Ashe	Ramseur, Andrew D	2010	Iredell
Cole, Wade L	1994	Camden	Richardson, Martin A	1993	Union
Davis, Phillip	1997	Buncombe	Rose, Clinton R	1991	Rockingham
East, Keith B	1995	Surry	Rouse, Kenneth B	1992	Randolph
Fletcher, Andre L	1999	Rutherford	Sidden, Tony M	1995	Wilkes
Goss, Christopher E	2005	Ashe	Strickland, Darrell E	1995	Union
Holmes, Mitchell D	2000	Johnston	Trull, Gary A	1996	Randolph
Hooks, Cerron T	2000	Forsyth	Tucker, Russell W	1996	Forsyth
Jaynes, James E	1999	Polk	Wilkerson, George T	2006	Randolph
Larry, Thomas M	1995	Forsyth	Williams, James E	1993	Randolph
Laws, Wayne A	1985	Davidson			

[8] Racial disparities in the State's use of peremptory strikes are also greater in cases involving other racial minority defendants. In cases with racial minority defendants, the average strike rate is 57.6% against racial minority venire members and 22.9% against other venire members. In contrast, in cases with white defendants, the average strike rate is 48.5% against racial minority venire members and 27.1% against white venire members. This difference in strike levels is significant at the $P < .02$ level.

[9] In five of the 33 cases with all-white juries, one non-white person was selected as an alternate juror. We have confirmed that none of those non-white alternates participated in sentencing deliberations.

19. Among the 173 cases analyzed, we found that 40 cases had only one non-white seated juror.[10] *See* Fig. 2, below.

FIGURE 2
Current Death Row Inmates Sentenced to Death by
Juries with Only One Non-White Juror
(by sentencing year and county)

Atkins, Randy L	1993	Buncombe	Gregory, William C	1996	Davie
Al-Bayyinah, Jathiyah	2003	Davie	Harden, Alden J	1994	Mecklenburg
Anderson, Billy R	1999	Craven	Haselden, Jim E	2001	Stokes
Badgett, John S	2004	Randolph	Hyatt, Terry A	2000	Buncombe
Bowie, Nathan & Bowie, William	1993	Catawba	Jaynes, James E	1992	Polk
Burr, John E	1993	Alamance	Jones, Marcus D	2000	Onslow
Campbell, James A	1993	Rowan	Mann, Leroy E	1997	Wake
Campbell, Terrance D	2002	Pender	Miller, Clifford R	2001	Onslow
Chambers, Frank J & Barnes, William	1994	Rowan	Morgan, James	1999	Buncombe
Cummings, Daniel, Jr.	1994	Brunswick	Morganherring, William	1995	Wake
Daughtry, Johnny R	1993	Johnston	Murrell, Jeremy D	2006	Forsyth
Davis, Edward E	1992	Buncombe	Neal, Kenneth	1996	Rockingham
Davis, James F	1996	Buncombe	Parker, Carlette E	1999	Wake
Decastro, Eugene T	1993	Johnston	Reeves, Michael M	1992	Craven
Elliot, John R	1994	Davidson	Watts, James H	2001	Davidson
Frogge, Danny D	1995	Forsyth	White, Melvin L	1996	Craven
Garcell, Ryan G	2006	Rutherford	Williams, John, Jr.	1998	Wake
Geddie, Malcolm, Jr.	1994	Johnston	Williams, Marvin, Jr.	1990	Wayne
Golphin, Tilmon C	1998	Cumberland	Woods, Darrell C	1995	Forsyth
Gregory, William C	1994	Davie	Wooten, Vincent M	1994	Pitt

[10] In seven of the 40 cases with one non-white seated juror, one non-white person was also selected as an alternate juror. We have confirmed that none of those non-white alternates participated in sentencing deliberations.

Statewide Evidence, Ten Year Periods

20. The disparities in prosecutors' use of peremptory strikes persist even if the patterns are examined over smaller time periods. When we examine the ten year period between 1990 and 1999, we find that prosecutors struck 52.1% of qualified black venire members at an average rate of 54.9% but struck 25.7% of qualified non-black venire members at an average rate of only 24.7%.[11] Thus, prosecutors were more than twice as likely to strike qualified venire members who were black. *See* Table 4.

21. When we examine the period between 2000 and 2010, we find that prosecutors struck qualified black venire members at an average rate of 56.9% but struck qualified non-black venire members at an average rate of only 25.1%.[12] Thus, prosecutors were more than twice as likely to strike qualified venire members who were black. *See* Table 5.

22. The probability of observing a statewide racial disparity of this magnitude in a race neutral peremptory strike system is less than .01.

Statewide Evidence, Five Year Periods

23. When we examine the five year period between 1990 and 1994, we find that prosecutors struck qualified black venire members at an average rate of 57.3% but struck qualified non-black venire members at an average rate of only 26.0%.[13] Thus, prosecutors were 2.2 times more likely to strike qualified venire members who were black. *See* Table 6.

24. When we examine the five year period between 1995 and 1999, we find that prosecutors struck qualified black venire members at an average rate of 53.6% but struck qualified non-black venire members at an average rate of only 24.1%.[14] Thus, prosecutors were 2.2 times more likely to strike qualified venire members who were black. *See* Table 7.

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[11] Similarly, we find that prosecutors struck qualified racial minority venire members at an average rate of 53.7% but struck qualified white venire members at an average rate of only 24.3%. Thus, prosecutors were 2.2 times more likely to strike qualified racial minority venire members. This difference in strike levels is significant at the $p < .001$ level.

[12] Similarly, we find that prosecutors struck qualified racial minority venire members at an average rate of 54.9% but struck qualified white venire members at an average rate of only 25.0%. Thus, prosecutors were 2.2 times more likely to strike qualified racial minority venire members. This difference in strike levels is significant at the $p < .001$ level.

[13] Similarly, we find that prosecutors struck qualified racial minority venire members at an average rate of 56.2% but struck qualified white venire members at an average rate of only 26.0%. Thus, prosecutors were 2.2 times more likely to strike qualified racial minority venire members. This difference in strike levels is significant at the $p < .001$ level.

[14] Similarly, we find that prosecutors struck qualified racial minority venire members at an average rate of 52.5% but struck qualified white venire members at an average rate of only 23.4%. Thus, prosecutors were 2.2 times more likely to strike qualified racial minority venire members. This difference in strike levels is significant at the $p < .001$ level.

25. When we examine the five year period between 2000 and 2004, we find that prosecutors struck qualified black venire members at an average rate of 57.2% but struck qualified non-black venire members at an average rate of only 25.0%.[15] Thus, prosecutors were 2.3 times more likely to strike qualified venire members who were black. *See* Table 8.

26. When we examine the nearly six year period between 2005 and the present, we find that prosecutors struck qualified black venire members at an average rate of 56.4% but struck qualified non-black venire members at an average rate of only 25.4%.[16] Thus, prosecutors were 2.2 times more likely to strike qualified venire members who were black. *See* Table 9.

27. The probability of observing a statewide racial disparity of this magnitude in a race neutral peremptory strike system is less than .01.

Local Evidence

28. These disparities further persist across the jurisdictions implicated in individual death sentenced cases. Specifically, we observed significant racial disparities in the exercise of peremptory strikes by the prosecution at the judicial division, prosecutorial district, county, and individual case level.

29. **Former Judicial Division, 1990-1999.** In former Judicial Division 3,[17] from 1990 through 1999, prosecutors in 36 cases struck qualified black venire members at an average rate of 65.4% but struck qualified non-black venire members at an average rate of only 25.3%.[18] Thus, prosecutors were 2.6 times more likely to strike qualified venire members who were black. This difference in strike levels is significant at the $p < .001$ level.

30. **Current Judicial Division, 2000-present.** In current Judicial Division 6, from 2000 to 2010, prosecutors in 4 cases struck qualified black venire members at an average rate of

[15] Similarly, we find that prosecutors struck qualified racial minority venire members at an average rate of 53.3% but struck qualified white venire members at an average rate of only 24.9%. Thus, prosecutors were 2.1 times more likely to strike qualified racial minority venire members. This difference in strike levels is significant at the $p < .001$ level.

[16] Similarly, we find that prosecutors struck qualified racial minority venire members at an average rate of 57.9% but struck qualified white venire members at an average rate of only 25.0%. Thus, prosecutors were 2.3 times more likely to strike qualified racial minority venire members. This difference in strike levels is significant at the $p < .01$ level.

[17] This study refers to former and current judicial divisions because, on January 1, 2000, North Carolina's judicial divisions were reconstituted from four divisions statewide to eight divisions statewide.

[18] Similarly, we find that prosecutors in 36 cases struck qualified racial minority venire members at an average rate of 65.3% but struck qualified white venire members at an average rate of only 25.2%.

70.8% but struck qualified non-black venire members at an average rate of only 25.7%.[19] Thus, prosecutors were 2.8 times more likely to strike qualified venire members who were black.

31. **Prosecutorial District.** In Prosecutorial District 20, prosecutors in 7 cases struck qualified black venire members at an average rate of 87.0% but struck qualified non-black venire members at an average rate of only 24.0%.[20] Thus, prosecutors were 3.6 times more likely to strike qualified venire members who were black. This difference in strike levels is significant at the $p < .001$ level.

32. **County.** In Richmond County, the prosecutors in one case struck qualified black venire members at an average rate of 71.4% but struck qualified non-black venire members at a rate of only 20.0%.[21] Thus, prosecutors were 3.6 times more likely to strike qualified venire members who were black.

33. In Stanly County, the prosecutors in 2 cases struck qualified black venire members at an average rate of 100% but struck qualified non-black venire members at a rate of only 26.9%.[22] Thus, prosecutors were 3.7 times more likely to strike qualified venire members who were black. The difference in strike levels is significant at the $p < .001$ level.

34. In Anson County, the prosecutors in one case struck qualified black venire members at a rate of 62.5% but struck qualified non-black venire members at a rate of only 13.3%.[23] Thus, prosecutors were 4.7 times more likely to strike qualified venire members who were black.

35. In Union County, the prosecutors in 3 cases struck qualified black venire members at an average rate of 91.7% but struck qualified non-black venire members at an average rate of only 27.0%.[24] Thus, prosecutors were 3.4 times more likely to strike qualified

[19] In current Judicial Division 6, prosecutors in 4 cases struck qualified racial minority venire members at an average rate of 70.8% but struck qualified white venire members at an average rate of only 25.7%.

[20] In Prosecutorial District 20, prosecutors in 7 cases struck qualified racial minority venire members at an average rate of 85.7% but struck qualified white venire members at an average rate of only 24.1%. This difference in strike rates is statistically significant at the $p < .001$ level.

[21] In Richmond County, prosecutors in one case struck qualified racial minority venire members at a rate of 62.5% but struck qualified white venire members at a rate of only 20.6%.

[22] In Stanley County, prosecutors in 2 cases struck qualified racial minority venire members at an average rate of 100% but struck qualified white venire members at an average rate of only 26.9%. This difference in strike rates is statistically significant at the $p < .01$ level.

[23] In Anson County, prosecutors in one case struck qualified racial minority venire members at a rate of 62.5% but struck qualified white venire members at a rate of only 13.3%.

[24] In Union County, prosecutors in 3 cases struck qualified racial minority venire members at an average rate of 91.7% but struck qualified white venire members at an average rate of only 27.0%. This difference in strike rates is statistically significant at the $p < .02$ level.

venire members who were black. This difference in strike levels is significant at the $p < .01$ level.

36. **Individual Cases.** Average strike rates for individual cases in this district are reported below in Table 10.

ANALYSIS AND RESULTS: CHARGING AND SENTENCING

Statewide Evidence, 1990-2009

37. The statewide analysis of charging and sentencing in death eligible murder cases shows significant, strong, and consistent disparities based on the race of the victim. The statewide data analysis reveals that between 1990 and 2009 defendants in North Carolina were significantly more likely to be charged and sentenced to death if at least one of the victims was white.

38. **Combined Effect of Charging and Sentencing Decisions.** Statewide, from 1990 to 2009, 8.26% of death eligible cases with at least one white victim resulted in death sentences, while only 3.19% of death eligible cases without white victims resulted in death sentences. Thus, death eligible cases with at least one white victim were 2.59 times more likely to result in a death sentence than all other cases. *See* Table 11.

39. We also measured race disparities in adjusted analyses that account for the impact of non-racial factors that bear on charging and sentencing outcomes. Even after controlling for statutory aggravating and mitigating circumstances in the statutory controls regression model, death eligible defendants in cases with at least one white victim faced odds of receiving a death sentence that were 2.067 times higher than the odds faced by all other similarly situated defendants. *See* Table 12.

40. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors in the all meaningful controls regression model, death eligible defendants in cases with at least one white victim faced odds of receiving a death sentence that were 1.635 times higher than the odds faced by all other similarly situated defendants. *See* Table 13.

41. **Prosecutors' Decisions to Advance to Capital Trial.** Statewide, from 1990 to 2009, prosecutors brought 17.21% of death eligible cases with at least one white victim to a capital trial, but brought only 8.86%of those cases without at least one white victim to a capital trial. Thus, prosecutors were 1.94 times more likely to bring a case to a capital trial if the case involved at least one white victim. *See* Table 11.

42. These disparities also persisted in regression models that account for the impact of non-racial statutory aggravating and mitigating circumstances in the cases. Even after controlling for statutory aggravating and mitigating circumstances in the statutory controls model, death eligible defendants in cases with least one white victim faced odds of advancing to a capital trial that were 1.530 times higher than the odds faced by all other similarly situated defendants. *See* Table 14.

43. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors in the all meaningful controls model, death eligible defendants in cases with at least one white victim faced odds of advancing to a capital trial that were 1.609 times higher than the odds faced by all other similarly situated defendants. *See* Table 15.

Statewide Evidence, 1990-1999

44. The statewide data analysis reveals significant disparities based on the race of the victim between 1990 and 1999.

45. **Combined Effect of Charging and Sentencing Decisions.** Statewide, from 1990 to 1999, 11.25% of death eligible cases with at least one white victim resulted in death sentences, while only 4.71% of death eligible cases without white victims resulted in death sentences. Thus, death eligible cases with at least one white victim were 2.39 times more likely to result in a death sentence than all other cases. *See* Table 16.

46. Even after controlling for statutory aggravating and mitigating circumstances in the statutory controls regression model, death eligible defendants in cases with at least one white victim faced odds of receiving a death sentence that were 1.481 times higher than the odds faced by all other similarly situated defendants. *See* Table 12.

47. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors in the all meaningful controls regression model, death eligible defendants in cases with at least one white victim faced odds of receiving a death sentence that were 1.708 times higher than the odds faced by all other similarly situated defendants. *See* Table 13.

48. **Prosecutors' Decisions to Advance to Capital Trial.** Statewide, for the time period between 1990 and 1999, prosecutors brought 22.44% of death eligible cases with at least one white victim to capital trials, but brought only 11.36% of those cases without white victims to capital trials. Thus, prosecutors were 1.98 times more likely to bring a case to a capital trial if there was at least one white victim. *See* Table 16.

49. Even after controlling for statutory aggravating and mitigating circumstances in the statutory controls model, death eligible defendants in cases with least one white victim faced odds of advancing to a capital trial that were 1.478 times higher than the odds faced by all other similarly situated defendants. *See* Table 14.

50. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors in the all meaningful controls model, death eligible defendants in cases with at least one white victim faced odds of advancing to a capital trial that were 1.469 times higher than the odds faced by all other similarly situated defendants. *See* Table 15.

Statewide Evidence, 2000-2009

51. The statewide data analysis reveals significant disparities based on the race of the victim between 2000 and 2009.

52. **Combined Effect of Charging and Sentencing Decisions.** Statewide, from 2000 to 2009, 4.18% of death eligible cases with at least one white victim resulted in death sentences, while only 1.50% of death eligible cases without white victims resulted in death sentences. Thus, death eligible cases with at least one white victim were 2.78 times more likely to result in a death sentence than all other cases. *See* Table 17.

53. Even after controlling for statutory aggravating and mitigating circumstances in the statutory controls regression model, death eligible defendants in cases with at least one white victim faced odds of receiving a death sentence that were 2.647 times higher than the odds faced by all other similarly situated defendants. *See* Table 12.

54. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors in the all meaningful controls regression model, death eligible defendants in cases with at least one white victim faced odds of receiving a death sentence that were 2.158 times higher than the odds faced by all other similarly situated defendants. *See* Table 13.

55. **Prosecutors' Decisions to Advance to Capital Trial.** Statewide, for the time period between 2000 and 2009, prosecutors brought 10.11% of death eligible cases with at least one white victim to capital trials, but brought only 6.09% of those cases without white victims to capital trials. Thus, prosecutors were 1.66 times more likely to bring a case to a capital trial if there was at least one white victim. *See* Table 17.

56. Even after controlling for statutory aggravating and mitigating circumstances in the statutory controls model, death eligible defendants in cases with least one white victim faced odds of advancing to a capital trial that were 1.651 times higher than the odds faced by all other similarly situated defendants. *See* Table 14.

57. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors in the all meaningful controls model, death eligible defendants in cases with at least one white victim faced odds of advancing to a capital trial that were 1.417 times higher than the odds faced by all other similarly situated defendants. *See* Table 15.

Statewide Evidence, 1990-1994

58. The statewide data analysis reveals significant disparities based on the race of the victim between 1990 and 1994.

59. **Combined Effect of Charging and Sentencing Decisions.** Statewide, from 1990 to 1994, 12.14% of death eligible cases with at least one white victim resulted in death sentences, while only 3.90% of death eligible cases without white victims resulted in death sentences. Thus, death eligible cases with at least one white victim were 3.11 times more likely to result in a death sentence than all other cases. *See* Table 18.

60. Even after controlling for statutory aggravating and mitigating circumstances in the statutory controls regression model, death eligible defendants in cases with at least one white victim faced odds of receiving a death sentence that were 1.742 times higher than the odds faced by all other similarly situated defendants. *See* Table 12.

61. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors in the all meaningful controls regression model, death eligible defendants in cases with at least one white victim faced odds of receiving a death sentence that were 1.255 times higher than the odds faced by all other similarly situated defendants. *See* Table 13.

62. **Prosecutors' Decisions to Advance to Capital Trial.** Statewide, for the time period between 1990 and 1994, prosecutors brought 24.01% of death eligible cases with at least one white victim to capital trials, but brought only 10.20% of those cases without white victims to capital trials. Thus, prosecutors were 2.35 times more likely to bring a case to a capital trial if there was at least one white victim. *See* Table 18.

63. Even after controlling for statutory aggravating and mitigating circumstances in the statutory controls model, death eligible defendants in cases with least one white victim faced odds of advancing to a capital trial that were 1.805 times higher than the odds faced by all other similarly situated defendants. *See* Table 14.

64. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors in the all meaningful controls model, death eligible defendants in cases with at least one white victim faced odds of advancing to a capital trial that were 1.608 times higher than the odds faced by all other similarly situated defendants. *See* Table 15.

Statewide Evidence, 1995-1999

65. The statewide data analysis reveals significant disparities based on the race of the victim between 1995 and 1999.

66. **Combined Effect of Charging and Sentencing Decisions.** Statewide, from 1995 to 1999, 10.42% of death eligible cases with at least one white victim resulted in death sentences, while only 5.41% of death eligible cases without white victims resulted in death sentences. Thus, death eligible cases with at least one white victim were 1.93 times more likely to result in a death sentence than all other cases. *See* Table 19.

67. Even after controlling for statutory aggravating and mitigating circumstances in the statutory controls regression model, death eligible defendants in cases with at least one white victim faced odds of receiving a death sentence that were 1.389 times higher than the odds faced by all other similarly situated defendants. *See* Table 12.

68. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors in the all meaningful controls regression model, death eligible defendants in cases with at least one white victim faced odds of receiving a death sentence that were 2.150 times higher than the odds faced by all other similarly situated defendants. *See* Table 13.

69. **Prosecutors' Decisions to Advance to Capital Trial.** Statewide, for the time period between 1995 and 1999, prosecutors brought 20.98% of death eligible cases with at least one white victim to capital trials, but brought only 12.38% of those cases without white victims to capital trials. Thus, prosecutors were 1.70 times more likely to bring a case to a capital trial if there was at least one white victim. *See* Table 19.

70. Even after controlling for statutory aggravating and mitigating circumstances in the statutory controls model, death eligible defendants in cases with least one white victim faced odds of advancing to a capital trial that were 1.362 times higher than the odds faced by all other similarly situated defendants. *See* Table 14.

71. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors in the all meaningful controls model, death eligible defendants in cases with at least one white victim faced odds of advancing to a capital trial that were 1.464 times higher than the odds faced by all other similarly situated defendants. *See* Table 15.

Statewide Evidence, 2000-2004

72. The statewide data analysis reveals significant disparities based on the race of the victim between 2000 and 2004.

73. **Combined Effect of Charging and Sentencing Decisions.** Statewide, from 2000 to 2004, 4.98% of death eligible cases with at least one white victim resulted in death sentences, while only 2.34% of death eligible cases without white victims resulted in death sentences. Thus, death eligible cases with at least one white victim were 2.13 times more likely to result in a death sentence than all other cases. *See* Table 20.

74. Even after controlling for statutory aggravating and mitigating circumstances in the statutory controls regression model, death eligible defendants in cases with at least one white victim faced odds of receiving a death sentence that were 2.173 times higher than the odds faced by all other similarly situated defendants. *See* Table 12.

75. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors in the all meaningful controls regression model, death eligible defendants in cases with at least one white victim faced odds of receiving a death sentence that were 1.324 times higher than the odds faced by all other similarly situated defendants. *See* Table 13.

76. **Prosecutors' Decisions to Advance to Capital Trial.** Statewide, for the time period between 2000 and 2004, prosecutors brought 10.89% of death eligible cases with at least one white victim to capital trials, but brought only 9.40% of those cases without white victims to capital trials. Thus, prosecutors were 1.16 times more likely to bring a case to a capital trial if there was at least one white victim. *See* Table 20.

77. Even after controlling for statutory aggravating and mitigating circumstances in the statutory controls model, death eligible defendants in cases with least one white victim faced

odds of advancing to a capital trial that were 1.045 times higher than the odds faced by all other similarly situated defendants. *See* Table 14.

Statewide Evidence, 2005-2009

78. The statewide data analysis reveals significant disparities based on the race of the victim between 2005 and 2009.

79. **Combined Effect of Charging and Sentencing Decisions.** Statewide, from 2005 to 2009, 3.16% of death eligible cases with at least one white victim resulted in death sentences, while only 0.55% of death eligible cases without white victims resulted in death sentences. Thus, death eligible cases with at least one white victim were 5.69 times more likely to result in a death sentence than all other cases. *See* Table 21.

80. Even after controlling for statutory aggravating and mitigating circumstances in the statutory controls regression model, death eligible defendants in cases with at least one white victim faced odds of receiving a death sentence that were 10.681 times higher than the odds faced by all other similarly situated defendants. *See* Table 12.

81. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors in the all meaningful controls regression model, death eligible defendants in cases with at least one white victim faced odds of receiving a death sentence that were 6.322 times higher than the odds faced by all other similarly situated defendants. *See* Table 13.

82. **Prosecutors' Decisions to Advance to Capital Trial.** Statewide, for the time period between 2005 and 2009, prosecutors brought 9.12% of death eligible cases with at least one white victim to capital trials, but brought only 2.36% of those cases without white victims to capital trials. Thus, prosecutors were 3.86 times more likely to bring a case to a capital trial if there was at least one white victim. *See* Table 21.

83. Even after controlling for statutory aggravating and mitigating circumstances in the statutory controls model, death eligible defendants in cases with least one white victim faced odds of advancing to a capital trial that were 5.404 times higher than the odds faced by all other similarly situated defendants. *See* Table 14.

84. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors in the all meaningful controls model, death eligible defendants in cases with at least one white victim faced odds of advancing to a capital trial that were 3.210 times higher than the odds faced by all other similarly situated defendants. *See* Table 15.

Statewide Evidence, Native American Defendant Disparities, 1990-2009

85. **Combined Effect of Charging and Sentencing Decisions.** Statewide, from 1990 to 2009, 10.58% (12/113)[25] of death eligible cases with Native American defendants resulted in death sentences, while only 5.32% (301/5662) of death eligible cases without Native American defendants resulted in death sentences. Thus, death eligible cases with Native American defendants were 1.99 times more likely to result in a death sentence than all other cases.

86. Even after controlling for statutory aggravating and mitigating circumstances, death eligible Native American defendants faced odds of receiving a death sentence that were 1.815 times higher than the odds faced by all other similarly situated defendants.

87. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors, death eligible Native American defendants faced odds of receiving a death sentence that were 1.198 times higher than the odds faced by all other similarly situated defendants.

88. **Prosecutors' Decisions to Seek Death at Any Point in the Charging.** Statewide, from 1990 to 2009, prosecutors sought the death penalty at some point in the charging process in 81.86% (93/113) of death eligible cases with Native American defendants. Prosecutors sought the death penalty at some point in the charging process in 60.45% (3391/5609) of death eligible cases without Native American defendants. Thus, prosecutors were 1.35 times more likely to seek the death penalty in cases with Native American defendants.

89. Even after controlling for statutory aggravating and mitigating circumstances, death eligible Native American defendants faced odds of being charged capitally at some point in the charging process that were 2.883 times higher than the odds faced by all other similarly situated defendants.

90. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors, death eligible Native American defendants faced odds of being charged capitally at some point in the charging process that were 3.298 times higher than the odds faced by all other similarly situated defendants.

91. **Prosecutors' Decisions to Advance to Capital Trial.** Statewide, from 1990 to 2009, prosecutors brought 27.34% (31/113) of death eligible cases with Native American Defendants to capital trials, but brought only 12.24% (692/5657) of death eligible cases without Native American defendants to capital trials. Thus, prosecutors were 2.23 times more likely to bring a case to a capital trial if there was a Native American defendant.

[25] From this point forward in the affidavit, we provide the numbers of cases used to calculate the selection rate in parentheses following the percentage. The numbers for the previous sections of the affidavit are available in the tables.

92. Even after controlling for statutory aggravating and mitigating circumstances, death eligible Native American defendants faced odds of advancing to a capital trial that were 2.797 times higher than the odds faced by all other similarly situated defendants.

93. Even after analyzing the importance of and where appropriate controlling for over 200 additional factors, death eligible Native American defendants faced odds of advancing to a capital trial that were 2.258 times higher than the odds faced by all other similarly situated defendants.

Former Judicial Division 3, 1990-1999

94. Data analysis for former Judicial Division 3 reveals significant disparities based on race from 1990 to 1999.

White Victim Disparities

95. **Combined Effect of Charging and Sentencing Decisions.** In former Judicial Division 3, from 1990 to 1999, 11.13% (45/404) of death eligible cases with at least one white victim resulted in death sentences, while only 4.37% (17/389) of death eligible cases without white victims resulted in death sentences. Thus, death eligible cases with at least one white victim were 2.55 times more likely to result in a death sentence.

96. **Prosecutors' Decisions to Advance to Capital Trial.** In former Judicial Division 3, from 1990 to 1999, prosecutors brought 20.28% (82/404) of death eligible cases with at least one white victim to capital trials, but brought only 10.28% (40/389) of death eligible cases without white victims to capital trials. Thus, prosecutors were 1.97 times more likely to bring a case to a capital trial if there was at least one white victim.

97. **Jury Sentencing Decisions.** In former Judicial Division 3, from 1990 to 1999, juries imposed death sentences in 54.88% (45/82) of all penalty phase trials with at least one white victim, but only 42.50% (17/40) of penalty phase trials without white victims. Thus, juries were 1.29 times more likely to sentence a defendant to death if the case had at least one white victim.

Racial Minority Defendant/White Victim Disparities

98. **Jury Sentencing Decisions.** In former Judicial Division 3, from 1990 to 1999, juries imposed death sentences in 64.00% (16/25) of all penalty phase trials with racial minority defendants and at least one white victim, but only 47.42% (46/97) of all other penalty phase trials. Thus, juries were 1.35 times more likely to sentence a defendant to death if the case had a racial minority defendant and at least one white victim.

Current Judicial Division 6, 2000-2009

99. Data analysis for current Judicial Division 6 reveals significant disparities based on race from 1990 to 1999.

White Victim Disparities

100. **Combined Effect of Charging and Sentencing Decisions.** In current Judicial Division 6, from 2000 to 2009, 3.34% (4/120) of death eligible cases with at least one white victim resulted in death sentences, while only 0% (0/120) of death eligible cases without white victims resulted in death sentences. Thus, death eligible cases with at least one white victim were an infinite times more likely to result in a death sentence.

101. **Prosecutors' Decisions to Advance to Capital Trial.** In current Judicial Division 6, from 2000 to 2009, prosecutors brought 6.67% (8/120) of death eligible cases with at least one white victim to capital trials, but brought only 0.83% (1/120) of death eligible cases without white victims to capital trials. Thus, prosecutors were 8.04 times more likely to bring a case to a capital trial if there was at least one white victim.

102. **Jury Sentencing Decisions.** In current Judicial Division 6, from 2000 to 2009, juries imposed death sentences in 50% (4/8) of all penalty phase trials with at least one white victim, but only 0% (0/1) of penalty phase trials without white victims. Thus, juries were an infinite times more likely to sentence a defendant to death if the case had at least one white victim.

Racial Minority Defendant Disparities

103. **Prosecutors' Decisions to Seek Death at Any Point in the Charging.** In current Judicial Division 6, from 2000 to 2009, prosecutors sought the death penalty at some point in the charging process in 74.32% (111/149) of death eligible cases with racial minority defendants. Prosecutors sought the death penalty at some point in the charging process in 52.34% (46/87) of death eligible cases with white defendants. Thus, prosecutors were 1.42 times more likely to seek the death penalty in cases with racial minority defendants.

Racial Minority Defendant/White Victim Disparities

104. **Combined Effect of Charging and Sentencing Decisions.** In current Judicial Division 6, from 2000 to 2009, 5.43% (2/37) of death eligible cases with racial minority defendants and at least one white victim resulted in death sentences, while only 0.98% (2/203) of all other death eligible cases resulted in death sentences. Thus, death eligible cases with racial minority defendants and at least one white victim were 5.52 times more likely to result in a death sentence.

105. **Prosecutors' Decisions to Seek Death at Any Point in the Charging.** In current Judicial Division 6, from 2000 to 2009, prosecutors sought the death penalty at some point in the charging process in 89.15% (33/37) of death eligible cases with racial minority defendants and at least one white victim. Prosecutors sought the death penalty at some point in the charging process in 61.95% (123/199) of all other death eligible cases. Thus, prosecutors were 1.44 times more likely to seek the death penalty in cases with racial minority defendants and at least one white victim.

Prosecutorial District 20

106. Data analysis for Prosecutorial District 20 reveals significant disparities based on race from 1990 to 2009.

White Victim Disparities

107. **Combined Effect of Charging and Sentencing Decisions.** In Prosecutorial District 20, from 1990 to 2009, 11.92% (9/75) of death eligible cases with at least one white victim resulted in death sentences, while only 4.73% (4/85) of death eligible cases without white victims resulted in death sentences. Thus, death eligible cases with at least one white victim were 2.52 times more likely to result in a death sentence.

108. **Prosecutors' Decisions to Advance to Capital Trial.** In Prosecutorial District 20, from 1990 to 2009, prosecutors brought 17.22% (13/75) of death eligible cases with at least one white victim to capital trials, but brought only 8.27% (7/85) of death eligible cases without white victims to capital trials. Thus, prosecutors were 2.08 times more likely to bring a case to a capital trial if there was at least one white victim.

109. **Jury Sentencing Decisions.** In Prosecutorial District 20, from 1990 to 2009, juries imposed death sentences in 69.23% (9/13) of all penalty phase trials with at least one white victim, but only 57.14% (4/7) of penalty phase trials without white victims. Thus, juries were 1.21 times more likely to sentence a defendant to death if the case had at least one white victim.

Union County

110. Data analysis for Union County reveals significant disparities based on race from 1990 to 2009.

White Victim Disparities

111. **Combined Effect of Charging and Sentencing Decisions.** In Union County, from 1990 to 2009, 10.26% (2/19) of death eligible cases with at least one white victim resulted in death sentences, while only 3.96% (2/51) of death eligible cases without white victims resulted in death sentences. Thus, death eligible cases with at least one white victim were 2.59 times more likely to result in a death sentence.

112. **Prosecutors' Decisions to Advance to Capital Trial.** In Union County, from 1990 to 2009, prosecutors brought 15.39% (3/19) of death eligible cases with at least one white victim to capital trials, but brought only 5.94% (3/51) of death eligible cases without white victims to capital trials. Thus, prosecutors were 2.59 times more likely to bring a case to a capital trial if there was at least one white victim.

Racial Minority Defendant Disparities

113. **Combined Effect of Charging and Sentencing Decisions.** In Union County, from 1990 to 2009, 7.76% (4/52) of death eligible cases with racial minority defendants resulted in death sentences, while only 0% (0/18) of death eligible cases with white defendants resulted in death sentences. Thus, death eligible cases with racial minority defendants were an infinite times more likely to result in a death sentence.

114. **Prosecutors' Decisions to Seek Death at Any Point in the Charging.** In Union County, from 1990 to 2009, prosecutors sought the death penalty at some point in the charging process in 84.00% (43/52) of death eligible cases with racial minority defendants. Prosecutors sought the death penalty at some point in the charging process in 55.41% (10/18) of death eligible cases with white defendants. Thus, prosecutors were 1.52 times more likely to seek the death penalty in cases with racial minority defendants.

115. **Jury Sentencing Decisions.** In Union County, from 1990 to 2009, juries imposed death sentences in 100% (4/4) of all penalty phase trials with racial minority defendants, but only 0% (0/2) of penalty phase trials with white defendants. Thus, juries were an infinite times more likely to sentence a racial minority defendant to death.

Racial Minority Defendant/White Victim Disparities

116. **Combined Effect of Charging and Sentencing Decisions.** In Union County, from 1990 to 2009, 35.16% (2/6) of death eligible cases with racial minority defendants and at least one white victim resulted in death sentences, while only 3.11% (2/64) of all other death eligible cases resulted in death sentences. Thus, death eligible cases with racial minority defendants and at least one white victim were 11.31 times more likely to result in a death sentence.

117. **Prosecutors' Decisions to Advance to Capital Trial.** In Union County, from 1990 to 2009, prosecutors brought 35.16% (2/6) of death eligible cases with racial minority defendants and at least one white victim to capital trials, but brought only 6.22% (4/64) of all other death eligible cases to capital trials. Thus, prosecutors were 5.65 times more likely to bring a case to a capital trial if there was a racial minority defendant and at least one white victim.

118. **Jury Sentencing Decisions.** In Union County, from 1990 to 2009, juries imposed death sentences in 100.0% (2/2) of all penalty phase trials with racial minority defendants and at least one white victim, but only 50.00% (2/4) of all other penalty phase trials. Thus, juries were 2.00 times more likely to sentence a defendant to death if the case had a racial minority defendant and at least one white victim.

Stanly County

119. Data analysis for Stanly County reveals significant disparities based on race from 1990 to 2009.

Racial Minority Defendant Disparities

120. **Prosecutors' Decisions to Advance to Capital Trial.** In Stanly County, from 1990 to 2009, prosecutors brought 14.89% (2.13) of death eligible cases with racial minority defendants to capital trials, but brought only 0% (0/17) of death eligible cases with white defendants to capital trials. Thus, prosecutors were an infinite times more likely to bring a case to a capital trial if there was a racial minority defendant.

Racial Minority Defendant/White Victim Disparities

121. **Prosecutors' Decisions to Advance to Capital Trial.** In Stanly County, from 1990 to 2009, prosecutors brought 9.86% (1/10) of death eligible cases with racial minority defendants and at least one white victim to capital trials, but brought only 5.01% (1/20) of all other death eligible cases to capital trials. Thus, prosecutors were 1.97 times more likely to bring a case to a capital trial if there was a racial minority defendant and at least one white victim.

Richmond County

122. Data analysis for Richmond County reveals significant disparities based on race from 1990 to 2009.

White Victim Disparities

123. **Combined Effect of Charging and Sentencing Decisions.** In Richmond County, from 1990 to 2009, 13.70% (3/22) of death eligible cases with at least one white victim resulted in death sentences, while only 6.72% (2/30) of death eligible cases without white victims resulted in death sentences. Thus, death eligible cases with at least one white victim were 2.04 times more likely to result in a death sentence.

124. **Prosecutors' Decisions to Advance to Capital Trial.** In Richmond County, from 1990 to 2009, prosecutors brought 18.26% (4/22) of death eligible cases with at least one white victim to capital trials, but brought only 10.08% (3/30) of death eligible cases without white victims to capital trials. Thus, prosecutors were 1.81 times more likely to bring a case to a capital trial if there was at least one white victim.

Catherine Grosso, J.D.
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Michigan State University College of Law

Sworn and subscribed to before me, a notary public for the County of Ingham, State of Michigan, on this the 30 day of July 2010.

NOTARY PUBLIC

BETH ANNE WEY
Notary Public, State of Michigan
County of Clinton
My Commission Expires Nov. 29, 2015
Acting in the County of Ingham

MY COMMISSION EXPIRES ON:

TABLE 1
Statewide Prosecutorial Peremptory Strike Patterns over Entire Study Period

		A Black Venire members	B All Other Venire members	C Unknown	D Total
1	**Passed**	572 (47.5%)	4595 (74.2%)	3 (75.0%)	5170 (69.9%)
2	**Struck**	631 (52.5%)*	1598 (25.8%)*	1 (25.0%)	2230 (30.1%)
3	**Total**	1203 (100.0%)	6193 (100.0%)	4 (100.0%)	7400 (100.0%)

*This difference in strike rates is significant at $p < .001$.

TABLE 2
Statewide Average Rates of State Strikes
By Entire Study Period

	A Average Strike Rate	B Number of Cases
1. **Strike Rates Against Black Qualified Venire Members**	55.5%	166
2. **Strike Rates Against All Other Qualified Venire Members**	24.8%	166

*This difference in strike rates is significant at $p < .001$.

TABLE 3
Disparities in Strike Patterns by Race of Defendant
Statewide Average Rates of State Strikes

	Race of Defendant	A Strikes Against	B Average Strike Rate	C Number of Cases
1.	**Black**	**Black Qualified Venire members**	59.9%	90
2.		**All Other Qualified Venire members**	23.1%	
3.	**Non-Black**	**Black Qualified Venire members**	50.1%	76
4.		**All Other Qualified Venire members**	26.9%	

*This difference between the disparities in strike rates by race of defendant is significant at $p < .02$.

TABLE 4
Statewide Average of Rates of State Strikes
From 1990 through 1999

	A Average Strike Rate	B Number of Cases
1. **Strike Rates Against Black Qualified Venire Members**	54.9%	122
2. **Strike Rates Against All Other Qualified Venire Members**	24.7%	122

*This difference in strike rates is significant at $p < .001$.

TABLE 5
Statewide Average of Rates of State Strikes
From 2000 through 2010

	A Average Strike Rate	B Number of Cases
1. **Strike Rates Against Black Qualified Venire Members**	56.9%	44
2. **Strike Rates Against All Other Qualified Venire Members**	25.1%	44

*This difference in strike rates is significant at $p < .001$.

TABLE 6
Statewide Average of Rates of State Strikes
From 1990 through 1994

	A Average Strike Rate	B Number of Cases
1. **Strike Rates Against Black Qualified Venire Members**	57.3%	42
2. **Strike Rates Against All Other Qualified Venire Members**	26.0%	42

*This difference in strike rates is significant at $p < .001$.

TABLE 7
Statewide Average of Rates of State Strikes
From 1995 through 1999

	A Average Strike Rate	B Number of Cases
1. **Strike Rates Against Black Qualified Venire Members**	53.6%	80
2. **Strike Rates Against All Other Qualified Venire Members**	24.1%	80

*This difference in strike rates is significant at $p < .001$.

TABLE 8
Statewide Average of Rates of State Strikes
From 2000 through 2004

	A Average Strike Rate	B Number of Cases
1. **Strike Rates Against Black Qualified Venire Members**	57.2%	29
2. **Strike Rates Against All Other Qualified Venire Members**	25.0%	29

*This difference in strike rates is significant at $p < .001$.

TABLE 9
Statewide Average of Rates of State Strikes
From 2005 through 2010

	A Average Strike Rate	B Number of Cases
1. **Strike Rates Against Black Qualified Venire Members**	56.4%	15
2. **Strike Rates Against All Other Qualified Venire Members**	25.4%	15

*This difference in strike rates is significant at $p < .01$.

TABLE 10
Rates of State Strikes for Cases in Prosecutorial District 20
By Entire Study Period

Name of Defendant	Mean Strike Rate	
	Black Qualified Venire Members	**All Other Qualified Venire Members**
Roger Blakeney	100% (1/1)	31.7% (13/41)
Guy LeGrande	100% (2/2)	26.3% (10/38)
Lawrence Peterson	71.4% (5/7)	20.0% (7/35)
Ted Prevatte 1 (1995)	62.5% (10/16)	13.3% (4/30)
Ted Prevatte 2 (1999)	100% (1/1)	27.5% (11/40)
Martin Richardson	100% (2/2)	25.0% (8/32)
Darrell Strickland	75.0% (3/4)	24.3 (9/37)

TABLE 11
Statewide Unadjusted Racial Disparities: North Carolina, 1990-2009

	A	B **Racial Minority Defendant** (DefRM)	C **White Victim** (WhiteVic)	D **Minority Defendant/ White Victim** (RMWV)
1.	Combined Effect of Charging and Sentencing Decisions (Death1=1) n = 1562 (weighted analysis) Overall Rate: 5.42%	Yes: 4.23% (175/4135) No : 8.42% (138/1640) Diff: -4.18 points Ratio: 0.50 ($p < 0.0001$)	Yes: 8.26% (210/2544) No : 3.19% (103/3231) Diff: 5.07 points Ratio: 2.59 ($p < 0.0001$)	Yes: 7.64% (82/1074) No : 4.91% (231/4701) Diff: 2.72 points Ratio: 1.55 ($p < 0.01$)
	Charging Decisions			
2.	Prosecutors' Decisions to Seek Death at Any Point in the Charging (EverSeekDeath=1) n = 1549 (weighted analysis) Overall Rate: 60.88%	Yes: 60.68% (2489/4102) No : 61.39% (995/1620) Diff: -0.71 points Ratio: 0.99 ($p = 0.85$)	Yes: 62.15% (1564/2516) No : 59.88% (1920/3206) Diff: 2.27 points Ratio: 1.04 ($p = 0.52$)	Yes: 62.23% (660/1060) No : 60.57% (2824/4662) Diff: 1.66 points Ratio: 1.03 ($p = 0.72$)
3.	Prosecutors' Decisions to Advance to a Capital Guilt Trial (CapTrial=1) n = 1561 (weighted analysis) Overall Rate: 12.53%	Yes: 10.48% (433/4135) No : 17.73% (290/1635) Diff: -7.25 points Ratio: 0.59 ($p < 0.0001$)	Yes: 17.21% (437/2539) No : 8.86% (286/3231) Diff: 8.35 points Ratio: 1.94 ($p < 0.0001$)	Yes: 16.39% (176/1074) No : 11.65% (547/4696) Diff: 4.74 points Ratio: 1.41 ($p = 0.005$)
	Sentencing Decisions			
4.	Jury Decision to Impose Death Sentence at Penalty Trial (PTDeath=1) n = 691 (unweighted analysis) Overall Rate: 45.30%	Yes: 42.17% (175/415) No : 50.00% (138/276) Diff: -7.83 points Ratio: 0.84 ($p = 0.05$)	Yes: 49.65% (210/423) No : 38.43% (103/268) Diff: 11.21 points Ratio: 1.29 ($p < 0.01$)	Yes: 46.59% (82/176) No : 44.85% (231/515) Diff: 1.74 points Ratio: 1.04 ($p = 0.73$)

TABLE 12

Combined Effect of Charging and Sentencing Decisions (Death1): North Carolina, 1990-2009
Statutory Controls Regression Models, Twenty- (Col. B), Ten- (Cols. C-D), and Five-Year (Cols. E-H) Periods
(*Variable definitions are provided in Table 22*.)

	A	B		C		D		E		F		G		H	
		Full Study Period Twenty Years 1990-2009		**First Ten Years 1990-1999** (FiveYears = 1 or 2)		**Second Ten Years 2000-2009** (FiveYears = 3 or 4)		**First Five Years 1990-1994** (FiveYears=1)		**Second Five Years 1995-1999** (FiveYears=2)		**Third Five Years 2000-2004** (FiveYears=3)		**Fourth Five Years 2005-2009** (FiveYears=4)	
1.	# death sentences	313		245		68		117		128		49		19	
2.	n	1,562		1,042		520		492 (117)		550		349		171	
3.	weighted n	5,775		3,166		2,609		1,503 (117)		1,663		1,413		1196	
4.	R^2	0.22		0.36		0.19		0.43		0.32		0.14		0.19	
		Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio
5.	Intercept	-3.8966 *<.0001*		-4.1666 *<.0001*		-5.2539 *<.0001*		-4.4929 *<.0001*		-4.2219 *<.0001*		-4.5123 *<.0001*		-6.8322 *<.0001*	

6.	**DefRM**	-0.4019 *0.0477*	0.669	-0.7408 *0.0021*	0.477	0.2776 *0.5165*	1.320	-1.0616 *0.0008*	0.346	-.03871 *0.2597*	0.679	0.2568 *0.5405*	1.293	0.4297 *0.5116*	1.537
7.	**WhiteVic**	0.7261 *0.0002*	2.067	0.3929 *0.0877*	1.481	0.9736 *0.0123*	2.647	0.5552 *0.0984*	1.742	0.3283 *0.2873*	1.389	0.7759 *0.0385*	2.173	2.3685 *0.0039*	10.681
8.	**AggE2**	1.6087 *0.0093*	4.996												
9.	**AggE3**	1.0228 *<.0001*	2.781	1.5219 *<.0001*	4.581	1.1614 *0.0002*	3.195	1.7509 *<.0001*	5.760	1.3842 *<.0001*	3.992	1.1797 *0.0006*	3.254	1.2205 *0.0551*	3.389
10.	**AggE4**	1.4083 *<.0001*	4.089	1.3748 *0.0005*	3.954	1.8172 *0.0004*	6.155	1.4072 *0.0011*	4.084	1.3987 *0.0050*	4.050	2.0649 *<.0001*	7.885		
11.	**AggE5**							1.3367 *0.0003*	3.807						
12.	**AggE6**	0.5454 *0.0009*	1.725	0.9137 *<.0001*	2.493					0.6908 *0.0120*	1.995				
13.	**AggE8**	1.7449 *0.0002*	5.725												
14.	**AggE9**			1.9593 *<.0001*	7.094	0.9570 *0.0014*	2.604	2.2905 *<.0001*	9.880	1.7528 *<.0001*	5.771			1.5244 *0.0166*	4.592

15.	**AggE11**	0.4493 *0.0055*	1.567	0.8614 *<.0001*	2.366					1.0101 *0.0002*	2.746				
16.	**MitF4**	-2.5612 *<.0001*	0.077	-2.7634 *0.0002*	0.063	-1.7442 *0.0764*	0.175	-2.7737 *0.0147*	0.062	-2.3078 *0.0145*	0.099				

TABLE 13

Combined Effect of Charging and Sentencing Decisions (Death1): North Carolina, 1990-2009
All Meaningful Controls Regression Models, Twenty- (Col. B), Ten- (Cols. C-D), and Five-Year (Cols. E-H) Periods
(*Variable definitions are provided in Table 22*.)

	A	B		C		D		E		F		G		H	
		Full Study Period Twenty Years 1990-2009		**First Ten Years 1990-1999** (FiveYears = 1 or 2)		**Second Ten Years 2000-2009** (FiveYears = 3 or 4)		**First Five Years 1990-1994** (FiveYears=1)		**Second Five Years 1995-1999** (FiveYears=2)		**Third Five Years 2000-2004** (FiveYears=3)		**Fourth Five Years 2005-2009** (FiveYears=4)	
1.	# death sentences	313		245		68		117		128		49		19	
2.	n	1,562		1,042		520		492		550		349		171	
3.	weighted n	5,775		3,166		2,609		1,503		1,663		1,413		1,196	
4.	R^2	0.68		0.71		0.49		0.68		0.73		0.57		0.65	
		Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio
5.	Intercept	-4.8856 *<.0001*		-4.5854 *<.0001*		-5.6177 *<.0001*		-5.7754 *<.0001*		-5.0176 *<.0001*		-3.6447 *<.0001*		-2.6945 *0.0008*	
6.	**DefRM**	-0.4869 *0.0355*	0.615	-.03050 *0.2622*	0.737	-0.0713 *0.8628*	0.931	-0.5224 *0.1609*	0.593	-0.0479 *0.8902*	0.953	-0.5536 *0.3058*	0.575	-0.3120 *0.6665*	0.732
7.	**WhiteVic**	0.4918 *0.0317*	1.635	0.5355 *0.0409*	1.708	0.7690 *0.0480*	2.158	0.2274 *0.5498*	1.255	0.7657 *0.0503*	2.150	0.2809 *0.6111*	1.324	1.8441 *0.0139*	6.322
8.	**AggE3**	0.9582 *<.0001*	2.607	1.4261 *<.0001*	4.162			1.7937 *<.0001*	6.012						
9.	**AggE4**									1.5169 *0.0023*	4.558				
10.	**AggE6**			0.8951 *0.0004*	2.448			1.3255 *0.0002*	3.764						
11.	**AggE9**	0.7440 *0.0010*	2.104	0.9758 *0.0002*	2.653			1.6297 *<.0001*	5.102						
12.	**AggCirScale**	0.2092 *0.0064*	1.233			0.5835 *<.0001*	1.792			0.4623 *0.0012*	1.588	0.2840 *0.0483*	1.328		
13.	**AssaultGun**									1.9584 *0.0028*	7.088				
14.	**Disrobe**			0.8197 *0.0230*	2.270										
15.	**EvidType2**	0.7204 *0.0002*	2.055			1.2455 *0.0006*	3.475					1.8750 *<.0001*	6.521		

	A	B		C		D		E		F		G		H	
16.	**EvidType3**	1.2376 *0.0002*	3.447												
17.	**EvidType9**							1.1744 *0.0031*	3.236						
18.	**EvidType10**	0.8562 *<.0001*	2.354	0.9507 *<.0001*	2.587					1.8852 *<.0001*	6.588	1.6348 *<.0001*	5.129		
19.	**EvidType11**			1.2532 *<.0001*	3.502					1.1982 *0.0003*	3.314				
20.	**Execution**	0.5053 *0.0193*	1.657												
21.	**FemVic**	0.5707 *0.0068*	1.770	0.5472 *0.0283*	1.728			1.5406 *<.0001*	4.668						
22.	**GratuitousFelony**			1.2308 *0.0003*	3.424										
23.	**HeadWound**	0.7893 *0.0002*	2.202	0.7085 *0.0043*	2.031			1.3188 *0.0002*	3.739						
24.	**Killer**							1.3490 *0.0006*	3.853						
25.	**PleasureKill**					1.5200 *0.0020*	4.572								
26.	**PTDNDX_DTH1**													1.5850 *<.0001*	4.879
27.	**SeverePain**	0.9714 *<.0001*	2.642	0.8787 *0.0005*	2.408					2.0666 *<.0001*	7.898				
28.	**SpecialAgg2**							1.0551 *0.0073*	2.872						
29.	**Trauma**	1.6213 *<.0001*	5.060	1.3318 *0.0001*	3.788	1.9783 *<.0001*	7.231	1.7858 *0.0005*	5.965						
30.	**TwoVic**	0.7748 *0.0058*	2.170	1.5423 *<.0001*	4.675					1.6506 *0.0002*	5.210				
31.	**VStranger**	1.3186 *<.0001*	3.738			1.4054 *<.0001*	4.077					1.4337 *0.0053*	4.194	1.3840 *0.0605*	3.991
32.	**DefenseType15**	-1.4165 *<.0001*	0.243	-1.1568 *0.0051*	0.314							-3.6388 *0.0008*	0.026		
33.	**DRage**	-1.0233 *0.0006*	0.359												
34.	**DselfD**	-2.0764 *0.0046*	0.125												
35.	**MinorAcc2**	-2.0905 *<.0001*	0.124	-1.9885 *<.0001*	0.137					-3.1534 *<.0001*	0.043				
36.	**NoLongPlan**											-0.1437 *0.0048*	0.866		

	A	B		C		D		E		F		G		H	
37.	**ProvokeQ**			-1.5015 *0.0058*	0.223										
38.	**TookResp**	-2.4856 *<.0001*	0.083	-2.5294 *<.0001*	0.080	-2.7178 *<.0001*	0.066	-2.2360 *<.0001*	0.107	-3.1430 *<.0001*	0.043	-2.6564 *<.0001*	0.070		
39.	**YoungDef**			-0.9880 *0.0552*	0.372										

TABLE 14

Prosecutors' Decisions to Advance to a Capital Guilt Trial (CapTrial): North Carolina, 1990-2009
Statutory Controls Regression Models, Twenty- (Col. B), Ten- (Cols. C-D), and Five-Year (Cols. E-H) Periods
(*Variable definitions are provided in Table 22*.)

	A	B		C		D		E		F		G		H	
		Full Study Period Twenty Years 1990-2009		**First Ten Years 1990-1999** (FiveYears = 1 or 2)		**Second Ten Years 2000-2009** (FiveYears = 3 or 4)		**First Five Years 1990-1994** (FiveYears=1)		**Second Five Years 1995-1999** (FiveYears=2)		**Third Five Years 2000-2004** (FiveYears=3)		**Fourth Five Years 2005-2009** (FiveYears=4)	
1.	# capital trials	695		521		174		250		271		124		50	
2.	n	1,561[26]		1,041		520		491		550		349		171	
3.	# capital trials weighted	723		521		202		250		271		142		60	
4.	weighted n	5,770		3,161		2,609		1,498		1,663		1,413		1,196	
5.	R^2	0.22		0.31		0.14		0.31		0.23		0.16		0.31	
		Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio
6.	Intercept	-2.6157 *<.0001*		-2.5605 *<.0001*		-3.2582 *<.0001*		-2.5286 *<.0001*		-2.6312 *<.0001*		-3.0327 *<.0001*		-5.2368 *<.0001*	
7.	**DefRM**	-0.3875 *0.0347*	0.679	-0.6533 *0.0005*	0.520	-0.0402 *0.9059*	0.961	-0.8265 *0.0020*	0.438	-0.4819 *0.0612*	0.618	0.1993 *0.5948*	1.221	0.2116 *0.7345*	1.236
8.	**WhiteVic**	0.4253 *0.0097*	1.530	0.3905 *0.0346*	1.478	0.5014 *0.0836*	1.651	0.5903 *0.0254*	1.805	0.3088 *0.2000*	1.362	0.0438 *0.9000*	1.045	1.6872 *0.0014*	5.404
9.	**AggE3**	0.7503 *<.0001*	2.118	0.9719 *<.0001*	2.643	0.6549 *0.0148*	1.925	1.0059 *<.0001*	2.734	1.0113 *<.0001*	2.749	0.9394 *0.0005*	2.558		
10.	**AggE4**	0.9420 *0.0027*	2.565	1.7350 *<.0001*	5.669					1.4251 *0.0012*	4.158	1.6024 *0.0002*	4.965		
11.	**AggE5**							0.8063 *0.0061*	2.240					1.1412 *0.0506*	3.131
12.	**AggE6**	0.4455 *0.0027*	1.561	0.6753 *<.0001*	1.965					0.4342 *0.0335*	1.544				
13.	**AggE8**	2.0516 *<.0001*	7.780			1.9073 *0.0010*	6.735								
14.	**AggE9**	0.8104 *<.0001*	2.249	1.1270 *<.0001*	3.087	1.9073 *0.0020*	2.439	1.3156 *<.0001*	3.727	0.9174 *<.0001*	2.503	0.7285 *0.0104*	2.072	1.1944 *0.0433*	3.301
15.	**AggE11**			0.7358 *<.0001*	2.087					0.8468 *<.0001*	2.332				
16.	**MitF4**			-0.7472 *0.0214*	0.474			-1.2233 *0.0057*	0.294					-1.8037 *0.0465*	0.165
17.	**MitF8**	-0.7885 *0.0006*	0.455	-0.8127 *0.0062*	0.444										

[26] This model has one fewer case than the models in Tables 12 and 13 because it is not known whether one case went to a capital or non-capital trial. It did not result in a death sentence.

TABLE 15

Prosecutors' Decisions to Advance to a Capital Guilt Trial (CapTrial): North Carolina, 1990-2009
All Meaningful Controls Regression Models, Twenty- (Col. B), Ten- (Cols. C-D), and Five-Year (Cols. E-H) Periods
(*Variable definitions are provided in Table 22*.)

	A	B		C		D		E		F		G		H	
		Full Study Period Twenty Years 1990-2009		**First Ten Years 1990-1999** (FiveYears = 1 or 2)		**Second Ten Years 2000-2009** (FiveYears = 3 or 4)		**First Five Years 1990-1994** (FiveYears=1)		**Second Five Years 1995-1999** (FiveYears=2)		**Third Five Years 2000-2004** (FiveYears=3)		**Fourth Five Years 2005-2009** (FiveYears=4)	
18.	# capital trials	695		521		174		250		271		124		50	
19.	n	1,561		1,041		520		491		550		349		171	
20.	# capital trials weighted	723		521		202		250		271		142		60	
21.	weighted n	5,770		3,161		2,609		1,498		1,663		1,413		1,196	
22.	R^2	0.78		0.81		0.72		0.74		0.81		0.75		0.64	
		Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio	Coefficient *p-value*	Odds Ratio
23.	Intercept	-3.4175 *<.0001*		-2.4295 *<.0001*		-3.4456 *<.0001*		-1.8714 *<.0001*		-3.7178 *<.0001*		-5.3015 *<.0001*		-4.6543 *<.0001*	
24.	**DefRM**	-0.7704 *0.0004*	0.463	-0.7889 *0.0075*	0.454	-0.4545 *0.2349*	0.635	-0.6603 *0.0394*	0.517	-0.7227 *0.0339*	0.485	-0.6058 *0.2649*	0.546	0.0741 *0.8906*	1.077
25.	**WhiteVic**	0.4758 *0.0326*	1.609	0.3849 *0.1674*	1.469	0.3482 *0.3209*	1.417	0.4748 *0.1339*	1.608	0.3814 *0.2546*	1.464	-0.2392 *0.6022*	0.787	1.1662 *0.0284*	3.210
26.	**AggE3**	0.7792 *0.0009*	2.180	1.2621 *<.0001*	3.533					0.7321 *0.0177*	2.079				
27.	**AddCrime**	0.6813 *0.0035*	1.976												
28.	**AggCirScale**							0.3662 *0.0005*	1.442						
29.	**AggCirScale2**									0.7385 *0.0003*	2.093	0.5339 *0.0122*	1.706	1.1098 *0.0021*	3.034
30.	**EvidType1**	1.2811 *0.0004*	3.601												
31.	**EvidType2**	0.5200 *0.0075*	1.682							1.0887 *0.0004*	2.970				
32.	**EvidType3**	1.2975 *0.0002*	3.660	1.0258 *0.0361*	2.789	1.2130 *0.0224*	3.363								
33.	**EvidType4**											1.5445 *0.0001*	4.686		
34.	**EvidType8**	0.6386 *0.0019*	1.886	1.0646 *<.0001*	2.900										
35.	**EvidType9**							1.4493 *0.0005*	4.260						

	A	B		C		D		E		F		G		H	
36.	**EvidType10**	0.7424 *0.0002*	2.101	0.9582 *0.0002*	2.607	1.0138 *0.0016*	2.756								
37.	**EvidType11**			1.0857 *<.0001*	2.962					0.8098 *0.0112*	2.248				
38.	**FemVic**	0.8392 *<.0001*	2.315	0.9424 *0.0001*	2.566	1.1508 *0.0002*	3.161			1.6394 *<.0001*	5.152	1.6403 *<.0001*	5.157		
39.	**HeadWound**	0.7482 *<.0001*	2.113	0.7609 *0.0016*	2.140					0.9710 *0.0025*	2.640				
40.	**Indifferent**	0.6476 *0.0157*	1.911												
41.	**Killer**			0.7783 *0.0031*	2.178			1.0418 *0.0020*	2.834						
42.	**LowSES**					0.9484 *0.0036*	2.582					1.8288 *<.0001*	6.226		
43.	**ManyWound**							1.1059 *0.0012*	3.022						
44.	**PleasureKill**					1.2300 *0.0351*	3.421								
45.	**PreArmed**	0.5706 *0.0066*	1.769			1.0800 *0.0015*	2.945			1.0732 *0.0010*	2.925	1.7748 *<.0001*	5.899		
46.	**PriorThreat**	0.8185 *0.0004*	2.267							0.7872 *0.0263*	2.197				
47.	**RapeSodomy**							1.0087 *0.0260*	2.742					1.8348 *0.0046*	6.264
48.	**RobBurg**			0.6853 *0.0059*	1.984			0.5961 *0.0427*	1.815						
49.	**SeverePain**	1.0614 *<.0001*	2.890			1.8982 *<.0001*	6.674	0.7230 *0.0078*	2.061			1.7896 *<.0001*	5.987		
50.	**SilenceWitness**													1.6984 *0.0017*	5.465
51.	**SpecialAggHi**							1.3353 *0.0013*	3.801						
52.	**Suffering**			0.5447 *0.0155*	1.724										
53.	**TenPlusStab**	0.9877 *0.0190*	2.685	1.0302 *0.0426*	2.802										
54.	**TwoVic**	0.8596 *0.0042*	2.362	1.3770 *<.0001*	3.963	1.1123 *0.0066*	3.041								
55.	**Vhome**			0.8112 *0.0013*	2.251					1.1098 *0.0005*	3.034	0.9402 *0.0066*	2.561		
56.	**VStranger**	0.9451 *<.0001*	2.573	0.9555 *0.0006*	2.600	1.347 *0.0051*	3.110			0.9527 *0.0057*	2.593	1.4336 *0.0008*	4.194		
57.	**DefenseType5**	-1.2576 *0.0001*	0.284	-1.4691 *0.0002*	0.230					-1.9360 *0.0006*	0.144				
58.	**DefenseType14**	-1.6406 *<.0001*	0.194	-1.7221 *0.0013*	0.179					-2.8562 *0.0071*	0.057	-3.6484 *0.0108*	0.026		

	A	B		C		D		E		F		G		H	
59.	**DVHome**	-1.4151 *<.0001*	0.243			-1.7049 *0.0028*	0.182								
60.	**DRage**	-0.7602 *0.0034*	0.468	-0.9594 *0.0015*	0.383					-0.8761 *0.0533*	0.416				
61.	**MitType302**					-1.2209 *0.0046*	0.295							-2.7599 *<.0001*	0.063
62.	**NoLongPlan**	-0.0756 *0.0018*	0.927	-0.0985 *0.0003*	0.906	-0.1428 *0.0003*	0.867	-0.1086 *0.0016*	0.897			-0.1918 *<.0001*	0.825		
63.	**TookResp**	-2.7677 *<.0001*	0.063	-3.1282 *<.0001*	0.044	-2.0169 *<.0001*	0.133	-2.5154 *<.0001*	0.081	-3.6533 *<.0001*	0.026	-3.1852 *<.0001*	0.041		
64.	**YoungDef**							-1.4310 *0.0007*	0.239						

TABLE 16
Statewide Unadjusted Racial Disparities: North Carolina, 1990-1999
(FiveYears in (1 2))

	A	B **Racial Minority Defendant** (DefRM)	C **White Victim** (WhiteVic)	D **Minority Defendant/ White Victim** (RMWV)
1.	Combined Effect of Charging and Sentencing Decisions (Death1=1) n = 1042 (weighted analysis) Overall Rate: 7.74%	Yes: 5.88% (133/2262) No : 12.40% (112/903) Diff: -6.52 points Ratio: 0.47 (p < 0.0001)	Yes: 11.25% (165/1466) No : 4.71% (80/1699) Diff: 6.54 points Ratio: 2.39 (p < 0.0001)	Yes: 9.61% (62/645) No : 7.26% (183/2520) Diff: 2.35 points Ratio: 1.32 (p = 0.11)
	Charging Decisions			
2.	Prosecutors' Decisions To Seek Death at Any Point in the Charging (EverSeekDeath=1) n = 1031 (weighted analysis) Overall Rate: 56.77%	Yes: 53.67% (1201/2237) No : 64.62% (571/884) Diff: -10.95 points Ratio: 0.83 (p = 0.01)	Yes: 64.11% (922/1439) No : 50.49% (849/1683) Diff: 13.62 points Ratio: 1.27 (p < 0.01)	Yes: 63.66% (402/631) No : 55.02% (1370/2490) Diff: 8.64 points Ratio: 1.16 (p = 0.18)
3.	Prosecutors Decisions to Advance to a Capital Guilt Trial (CapTrial=1) n = 1041 (weighted analysis) Overall Rate: 16.48%	Yes: 13.17% (298/2262) No : 24.82% (223/899) Diff: -11.65 points Ratio: 0.53 (p < 0.0001)	Yes: 22.44% (328/1462) No : 11.36% (193/1699) Diff: 11.08 points Ratio: 1.98 (p < 0.0001)	Yes: 20.31% (131/645) No : 15.50% (390/2516) Diff: 4.80 points Ratio: 1.31 (p = 0.06)
	Sentencing Decisions			
4.	Death Sentence Imposed in a Penalty Trial (PTDeath=1) n = 521 (unweighted analysis) Overall Rate: 47.02%	Yes: 44.63% (133/298) No : 50.22% (112/223) Diff: -5.59 points Ratio: 0.89 (p = 0.21)	Yes: 50.30% (165/328) No : 41.45% (80/193) Diff: 8.85 points Ratio: 1.21 (p = 0.06)	Yes: 47.33% (62/131) No : 46.92% (183/390) Diff: 0.41 points Ratio: 1.01 (p = 1.00)

TABLE 17
Statewide Unadjusted Racial Disparities: North Carolina, 2000-2009
(FiveYears in (3 4))

	A	B **Racial Minority Defendant** (DefRM)	C **White Victim** (WhiteVic)	D **Minority Defendant/ White Victim** (RMWV)
1.	Combined Effect of Charging and Sentencing Decisions (Death1=1) n = 520 (weighted analysis) Overall Rate: 2.61%	Yes: 2.24% (42/1873) No : 3.53% (26/737) Diff: -1.29 points Ratio: 0.64 (p = 0.10)	Yes: 4.18% (45/1077) No : 1.50% (23/1532) Diff: 2.68 points Ratio: 2.78 (p < 0.001)	Yes: 4.66% (20/429) No : 2.20% (48/2181) Diff: 2.46 points Ratio: 2.12 (p = 0.01)
	Charging Decisions			
2.	Prosecutors' Decisions to Seek Death at Any Point in the Charging (EverSeekDeath=1) n = 518 (weighted analysis) Overall Rate: 65.81%	Yes: 69.09% (1288/1864) No : 57.51% (424/737) Diff: 11.57 points Ratio: 1.20 (p = 0.05)	Yes: 59.53% (641/1077) No : 70.25% (1070/1524) Diff: -10.72 points Ratio: 0.85 (p = 0.06)	Yes: 60.12% (258/429) No : 66.93% (1454/2172) Diff: -6.81 points Ratio: 0.90 (p = 0.31)
3.	Prosecutors' Decisions to Advance a to Capital Guilt Trial (CapTrial=1) n = 520 (weighted analysis) Overall Rate: 7.75%	Yes: 7.22% (135/1873) No : 9.08% (67/737) Diff: -1.86 points Ratio: 0.80 (p = 0.39)	Yes: 10.11% (109/1077) No : 6.09% (93/1532) Diff: 4.02 points Ratio: 1.66 (p = 0.03)	Yes: 10.50% (45/429) No : 7.21% (157/2181) Diff: 3.29 points Ratio: 1.46 (p = 0.11)
	Sentencing Decisions			
4.	Death Sentence Imposed in a Penalty Trial (PtDeath=1) n = 170 (unweighted analysis) Overall Rate: 40.00%	Yes: 35.90% (42/117) No : 49.06% (26/53) Diff: -13.16 points Ratio: 0.73 (p = 0.13)	Yes: 47.37% (45/95) No : 30.67% (23/75) Diff: 16.70 points Ratio: 1.54 (p = 0.03)	Yes: 44.44% (20/45) No : 38.40% (48/125) Diff: 6.04 points Ratio: 1.16 (p = 0.48)

TABLE 18
Statewide Unadjusted Racial Disparities: North Carolina, 1990-1994
(FiveYears = 1)

	A	B **Racial Minority Defendant** (DefRM)	C **White Victim** (WhiteVic)	D **Minority Defendant/ White Victim** (RMWV)
1.	Combined Effect of Charging and Sentencing Decisions (Death1=1) n = 492 (weighted analysis) Overall Rate: 7.79%	Yes: 4.91% (55/1120) No : 16.18% (62/383) Diff: -11.27 points Ratio: 0.30 (p < 0.0001)	Yes: 12.14% (86/709) No : 3.90% (31/794) Diff: 8.23 points Ratio: 3.11 (p < 0.0001)	Yes: 7.69% (28/364) No : 7.82% (89/1139) Diff: -0.12 points Ratio: 0.98 (p = 0.9501)
	Charging Decisions			
2.	Prosecutors' Decisions To Seek Death at Any Point in the Charging (EverSeekDeath=1) n = 485 (weighted analysis) Overall Rate: 47.80%	Yes: 43.35% (479/1104) No : 60.99% (227/373) Diff: -17.64 points Ratio: 0.71 (p = 0.0051)	Yes: 56.79% (395/695) No : 39.82% (311/782) Diff: 16.97 points Ratio: 1.43 (p = 0.0073)	Yes: 53.21% (189/355) No : 46.09% (517/1122) Diff: 7.11 points Ratio: 1.15 (p = 0.4023)
3.	Prosecutors' Decisions to Advance to a Capital Guilt Trial (CapTrial=1) n = 491 (weighted analysis) Overall Rate: 16.69%	Yes: 12.06% (135/1120) No : 30.39% (115/378) Diff: -18.33 points Ratio: 0.40 (p < 0.0001)	Yes: 24.01% (169/704) No : 10.20% (81/794) Diff: 13.81 points Ratio: 2.35 (p < 0.0001)	Yes: 18.13% (66/364) No : 16.23% (184/1134) Diff: 1.91 points Ratio: 1.12 (p = 0.5679)
	Sentencing Decisions			
4.	Death Sentence Imposed in a Penalty Trial (PTDeath=1) n = 250 (unweighted analysis) Overall Rate: 46.80%	Yes: 40.74% (55/135) No : 53.91% (62/115) Diff: -13.17 points Ratio: 0.76 (p = 0.0424)	Yes: 50.89% (86/169) No : 38.27% (31/81) Diff: 12.62 points Ratio: 1.33 (p = 0.0781)	Yes: 42.42% (28/66) No : 48.37% (89/184) Diff: -5.95 points Ratio: 0.88 (p = 0.4727)

TABLE 19
Statewide Unadjusted Racial Disparities: North Carolina, 1995-1999
(FiveYears = 2)

	A	B **Racial Minority Defendant** (DefRM)	C **White Victim** (WhiteVic)	D **Minority Defendant/ White Victim** (RMWV)
1	Combined Effect of Charging and Sentencing Decisions (Death1=1) n = 550 (weighted) Overall Rate: 7.70%	Yes: 6.83% (78/1143) No : 9.61% (50/520) Diff: -2.79 points Ratio: 0.71 (p = 0.08)	Yes: 10.42% (79/758) No : 5.41% (49/905) Diff: 5.01 points Ratio: 1.93 (p < 0.001)	Yes: 12.09% (34/281) No : 6.80% (94/1382) Diff: 5.29 points Ratio: 1.78 (p < 0.01)
	Charging Decisions			
2.	Prosecutors' Decisions to seek Death at Any Point in the Charging (EverSeekDeath=1) n = 546 (weighted analysis) Overall Rate: 64.82%	Yes: 63.72% (722/1133) No : 67.27% (344/511) Diff: -3.54 points Ratio: 0.95 (p = 0.53)	Yes: 70.97% (528/743) No : 59.75% (538/901) Diff: 11.21 points Ratio: 1.19 (p = 0.04)	Yes: 77.12% (213/276) No : 62.34% (853/1368) Diff: 14.77 points Ratio: 1.24 (p = 0.03)
3.	Prosecutors' Decisions To Advance to a Capital Guilt Trial (CapTrial=1) n = 550 (weighted) Overall Rate: 16.30%	Yes: 14.26% (163/1143) No : 20.76% (108/520) Diff: -6.50 points Ratio: 0.69 (p = 0.01)	Yes: 20.98% (159/758) No : 12.38% (112/905) Diff: 8.60 points Ratio: 1.70 (p < 0.001)	Yes: 23.12% (65/281) No : 14.91% (206/1382) Diff: 8.21 points Ratio: 1.55 (p < 0.01)
	Sentencing Decisions			
4.	Death Sentence Imposed In a Penalty Trial (PTDeath=1) n = 271 (unweighted) Overall Rate: 47.23%	Yes: 47.85% (78/163) No : 46.30% (50/108) Diff: 1.56 points Ratio: 1.03 (p = 0.80)	Yes: 49.69% (79/159) No : 43.75% (49/112) Diff: 5.94 points Ratio: 1.14 (p = 0.39)	Yes: 52.31% (34/65) No : 45.63% (94/206) Diff: 6.68 points Ratio: 1.15 (p = 0.39)

TABLE 20
Statewide Unadjusted Racial Disparities: North Carolina, 2000-2004
(FiveYears = 3)

	A	B **Racial Minority Defendant** (DefRM)	C **White Victim** (WhiteVic)	D **Minority Defendant / White Victim** (RMWV)
1.	Combined Effect of Charging and Sentencing Decisions (Death1=1) n = 349 (weighted analysis) Overall Rate: 3.47%	Yes: 3.13% (32/1022) No : 4.35% (17/391) Diff: -1.22 points Ratio: 0.72 (p = 0.30)	Yes: 4.98% (30/602) No : 2.34% (19/811) Diff: 2.64 points Ratio: 2.13 (p = 0.01)	Yes: 4.83% (13/269) No : 3.15% (36/1144) Diff: 1.68 points Ratio: 1.53 (p = 0.23)
	Charging Decisions			
2.	Prosecutors' Decisions to Seek Death at Any Point in the Charging (EverSeekDeath=1) n = 347 (weighted analysis) Overall Rate: 67.60%	Yes: 70.66% (716/1014) No : 59.65% (233/391) Diff: 11.01 points Ratio: 1.18 (p = 0.11)	Yes: 63.00% (379/602) No : 71.04% (570/803) Diff: -8.05 points Ratio: 0.89 (p = 0.16)	Yes: 64.05% (173/269) No : 68.44% (777/1135) Diff: -4.39 points Ratio: 0.94 (p = 0.56)
3.	Prosecutors' Decisions To Advance to a Capital Guilt Trial (CapTrial=1) n = 349 (weighted analysis) Overall Rate: 10.04%	Yes: 10.20% (104/1022) No : 9.60% (38/391) Diff: 0.60 points Ratio: 1.06 (p = 0.80)	Yes: 10.89% (66/602) No : 9.40% (76/811) Diff: 1.49 points Ratio: 1.16 (p = 0.51)	Yes: 11.14% (30/269) No : 9.78% (112/1144) Diff: 1.36 points Ratio: 1.14 (p = 0.63)
	Sentencing Decisions			
4.	Death Sentence Imposed in a Penalty Trial (PTDeath=1) n = 121 (unweighted analysis) Overall Rate: 40.50%	Yes: 37.21% (32/86) No : 48.57% (17/35) Diff: -11.36 points Ratio: 0.77 (p = 0.31)	Yes: 47.62% (30/63) No : 32.76% (19/58) Diff: 14.86 points Ratio: 1.45 (p = 0.14)	Yes: 43.33% (13/30) No : 39.56% (36/91) Diff: 3.77 points Ratio: 1.10 (p = 0.83)

TABLE 21
Statewide Unadjusted Racial Disparities: North Carolina, 2005-2009
(FiveYears = 4)

	A	B **Racial Minority Defendant** (DefRM)	C **White Victim** (WhiteVic)	D **Minority Defendant/ White Victim** (RMWV)
1.	Combined Effect of Charging and Sentencing Decisions (Death1=1) n = 171 (weighted analysis) Overall Rate: 1.59%	Yes: 1.18% (10/851) No : 2.60% (9/346) Diff: -1.43 points Ratio: 0.45 (p = 0.10)	Yes: 3.16% (15/475) No : 0.55% (4/721) Diff: 2.60 points Ratio: 5.69 (p < 0.01)	Yes: 4.39% (7/159) No : 1.16% (12/1037) Diff: 3.24 points Ratio: 3.80 (p < 0.01)
	Charging Decisions			
2.	Prosecutors' Decisions to Seek Death at Any Point in the Charging (EverSeekDeath=1) n = 171 (weighted analysis) Overall Rate: 63.71%	Yes: 67.21% (572/851) No : 55.10% (190/346) Diff: 12.11 points Ratio: 1.22 (p = 0.17)	Yes: 55.13% (262/475) No : 69.37% (500/721) Diff: -14.23 points Ratio: 0.79 (p = 0.09)	Yes: 53.48% (85/159) No : 65.28% (677/1037) Diff: -11.80 points Ratio: 0.82 (p = 0.28)
3.	Prosecutors' Decisions To Advance to a Capital Guilt Trial (CapTrial=1) n = 171 (weighted analysis) Overall Rate: 5.04%	Yes: 3.64% (31/851) No : 8.49% (29/346) Diff: -4.84 points Ratio: 0.43 (p = 0.08)	Yes: 9.12% (43/475) No : 2.36% (17/721) Diff: 6.76 points Ratio: 3.86 (p < 0.01)	Yes: 9.41% (15/159) No : 4.37% (45/1037) Diff: 5.04 points Ratio: 2.15 (p = 0.07)
	Sentencing Decisions			
4.	Death Sentence Imposed in a Penalty Trial (PTDeath=1) n = 49 (unweighted analysis) Overall Rate: 38.78%	Yes: 32.26% (10/31) No : 50.00% (9/18) Diff: -17.74 points Ratio: 0.65 (p = 0.24)	Yes: 46.88% (15/32) No : 23.53% (4/17) Diff: 23.35 points Ratio: 1.99 (p = 0.13)	Yes: 46.67% (7/15) No : 35.29% (12/34) Diff: 11.37 points Ratio: 1.32 (p = 0.53)

TABLE 22
Variable Definitions

	Variable Name	Explanation
1.	AggE3	Defendant previously convicted of a violent felony. 15A-2000(e)(3)
2.	AggE4	Murder committed to prevent arrest or to effect escape. 15A-2000(e)(4)
3.	AggE5	Felony aggravator. 15A-2000(e)(5)
4.	AggE6	Murder committed for pecuniary gain. 15A-2000(e)(6)
5.	AggE8	Murder committed against certain lines of public officers in the line of their duties. 15A-2000(e)(8)
6.	AggE9	Murder was especially heinous, atrocious, or cruel. 15A-2000(e)(9)
7.	AggE11	Murder was part of defendant's course of violent conduct toward another person or persons. 15A-2000(e)(11)
8.	AddCrime	Defendant charged with at least one additional crime.
9.	AggCirScale	Five-level scale based on number of aggravating circumstances in the case.
10.	AggCirScale2	Three-level scale based on number of aggravating circumstances in the case.
11.	AssaultGun	D shot V with an assault rifle.
12.	DefenseType5	Defendant played a less substantial role than competitor.
13.	DefenseType14	Insanity
14.	DefenseType15	Lack of mens rea because of mental illness or intoxication.
15.	DefRM	Defendant is a racial minority.
16.	Disrobe	Victim or a nondecedent victim was forced to disrobe or was disrobed by perpetrator (in whole or in part)
17.	DRage	Defendant acted in rage.
18.	DselfD	Defendant acted in perceived self-defense.
19.	DVHome	Homicide occurred in residence of V and D or co-D
20.	EvidType1	Pretrial identification of the defendant occurred
21.	EvidType2	Defendant identified by someone who knew him or her.
22.	EvidType3	Defendant identified by a police officer.
23.	EvidType4	Defendant identified by two or more witnesses.
24.	EvidType8	Weapon found linking defendant to murder.
25.	EvidType9	Scientific evidence linking defendant to murder (e.g. DNA, or fingerprint evidence).
26.	EvidType10	Physical evidence specifically linking defendant to murder.
27.	EvidType11	Testimony of primary witness was corroborated.
28.	Execution	Execution-style homicide (homicide against a subdued or passive victim)
29.	FemVic	At least one victim was female.
30.	Firearm	Firearm was used in the killing.
31.	FiveYears	Groups the cases in five year intervals based on the date of sentencing.
32.	GratuitousFelony	Case involved a contemporaneous felony and homicide that was unnecessary to complete the crime to the point of being gratuitous
33.	HeadWound	Victim received wounds to the head.
34.	Indifferent	Defendant motivated at least partly by complete indifference to the value of life (e.g. defendant acted without anger or frustration or other recognizable human emotion).
35.	Killer	Defendant was actual killer (if there were co-perpetrators).
36.	LowSES	The variable is a rough approximation of defendant socioeconomic status. It is made by combining education level data and appointment of counsel data.
37.	ManyWound	Victim suffered many wounds.
38.	MinorAcc2	Combines the coding in MitF4 ("Defendant was an accomplice in or accessory to a murder committed by another person and the defendant's participation was relatively minor"), MinorAcc ("Defendant was an accomplice to the crime committed by another and defendant's participation was relatively minor"), and DefenseType5 ("Defendant played a less substantial role than competitor").

	Variable Name	Explanation
39.	MitType302	Defendant showed remorse for the crime, or confessed to the crime, or otherwise took responsibility for the crime.
40.	NoLongPlan	Homicide was not planned for more than five minutes.
41.	PleasureKill	File at least suggests that defendant expressed pleasure with the homicide.
42.	PreArmed	Defendant or co-perpetrator came to the scene of the crime with the weapon ultimately used to kill the victim.
43.	PriorThreat	File at least suggests that defendant threatened victim in victim's presence to kill victim's family members or others who were close to victim, or announced in advance to a third person an intention to kill the victim.
44.	ProvokeQ	Other disputes and fights where it is unknown who provoked the altercations.
45.	PTDNDX_Dth1	A race-purged index variable constructed using the variables in the 20-year model presented in Table 13.
46.	RapeSodomy	Case involved sexual assault or attempted sexual assault.
47.	RobBurg	Case involved robbery or burglary.
48.	SeverePain	Victim suffered severe physical pain.
49.	SilenceWitness	Defendant motivated at least partly by the desire to silence a witness.
50.	SpecialAgg2	Offense reflects at least one of a list of aggravating feature that can be specifically attributed to the defendant.
51.	SpecialAggHi	Offense reflects at least four of a list of aggravating feature that can be specifically attributed to the defendant.
52.	Suffering	Victim suffered severe physical suffering immediately prior to death.
53.	TenPlusStab	Deceased victim suffered from ten or more stab wounds or shots, except when murder weapon was penknife or other small cutting instrument.
54.	TookResp	Defendant took responsibility for the offense (other than confession to capital murder).
55.	Trauma	Defendant suffered physical or psychological trauma, e.g., brain injuries or observing a parent be killed.
56.	TwoVic	Case involved more than one victim.
57.	Vhome	Homicide occurred in residence of V or V's close friend or relative.
58.	VStranger	Defendant did not know victim before the murder.
59.	WhiteVic	Case involved at least one white victim.
60.	YoungDef	Defendant is less than 20 years old.

EXHIBIT 2

Affidavit of George G. Woodworth

COUNTY OF JOHNSON

STATE OF IOWA

George G. Woodworth, having been duly sworn, deposes and says:

1. My name is George G. Woodworth. I have a Ph.D. in Statistics, from The University of Minnesota. I am emeritus Professor of Statistics and Actuarial Science, and emeritus Professor of Biostatistics at the University of Iowa.

Background and Qualifications

2. I have taught, conducted research, and consulted in the field of Statistics for 44 years, specializing in statistical proof of discrimination and in the design and analysis of clinical trials in Biostatistics; I remain active in collaborative research and consultation in retirement. In the area of biostatistics, I published a text book used in introductory undergraduate courses. George G. Woodworth, BIOSTATISTICS: A BAYESIAN INTRODUCTION (2004).

3. I have also extensively researched and developed statistical methods for investigating age- race- and gender-based discrimination. . I collaborated on a comprehensive study of capital charging and sentencing practices in Georgia between the years of 1973 and 1979, with David Baldus, Joseph B. Tye Professor of Law, College of Law, University of Iowa, and Charles Pulaski. This study was the evidentiary support for the legal challenge in the seminal case *McCleskey v. Kemp and was subsequently* published in a book that described our methodology and results. *See* David Baldus, et al, EQUAL JUSTICE AND THE DEATH PENALTY: A LEGAL AND EMPIRICAL ANALYSIS (1990). In the Georgia study, we developed a thorough data collection instrument (DCI) for gathering relevant data for the capital charging and sentencing study. We then built multiple regression models that allowed us to analyze the relationship between race and capital charging and sentencing while controlling for other possible explanations, including characteristics of the crime, like number of victims and weapon used, and characteristics of the defendant, like age, gender, and socioeconomic status.

4. After the Georgia study, David Baldus and I have conducted numerous studies of capital charging and sentencing practices in a host of states, building on the methodology we developed in the Georgia study. *See* David Baldus, et al, *Racial Discrimination and the Death Penalty in the Post-Furman Era: An Empirical and Legal Overview, with Recent Findings from Philadelphia*, 83 CORNELL L. REV. 1638 (1998); David C. Baldus and George Woodworth, RACE-OF-VICTIM AND RACE-OF-DEFENDANT DISPARITIES IN THE ADMINISTRATIONS OF MARYLAND'S CAPITAL CHARGING AND SENTENCING SYSTEM (1978-1999): PRELIMINARY FINDINGS (2001)(unpublished manuscript); David C. Baldus et al, *Arbitrariness and Discrimination in the Administration of the Death Penalty: A Legal and Empirical Analysis of the Nebraska Experience (1973-1999)*, 81 NEB. L. REV. 486 (2003).

5. In our research, our analyses have frequently revealed disparities in capital charging and sentencing based on race of the victim. *See* David C. Baldus and George Woolworth, *Race Discrimination in the Administration of the Death Penalty: An Overview of The Empirical Evidence with Special Emphasis on the Post-1990 Research*, 41 No. 2. CRIM. LAW BULLETIN 6 (2005). On rare occasions, we have discovered racial disparities in capital charging and sentencing systems based on race of the defendant. *Id.* These findings are consistent with the findings of other investigators in other states. *Id.*

6. David Baldus and I also conducted an investigation of the presence of racial discrimination in capital jury selection in Philadelphia. David C. Baldus et al, *The Use of Peremptory Challenges in Capital Murder Trials: A legal and Empirical Analysis,* 3 U. PA. J. CONST. L. 3, (2001). We developed a DCI and statistical analysis methods to examine whether race played a role in the strike patterns of counsel in jury selection from 371 capital cases. *Id.*

Charging and Sentencing Study and
Jury Selection Study of North Carolina Cases

7. In the fall of 2009, I agreed to assist Michigan State University School of Law professors Catherine Grosso and Barbara O'Brien with the design and implementation of a both a charging and sentencing and a jury selection study of capital cases in North Carolina.

8. I consulted with Professors Grosso and O'Brien about the development of the DCI for both of the North Carolina studies. Professor Baldus and I provided them with the DCIs we have used in previous studies, including the Georgia and Philadelphia studies. I was consulted regarding the appropriateness of the DCIs for statistical analyses before they were finalized. I participated extensively in designing the sampling plan for selecting a scientific (probability) sample from the target population of the study. In particular I calculated the sample sizes required to achieve the desired level of precision.

9. Over the course of the past year, I have collaborated closely with Professors Grosso and O'Brien about all statistical and methodology decisions. Among these is the choice of appropriate software for analyzing a stratified sample of this complexity. I developed and tested flexible statistical tools ("SAS macros") and monitored the investigators' use of these tools.

10. It is my opinion that this study employed sampling methods, statistical methodology, and statistical software that are generally accepted as correct and reliable in my profession.

11. The statistical methods of analysis in these studies are also closely related to the methods Professor Baldus and I developed and used in our previous studies.

12. I have reviewed the statistical analyses underlying the affidavits of Professors Grosso and O'Brien and have reviewed and concur with the way they stated the conclusions and opinions that are supported by these analyses.

Further affiant sayeth naught.

George G. Woodworth

Sworn to and subscribed before me, this the 26th day of July 2010.

Notary Public

My commission expires: 7/8/2011

NOTARIAL SEAL IOWA

DANIEL BAILEY
Commission Number 753606
My Commission Expires
7/8/2011

EXHIBIT 3

Affidavit of Michael L. Radelet

STATE OF COLORADO

COUNTY OF BOULDER

Michael L. Radelet, having been duly sworn, deposes and says:

1. I received a Ph.D. in sociology from Purdue University in 1977. After two years of postdoctoral training in Psychiatry at the University of Wisconsin Medical School, I joined the faculty at the University of Florida in 1979. After twenty-two years of service at that university (including the last five as Chair, Department of Sociology), I moved to the University of Colorado in September 2001 as Professor of Sociology. I served as Chair, Department of Sociology, University of Colorado, 2004-2009.

2. Since 1981 I have published six books and six dozen scholarly papers, in the nation's top sociology, criminology, and law journals, relating to various aspects of capital punishment. See, for example, *Miscarriages of Justice in Potentially Capital Cases,* 40 STANFORD LAW REVIEW 21-179 (1987); FACING THE DEATH PENALTY (Temple University Press, 1989); *Choosing Those Who Will Die: Race and the Death Penalty in Florida,* 43 FLORIDA LAW REVIEW 1-34 (1991); IN SPITE OF INNOCENCE (Northeastern University Press, 1992); EXECUTING THE MENTALLY ILL (Sage Publications, 1993). I have also testified on issues relating to the death penalty before committees of the U.S. Senate and the U.S. House of Representatives, and have been retained by the Racial and Ethnic Bias Study Commission of the Florida Supreme Court to research patterns of death sentencing in Florida. Between 2000-2003, I was retained by the Office of the Governor, State of Illinois, to study race and death sentencing in that state. See Pierce and Radelet, *Race, Region, and Death Sentencing in Illinois, 1988-1997,* 81 OREGON LAW REVIEW 39 (2002).

3. My first publication on race and death sentencing, *Racial Characteristics and the Imposition of the Death Penalty* , was published in 1981 in American Sociological Review, the top journal in Sociology. Since then I have published a dozen other papers in top criminology, sociology, and law journals on the issue of race and death sentencing.

4. My work has been cited numerous times by appellate courts, including nine times by the United States Supreme Court.

5. Several of my publications have been coauthored with Dr. Glenn L. Pierce, College of Criminal Justice, Northeastern University, Boston. Dr. Pierce is unquestionably among the top handful of experts in the U.S. on the subject of race and death sentencing, with numerous publications on this issue dating back to the 1970s.

6. Together with Dr. Pierce, I have undertaken a study of capital charging and sentencing in North Carolina between the years of 1980 and 2007. Professor Pierce and I are the lead investigators and sole authors. In July 2010 this study was accepted for publication by the North Carolina Law Review.

I.

STUDY DESIGN AND METHODOLOGY

7. For this study, we combined two data sources on North Carolina homicides.

A. Supplemental Homicide Reports

8. We assembled a data set on all North Carolina homicides with an identified perpetrator over a 28 year period, 1980-2007. We obtained these data from the FBI's "Supplemental Homicide Reports," or SHRs.

9. Supplemental Homicide Reports are compiled after local law enforcement agencies throughout the United States report data on homicides to a central state agency, which in turn reports them to the FBI in Washington for inclusion in its Uniform Crime Reports.[1] While the Reports do not list the defendants' or victims' names, they do include the following information: the month, year, and county of the homicide; the age, gender, race, and ethnicity of the suspects and victims; the victim-defendant relationship, weapon used, and information on whether the homicide was accompanied by additional felonies (e.g., robbery or rape).[2] Local law enforcement agencies usually report these data long before the defendant has been convicted, so offender data are for "suspects," not convicted offenders.[3] The FBI defines murder and non-negligent manslaughter as:

> [t]he willful (non-negligent) killing of one human being by another. *Deaths caused by negligence, attempts to kill, assaults to kill, suicides, and accidental deaths are excluded. The Program classifies justifiable homicides separately and limits the definition to: (1) the killing of a felon by a law enforcement officer in the line of duty; or (2) the killing of a felon, during the commission of a felony, by a private citizen.*[4]

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[1] *See* <http://www.icpsr.umich.edu/NACJD/SDA/shr7699d.html>. We have used SHR data in other research projects, and an earlier version of this paragraph was included in Glenn L. Pierce & Michael L. Radelet, *The Impact of Legally Inappropriate Factors on Death Sentencing for California Homicides, 1990-99*, 46 SANTA CLARA LAW REVIEW 1, ??? (2005).

[2] <http://www.icpsr.umich.edu/NACJD/SDA/shr7699d.html>.

[3] *Id.*

[4] *See* <www.ocjc.state.or.us/county.htm> (italics in original).

10. As the Bureau of Justice Statistics notes, "[t]he classification of this offense is based solely on police investigation, as opposed to the determination of a court, medical examiner, coroner, jury, or other judicial body."[5]

11. For our project, a total of 15,281 homicide suspects were identified from North Carolina SHR reports for homicides committed during the period 1980 through 2007. Only those SHR homicide records that recorded the gender of the homicide suspect were included in the sample, effectively eliminating those cases in which no suspect was identified. In other words, for SHR records where no suspect gender information was recorded, we assumed that the police had not been able to identify a suspect for that particular homicide incident, rendering sentencing decisions irrelevant. In addition, in most of the analyses presented herein, we eliminated 532 homicide suspect cases where the victim's race information was either missing, mixed (i.e., multiple murder with victims of different races), or some race category other than White or Black. In the end, our sample consists of 15,281 homicide suspects, of which 14,749 were individuals suspected of homicides in which the victim or victims were either Black or White. We use the complete data set only for analyses that do not examine the race of the victim.

12. In addition to the race of the victim, the SHR data include information on the number of homicide victims in each case, and on what additional felonies, if any, occurred at the same time as the homicide. These variables are key to the analysis reported below.

B. Death Row Data Set

13. The Death Row Data Set was constructed with information from 368 cases in which defendants in North Carolina were sentenced to death for homicides that occurred between January 1, 1980, and December 31, 2007. We eliminated 16 cases in which the race of the victim was neither White nor Black, leaving 352 cases for analysis. Cases were identified from a master list of all North Carolina death row inmates maintained by the North Carolina Department of Correction,[6] as well as from a list of individuals who at one time had been sentenced to death but who are no longer on death row.[7] Information on the race of the victim was obtained from the North Carolina Office of the Chief Medical Examiner, in Chapel Hill.[8]

14. Once the master list of death penalty cases was assembled, an attorney working with the research team read direct appeal decisions by the North Carolina Supreme Court in all the cases. For each case, she identified the defendant's and victim's race and sex, date and county of offense, county of conviction, number of victims, and information on accompanying felonies from both the DOC data and the direct appeal decisions. The latter

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[5] *See* <www.ojp.usdoj.gov/bjs/homicide/addinfo.htm>
[6] http://www.doc.state.nc.us/dop/deathpenalty/deathrow.htm.
[7] http://www.doc.state.nc.us/dop/deathpenalty/removed.htm.
[8] http://www.ocme.unc.edu/.

two variables are included in both the SHR data and in the Death Row Data Set, enabling us to compare frequencies by race of victim for both all homicides and all homicides that resulted in a death sentence.

15. To conduct our analyses, we merged the death row offender data set with the FBI/SHR homicide suspect data set. Cases were matched based on the victim's race (White only and Black only victim homicides), year of offense categorized into two periods (1980 to 1989 and 1990 to 2007),[9] "additional legally relevant factors" (no additional legally relevant factors, one additional legally relevant factor, or two additional legally relevant factors). We define "additional legally relevant factor" as either 1) multiple victim homicide, or 2) a homicide with accompanying felony circumstances. In other words, we use two characteristics of the homicide event to measure "additional legally relevant factors": whether the homicide event took the lives of two or more victims, and whether there was evidence of additional felonies (e.g., rape, robbery) that occurred at the same time as the homicide. As will be discussed below, both of these factors are relevant when distinguishing death penalty cases from other homicides.

16. Using these three factors we were able to match all 352 cases from the death row data set in which the victim/s were "White only" or "Black only" with the 14,749 homicide suspects in the SHR data set that had also had "White only" or "Black only" victims. Other researchers who have used this matching method note that, "[o]ften more than one SHR case would correspond to a given death row case; however, since this matching was done only for the purpose of analyzing data on variable(s) that were reported in both sources, it did not matter whether a particular death row case was identified with a unique FBI/SHR case."[10]

II.

FINDINGS

A. Cross-tabulations

17. Table 1 presents an important finding: over the 28 years studied in North Carolina, those who are suspected of killing Whites are over three times more likely to be sentenced to death than those who are suspected of killing Blacks. Overall, 1.2 percent of those suspected of killing Blacks are sentenced to death, compared to 3.9 percent of those

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[9] In 1990, the Supreme Court handed down *McKoy v. North Carolina*, 494 U.S. 433, which held that capital jurors did not have to be unanimous in finding the presence of mitigating circumstances argued by the defense in death penalty cases. After that decision, "the number of mitigating circumstances presented to and accepted by capital juries in North Carolina doubled." Janine Kremling, M. Dwayne Smith, John K. Cochran, Beth Bjerregaard, & Sondra J. Fogel, *The Role of Mitigating Factors in Capital Sentencing Before and After* McKoy v. North Carolina, 24 JUSTICE QUARTERLY 357 (2007).

[10] SAMUEL R. GROSS & ROBERT MAURO, DEATH AND DISCRIMINATION: RACIAL DISPARITIES IN CAPITAL SENTENCING 38-39 (1989).

suspected of killing Whites, for a ratio of 3.25 (3.9 ÷ 1.2). Clearly, this disparity begs for an explanation. It could be that homicides with White victims are more aggravated and more consistent with statutory definitions of what types of homicides are appropriate for a death sentence, or it could be that because of conscious or unconscious racial bias, homicides with White victims are deemed "worse" or "more deserving of severe punishment" than homicides with Black victims.

18. Using the "chi-square" test (or χ^2 as it is written in statistics texts), the data in Table 1 form a "statistically significant" relationship. The χ^2 test is one of the oldest in statistics, and among the most commonly used. It is a test to determine if two variables (e.g., race and death sentencing) are independent, or if there is an association between the two. The observed results are compared to what would be expected if the two variables are indeed independent. Traditionally, relationships are said to be "statistically significant" if the chances that the observed results would come from a population in which the variables are indeed independent are less than or equal to five percent.[11] In Table 1, the probability that these patterns would be obtained if death sentencing is, in reality, unrelated to the race of the victim is less than one out of 1,000. A P-value of .001 is the probability that the chi-squared statistic would take a value at least as large as observed if the variables were actually independent.

19. Table 2 shows that our measures of "additional legally relevant factors" (hereinafter called "additional factors") are excellent predictors of who is sentenced to death. Overall, only one percent of the cases in which there are no additional factors end with a death sentence, compared to 7.1 percent of those with one additional factor present and 32 percent of those with two. If homicides with White victims have more additional factors present than homicides with Black victims, then the relationship observed in Table 2 between victim's race and death sentencing would be explained by legally relevant factors. Table 3 shows that in each of the time periods analyzed (1980-1989 and 1990-2007), the higher the number of additional legally relevant factors, the higher the probability of a death sentence.

20. However, the data in Table 4 show that the reason why the probability of a death sentence is higher for those who are suspected of killing Whites than for those who are suspected of killing Blacks is not because the former cases tend to be more aggravated. Regardless of whether there are zero, one, or two additional legally relevant factors present, cases with White victims are more likely to result in a death sentence than are cases with Black victims. In cases with no additional factors, those with White victims are 2.5 times more likely to end with a death sentence than those with Black victims (.015 ÷ .006). In cases where one additional factor is present, those with White victims are three times more likely to result in a death sentence than homicides with Black victims (.106 ÷ .035). In cases with two additional factors, the ratio is 2.07 (.468 ÷ .226). Thus, the data clearly show that the reason why White-victim cases are more likely than

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[11] *See, e.g.*, ALAN AGRESTI & BARBARA FINLAY, STATISTICAL METHODS FOR THE SOCIAL SCIENCES, 3d ed. 253-60 (1997).

Black-victim cases to result in a death sentence is not because the former types of homicides are more aggravated.

21. Table 5 shows that the probability of a death sentence is remarkably consistent across time periods. In the 1980s, 2.7 percent of all homicides resulted in a death sentence, compared to 2.3 percent in the period 1990-2007. This difference in death sentencing rates between time periods is not statistically significant. Similarly, Table 6 shows that the probability of death sentences by the race of the victim has changed little between the two time periods. In the 1980s, those suspected of killing Whites were 3.3 times more likely to be sentenced to death than those suspected of killing Blacks (.043 ÷ .013). Between 1990 and 2007, this ratio declined a bit to 3.0 (.036 ÷ .012).

22. Finally, Table 7 cross-classifies the probabilities of a death sentence with the three major variables used in this study: Victim's race, number of additional legally relevant factors, and time period (1980-89 and 1990-2007). In both time periods and for each number of additional legally relevant factors, the data show that those who are suspected of killing Whites are more likely to be sentenced to death than those who are suspected of killing Blacks. All of these relationships are statistically significant with the exception of cases from the 1980s where there are two additional factors present. In that cell, cases with White victims are still much more likely than those with Black victims to be sentenced to death (.667 vs. .444), but the small number of cases causes the difference to not attain statistical significance.

B. Multiple Regression Models

23. The remaining Tables presented in this paper use a statistical technique called "logistic regression." This technique is used to predict a dependent variable that has two categories, such as political party (Democratic or Republican), classification as obese (yes or no), or whether or not a death sentence is imposed. That dependent variable is predicted with a series of independent variables, such as gender, income, etc. The model predicts the dependent variable with a series of independent variables, and the unique predictive utility of each independent variable can be ascertained.[12]

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[12] As we have explained elsewhere, "Logistic regression models estimate the average effect of each independent variable (predictor) on the odds that a convicted felon would receive a sentence of death. An odds ratio is simply the ratio of the probability of a death sentence to the probability of a sentence other than death. Thus, when one's likelihood of receiving a death sentence is .75 (P), then the probability of receiving a non-death sentence is .25 (1-P). The odds ratio in this example is .75/.25 or 3 to 1. Simply put, the odds of getting the death sentence in this case is 3 to 1. The dependent variable is a natural logarithm of the odds ratio, y, of having received the death penalty. Thus, y=P / 1-P and (1) $\ln(y) = \hat{a}_o + X\hat{a} + \xi_i$ where $\hat{a}_o$ is an intercept, $\hat{a}_i$ are the i coefficients for the i independent variables, X is the matrix of observations on the independent variables, and ξ_i is the error term. Results for the logistic model are reported as odds ratios. Recall that when interpreting odds ratios, and odds ratio of 1 means that someone with that specific characteristic is just as likely to receive a capital sentence as not. Odds ratios of greater than one indicate a higher likelihood of the death penalty for those offenders who have a positive value for that particular independent variable. When the independent variable is continuous, the odds ratio indicates the multiplicative increase in the odds of receiving the death penalty for each unitary increase in the

24. Tables 1-7 show that three factors are associated with who is sentenced to death for murders in North Carolina: the race of the victim, the presence of additional felony circumstances, and the number of victims. Because the data presented in Table 5 do not show marked variation in death sentencing rates between our two time periods, this variable was not used, although we will present identical models for both time periods so the patterns can be compared. Tables 8a and 8b present the results of the logistic regression analysis for the entire 28 years of the study. The independent variables are victim's race (White or Black), and the number of additional legally relevant factors (none, one or two, where an additional legally relevant factor is either 1) a multiple victim homicide (where the number of victims was coded as 1 or 2 or more), 2) a homicide with accompanying felony circumstances. For purposes of this analysis, the variable measuring "additional legally relevant factors" was measured as (1) one factor vs. none, (2) two factors versus none. The remaining comparison of one factor versus two factors can be estimated by subtracting the two corresponding model parameter estimates.

25. The Tables show that even after the presence of our two additional legally relevant factors are used to explain all the variation in death sentencing that they can (Table 8a), adding the race of the victim to the equation (Table 8b) adds additional explanatory power. Adding the victim's race to the equation significantly improves the model fit, increasing the overall model Chi Square by 87.765, which is statistically significant at less than .001. The Exp (β) for the race of the victim in Table 8b reveals a strong effect. This shows that the odds of receiving a death sentence for killing one or more White victims increase by a factor of 2.96, controlling for the other independent variables in the equation. Thus, 2.96 (the Exp (β) value for White victims) is the odds ratio for an offender who is suspected of killing a White victim being sentenced to death. An odds ratio of exactly 1.0 would mean that the likelihood of receiving a death sentence changed by a factor of 1, or not at all. Here, the results indicate that the odds of receiving a death sentence in a White victim case are on average 2.96 times higher than are the odds of a death sentence in a Black victim case.

26. Tables 9a and 9b repeat this analysis with only the cases from the 1980s, and Tables 10a and 10b use only cases from 1990-2007. For each time period, adding the variable measuring race of victim significantly increases the predictive power of the model. For the 1980s, as shown in Table 9b, adding the race of the victim to the predictive equation improves the model Chi Square by 19.873, which is a significant improvement. Here the odds of a death sentence for those who kill Whites are 2.51 times higher than the odds for cases with Black victims. For the years 1990-2007, as shown in Table 10b, the odds of a death sentence for White victim cases are 3.02 higher than the odds of a death sentence in Black victim cases.

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predictor. Glenn L. Pierce & Michael L. Radelet, *Race, Region, and Death Sentencing in Illinois, 1988-1997*, 81 OREGON LAW REVIEW 39, 59 (2002).

IV.

SUMMARY AND CONCLUSIONS

27. The data presented in this paper show that in the 28 year period, 1980-1997, the race of the victim in homicide cases is a strong predictor of who is sentenced to death in North Carolina. Even after statistically controlling for the level of additional legally relevant factors in the case (accompanying felonies and number of victims), the victim's race remains a powerful determinant of who is and who is not sentenced to death. *Overall, for homicides in North Carolina 1980-2007, the odds of a death sentence for those who are suspected of killing Whites are approximately three times higher than the odds of a death sentence for those suspected of killing Blacks.* This odds ratio varies little if we break the data into two time periods (1980-1989 and 1990-2007). In short, the data clearly support the conclusion that at least over the period 1980-2007, the race of the victim is strongly correlated with the imposition of the death penalty.

Table 1
Race of Victim with Death Sentencing, 1980-2007 (n=14,749)

		Black Victim	White Victim
Death			
	No	8,238 (.988)	6,159 (.961)
	Yes	104 (.012)	248 (.039)
	N	8,342	6,407

Chi-Square equals 107.1; df=1; p <.001.
Missing Cases: 532 (other, mixed, or unknown on race-of-victim)

Table 2
Number of Additional Legally Relevant Factors and Death Sentencing (n=15,281)

		# of Additional Legally Relevant Factors		
		0	1	2
Death				
	No	12,171 (.990)	2,642 (.929)	100 (.680)
	Yes	119 (.010)	202 (.071)	47 (.320)
	N	12,290	2,844	147

Chi-Square equals 921.81; df=2; p <.001.

Table 3
Death Sentences by Number of Additional Legally Relevant Factors by Year (n=15,281)

		Number of Additional Legally Relevant Factors		
		0	1	2
	Death			
	No	4,110 (.989)	634 (.894)	9 (.474)
1980-1989	Yes	46 (.011)	75 (.106)	10 (.526)
	N	4,156	709	19

Chi-Square equals 390.47; df=2; p <.001.

	No	8,061 (.991)	2,008 (.941)	91 (.711)
1990-2007	Yes	73 (.009)	127 (.059)	37 (.289)
	N	8,134	2,135	128

Chi-Square equals 606.17; df=2; p <.001.

Table 4
Death Sentences by Victim's Race by Number of Additional Legally Relevant Factors, 1980-1997 (n=14,749)

		Victim's Race	
		Black	White
0 Factors	Not Death	6,843 (.994)	4,925 (.985)
	Death	41 (.006)	76 (.015)
	N	6,884	5,001
1 Factor	Not Death	1,347 (.965)	1,201 (.894)
	Death	49 (.035)	143 (.106)
	N	1,396	1,344
2 Factors.	Not Death	48 (.774)	33 (.532)
	Death	14 (.226)	29 (.468)
	N	62	62

With No Additional Factors: Chi Square =25.38; p <.001.
With One Additional Factor: Chi Square = 53.42; p <.001.
With Two Additional Factors: Chi Square = 8.01; p=.005

Table 5
Death Sentencing by Year (n=15,281)

		1980-1989	1990-2007
Death			
	No	4,753 (.973)	10,160 (.977)
	Yes	131 (.027)	237 (.023)
	N	4,884	10,397

Chi-Square equals 2.29; df=1; p=.130.

Table 6
Victim's Race by Death Sentencing by Year (n=14,749)

		Victim's Race	
		Black	White
Year			
1980-89	Not Death	2,527 (.987)	2,093 (.957)
	Death	33 (.013)	95 (.043)
	N	2,560	2,188
1990-2007	Not Death	5,711 (.988)	4,066 (.964)
	Death	71 (.012)	153 (.036)
	N	5,782	4,219

Among cases 1980-89, the Chi-Square equals 41.9, 1 df, p <.001.
Among cases 1995-2007, Chi-Square equals 64.08; df=1; p <.001.

Table 7
Death Sentences by Victim's Race by Number of Additional Legally Relevant Factors by Year

Year			Victim's Race Black	White
1980-89, 0 Factors		Not Death	2,304 (.994)	1,687 (.981)
		Death	13 (.006)	32 (.019)
		N	2,317	1,719
1980-89, 1 Factor		Not Death	218 (.932)	403 (.876)
		Death	16 (.068)	57 (.124)
		N	234	460
1980-89, 2 Factors		Not Death	5 (.556)	3 (.333)
		Death	4 (.444)	6 (.667)
		N	9	9

With No Factors: Chi Square =15.14; p <.001.
With One Factor: Chi Square = 5.08; p=.024.
With Two Factors: Chi Square = .900; p=.343

1990-2007, 0 Factors.		Not Death	4,539 (.994)	3,238 (.987)
		Death	28 (.006)	44 (.013)
		N	4,567	3,282
1990-2007, 1 Factor		Not Death	1,129 (.972)	798 (.903)
		Death	33 (.028)	86 (.097)
		N	1,162	884
1990-2007, 2 Factors		Not Death	43 (.811)	30 (.566)
		Death	10 (.189)	23 (.434)
		N	53	53

With No Factors: Chi Square =11.12; p=.001.
With One Factor: Chi Square = 43.49; p <.001.
With Two Factors: Chi Square = 7.44; p=.006.

Table 8a
Logistic Regression Analysis of Victim's Race and Number of Additional Legally Relevant Factors on the Imposition of a Death Sentence
1980-1997 (n=14,749)*

Independent Variables	β	Sig.	Exp (β)
1 Additional Factor**	2.025	<.001	7.58
2 Additional Factors**	3.98	<.001	53.395
Constant	-4.611	<.001	.010

* Death Sentence is coded: 0 = no death sentence (n=14,397), 1 = death sentence (n=352).
** 0=Not present; 1=present.
-2 Log Likelihood = 2865.17; Chi Square = 460.015, df = 2, p. = <.001.

Table 8b
Logistic Regression Analysis of Victim's Race and Number of Additional Legally Relevant Factors on the Imposition of a Death Sentence
1980-1997 (n=14,749)*

Independent Variables	β	Sig.	Exp (β)
Victim Race**	1.086	<.001	2.96
1 Additional Factor***	1.968	<.001	7.16
2 Additional Factors***	3.988	<.001	53.946
Constant	-5.210	<.001	.005

* Death Sentence is coded: 0 = no death sentence (n=14,397), 1 = death sentence (n=352).
** 0=Black; 1=White
*** 0=Not present; 1=present.
-2 Log Likelihood = 2777.40; Chi Square = 547.781, df = 3, p. = <.001.
Model improvement Chi Square = 87.765, df = 1, p. = <.001

Table 9a
Logistic Regression Analysis of Victim's Race and Number of Additional Legally Relevant Factors on the Imposition of a Death Sentence
1980-1989 (n=4,748)*

Independent Variables	β	Sig.	Exp (β)
1 Additional Factor**	2.344	<.001	10.43
2 Additional Factors**	4.708	<.001	110.861
Constant	-4.485	<.001	.011

* Death Sentence is coded: 0 = no death sentence (n=4,620), 1 = death sentence (n=128).
** 0=Not present; 1=present.
-2 Log Likelihood = 985.729; Chi Square = 191.832, df = 2, p. = <.001.

Table 9b
Logistic Regression Analysis of Victim's Race and Number of Additional Legally Relevant Factors on the Imposition of a Death Sentence
1980-1989 (n=4,748)*

Independent Variables	β	Sig.	Exp (β)
Victim Race**	.919	<.001	2.51
1 Additional Factor***	2.159	<.001	8.66
2 Additional Factors***	4.754	<.001	116.08
Constant	-4.979	<.001	.007

* Death Sentence is coded: 0 = no death sentence (n=4,620), 1 = death sentence (n=128).
** 0=Black; 1=White
*** 0=Not present; 1=present.
-2 Log Likelihood = 965.86; Chi Square = 211.705, df = 2, p. = <.001.
Model improvement Chi Square = 19.873, df = 1, p. = <.001

Table 10a
Logistic Regression Analysis of Victim's Race and Number of Additional Legally Relevant Factors on the Imposition of a Death Sentence
1990-2007 (n=10,001)*

Independent Variables	β	Sig.	Exp (β)
1 Additional Factor**	1.898	<.001	6.67
2 Additional Factors**	3.888	<.001	48.828
Constant	-4.682	<.001	.009

* Death Sentence is coded: 0 = no death sentence (n=9,777), 1 = death sentence (n=224).
** 0=Not present; 1=present.
-2 Log Likelihood = 1858.32; Chi Square = 286.487, df = 2, p. = <.001.

Table 10b
Logistic Regression Analysis of Victim's Race and Number of Additional Legally Relevant Factors on the Imposition of a Death Sentence
1990-2007 (n=10,001)*

Independent Variables	β	Sig.	Exp (β)
Victim Race**	1.106	<.001	3.02
1 Additional Factor***	1.897	<.001	6.66
2 Additional Factors***	3.887	<.001	48.76
Constant	-5.292	<.001	.005

* Death Sentence is coded: 0 = no death sentence (n=9,777), 1 = death sentence (n=224).
** 0=Black; 1=White
*** 0=Not present; 1=present.
-2 Log Likelihood = 1798.705; Chi Square = 346.100, df = 3, p. = <.001.
Model improvement Chi Square = 59.613, df = 1, p. = <.001

Further affiant sayeth not.

Michael L. Radelet

Michael L. Radelet

Sworn to and subscribed before me, this the 20th day of July 2010.

Notary Public

My commission expires: 6-26-2012

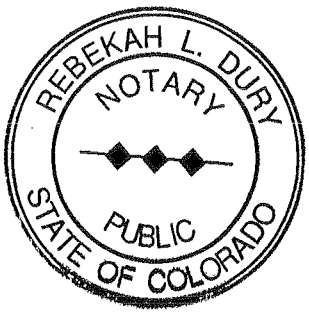

EXHIBIT 4

THE RACIAL JUSTICE ACT AND THE LONG STRUGGLE WITH RACE AND THE DEATH PENALTY IN NORTH CAROLINA

SETH KOTCH & ROBERT P. MOSTELLER*

[88 N.C. L. REV. ___ (forthcoming 2010)]

In August 2009, the North Carolina Legislature enacted the Racial Justice Act ("RJA"), which commands that no person shall be executed "pursuant to any judgment that was sought or obtained on the basis of race." One of the most significant features of the RJA is its use of statistical evidence to determine whether the race of defendants or victims played a significant role in death penalty decisions by prosecutors and jurors and in the prosecutor's exercise of peremptory challenges. The RJA commits North Carolina courts to ensuring that race does not significantly affect death sentences.

This article examines the RJA and North Carolina's long struggle with race and the death penalty. The first part traces the history of race and the death penalty in the state, showing that racial prejudice exerted a consistent, strong, and pernicious influence on the imposition and disposition of death sentences. From colonial times into the 1960s, the overwhelming majority of those executed were African American, and although most victims and perpetrators of crime are of the same race, the overwhelming majority of victims in cases where executions took place were white. Hundreds of African Americans have been executed for a variety of crimes against white victims, including scores of African American men executed for rape. However, just four whites have been executed for crimes against African American victims, all murders.

Not only does data indicate disproportionate racial impact, but events show that race frequently influenced capital prosecutions. In

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many cases in the first half of the twentieth century, juries sentenced African Americans to death in the shadow of lynch mobs. Newspaper reports of executions of African Americans included overtly racist images. In some instances, fairness and mercy eased the pernicious effects of prejudice. However, history shows that whether dooming African Americans or saving them from death, racial prejudice played a powerful role in the death penalty in North Carolina, enduring across the state's history despite enormous social and legal change.

The second part of this article examines major legal changes in the modern period that may limit the influence of racial prejudice by restraining discretion. It shows that discretionary determinations by prosecutors and jurors continue, allowing racial motivation—particularly unconscious racial prejudice toward defendants or empathy for victims—to influence decisions. Some racial disparities are less extreme but have not been eliminated, and troubling features continue. For example, jury participation by African Americans has remained limited in many cases, and the disproportion of white victims seen throughout North Carolina's history is virtually unchanged.

The task of the RJA is to ensure that the strong link between race and the death penalty shown by history is finally severed. In its concluding section, this article analyzes how the key features of the RJA will operate. That analysis, together with the historical record and legal framework of the modern death penalty, provide insight into North Carolina's effort to eliminate the effects of race from the operation of its death penalty.

I. INTRODUCTION

On August 11, 2009, North Carolina Governor Beverly Perdue signed the Racial Justice Act ("RJA") into law.[1] As she did so, she noted her support of the death penalty, but added: "I have always believed it must be carried out fairly . . . The Racial Justice Act ensures that when North Carolina hands down our state's harshest punishment to our most heinous criminals—the decision is based on the facts and the law, not racial prejudice."[2] This article demonstrates that the separation of race from the decision to execute, which is central to Governor Perdue's support for the death penalty, has proven difficult throughout North Carolina history. The RJA attempts to ensure that separation.[3]

This article examines the influence of racial prejudice on the death penalty in North Carolina. This history shows that racial prejudice has had a powerful impact on the death penalty that has continued despite significant legal and social change. Early in this history, race operated overtly, and its effects continued into the twentieth century in more subtle but no less pernicious forms. North Carolina was required to reformulate its death penalty laws to meet new constitutional standards after the United States Supreme Court invalidated all existing death penalty statutes in its 1972 decision, *Furman v. Georgia*.[4] However, despite major changes in law, the exercise of discretion continued, and race may have affected death penalty decisions. This article chronicles the important history of race and the death penalty in North Carolina and develops the legal framework in which the modern death penalty operates. It thereby identifies the critical issues for examination in litigation under the RJA.

With the RJA, North Carolina has chosen for the first time to look squarely at the connection between race and the death penalty. The RJA's opening provision declares that "[n]o person shall be subject to or given a sentence of death or shall be executed pursuant to any judgment that was sought or obtained on the basis of race."[5] In its most direct provision, it commands that "[i]f the court finds that race was a significant factor in

1. Press Release, North Carolina Office of Gov. Bev Perdue, Gov. Perdue Signs North Carolina Racial Justice Act (Aug. 11, 2009), a*vailable at* http://www.governor.state.nc.us/NewsItems/PressReleaseDetail.aspx?newsItemID=554.

2. *Id.*

3. *See* North Carolina Racial Justice Act, N.C. GEN. STAT. §§ 15A-2010 to -2012 (2009). See Appendix for full text of statute.

4. 408 U.S. 238 (1972) (per curiam) (invalidating existing state and federal death penalty statutes because they were capricious in their lack of standards); *see id.* at 310 (Stewart, J., concurring) ("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."); *see also infra* Part III.A.

5. N.C. GEN. STAT. § 15A-2010.

decisions to seek or impose the sentence of death . . . the death sentence imposed by the judgment shall be vacated."[6] It thus expressly forbids execution if the death penalty was sought or obtained on the basis of race. Among its most significant elements is its authorization for defendants to use statistical evidence to prove disparate impact based on the race of the defendant, the race of the victim, or on the use of race in jury selection. The statute provides that such statistical evidence can satisfy the defendant's burden to show discrimination and shift the burden to the prosecution to rebut that showing if the defendant's death sentence is to be sustained.[7]

The history of the death penalty in North Carolina before the last pre-*Furman* execution in 1961 unmistakably shows that the death penalty's strong identification with race during slavery outlived emancipation and extended into the twentieth century.[8] However, the history also reveals some exceptions and moderating effects. For example, throughout much of the first half of the twentieth century, when murder, rape, burglary, and arson carried mandatory death sentences, juries showed mercy by following guilty verdicts with clemency requests for executive clemency that governors honored frequently.[9] Furthermore, North Carolina lawmakers made the state among the first in the nation to switch its method of execution from hanging to electrocution and then from electrocution to asphyxiation by lethal gas, changes intended to make the deaths of all prisoners, white and black, swifter and less painful.[10] Despite these

6. N.C. GEN. STAT. § 15A-2012.

7. *See* discussion *infra* Part IV.B. The RJA goes beyond the restrictive requirements for federal constitutional remedies in criminal law enforcement. *See* McCleskey v. Kemp, 481 U.S. 279, 292 (1987) ("[T]o prevail under the Equal Protection Clause, [the defendant] must prove that the decisionmakers in *his* case acted with discriminatory purpose.").

8. For a list of all prisoners executed under state authority in North Carolina between 1910 and 1961, see M. Watt Espy & John Ortiz Smykla, Executions in the United States, 1608–2002: The Espy File [Computer File], 4th ICPSR ed. Compiled by M. Watt Espy and John Ortiz Smykla, Univ. of Ala. Ann Arbor, MI: Inter-University Consortium for Political and Social Research [producer and distributor], 2004 [hereinafter Espy File]; N.C. Dep't of Corr., Persons Executed in North Carolina 1910–1961, *available at* http://www.doc.state.nc.us/dop/deathpenalty/executed.htm (last visited July 1, 2010) [hereinafter DOC Persons Executed in N.C. 1910–1961]. No executions took place in North Carolina between 1962 and 1983. *See* Espy File, *supra*.

9. *See* Seth Kotch, Unduly Harsh and Unworkably Rigid: The Death Penalty in North Carolina, 1910-1961, ch. 3 (2008) (unpublished Ph.D. dissertation, University of North Carolina at Chapel Hill) (on file with the North Carolina Law Review and *available at* http://gradworks.umi.com/3352719.pdf) (describing various ways mercy was provided in the context of a mandatory death penalty); *see also* Cindy F. Adcock, *The Twenty-Fifth Anniversary of Post-Furman Executions in North Carolina: A History of One Southern State's Evolving Standards of Decency*, 1 ELON U. L. REV. 113, 117–18 (2009) (recounting that during the mandatory period 334 defendants were executed and 221 were granted clemency).

10. *See infra* notes 102–103 and accompanying text.

procedural changes, the racial attitudes of the Jim Crow period informed the imposition of the death penalty,[11] and, as it had done during slavery, North Carolina disproportionately executed African Americans, especially those who committed crimes against whites. This pattern continued from emancipation until the hiatus in executions that began in 1961 in advance of the *Furman* decision.

North Carolina's history reveals a pairing of the desire for progressive change that has bolstered the state's reputation as moderate among southern states and the less forward-thinking attitudes, particularly about race, that have long troubled the South.[12] In this context, its decision to adopt a mandatory sentence of death upon conviction of first degree murder or rape in response to *Furman*, which invalidated all existing death penalty statutes because they failed to constrain jury discretion, was uncharacteristically wooden and harsh. North Carolina's mandatory death sentence was unusual among the states,[13] and it was quickly ruled unconstitutional.[14] The

11. "Jim Crow" refers to the laws and customs in southern states that restricted the political and social lives of African Americans. The Jim Crow era is widely understood to have lasted from the withdrawal of federal troops from the South in 1877 to 1965, when the Voting Rights Act restored the franchise to African Americans. *See generally* MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY (2004) (assessing the role of the Supreme Court in shoring up then dismantling Jim Crow laws); LEON F. LITWACK, TROUBLE IN MIND: BLACK SOUTHERNERS IN THE AGE OF JIM CROW (1998) (describing the lives of black Americans in the Jim Crow South); C. VANN WOODWARD, THE STRANGE CAREER OF JIM CROW (1955) (describing and reflecting on Jim Crow throughout the South).

12. The reputation includes moderation on matters of race despite its own episodes of racial violence. The most notable of these episodes was the 1898 Wilmington "race riot" or "insurrection" in which scores of African American residents were killed and the elected leadership of the state's largest city was deposed, signaling the end of African American political involvement in a coalition between Republicans and Populists that briefly dominated the state at the end of the nineteenth century. *See* DEMOCRACY BETRAYED: THE WILMINGTON RACE RIOT OF 1898 AND ITS LEGACY (David S. Cecelski & Timothy B. Tyson eds., 1998). *See generally* WILLIAM H. CHAFE, CIVILITIES AND CIVIL RIGHTS: GREENSBORO, NORTH CAROLINA, AND THE BLACK STRUGGLE FOR FREEDOM 3–10 (1980) (describing the state's "progressive mystique," cultivated despite harsher social realities); ROB CHRISTENSON, THE PARADOX OF TAR HEEL POLITICS: THE PERSONALITIES, ELECTIONS, AND EVENTS THAT SHAPED MODERN NORTH CAROLINA 1–3 (2008) (giving some brief examples of the limits of progressivism in North Carolina); WILLIAM A. LINK, THE PARADOX OF SOUTHERN PROGRESSIVISM, 1880-1930 (1992) (describing the paradoxical concept of "southern progressivism").

13. For example, Florida, Georgia and Texas did not impose mandatory death sentences, and the Supreme Court upheld those statutes. *See, e.g.*, Proffitt v. Florida, 428 U.S. 242, 242 (1976) (finding that the imposition of the death penalty is valid when judges are given detailed guidance to assist them in deciding whether or not to impose the death penalty); Gregg v. Georgia, 428 U.S. 153, 155 (1976) (finding the Georgia statutory scheme constitutional since it required specific jury findings about the facts of the case and the character of the defendant, while requiring the state supreme court to review the jury verdict to ensure the defendant is not being treated unusually harsh compared to other criminals); Jurek v. Texas, 428 U.S. 262, 262–63 (1976) (upholding the exercise of "channeled" discretion by the jury through differing statutory structures).

RJA is more consistent with North Carolina's moderate tradition and its place in the Upper South.[15] At the same time, the RJA represents a new chapter in the state's history. The command of the RJA to ensure that the complex and pernicious relationship between race and the death penalty is finally severed is the challenging task the legislature has entrusted to the courts.

This article is a combination of history and law.[16] The first half examines the history of the death penalty and race in North Carolina as a colony, during slavery and Reconstruction, and in the Jim Crow period. It culminates in an examination of the first fifty years of state-run executions ending in 1961, when the last pre-*Furman* execution took place. The second half deals with the revised death penalty operating in the modern period, executions during this period, the paths that led defendants to their place on North Carolina's current death row, and the development and details of the RJA.

Part II begins with the state's first recorded execution, which occurred while North Carolina was still a colony. It examines the death penalty's important role in slave owners' mastery over the state's enslaved population, noting that a heavy majority of those executed were black slaves. Slaves were barred by law from serving on the tribunals and juries that decided cases in which they were defendants and/or victims, and the available evidence shows that, except briefly during Reconstruction, jury participation by African Americans was negligible as the Jim Crow era began around the turn of the twentieth century.[17] Under Jim Crow, as before emancipation, the vast majority of those executed were African Americans, and African Americans continued to face systematic exclusion from jury service. During the entire period, only two whites were executed for crimes against African American victims.[18]

14. *See* Woodson v. North Carolina, 428 U.S. 280, 305 (1976). *Woodson* is discussed further in *infra* notes 29–31 and accompanying text. Louisiana also chose a mandatory model, but, even though its crime definition was more precisely tailored than North Carolina's, it too was declared unconstitutional for the same reasons the Court gave in *Woodson*—the inherent vice of any mandatory imposition of death is a failure to focus on the circumstances of the particular offense and the character and propensities of the offender. *See* Roberts v. Louisiana, 428 U.S. 325, 331–36 (1976).

15. Kentucky is the other state to have a racial justice act. *See* KY. REV. STAT. ANN. §§ 532.300–.309 (2008). The Kentucky statute differs significantly with the North Carolina Racial Justice Act, and, indeed, those differences are an important part of the interpretative history of the RJA because it helps define important differences in intended effect. *See infra* Part IV.C.

16. The historical development in this article is the principal responsibility of historian Seth Kotch. The developments after the 1972 *Furman* decision are the principal responsibility of Robert Mosteller, a member of the University of North Carolina law faculty.

17. *See supra* note 11 (providing references describing "Jim Crow" period in the South).

18. The first white person executed for a crime against an African American was Mason Scott who was executed in 1820 for the murder of a slave belonging to another white man. *See*

Part II continues as it sets out the history of the imposition of the death penalty from 1910 until 1961. The year 1910, almost a century before the passage of the RJA, was selected as the starting point because in that year the state assumed responsibility for executions. Sheriffs were relieved from publicly hanging prisoners in the counties where their crimes took place, and instead state prison staff conducted more private executions in a death chamber in Raleigh.[19] This Part ends in 1961 when the state of North Carolina executed its last prisoner until lawmakers revamped its capital punishment statute following the *Furman* decision.

An examination of events and executions in North Carolina during this period shows that race played a powerful role in the death penalty process. Some African American defendants were quickly charged, tried, convicted, sentenced to death, and executed under a shadow of racial hostility.[20] In rape cases, the vast majority of those executed were African American men sentenced for crimes against white women, and no whites were executed for the rape of African American women.[21] All those executed for burglary were African Americans.[22] Between 1910 and 1961, only one white person was executed for a crime against an African American.[23]

Although the death penalty was not exclusively imposed on African Americans, it was principally reserved for them, a fact that was deeply embedded in the mindset of the state's populace. In 1911, a white prisoner slashed his own throat before being transported to death row, explaining that "'he would not be the first white man electrocuted in North Carolina.'"[24] Between 1910 and 1961, approximately sixty other white people were executed. However, over that period, the state executed 362 people, of whom 283 were African Americans. Thus, 78% of those

infra note 71 and accompanying text. The second was Daniel Keath, who was executed in 1880 for the murder of a child. Although Keath was charged only with murder, the victim's body showed evidence of sexual assault. *See infra* note 88.

19. This shift, while superficially an administrative detail, had important consequences because it placed a visible state agency in charge of the execution process. This change implicated state legislative concerns regarding execution method, which became its own significant element in the history of efforts to perfect the process and make executions less visibly painful. *See infra* note 103.

20. *See infra* Part II.B.1.

21. *See infra* Part II.B.2. Also, as the case of Alvin Mansel demonstrates, the conviction of an African American man for the rape of a white woman sometimes occurred based upon weak evidence. *See infra* II.B.1.b.

22. *See infra* Part II.B.2.

23. *See infra* note 184 (describing the conviction of Milford Exum, who was executed in 1938 for murdering an African American while robbing him in his home).

24. *First White Man is Electrocuted*, NEWS & OBSERVER (Raleigh, N.C.), Feb. 25, 1911, at 7. His efforts at suicide were unsuccessful and he became the first white man executed. *See also* Kotch, *supra* note 9, at 101 n.33.

executed were African American, and, including Native Americans, 80% were members of a racial minority.[25] These extreme percentages present a daunting challenge to explain on grounds that do not include race.

It is only at the middle of the twentieth century that instances of African Americans serving on juries in capital cases can be found.[26] Prior to the mid-twentieth century, African Americans were not included in meaningful numbers in the jury pool from which jury venires and trial juries were selected.[27] However, subsequent decisions of the United States

25. *See infra* notes 108–109 and accompanying text.

26. *See* Miller v. State, 237 N.C. 29, 40, 74 S.E.2d 513, 521 (1953) (noting that three African Americans served on a jury in the trial of an African American defendant in a capital case); State v. Roman, 235 N.C. 627, 628, 70 S.E.2d 857, 857 (1952) (showing that four African Americans served on the jury in the trial of an African American sentenced to death). Systematic data regarding jury service in particular cases are generally unavailable for cases prior to the last few decades and the principle source of information is litigation reflected in reported cases.

27. *See infra* Part II.B.6. For example, in *State v. Speller*, 229 N.C. 67, 70–71, 47 S.E.2d 537, 538–39 (1948), the Supreme Court of North Carolina overturned the conviction of Raleigh Speller, an African American, for rape, reversing the denial of his motion to quash the indictment because African Americans had been improperly excluded from service on the grand jury that indicted him. The Supreme Court recounted the facts as follows:

> The Register of Deeds of the County testified that he had been Clerk of the Board of County Commissioners for 17 years; that Negroes comprise approximately 60% of the population of the County, and about 35% or 40% of the taxpayers; that the names of Negroes in jury box No. 1 are printed in red, while those of Whites are printed in black; that the Commissioners pass upon the person whose name is drawn, and either accept or reject such person when called; that in his 17 years as Clerk to the Board of County Commissioners he had never seen the name of a Negro placed on the approved list of prospective jurors; that it is "common knowledge, and generally known, that Negroes do not serve and have not served on grand or petit juries in Bertie County"; that he knows some of the Negroes whose names have been drawn and rejected and he would say they are average citizens; that "whenever the name of a colored person was called at a drawing of the County Commissioners nobody said anything", or they would say: "Strike him out" or "Let him go"; that according to his records no Negro has ever been summoned for jury duty by the County Commissioners . . . .
>
> The Chairman of the Board of County Commissioners testified that there had been "no discrimination at all" in the selection of persons to serve on juries; that he had never "known a Negro's name to be on the list of persons chosen for service on a grand or petit jury", but that all rejections were for want of good moral character and sufficient intelligence.

Id. at 68–69, 47 S.E.2d at 537–38.

The trial court nevertheless held that there was "no intentional or purposeful discrimination against the colored race in the selection of jurors." *Id.* at 69, 47 S.E.2d at 538. Speller was ultimately convicted and sentenced to death by an all white jury for raping a white woman, and his conviction was affirmed on appeal. *See* State v. Speller, 230 N.C. 345, 347, 53 S.E.2d, 294, 295 (1949) (noting that the defendant was Negro and the victim was a white woman); State v. Speller, 231 N.C. 549, 550, 57 S.E.2d 759, 759–60 (1950) (concluding that the defendant had no right to be tried by a jury that contained members of his race but only the right not to be tried by a jury from which members of his race have been unlawfully excluded, and concluding that the seven Negroes on the list from which the jurors were summoned was sufficient to satisfy that requirement). The Federal District Court denied habeas relief, finding "no discrimination against the negro race as such, and the ratio of negroes to whites in the jury

Supreme Court forced jurisdictions to select juries from pools that were broadly inclusive of the jurisdiction's population, which had the effect of including African Americans in meaningful numbers in many jury venires. Although challenges to the composition of jury venires did not end, the primary focus of litigation shifted to exclusion from jury service by the prosecutor's exercise of peremptory challenges.[28]

Part III begins when North Carolina reestablished the death penalty after *Furman*. Because of North Carolina's false start with an invalid mandatory death penalty for designated crimes, which was ruled unconstitutional in *Woodson v. North Carolina*,[29] a valid post-*Furman* death penalty statute was not enacted until 1977.[30] Over twenty years passed between the last pre-*Furman* execution in 1961 and the resumption of executions in 1984.[31] North Carolina executed forty-two men and one woman under the new statute.[32] As of July 1, 2010, 159 men and women were confined on North Carolina's death row awaiting further review of their death sentences and execution.[33]

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boxes, in the light of the well known fact that the proportion of whites qualified for jury service is much higher than that of negroes who are so qualified, is not sufficient . . . to support the burden resting upon the petitioner to show actual discrimination." *See* Speller v. Crawford, 99 F. Supp. 92, 97 (E.D.N.C. 1951). Speller was executed in 1953. *See* Charles Craven, *Two Rapists Pay with Lives after Long Death Row Wait*, NEWS & OBSERVER (Raleigh, N.C.), May 30, 1953, at 1.

28. *See infra* Part III.B.3.

29. 428 U.S. 280 (1976).

30. In 1977, North Carolina enacted N.C. GEN. STAT. § 15A-2000 (1978), which was ruled constitutional by the Supreme Court of North Carolina in *State v. Barfield*, 298 N.C. 306, 343–55, 259 S.E.2d 510, 537–44 (1979).

31. Executions resumed with the execution by lethal injection of James Hutchins on March 16, 1984. *See* N.C. Dep't of Corr., Executions Carried out Under Current Death Penalty Statute, http://www.doc.state.nc.us/dop/deathpenalty/executed.htm (last visited July 1, 2010) [hereinafter DOC Post-*Furman* N.C. Executions].

32. *Id.* North Carolina's forty-three post-*Furman* executions place it eighth among the states. Nine of the top ten states in executions are in the South. In order of executions since 1976, the states are: Texas–460, Virginia–107, Oklahoma–92, Florida–69, Missouri–67, Georgia–47, Alabama–46, North Carolina–43, South Carolina–42, Ohio–38, Louisiana–28, Arkansas–27, Arizona–23, Indiana–20, Delaware–14, California–13, Nevada–12, Illinois–12, Mississippi–12, Utah–7, Tennessee–6, Maryland–5, Washington–4, Kentucky–3, Montana–3, Nebraska–3, Pennsylvania–3, Oregon–2, Colorado–1, Connecticut–1, Idaho–1, New Mexico–1, South Dakota–1, and Wyoming–1. *See* State by State Database, Death Penalty Information Center, http://www.deathpenaltyinfo.org/state_by_state (last visited July 1, 2010).

33. North Carolina has the seventh largest death row population in the United States. In order of death row population, the states are: California–690, Florida–403, Texas–340, Pennsylvania–225, Alabama–199, Ohio–175, North Carolina–169, Arizona–129, Georgia–108, Tennessee–92, Oklahoma–86, Louisiana–84, Nevada–78, South Carolina–63, Mississippi–59, Missouri–52, Arkansas–43, Kentucky–36, Oregon–33, Delaware–19, Idaho–18, Indiana–17, Virginia–15, Illinois–15, Nebraska–11, Connecticut–10, Kansas,–10, Utah–10, Washington–9, Maryland–5, Colorado–3, South Dakota–3, Montana–2, New Mexico–2, New Hampshire–1, Wyoming–1. *See id*. Because of a difference in the treatment of defendants who face possible resentencing, the number shown above for North Carolina's death row (169) differs from that

Part III traces the process leading to enactment of a constitutionally valid death penalty statute in North Carolina and renewed executions. It examines the development of the present death penalty law, looking at both the changes made in the system that existed before *Furman* and in the elements of that new system that permit continuity of racially discriminatory practices. In general, the new law limited but did not eliminate the operation of discretion in decisions to seek and to impose the death penalty.

Almost four hundred defendants have been sentenced to death in North Carolina since the *Furman* and *Woodson* decisions.[34] This Part traces the complex process that sorted these individuals into four different groups. One large group comprises the current death row population to which the Racial Justice Act applies.[35] Another slightly larger group was granted relief by judicial action for a number of different reasons or received executive clemency and has been removed from death row. A small group died outside the judicial process while on death row. The final group consists of forty-three defendants who were executed. As in the previous two periods, only one white person in this period was executed for the murder of an African American.[36]

Part III then examines the historical and continuing importance of the race of the victim in the imposition of death sentences in post-*Furman* executions.[37] Today, while African Americans and minority group members are disproportionately represented among defendants relative to their population percentage, the disparity is somewhat smaller than in earlier periods. However, the figures show clear continuity for race of victims. White victims have predominated in all periods for those executed and for those currently awaiting execution despite the fact that a very heavy

presented in the remainder of this article (159), which is based on North Carolina Department of Corrections data. North Carolina's death row is the seventh largest using either total.

34. *See infra* Part III.B.1 (describing 391 defendants sentenced to death since the *Woodson* decision). These defendants are listed in two documents developed by the North Carolina Department of Corrections. *See* N. C. Dep't of Corr., Offenders on Death Row, http://www.doc.state.nc.us/dop/deathpenalty/deathrow.htm (last visited July 1, 2010) [hereinafter DOC Offenders on Death Row]; N.C. Dep't of Corr., Persons Removed from Death Row, http://www.doc.state.nc.us/dop/deathpenalty/removed.htm (last visited July 1, 2010) [hereinafter DOC Persons Removed from Death Row]. The data presented in this article corrects a handful of errors found in these documents, which include a few instances of double entries for defendants and several misidentifications of racial categories. Racial descriptions are corrected using other DOC data and amplified as described in specific footnotes. *See infra* notes 266, 268, 272.

35. The RJA also applies to defendants tried on capital charges after the enactment of the statute. *See* 2009 N.C. Sess. Laws 464 § 2 reproduced in the Appendix; s*ee also infra* Part IV.E.

36. *See* State v. Smith, 305 N.C. 691, 693–98, 292 S.E.2d 264, 266–69 (1982) (detailing Kermit Smith's crimes of kidnapping, raping, and murdering an African American woman which led to his execution in 1995).

37. *See infra* Part III.B.

majority of murders are committed by defendants against members of their own race. Indeed, there is only a minor reduction in the percentage of white victims in the death penalty cases examined before and after *Furman*.

Part III also examines the importance of unconscious racial motivation in contemporary death penalty sentencing.[38] As public expressions of racially biased attitudes have become less frequent, unconscious discriminatory motivation has taken on greater significance. Such unconscious racial motivation, which is relevant under the RJA, is often particularly important when considering race-of-the-victim discrimination. Finally, this Part examines the continued limited presence of African Americans on juries. While discrimination in the exercise of peremptory challenges is more easily challenged,[39] relatively few African Americans have served on death penalty juries. Moreover, many defendants on death row were tried by juries without any African American members.[40]

Part IV analyzes the legal issues involved in the interpretation and application of the RJA. The critical provision of the statute is that "[n]o person shall be subject to or given a sentence of death or shall be executed pursuant to any judgment that was sought or obtained on the basis of race."[41] As noted earlier, the legislature's decision to allow defendants to present statistical evidence supporting the disparate impact of race regarding the defendant, the victim, and jury selection has enormous significance. It means that, unlike in federal constitutional remedies in criminal law enforcement, proof is not restricted to intentional discrimination. Instead, statistical evidence regarding disparate impact may be used to meet the defendant's burden for relief. If the defendant presents sufficient statistical evidence, then the burden shifts to the prosecution to rebut the inference of discrimination.

II. THE HISTORY OF RACE AND EXECUTIONS IN NORTH CAROLINA

A. From Slavery to the Twentieth Century

The death penalty process in North Carolina has changed a great deal since colonial authorities first imposed it with the hanging of a Native American man in 1726,[42] but key features have shown remarkable

38. *See infra* Part III.B.2.b.

39. *See* Batson v. Kentucky, 476 U.S. 79, 79 (1986) ("The principle . . . that a State denies a black defendant equal protection when it puts him on trial before a jury from which members of his race have been purposefully excluded is reaffirmed."); *see also infra* Part III.B.3.

40. *See infra* note 355 (listing thirty cases of death row defendants whose juries had no African American members).

41. N.C. GEN. STAT. § 15A-2010 (2009).

42. *See* Espy File, *supra* note 8. For an early history of the death penalty and other punishments in North Carolina, see generally DONNA J. SPINDEL, CRIME AND SOCIETY IN NORTH

resilience. This Part briefly explores the interaction of race with the death penalty between that hanging, which occurred when North Carolina was a colony, and 1910, when the state assumed responsibility for executions.[43] In this period, as in those that followed, the death penalty was used primarily against African Americans, principally in cases where whites were the victims, and upon verdicts by tribunals or juries that excluded African American participation.[44] Although the laws and practices that define the death penalty have changed, the influence of race, though moderated, has endured.

1. Colonial Settlement to Emancipation

In this limited space, it is possible to describe only the broad features of the history of slavery and the death penalty. One such feature is clear: those executed were principally African Americans.[45] African Americans, most of them slaves, constituted 71% of the 242 people executed from 1726 to 1865.[46] For the minority of capital cases that involved white

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CAROLINA, 1663–1776 (1989); Albert Coates, *Punishment for Crime in North Carolina*, 17 N.C. L. REV. 205 (1939).

43. *See infra* notes 102–103 and accompanying text.

44. It is difficult to know how many, if any, African Americans served on juries trying capital cases before the end of slavery because of the potential service of free blacks living in the state. However, because the free black population in the state was very small, ranging from less than 1% of the state's population in 1790 to a little more than 3% in 1860, a substantial presence by blacks on capital juries is not a realistic possibility. *See* North Carolina – Race and Hispanic Origin: 1790 to 1990, http://www.census.gov/population/www/documentation/twps0056/tab48.pdf. [hereinafter 1790 to 1990 Census]. Slaves would have been excluded from jury service until the end of the Civil War by the requirement of early North Carolina constitutions that jurors be "good and lawful men." *See* N.C. CONST. of 1776, art. IX. The Constitution of 1868 and Reconstruction brought a brief era of black jury participation. One case in eastern North Carolina saw fifty men, twenty-five white and twenty-five black, produced for jury selection. State v. Holmes, 63 N.C. 18, 21 (1868). Four African Americans were picked for the jury. *Id*. However, Reconstruction, which ended in stages, was over by 1875. *See* Joseph A. Ranney, *A Fool's Errand? Legal Legacies of Reconstruction in Two Southern States*, 9 TEX. WESLEYAN L. REV. 1, 9–10 (2002) (describing the series of political events that signaled its end). Following this brief period of participation by blacks, examination of cases challenging exclusion of African Americans from jury service suggest that the constitutional command established by *Strauder v. West Virginia*, 100 U.S. 303 (1879), had little effect in putting African Americans on juries during this period. *See id.* at 309 ("It is not easy to comprehend how it can be said that while every white man is entitled to a trial by a jury selected . . . without discrimination against his color, and a negro is not, the latter is equally protected by the law with the former."); s*ee also infra* Part II.B.6.

45. *See* Espy File, *supra* note 8. Between 1790 and 1870, the African American population ranged from 26.6% to 36.6% of the total population. *See* 1790 to 1990 Census, *supra* note 44.

46. This figure excludes a group of wartime deserters who were executed in North Carolina in 1864. A total of 172 African Americans and sixty-six whites (excluding the deserters), which constitutes 25% of the total, were executed over this period. *See* Espy File, *supra* note 8. If the twenty-two white deserters are included, 65% of those executed were African American and 32% were white. *Id.* It is likely that the number of slaves executed under state authority, and certainly

defendants and victims, the death penalty during slavery appears to have functioned much as it did in jurisdictions without slavery.[47] However, executions of whites were relatively infrequent, and periods of up to twenty years passed without the execution of a white person.[48]

These disparities arose in part from the way North Carolina's court system dealt with slaves accused of crimes. Beginning in 1715 and continuing until shortly after statehood,[49] punishment for crimes committed by slaves, including the death penalty, was directed under the state's slave code.[50] The code established a separate tribunal to try slaves, restricting its membership to slave owners.[51] Even after jurisdiction over slave trials was

with the tacit approval of law, was much higher than this number. In addition to those slaves formally executed, many were killed by their owners, killed during attempts at apprehending them, killed after being designated as outlaws, or killed during the commission of a crime. *See* MARVIN L. MICHAEL KAY & LORIN LEE CARY, SLAVERY IN NORTH CAROLINA, 1748–1775, at 74, 77, 81–82, 136 (1995) [hereinafter SLAVERY IN NORTH CAROLINA] (confirming eighty-six executions of slaves under state authority between 1748 and 1772 alone). The number of slave executions was likely affected by the fact that owners were often compensated for their economic loss. Between 1734, when the colony executed its first slave, and 1789, slave owners appear to have been compensated for more than 80% of confirmed slave executions. *See* Espy File, *supra* note 8 (listing payments but providing somewhat unclear information because of the use of a single designator for slave compensations paid to owners and fees paid to executioners). However, the frequent compensation to slave owners is well documented. *See* Marvin L. Michael Kay & Lorin Lee Cary, "*The Planters Suffer Little or Nothing": North Carolina Compensation for Executed Slaves, 1748–1772*, 40 SCI. & SOC'Y 288, 306 (1976) (observing that compensation systems insured that "the capital punishment of slaves did not directly harm slave owners economically").

47. White defendants were executed for crimes against the state and public order, such as counterfeiting, insurrection, and assisting runaway slaves, occasionally against property, such as horse stealing, and most frequently for crimes of violence. *See* Espy File, *supra* note 8. The execution of whites for aiding runaway slaves provides one clear difference between North Carolina and states without slaves. The death penalty for aiding runaway slaves, like that for insurrection, punished a crime against the state committed by one of its citizens who was a member of the ruling racial majority. *See id.*

48. *See* Espy File, *supra* note 8. No executions of whites occurred from 1752–1762 and from 1773–1793. *Id.*

49. In 1793, jurisdiction was transferred to the county courts. *See* 1793 N.C. Sess. Laws ch. 381 §1. In 1816, jurisdiction of felony cases involving slaves was transferred to superior court. *See* 1816 N.C. Sess. Laws ch. 912 §1.

50. *See* 1715 N.C. Sess. Laws ch. XLVI § XI (creating "slave court"). Legislation enacted in 1741, inter alia, gave the tribunal the power, upon a guilty determination, of discretion regarding the sentence imposed: "to pass such Judgment upon such Offender, according to their Discretion as the Nature of the Crime or Offence shall require." 1741 N.C. Sess. Laws ch. XXIV § XLVIII. *See generally* Ernest James Clark, Jr., *Aspects of the North Carolina Slave Code, 1751–1860*, 39 N.C. HIST. REV. 148, 148–51 (1962) (describing early development of the slave code from Virginia law, being compiled in 1712 as the colony's first slave code).

51. *See* Alan D. Watson, *North Carolina Slave Courts, 1715–1785*, 40 N.C. HIST. REV. 24, 25 (1983) (describing slave courts as being made up of justices of the peace, "who were invariably slave owners," and slave owning freeholders). In proceedings before slave courts and later in regular courts, the testimony of slaves and free blacks was not treated equally with that of whites, who were considered "credible witnesses." In some situations, such as when testifying

transferred to the regular courts in the early nineteenth century,[52] slave defendants were tried by juries composed of slave owners.[53] Until the end of the Civil War, slaves were barred entirely from jury service.[54] Free blacks, although extended some protections, were often treated differently than whites under the law, and along with slaves, were subject to the death penalty for rape committed against a white victim, which was not a capital offense if committed by a white man.[55] The role of race in the imposition of the death penalty became particularly conspicuous during the execution process. Slaves were sometimes executed more brutally than whites or were mutilated before execution, and their bodies were sometimes displayed after execution as warnings to other slaves.[56]

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against a white, testimony by African Americans was excluded entirely. *See* 1777 N.C. Sess. Laws ch. 2 § 42 (allowing African Americans to testify against each other but not against whites); State v. Ben, 8 N.C. (1 Hawks) 434, 434–37 (1821) (noting that under prior interpretations of the law a distinction had been drawn between the testimony of a white witness, who was presumed credible, and a slave, whose testimony had to be corroborated because he was not treated by the law as a "credible witness"); Clark, *supra* note 50, at 152–53 (describing testimonial restrictions in various periods and circumstances). Furthermore, conviction rates for accused slaves ran as high as 97%. *See* SLAVERY IN NORTH CAROLINA, *supra* note 46, at 72; s*ee also* Daniel J. Flanigan, *Criminal Procedure in Slave Trials in the Antebellum South*, 40 J.S. HIST. 537, 538–40 (1974) (describing slave owner rationale for separate slave courts).

52. *See supra* note 49.

53. *See* State v. Jim, 12 N.C. (1 Dev.) 142, 144–45 (1826) (rejecting slave's challenge to a jury composed of entirely white slave holders on the basis that the practice was required by law and protected not only the slave owner's property—the defendant—but also protected the slave, who would benefit from the jury's experience with slaves). In *State v. Patrick*, 48 N.C. (3 Jones) 443, 447 (1856), the Supreme Court of North Carolina ruled that the slave defendant could waive his right to require only slave owners serve on the jury. However, in *State v. Arthur*, 13 N.C. (2 Dev.) 217, 219–20 (1829), it held that the slave defendant could not object to the prosecutor striking prospective jurors for cause because they were not slave owners, which the statutory law specified as a qualification for service on a jury that tried a criminal charge against a slave.

54. Slave status was incompatible with the basic definition of juror eligibility. *See, e.g.*, N.C. CONST. of 1791, art. IX (limiting jury service to "good and lawful men").

55. Legislation enacted in 1823 clarified that assault with intent to commit rape upon a white woman by any "person of colour" was punishable by death. N.C. Sess. Laws ch. LI. Free blacks, although extended some protections in North Carolina courts, were denied much protection, including limitations to their testimony in court. *See* JOHN HOPE FRANKLIN, THE FREE NEGRO IN NORTH CAROLINA 1790–1860, at 82 (1943) (describing how the Supreme Court of North Carolina rejected the competency of a free black as a witness). The law, if enforced, would have given free blacks the right to a trial by jury and the privilege of counsel. *See id.* at 84–86 (describing free blacks' right to trial by jury and representation by counsel for a variety of offenses). However, "the legal status of the free Negro in North Carolina . . . represented liberalism in some respects, extreme conservatism in others, and contradictions in many." *Id.* at 95; *see also id.* at 81–101 (describing the complicated legal status of free blacks).

56. Slaves were sometimes burned to death, *see* Esp51y File, *supra* note 8 (noting that eight slaves were burned to death between 1760 and 1805), and some who were hanged were first mutilated, including by castration. Nearly half of the slaves executed in the colonial period suffered "comparatively brutal executions." *See* SLAVERY IN NORTH CAROLINA, *supra* note 46, at 81. Historian Alan Watson describes the court-ordered public display of the severed heads of executed slaves. *See* Watson, *supra* note 51, at 33–34 (describing orders in two specific cases and

The disparities between whites and enslaved African Americans under the law found vivid expression in *State v. Mann*.[57] According to this 1829 decision, a slave owner could not be punished for physical assault against his slave,[58] and so masters and those acting under their authority were free to impose discipline short of death outside the courts.[59] They did so often.[60] However, the power of slave owners to punish summarily did not formally include the right to execute.[61] In fact, beginning in 1774, the willful and malicious killing of a slave by any white person was made punishable as a crime, with some significant exceptions.[62] Moreover, many slave owners believed that public executions served an important purpose in deterring misbehavior among the slave population at large.[63] Thus, the state-sanctioned death penalty was not only the required legal method of executing slaves but also the ultimate method for slave owners to enforce slave discipline. It sealed the strong link between capital punishment, slavery, and race during this period of North Carolina's history.[64]

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noting other decapitations); SLAVERY IN NORTH CAROLINA, *supra* note 46, at 81 (describing the practice generally and noting another instance of beheading); *see also* KIRSTEN FISCHER, SUSPECT RELATIONS: SEX, RACE, AND RESISTANCE IN COLONIAL NORTH CAROLINA 180–81 (2002) (describing castration as a substitute for execution in some cases).

57. 13 N.C. (2 Dev.) 263 (1829).

58. *See id.* at 266 (ruling that a master was not subject to indictment for battery upon his slave, noting that "[t]his discipline belongs to the state of slavery").

59. *See* James M. Wynn, Jr., State v. Mann: *Judicial Choice or Judicial Necessity*, 87 N.C. L. REV. 991, 1005 (2009) (discussing the anomaly of whether a serious assault was even a crime—based on the fortuity of whether the slave survived the assault—when the slave survived, there was no crime; when the slave died, it was murder).

60. *See* SLAVERY IN NORTH CAROLINA, *supra* note 46, at 73–74 (describing slave owner correction of slaves for various infractions under a system of "plantation justice").

61. *See id.* at 74–75.

62. Under the 1774 Act, the punishment for the willful and malicious killing of a slave by a white person in the first instance depended upon whether the murderer was the slave owner who was subject to imprisonment for twelve months. *See* 1774 N.C. Sess. Laws ch. XXXI §1 ("An act to prevent the willful and malicious killing of slave."). If he was not the slave's owner, he was also to pay the owner the value of the slave and be committed to jail until he made payment. *See id.* § 2. On the second conviction, the murderer was to be sentenced to death without the benefit of clergy, regardless of whether he was the owner or not. *See id.* § 1. Three exceptions were recognized for such killings: outlawed slaves, any slave in the act of resistance to his owner or master, and slaves dying under "Moderate Correction." *Id.* § 3.

63. The 1715 slave code instructed slave owners to make sure their slaves were executed publicly "to the Terror of other Slaves." SLAVERY IN NORTH CAROLINA, *supra* note 46, at 91; *see also* Watson, *supra* note 51, at 33–34 (noting that masters sometimes brought their slaves to witness executions "in hope of deterring possible future offenders" and describing the public display of decapitated heads as part of the "object lesson" to "impress slaves with the gravity of criminality").

64. How fully the statutory sanctions were enforced regarding lethal violence against slaves by owners is impossible to assess as is quantifying the degree of extra-judicial lethal violence that continued during slavery outside legal executions.

Race-of-the-victim information has not been systematically gathered for the slave period, but reported cases, historical studies, information about the crimes in question,[65] and the legal status of slave victims as their owners' property show that whites were almost exclusively the victims in cases where executions occurred. The execution of a white person for any crime against an African American was not authorized by law until the 1774 legislation, which made the second conviction for willful and malicious killing of a slave by a white person punishable by death.[66] However, enforcement of this law and similar laws that followed almost never resulted in execution. For example, the first successful prosecution of a white person charged with murdering an African American did not come until after the enactment of a statute in 1791 that appeared to make the willful and malicious murder of a slave a capital offense.[67] Nevertheless, ten years later, the Supreme Court of North Carolina declared the statute invalid.[68] The legislature enacted a revised statute, and, in 1820, the court affirmed the first white person's death sentence for killing a slave.[69] From then until emancipation, five white men were sentenced to death for murdering slaves.[70] But just one, who murdered a slave belonging to another man, was executed.[71]

65. In his examination of slave courts, Alan Watson reports that, among cases from 1755 to 1790 in which executions occurred and claims for compensation were filed, "[m]ost of the victims or intended victims were white, though they were infrequently masters or mistresses." Watson, *supra* note 51, at 31 n.27. Also, the nature of the crime offers clues as to the race of the victim. For example, under the law, all executions for rape involved white victims. *See* Espy File, *supra* note 8 (showing African Americans executed for rape in 1831 and 1837); *supra* note 55; *infra* note 77. Also, for the twenty-five African Americans who were executed for slave revolt (twenty-three in 1802 and two in 1831), the "victims" logically should be considered white. *See id*. The executions in 1802 and 1831 followed widely publicized revolts in Virginia led by Gabriel Prosser and Nat Turner. *See* Jeffrey J. Crow, *Slave Rebelliousness and Social Conflict in North Carolina, 1775–1802*, 37 WM. & MARY Q. 79, 79–102 (1980) (describing the 1802 revolt in North Carolina).

66. *See* 1774 N.C. Sess. Laws ch. XXXI §1.

67. *See* 1791 N.C. Sess. Laws ch. 348 §2.

68. *See* State v. Boon, 1 N.C. (Tay.) 191, 191–201 (1801) (finding inconsistencies between statutory language and common law usage in capital cases).

69. *See* State v. Scott, 8 N.C. (1 Hawks) 24, 34–35 (1820) (interpreting 1817 N.C. Sess. Laws ch. 18 as creating a capital offense); *see also* State v. Reed, 9 N.C. (2 Hawks) 454, 456–57 (1823) (giving statute same application).

70. *See* State v. Robbins, 48 N.C. (3 Jones) 249, 254–55 (1855) (affirming sentence of death for a master who killed his own slave); State v. Hoover, 20 N.C. (3 & 4 Dev. & Bat.) 365, 370 (1839) (affirming murder sentence for a master killing his own slave); *Reed*, 9 N.C. at 456–57 (affirming death sentence for the killing of a slave, and although not clearly stated in the opinion, it appears that it was the defendant's own slave); *Scott*, 8 N.C. at 35 (affirming death sentence for killing a slave belonging to another person); State v. Walker, 4 N.C. (Taylor) 662, 667–68 (1817) (affirming sentence of death for killing a slave belonging to another).

71. *See Scott*, 8 N.C. at 34–35; Espy File, *supra* note 8 (showing execution in 1820 of Mason Scott, who was nineteen years old). Walker, who also killed a slave belonging to another person, was pardoned. *See Walker*, 4 N.C. at 669.

During this period, the word "victim," when applied to a slave, did not have its modern meaning. *State v. Hale*,[72] a non-capital case, provides insight into a criminal system that effectively ignored slaves as human victims and instead treated them as the damaged property of their owner, who was considered the injured party or victim. In *Hale*, the Supreme Court of North Carolina approved an indictment for assault upon a slave by a white man other than his master.[73] It justified the prosecution to avoid a breach of the public peace because the assault was "a great provocation to the owner" and also noted that assaults on slaves by whites were usually committed by "men of dissolute habits" from the underclass.[74] The ruling explained that such crimes required punishment because "[i]f such offenses may be committed with impunity, the public peace will not only be rendered extremely insecure [because it "awakens" the owner's resentment], but the value of slave property must be much impaired, for the offenders can seldom make any reparation in damages."[75] Thus, because of a slave's status as property, when a slave was injured or even killed, his owner was considered the party who suffered the loss.[76] African American slaves were more than diminished victims; indeed, in a modern sense, they were not victims at all.[77]

72. 9 N.C. (2 Hawks) 582 (1823).

73. *See id.* at 582–86.

74. *Id.* at 584–85.

75. *Id.* at 585.

76. *See* Andrew Fede, *Legitimized Violent Slave Abuse in the American South, 1619–1865: A Case Study of Law and Social Change in Six Southern States*, 29 AM. J. LEGAL HIST. 93, 130–31 (1985). The owner's status as the injured party operated as well when the slave was killed, and owners often resorted to civil actions to receive compensation for damages to their property rather than pursue criminal sanctions. *See* THOMAS MORRIS, SOUTHERN SLAVERY AND THE LAW, 1619–1860, at 203 (1996) (noting the general use of civil actions and that such actions, and the subsequent bypassing of criminal sanctions, frequently occurred when the killing or injury to the slave was committed by someone who had hired the slave from his owner). Outside the narrow confines of the statute, suits were not intended as punishment for the homicide but for recovery of the value of the slave. Clark, *supra* note 50, at 158 (describing security provided to slaves through civil suit while also noting that such suits were intended, not as punishment, but to recover the slave's value).

77. Whether or not rape was a capital offense when committed by an African American man depended on the race of the victim. It was a capital offense when the victim was white but not when the victim was African American. *See* FRANKLIN, *supra* note 55, at 98–99 (noting that the capital status was based on the defendant's race rather than slave status); SLAVERY IN NORTH CAROLINA, *supra* note 46, at 74. In contrast, for instance, when the "victim" was a slave and the perpetrator was a white man, there could be no conviction for fornication or adultery, "because such a woman had no standing in the courts." JOHN SPENCER BASSETT, SLAVERY IN THE STATE OF NORTH CAROLINA 28 (Herbert B. Adams ed., 1899) (providing this "curious case" based on a statement of Supreme Court Justice Ruffin that the case was decided early in the nineteenth century but not published "in the interest of public morality") *available at* http://docsouth.unc.edu/nc/bassett99/bassett99.html. If the "victim" slave was owned by a different master than the defendant slave, a criminal prosecution would proceed in theory, as in

North Carolina's death penalty law for slaves, although undeniably harsh, was harsher as written than applied in practice: even slave courts handed down fewer death sentences than was within their authority.[78] Furthermore, as slavery ended, the death penalty was narrowed appreciably. In 1868, the number of capital crimes was reduced to four (murder, rape, burglary, and arson)[79] under statutes applicable to both African Americans and whites.

2. Reconstruction to 1910

In the aftermath of the Civil War, North Carolinians had to reinvent their criminal punishment process as emancipation removed slave owners' authority over newly freed African Americans.[80] Seeking to reassert their mastery over these former slaves, white lawmakers passed black codes that

Hale, to support the white owner's interests. When both "victim" and defendant slave were owned by the same master, the master's property interest was divided. Indeed, he would have been obligated to pay for the defense of the defendant slave. *See* Clark, *supr*a note 50, at 152. However, the owner should have had substantial control, particularly for crimes committed on his plantation, over the decision to prosecute. *See* Watson, *supra* note 51, at 24 (noting that slave discipline within the plantation was generally controlled by the owner or master). In any case, executions served an instrumental interest of the owner "to impress slaves with the gravity of criminality," so masters sometimes brought their slaves to witness the executions, and courts sometimes directed the decapitated heads of executed slaves be publicly displayed. *See id.* at 33. Once in court as a defendant, the slave did, in certain situations, have some recognized independent voice. *See* State v. Poll, 8 N.C. (1 Hawks) 442, 444 (1821) (ruling that when a slave did object to removal of the case to another county, the normal right of the slave owner or lawyer for the slave to consent was not effective). However, as a victim, a slave did not appear to have any ability to seek enforcement of the criminal law or civil remedies. *See* Clark, *supra* note 50, at 153 (noting that slaves never received the privilege of instituting proceedings in state courts and had to rely on assistance from supportive whites).

78. *See* Clark, *supra* note 50, at 153, 162–63 (noting that communities sometimes petitioned the governor to grant clemency, that many pardons were granted, and that communities increased efforts during the later years of slavery to grant rights to defendant slaves); Watson, *supra* note 51, at 31–33 (describing unanimity in decisions to convict but little uniformity in sentences, even for crimes such as fomenting a slave rebellion, with "the slave courts fail[ing] to mete out the death penalty on a wholesale basis" but generally limiting it to cases within a subset of capital crimes).

79. *See* N.C. CONST. of 1868 art. XI, §2. *See generally* Coates, *supra* note 42, at 205–06 (describing progression of capital punishment provisions).

80. EDWARD L. AYERS, VENGEANCE AND JUSTICE: CRIME AND PUNISHMENT IN THE NINETEENTH-CENTURY AMERICAN SOUTH 150 (1984). Among the more profound readjustments was the construction of a penitentiary, a move North Carolinians were slow to make. *See id*. at 49–50 (describing North Carolina's referenda votes against construction of a prison). *See* N.C. STATE PRISON DEPARTMENT, BIENNIAL REPORT OF THE STATE PRISON DEPARTMENT: JULY 1, 1930 – JUNE 30, 1932, at 7 (1932); Hilda Jane Zimmerman, Penal Systems and Penal Reforms in the South Since the Civil War 30 (1947) (unpublished Ph.D. dissertation, University of North Carolina at Chapel Hill) (on file with North Carolina Collection, University of North Carolina at Chapel Hill).

limited the rights and controlled the labor of African Americans.[81] At the same time, the federal government offered African Americans practical help in the form of the Freedmen's Bureau,[82] and it promised legal protections with the enactment of the Fourteenth Amendment.[83]

The Fourteenth Amendment was of particular importance to African Americans seeking fuller protection from the law. Senator Jacob Howard of Michigan, who introduced the Amendment, explained that one of its purposes was "prohibit[ing] the hanging of a black man for a crime for which the white man is not to be hanged."[84] In addition, Congressional hearings addressed the unequal treatment of African American victims, with witnesses recounting the widespread but largely unpunished violence against newly freed slaves.[85] However, as Reconstruction ended, and with it federal protection of black defendants and victims of violence, these concerns were largely abandoned or deferred.[86] When the federal

81. *See* James B. Browning, *The North Carolina Black Code*, 15 J. NEGRO HIST. 461, 461–73 (1930) (describing former slave owners' decision to enact black codes and assessing the effects of these restrictions on personal, public, and economic life).

82. *See* ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863–1877, 148–51 (1988) (describing freedmen's belief that the Freedmen's Bureau would protect their new rights); Eric Foner, *Rights and the Constitution in Black Life During the Civil War and Reconstruction*, 74 J. AM. HIST. 863, 880–81 (1987) (describing freedmen's belief that the Fourteenth Amendment would protect their rights and protect them from violence).

83. *See* FONER, *supra* note 82, at 256–57 (describing Republicans' intent that the Fourteenth Amendment guarantee federal protection of the rights of freedmen).

84. CONG. GLOBE, 39th Cong., 1st Sess. 2766 (1866). For more on the black codes and the Fourteenth Amendment, see Michael Kent Curtis, *The Fourteenth Amendment: Recalling What the Court Forgot*, 56 DRAKE L. REV. 911, 991–92 (2008).

85. At Congressional hearings on the inequities of the southern justice system, an officer stationed in North Carolina from July 1865 until January 1866 testified: "Of the thousand cases of murder, robbery, and maltreatment of freedmen that have come before me . . . I have never yet known a single case in which the local authorities or police or citizens made any attempt or exhibited any inclination to redress any of these wrongs or to protect such persons." REPORT OF THE JOINT COMMITTEE ON RECONSTRUCTION, 39th Cong., 1st Sess. 209 (1866). Another officer testified: "There was a case reported in Pitt County of a man named Carson who murdered a [N]egro. There was also a case reported to me of a man named Cooley who murdered a [N]egro near Goldsborough. Neither of these men has been tried or arrested." *Id.* at 213; *see* Lisa Cardyn, *Sexualized Racism/Gendered Violence: Outraging the Body Politic in the Reconstruction South*, 100 MICH. L. REV. 675, 701, 722, 788 (2002) (describing numerous incidents of unpunished violence against African Americans in the South and, specifically, in North Carolina during Reconstruction and the rise of Klan violence, including an inquiry by the United States Senate specially focused on North Carolina before the establishment of the Senate Joint Select Committee in 1871); Jeffrey J. Pokorak, *Rape as a Badge of Slavery: The Legal History of, and Remedies for, Prosecutorial Race-of-Victim Charging Disparities*, 7 NEV. L.J. 1, 20 (2006) (describing unequal application of the law as particularly problematic in failing to prosecute white perpetrators of serious crimes against African Americans).

86. The difficulty of guaranteeing equal treatment for victims and the strength of racial prejudice shortly after the Civil War were shown by *State v. McAfee*, 64 N.C. 339 (1870), in which the court reversed the decision of the trial court to deny defense counsel's proposal to ask the jurors on voir dire, in the trial of an African American man for rape, whether they could "do

government withdrew from North Carolina, African Americans experienced a resurgence of personal violence and legal discrimination.[87]

The use of the death penalty between the end of the Civil War and the beginning of the twentieth century continued to demonstrate the intersection of this violence and racial discrimination. As during slavery, in this period just one white person was executed for a crime against an African American.[88] African Americans represented 74% of the 160 people executed from the end of the Civil War to 1910,[89] even though the African American percentage of the population never exceeded 38%.[90] Other African Americans were victims of another kind of lethal punishment—lynchings. Lynchings, which are discussed further in the next section,[91] became increasingly frequent,[92] brutal,[93] race-based,[94] and southern[95]in the 1880s and 1890s. In some periods, lynchings outnumbered executions.[96]

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equal and impartial justice between the State and a *colored* man." *Id*. at 340 (emphasis in original). In the opinion, Justice Thomas Settle recounted his observations regarding a case, tried shortly after emancipation, in which a victim was an elderly African American killed while doing his farm chores. *See id.* at 340–41; *see also* ALBION W. TOURGÉE, A FOOL'S ERRAND 256–58 (John Hope Franklin ed., Harvard 1961) (1879) (recounting details of the case described by Settle). Prospective jurors were asked if they had any feelings which would prevent them from convicting a white man for the murder of an African American. *See McAffee*, 64 N.C. at 340. Settle recounted that, in addition to the regular panel, the trial court had to order three additional venires of fifty each before he found twelve jurors who did not respond that "they would not convict a white man for killing a negro." *Id*. at 340–41.

87. *See* EDWARD L. AYERS, THE PROMISE OF THE NEW SOUTH: LIFE AFTER RECONSTRUCTION 153–59 (1992); LITWACK, *supra* note 11, at 280–325, 445–47 (1998).

88. *See* Michael L. Radelet, *Execution of Whites for Crimes Against Blacks: Exception to the Rule?*, 30 SO. Q. 529, 533, 539 (1989). In 1880, Daniel Keath was indicted for the murder of a child whose "head was crushed as with a stone, and her body bore marks of violent sexual connection." State v. Keath, 83 N.C. 626, 627 (1880). The victim was an eleven-year-old African American. *See* Radelet, at 539. *See also Hanging in Rutherford*, NEWS & OBSERVER (Raleigh, N.C.), Dec. 19, 1880, at 2. The defendant, who had previously served a prison term in Kentucky, was described as "a horse thief, swindler, bigamist (with three wives), and rapist who drank heavily and had deserted from the Confederate Army." Radelet *supra*, at 539.

89. *See* Espy File, *supra* note 8. Among those executions in this group in which the defendant's race is shown, the racial composition was as follows: African American–119, White–25, Native American–2, Unknown–14. *Id*.

90. *See* 1790 to 1990 Census, *supra* note 44.

91. *See infra* Part II.B.1.d.

92. *See* AYERS, *supra* note 87, at 155–56.

93. *See* LITWACK, *supra* note 11, at 284–86.

94. *See* W. FITZHUGH BRUNDAGE, LYNCHING IN THE NEW SOUTH: GEORGIA AND VIRGINIA, 1880–1930, at 7– 8 (1993).

95. *See id.*

96. Scholars estimate that nearly 2,500 African Americans were killed in lynchings between 1880 and 1930. *See* LITWACK, *supra* note 11, at 280–325; STEWART E. TOLNAY & E.M. BECK, A FESTIVAL OF VIOLENCE: AN ANALYSIS OF SOUTHERN LYNCHINGS, 1882–1930, at 17 (1995). Lynchings continued in North Carolina until at least 1941. *See* BRUCE E. BAKER, THIS MOB WILL SURELY TAKE MY LIFE: LYNCHINGS IN THE CAROLINAS, 1871–1947, at 167–70 (2008)

The influence of race on the death penalty in North Carolina between the colonial era and the twentieth century was complex, yet it is clear that the state's implementation of the punishment was cruelly unfair to both African American defendants and victims.[97] From 1726 to 1910, 72% of those executed were African American.[98] Various exceptions that benefitted both white and black defendants reduced the total number of executions;[99] however, operating alongside the systematic exclusion of African Americans from the criminal justice decision-making process, they did not make the system fair or the process just.

B. Continuity and Change in a New Era

This Part examines executions between 1910, when North Carolina transferred authority over executions from counties to the state and

(listing confirmed lynchings in North Carolina); Espy File, *supra* note 8 (listing executions in North Carolina for comparison to list of lynchings). The relationship between lynchings and the death penalty is discussed in Part II.B.1.d. On a yearly basis, neither lynchings nor executions in North Carolina were particularly frequent in contrast with some states in the Deep South, but lynchings outnumbered legal executions between the end of the Civil War and the beginning of state-run executions in 1910. *See* BAKER, *supra*, at 168. In some years during this period, the number of lynchings dwarfed the number of legal hangings: in 1869 there were twenty-three lynchings but just one legal execution, and, in 1888, ten lynchings took place but no executions. *See id.* at 167–70.

97. Moreover, African Americans were, except for a brief period during Reconstruction, almost totally excluded from jury service. *See supra* note 43 (discussing limited African American presence on juries).

98. Between 1726 (the first recorded legal hanging in the colony) and 1910 (the last hanging under county authority), the record shows that North Carolina executed at least 424 people. Espy File, *supra* note 8. Race of the defendant is known in 404 cases. *Id.* Of these executions, 291 were of African Americans, 110 were of whites, and three were of Native Americans. *See id.* The race of twenty people during this period is unconfirmed. The African American population percentage ranged from 26.8% to 38.0% over the period. *See* 1790 to 1990 Census, *supra* note 44.

99. *See, e.g.*, State v. Jim, 12 N.C. (1 Dev.) 142, 143 (1826) (voiding death sentence for a slave because of the court's enforcement of strict rules requiring the sufficiency of indictments); State v. Sue, 1 N.C. (Cam. & Nor.) 277, 281–84 (1800) (voiding a death sentence against a slave because the statute applicable to slaves did not specifically provide for punishment and the common law applicable to free men did not carry a death sentence); State v. Boon, 1 N.C. (Tay.) 191, 191–200 (1801) (interpreting a statute that punished the murder of a slave by a white man as a capital offense to be invalid because of a slight imperfection in its use of terminology). "[F]ear, compassion, formalism, material security, and recognition of moral qualities played a role in each judicial finding," creating gaps that allowed for occasional leniency for slave defendants. Reuel E. Schiller, Note, *Conflicting Obligations: Slave Law and the Late Antebellum North Carolina Supreme Court*, 78 VA. L. REV. 1207, 1251 (1992); *see also* Flanigan, *supra* note 51, at 557–58 (discussing such leniency). Some courts were, however, willing to eschew this so-called formalism in order to protect the interests of the slaveholding class. *See* Sally Greene, State v. Mann *Exhumed*, 87 N.C. L. REV. 701, 727–50 (2009) (discussing the ideological context of the decision).

replaced the gallows with the electric chair,[100] and 1961, when the state's last pre-*Furman* execution took place.[101] The change from locally conducted hangings to electrocutions at a central location made North Carolina among the region's, and indeed the nation's, first participants in the process of "delocalization."[102] North Carolina's leaders hoped to regularize the execution process and make it more humane, but their focus lay in how the death penalty was applied,[103] rather than to whom and in what circumstances it was imposed. This Part ends in 1961 when North Carolina executed the last prisoner under the death penalty system later invalidated by *Furman v. Georgia*.[104]

For much of this period, North Carolina law mandated a death sentence for four crimes: first degree murder, rape, first degree burglary, and arson.[105] These mandatory laws were enacted shortly after the end of the Civil War, and it was not until the 1940s that the death penalty for these crimes became a matter of discretionary judgment for the jury.[106] North Carolina's 362 executions during this period placed it sixth nationally and third in the South.[107]

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100. N.C. GEN. ASSEMBLY, JOURNAL OF THE SENATE OF THE GENERAL ASSEMBLY OF THE STATE OF NORTH CAROLINA, 1909 Sess., at 18 (1909) (noting the introduction of Senate Bill thirty-seven to establish a permanent place in the State Penitentiary for executions and to change the mode of executions to electrocution); 1909 N.C. Pub. Laws ch. 443.

101. *See supra* note 8 and accompanying text.

102. *See* WILLIAM J. BOWERS, EXECUTIONS IN AMERICA 37–38 (1974) (describing the movement to state-imposed executions both nationally and in the South).

103. *See* Trina N. Seitz, *The Killing Chair: North Carolina's Experiment in Civility and the Execution of Allen Foster*, 81 N.C. HIST. REV. 38, 39–40 (2004) (noting belief that the electric chair was more civilized and humane than hanging). In 1936, North Carolina began using the gas chamber to execute criminals. *First Lethal Gas Victim Dies in Torture as Witnesses Quail*, NEWS & OBSERVER (Raleigh, N.C.), Jan. 25, 1936, at 1. For more on this change and its implications, see generally Seitz, *supra*.

104. 408 U.S. 238 (1972).

105. *See* Adcock, *supra* note 9, at 116 (providing the history of enactment for these four mandatory death penalty crimes through constitutional provision and legislation in 1868 and 1869).

106. *See id.* at 117 (describing how mandatory death sentences were replaced with a discretionary system, first for burglary and arson in 1941, and then for murder and rape in 1949). The mandatory nature of North Carolina's death penalty system likely added to the number of executions, but clear cause and effect is difficult to determine since other parts of that system, such as the frequent grants of clemency, *see id.* at 117–18, seemed to respond to the obvious need to ameliorate its harshness.

107. North Carolina executed 362 people under state authority between 1910 and 1961. The Espy File lists 360 of these executions but does not include the execution of Taylor Love on December 1, 1911, or Edward Floyd on October 25, 1946. *See* Espy File, *supra* note 8; DOC Persons Executed in N.C. 1910–1961, *supra* note 8; *Taylor Love Pays Death Penalty*, NEWS & OBSERVER (Raleigh, N.C.), Dec. 2, 1911, at 5; *Slayer Executed in Gas Chamber*, NEWS & OBSERVER (Raleigh, N.C.), Oct. 26, 1946, at 10. Additionally, this count does not include the 1910 hanging of Henry Spivey, as Spivey was not executed under state authority. *See* Seitz,

As developed in Part II.A., the death penalty prior to emancipation was principally used for the execution of slaves, thus closely linking the death penalty and race. After the end of slavery, legal structures changed. However, the influence of race on executions from the Civil War to 1910—a period that includes Reconstruction, its termination, and the beginning of the Jim Crow era—remained strong and pernicious. This influence persisted into the twentieth century, as borne out by events and execution data. Of the 362 people executed, 283 were African American and six were Native American, meaning that 78% of those executed were African American and 80% were minorities.[108] By contrast, 75% of the victims in these cases were white.[109] Census figures show that North Carolina's African American population during this period declined from a high of 32% in 1910 to a low of 25% in 1960.[110] The race-of-the-defendant and race-of-the-victim percentages are so extreme as to make explanation by non-racial factors very unlikely.

1. Racial Discrimination Against African American Defendants

The experiences of three African American defendants in capital cases reveal the influence of race on the death penalty in North Carolina. All three men were tried quickly in communities where whites responded angrily to reports of attacks by African American men against white females. Tom Gwyn was executed for rape in 1919, only two months after his crime.[111] Alvin Mansel was convicted of rape in 1925 but later had his sentence commuted and received parole.[112] Larry Newsome was executed for murder and attempted rape in 1928, less than a year after the crime, even though the reversal of his first death sentence required a retrial.[113] These cases reveal the strong, if not uniform, influence of race on the death penalty in the twentieth century.

supra note 103, at 40 (noting that Spivey's hanging in Elizabethtown was the last judicial, county-based execution in the state).

108. *See* Espy File, *supra* note 8.

109. *See id.* Race-of-the-victim information is developed from the Espy File, supplemented and corrected principally by examination of contemporary newspaper reports. The race-of-the-victim calculation was performed using the 325 executions during this period where the race of the victim could be confirmed. Of that total, 244 (75%) were white, seventy-eight (24%) were black, and three (1%) were Native American. *See id.*

110. Between 1910 and 1960, the percentage of African Americans in North Carolina ranged from 31.6% to 24.5%, declining throughout the period; less than 1% of the population was Native American. *See* 1790 to 1990 Census, *supra* note 44.

111. *See infra* notes 115–123 and accompanying text.

112. *See infra* notes 125–144 and accompanying text.

113. *See infra* notes 145–164 and accompanying text.

a. Tom Gwyn

On April 29, 1919, Tom Gwyn was arrested for raping Ruth Hildebrand,[114] a sixteen-year-old white girl near Hickory, North Carolina.[115] Gwyn was jailed in nearby Newton shortly after the victim reported the crime, but he was "spirited away," first to Lumberton and then to an undisclosed location, after a mob broke down the doors of the jail in an effort to lynch him.[116] As Gwyn awaited trial, a local newspaper reported that "there is no longer any doubt that [Gwyn] was the guilty brute" whose "beast-like hands had throttled" the neck of his victim.[117]

The trial occurred at a special term of court[118] less than a month later in Newton. Large crowds gathered around the courthouse, and the Catawba County sheriff summoned all his officers and deputized twenty-five soldiers in the area to protect Gwyn.[119] With tensions running high inside and outside the courtroom,[120] the trial was completed in a single day, even with jury selection taking place that morning and an adjournment for lunch. Jury deliberations took just ten minutes.[121] Gwyn was rushed to the State's Prison to await his execution.[122] He died in the electric chair on June 27, 1919, less than two months after the crime was reported.[123]

b. Alvin Mansel

On September 19, 1925, Alvin Mansel was arrested for the rape of Lucy Cartee,[124] a thirty-year-old white woman, near Asheville, North Carolina.[125] Although Mansel, "thoroughly frightened," insisted to a reporter that he was innocent, many Asheville residents thought otherwise, and because the alleged rape was the second such incident in recent days, locals were on edge.[126] That night sheriff's deputies saved Mansel from a

114. Indictment, State v. Gwyn, May Special Term (Super. Ct. 1919) (on file with the North Carolina Law Review).

115. *Mob Attempts to Lynch Negro Accused of Crime,* HICKORY DAILY REC., Apr. 30, 1919, at 1.

116. *Id.*

117. *Negro Thought Girl Would Not Tell*, HICKORY DAILY REC., May 1, 1919, at 1.

118. *Sentence of Death for Negro Assailant*, HICKORY DAILY REC., May 28, 1919, at 9.

119. *Large Crowd at Newton for Trial*, HICKORY DAILY REC., May 26, 1919, at 1.

120. *Gwin* [sic] *Is Sentenced to Die on June 27*, HICKORY DAILY REC., May 26, 1919, at 1.

121. *Id.*; *Large Crowd at Newton for Trial*, *supra* note 119.

122. *Gwin* [sic] *Is Sentenced to Die on June 27*, *supra* note 120; *Large Crowd at Newton for Trial*, *supra* note 119.

123. *Tom Gwyn Dies in Electric Chair*, NEWS & OBSERVER (Raleigh, N.C.), June 28, 1919, at 12.

124. Indictment, State v. Mansel, 192 N.C. 20, 133 S.E. 190 (1926) (No. 547) (on file with the North Carolina Law Review).

125. *Sheriff Takes Negro from the City as Big Crowd Begins to Form*, ASHEVILLE CITIZEN, Sept. 20, 1925, at. 1.

126. *Id.*

mob of as many as 1,000 people by secretly removing him from the jail where he had been confined.[127] The deputies took Mansel several hours away to Charlotte,[128] where he remained until his trial date. After returning to Asheville for his trial, he was escorted into the Buncombe County courthouse by armed National Guardsmen.[129] Local whites gathered in large numbers for the trial and were searched for weapons before entering the courtroom; local African Americans were urged to stay out of sight.[130] The presiding judge warned jurors against letting race influence their verdict,[131] and the press opined that the trial would result in the most "perfect expression of right possible for fallible mankind—we should accept it with confidence in its verity and its justice."[132]

Hastened by night sessions, Mansel's trial proceeded swiftly.[133] On the morning of November 6, just two days after his arraignment, Mansel was sentenced to death. "I hope to meet you all in heaven," he said. "I am not guilty, but the jury has come out, and said I was."[134] Indeed, the facts of the case suggested that Mansel was innocent.[135] For instance, the survivor of the attack had described her assailant as a thirty-five year-old, light-skinned black man.[136] Alvin Mansel was dark-skinned, and he was

127. *Asheville Mob Enters Jail in Quest of Negro Prisoner*, NEWS & OBSERVER (Raleigh, N.C.), Sept. 20, 1925, at. 1; *Quiet Sunday at Buncombe Jail*, NEWS & OBSERVER (Raleigh, N.C.), Sept. 21, 1925, at 1; *Report of Mob Proves Mistake*, NEWS & OBSERVER (Raleigh, N.C.), Sept. 22, 1925, at 1; *Sheriff Takes Negro from the City as Big Crowd Begins to Form*, *supra* note 125.

128. *Negro Assailant of Woman Is Held in Charlotte Jail after All Night Ride with Mitchell*, ASHEVILLE CITIZEN, Sept. 21, 1925, at 1.

129. *Negro Goes on Trial Today for Attacking White Woman of City*, ASHEVILLE CITIZEN, Nov. 2, 1925, at 1. Preston Neely, another African American man charged with rape, was tried immediately after Mansel, but he was acquitted. *See Preston Neely Goes on Trial for His Life*, ASHEVILLE CITIZEN, Nov. 6, 1925, at 1*; Preston Neely Is Acquitted and Rushed to South Carolina Under Guard*, ASHEVILLE CITIZEN, Nov. 8, 1925, at 1.

130. *See Negro Leaders Advise Race of Present Duties*, ASHEVILLE CITIZEN, Nov. 2, 1925, at 1.

131. *See Fate of Accused Negro Is in Hands of Jury*, ASHEVILLE CITIZEN, Nov. 5, 1925, at 1.

132. Editorial, *Even Handed Justice*, ASHEVILLE CITIZEN, Nov. 4, 1925, at 4.

133. *Alvin Mansel Sentenced to Die in the Electric Chair*, ASHEVILLE CITIZEN, Nov. 6, 1925, at 1.

134. *Id.*

135. Mansel's attorneys tried to demonstrate that Mansel could not have been present at the scene of the crime, given that witnesses placed him at his workplace, and they apparently had substantial evidence of that alibi. *See* Transcript of Record at 38–45, State v. Mansell, 192 N.C. 20, 133 S.E. 190 (1926) (No. 547) (on file with the North Carolina Law Review) (describing testimony of witnesses that Mansel remained at work during the time of the crime); *id.* at 63–65 (summarizing alibi evidence); Hugo Adam Bedau & Michael L. Radelet, *Miscarriages of Justice in Potentially Capital Cases*, 40 STAN. L. REV. 21, 143 (1987) (describing evidence of Mansel's likely innocence).

136. *See* Transcript of Record at 48, State v. Mansell, 192 N.C. 20, 133 S.E. 190 (1926) (No. 547) (on file with the North Carolina Law Review) (giving testimony of witness regarding early description).

seventeen years old.[137] The North Carolina Supreme Court heard Mansel's case a few months later, and, in addition to arguing that Mansel was innocent, the young man's attorneys claimed that Mansel was the target of an effort to meet the demands of the mob with a legally sanctioned but illegitimate execution.[138] The Court rejected the arguments and affirmed the conviction.[139]

In a reversal of the sentiments that Mansel's lawyers had decried, four thousand people, including the victim,[140] wrote to Governor Angus MacLean urging that he stop Mansel's execution.[141] MacLean responded, commuting Mansel's death sentence to life imprisonment and stating that only the execution of an innocent was more troubling than the crime of rape.[142] Soon, Mansel's life sentence was reduced to a thirty-year term, and in October 1930, he left prison on parole.[143] The *News and Observer* recognized his supporters for saving him "from being killed for a crime he knew nothing about."[144]

c. Larry Newsome

On December 8, 1927, Larry Newsome was arrested in Wayne County, North Carolina, for the murder of Beulah Tedder, a fourteen-year-old white girl.[145] Although the county physician who examined her body

137. *Id.* at 65–66 (giving judge's summary of defense evidence).

138. The attorneys argued:

> Under the circumstances, we respectfully submit the prisoner did not have a fair trial; that it was impossible in the presence of armed Militia to remove the idea from the public generally, including the Jury, that the Court was simply protecting the defendant to the end not that he should have a fair trial, but, that the law should have its course and that the law should execute him instead of the mob. The whole atmosphere of the Court House spoke out and said: "Let the law have him. It will do what ought to be done and let individuals stand back and let it have its way."

Brief of Defendant at 7, State v. Mansell, 192 N.C. 20, 133 S.E. 190 (1926) (No. 547) (on file with the North Carolina Law Review).

139. *Mansell*, 192 N.C. at 25, 133 S.E. at 193 (finding no errors of law and affirming the judgment); *see also Supreme Court Decides Alvin Mansel Must Die*, ASHEVILLE CITIZEN, May 28, 1926, at 1.

140. *Woman Victim Pleads to Spare Negro's Life*, WASH. POST, Dec. 12, 1925, at 2.

141. Bedau & Radelet, *supra* note 135, at 143.

142. Application for Pardon of Alvin Mansel (July 8, 1926), *in* PUBLIC PAPERS AND LETTERS OF ANGUS WILTON MCLEAN, GOVERNOR OF NORTH CAROLINA 1925-1929, at 756 (David Leroy Corbitt ed., 1931).

143. Bedau & Radelet, *supra* note 135, at 143–44 (describing the Mansel case).

144. *Mansel and His Benefactor*, NEWS & OBSERVER (Raleigh, N.C.), Nov. 8, 1930, at 1. Meanwhile, although six thousand people—two thousand more than supported Mansel—appealed to Governor MacLean on behalf of the imprisoned members of the lynch mob, the governor announced that he would not pardon them. *See* Brock Barkley, *McLean Refuses to be Moved by Appeals for Participants in Riot*, ASHEVILLE CITIZEN, Feb. 11, 1926, at 1.

145. Tedder's father discovered the body late in the afternoon of that day. State v. Newsome, 195 N.C. 552, 553, 143 S.E. 187, 188 (1928).

testified that she had not been raped,[146] sheriff's deputies testified that Newsome, while being transported to Goldsboro from the state prison in Raleigh where he had been placed for safekeeping because of a threatened lynching, admitted attempting to rape Tedder and killing her to keep her from telling her father about the assault.[147]

Newsome's trial began in Goldsboro just two days after the murder, starting on Saturday and concluding in an unusual Sunday session of Superior Court.[148] Given the lynching threat and high tensions in the community, the presiding judge took steps to protect Newsome in case of violence at the trial.[149] Nevertheless, during the testimony of a deputy sheriff, the victim's father and her uncle grabbed Newsome and, joined by others, attempted to drag him from the courtroom to cries of "Take him! Take him!"[150] The sheriff rushed into the crowd, wrested Newsome away from the victim's uncle, and took him into the relative safety of the jury room.[151] Returning to the courtroom, he fired two shots into the ceiling to

146. *See id.*; Transcript of Record at 7, State v. Newsome, 195 N.C. 552, 143 S.E. 187 (1928) (No. 74) (on file with the North Carolina Law Review). The *News and Observer* went further and reported that the victim had been "criminally assaulted." *Larry Newsome Dies at Prison*, NEWS & OBSERVER (Raleigh, N.C.), Sept. 29, 1928, at 1.

147. *See Newsome*, 195 N.C. at 554–56, 143 S.E. at 188–89 (stating that the evidence "tended to show" that Newsome seized the victim around the waist, but she fought him off and ran from him, and he killed her when he caught her because she said she would tell her father); Transcript of Record at 14–16, State v. Newsome, 195 N.C. 552, 143 S.E. 187 (1928) (No. 74) (on file with the North Carolina Law Review) (setting out testimony of Deputy Sheriff J.R Kornegay describing defendants confession of crime); *id.* at 16 (providing corroborating testimony of Deputy Carl Smith who witnessed the conversation); *see also id.* at 18 (summarizing testimony of psychiatrist W. C. Linville providing less detailed but similar description of crime). Newsome unsuccessfully challenged the statements to the deputies as involuntary because they were made after the deputies assured him they would protect him, *see Newsome*, 195 N.C. at 556, 143 S.E. at 190, and he unsuccessfully challenged a less detailed admission to a psychiatrist at the state mental hospital that was secured through efforts by his attorney to testify to his mental limitations, *see* Transcript of Record at 18, State v. Newsome, 195 N.C. 552, 143 S.E. 187 (1928) (No. 74) (classifying defendant as "high grade moron"), on grounds of physician-patient privilege. *Newsome*, 195 N.C. at 558–59, 143 S.E. at 190–91.

148. *Near Riot Marks Trial in Carolina*, ATLANTA CONST., Dec. 12, 1927, at 2 (stating that the trial included the only known Sunday trial session); *see also* Transcript of Record at 35–36, State v. Newsome, 195 N.C. 552, 143 S.E. 187 (1928) (No. 74) (on file with the North Carolina Law Review) (setting out defense attorney's objection under category of "Assignment of Error Not Noted as Exceptions" to the court "ordering a trial immediately after the alleged homicide and before the prisoner could prepare himself for trial").

149. The presiding judge sought to keep secret the news of Newsome's arrival from Raleigh. *See Girl's Alleged Slayer Faces Trial on Sunday*, WASH. POST, Dec. 11, 1927, at 7.

150. *Newsome*, 195 N.C. at 576, 143 S.E. at 199 (Brodgen, J., concurring) (quoting from memorandum of trial judge submitted to the Supreme Court regarding events in the courtroom); Transcript of Record at 30–31, State v. Newsome, 195 N.C. 552, 143 S.E. 187 (1928) (No. 74) (on file with the North Carolina Law Review) (setting out trial judge's statement); *Near Riot Marks Trial in Carolina*, *supra* note 148.

151. *Newsome*, 195 N.C. at 576, 143 S.E. at 200 (Brodgen, J., concurring).

"quell the tumult."[152] The presiding judge held a pistol on the crowd, warning that "[t]he next man who undertakes to lay hands on this prisoner I will shoot dead" and that "there will not be a lynching here."[153] As the judge held the crowd at bay, the prosecutor jumped onto a table and rang the courthouse bell—the prearranged signal for members of a waiting military company to give aid—bringing soldiers to the courtroom within a few minutes.[154]

The soldiers formed a cordon around Newsome when the trial resumed on Sunday morning.[155] The defense relied on testimony of a psychiatrist, who found that the defendant had the mental age of a ten- to twelve-year-old, to argue that Newsome was incapable of appreciating the nature of the crime and therefore he was not guilty.[156] But after eighteen minutes of deliberation, the jury found Newsome guilty of murder, and after receiving a death sentence, he was rushed from the courtroom and taken to death row.[157] According to the *News and Observer*, the speed of the conviction set a record: it came just sixty hours after the victim's death.[158]

On appeal, the Supreme Court of North Carolina denied Newsome's argument that a new trial should be granted because of the attempt to drag him from the courtroom. The decision relied on the trial judge's finding that "during the . . . demonstration, the jury sat in perfect order, and did not appear to be at all disturbed" and concluded that nothing in the record showed that the jury disobeyed the judge's charge not to be influenced by the courtroom incident.[159] However, the court granted Newsome a new

152. *Id.*

153. *Judge Grady, Pistol in Hand, Foils Attempt to Lynch Negro Murderer*, NEWS & OBSERVER (Raleigh, N.C.), Dec. 12, 1927, at 1; *Newsome*, 195 N.C. at 576, 143 S.E. at 200 (Brodgen, J., concurring in result).

154. *Newsome*, 195 N.C. at 576, 143 S.E. at 200 (Brodgen, J., concurring); *Judge, with Pistol, Defies Court Mob at Trial for Life*, WASH. POST, Dec. 12, 1927, at 1.

155. *Judge, with Pistol, Defies Court Mob at Trial for Life*, *supra* note 154.

156. *See* Transcript of Record at 27–28, State v. Newsome, 195 N.C. 552, 143 S.E. 187 (1928) (No. 74) (on file with the North Carolina Law Review) (providing judge's summary of defense contentions); *Judge Grady, Pistol in Hand, Foils Attempt to Lynch Negro Murderer*, *supra* note 153; *Newsome*, 195 N.C. at 558–59, 143 S.E. at 189 (describing psychiatrist's testimony regarding defendant's mental development).

157. *See Governor Lauds Action of Grady in Foiling Mob*, NEWS & OBSERVER (Raleigh, N.C.), Dec. 13, 1927, at 1.

158. *See Judge Grady, Pistol in Hand, Foils Attempt to Lynch Negro Murderer*, *supra* note 153; *Negro Scheduled for Death Today*, NEWS & OBSERVER (Raleigh, N.C.), Sept. 28, 1928, at 20 (describing the death sentence as coming quickly—within forty-eight hours—of the victim's death).

159. *See Newsome*, 195 N.C. at 565–66, 143 S.E. at 194. Two members of the court disagreed and would have held that the events in the courtroom required a new trial under the principle of *Moore v. Dempsey*, 261 U.S. 86 (1923), that a hurried conviction under mob

trial because the trial court failed to instruct the jury on second degree murder.[160]

Despite the reversal of his conviction and death sentence, Newsome's story does not end like Mansel's. At his retrial, conducted in another county to avoid the "intense feeling" in Wayne County,[161] he was again convicted of murder and sentenced to death.[162] Although his counsel filed a notice of appeal, the appeal was not "prosecuted as required," and the Supreme Court dismissed it.[163] A little over two weeks later, Newsome was executed.[164] Less than ten months had passed from the discovery of the victim's body to the execution.

These three cases demonstrate not only the impact of race upon the death penalty in this period, but also its complexity. Gwyn and Newsome were quickly sentenced to death in trials pervaded by racial hostility unique to the trials of African Americans accused of crimes against whites.[165] The North Carolina Supreme Court failed, at least by any modern standards, to even consider the influence of racial discrimination in these trials. Mansel, first the subject of a rushed trial driven by racial animosity, became the beneficiary of an act of mercy inspired by support from the white community. Mansel's innocence, of course, was overlooked or ignored in the courtroom and continued to be overlooked even after it became evident:

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domination requires the corrective action of new trial. *Id.* at 567–68, 143 S.E. at 194–95 (Stacy, J., concurring); *id.* at 568–75, 143 S.E. at 196–99 (Adams, J., concurring).

160. *Id.* at 564, 143 S.E. at 193–94 (ruling that failure to submit this charge was error because it was supported by the evidence).

161. Affidavit for Removal at 1, State v. Newsome (N.C. Super. Ct. June 5, 1928) (on file with the North Carolina Law Review) (requesting removal to another county "to the end that a fair and impartial trial may be had"); Order at 1, State v. Newsome (N.C. Super. Ct. June 11, 1928) (on file with the North Carolina Law Review) (granting removal to Chatham County, North Carolina).

162. *See Negro Scheduled for Death Today*, *supra* note 158; *Larry Newsome Dies at Prison*, *supra* note 146.

163. State v. Newsome, 196 N.C. 16, 17, 144 S.E. 300, 300 (1928) (stating also that the Supreme Court found no error on the face of the record).

164. *See* Espy File, *supra* note 8; *North Carolina Negro Dies in Electric Chair*, ATLANTA CONST., Sept. 29, 1928, at 6 (noting the execution date as September 28, 1928). The opinion dismissing the appeal is dated September 12, 1928. *See Newsome*, 196 N.C. at 16, 144 S.E. at 300.

165. By current standards, trials in this period were conducted quickly, but a very different pattern appears in the cases of four executed white defendants: W.Y. Westmoreland; J.T. Harris; and Joe and Gardner Cain, *see* Espy File, *supra* note 8, than for African Americans tried in an atmosphere influenced by the actions of a mob. Their trials and appeals were completed over a period of as much as sixteen months and as little as six months with the execution occurring at least a year and, in one case, close to two years after the crime occurred. *See* State v. Westmoreland, 181 N.C. 590, 590, 107 S.E. 438, 439 (1921); State v. Harris, 181 N.C. 600, 600–01, 107 S.E. 466, 466 (1921); State v. Cain, 178 N.C. 724, 724–25, 100 S.E. 884, 884 (1919); Transcript of Record at 64, State v. Cain, 178 N.C. 724, 100 S.E. 884 (1919) (No. 346) (on file with the North Carolina Law Review).

Governor O. Max Gardner declined to pardon him despite being "absolutely convinced" of his innocence.[166] Guilty and innocent, executed and spared, these African American men stood trial, received sentences, and mounted appeals in a death penalty system strongly influenced by race.

d. Speedy Trials and Death Sentences under the Threat of Lynching

Although cases proceeding from the date of the crime to execution at the pace of Gwyn's or Newsome's were not typical, neither were they unique.[167] Available records show that African American men executed in North Carolina, particularly for rape, sometimes evaded lynch mobs or were saved from lynching by local law enforcement officers in order to receive a state-sanctioned execution.[168] These speedy trials, with the

166. *Mansel and His Benefactor*, *supra* note 144. Mansel spent five years in prison for a crime he did not commit and left prison on parole, a convicted rapist.

167. *See* State v. Caldwell, 181 N.C. 519, 520, 523, 106 S.E. 139, 139, 141 (1921) (describing a speedy trial, with the crime occurring November 21, the trial starting December 2 in Goldsboro, North Carolina, a lynch mob attacking the courthouse that night, and the verdict being received the next evening); Espy File, *supra* note 8 (showing execution of Caldwell, an African American, on October 31); *Lee Washington Dies in Chair*, NEWS & OBSERVER (Raleigh, N.C.), Dec. 29, 1923, at 2 (describing process lasting less than two months from arrest to execution). Even with his successful appeal and retrial, Newsome's execution was less than ten months from the date of the crime. In a number of other cases during this period, African Americans were tried and executed with great speed and in an atmosphere dominated by the threat of mob violence. *Bob Williams Will Die Today*, NEWS & OBSERVER (Raleigh, N.C.), Mar. 1, 1923, at 11 (describing swift trial, under guard, of Bob Williams for murder); *Death Row Inmate Tells His Story of Life, Death*, NEWS & OBSERVER (Raleigh, N.C.), Apr. 5, 1934, at 14 (describing mob pursuit and speedy trial and death sentence of a convicted murderer); *Goldsboro Quiet After Sentence of Five Negroes*, NEWS & OBSERVER (Raleigh, N.C.), Dec. 4, 1920, at 1 (describing a crowd of thousands "clamoring for the blood" of five blacks on trial for the murder of a white man, two weeks after the murder); *His Life Forfeit for a Foul Crime*, NEWS & OBSERVER (Raleigh, N.C.), Oct. 28, 1911, at 5 (describing electrocution of prisoner for rape forty-one days after his arrest); *Nathan Montague in Electric Chair*, NEWS & OBSERVER (Raleigh, N.C.), Feb. 16, 1911, at 5 (describing trial in special term of court for rape and murder that took just four hours; Montague was executed just under two months after his arrest); *Two Executions Scheduled Today*, NEWS & OBSERVER (Raleigh, N.C.), Dec. 10, 1937, at 11 (describing guilty verdict and death sentence within seventy-two hours of the commission of the crime).

168. Between 1900 and 1941, at least ten of the African American men executed for rape of white women were saved from lynching before their trial. The absence of a description of a mob arrest or near lynching does not mean that such an event did not take place. *See* Brief for the Defendant, State v. Arthur Montague (1925), at 15 (describing captor of suspect declaring that he "ought to kill you right here."); *Howard Craig Pays Penalty*, NEWS & OBSERVER (Raleigh, N.C.), Dec. 5, 1914, at 2 (describing pursuit of suspect by "infuriated whites"); *John Goss Dies Admitting Crime*, NEWS & OBSERVER (Raleigh, N.C.), Dec. 8, 1925, at 9 (noting the need for troops to keep order in the community where the crime took place); *Lee Washington Dies in Chair*, *supra* note 167 (describing suspect's capture by posse and need for troops to keep him safe); *Mob Attempts to Lynch Negro Accused of Crime*, HICKORY DAILY REC., April 30, 1919, at 1 (describing effort to lynch suspect); *Negro Boy Ends in Death Chair*, NEWS & OBSERVER (Raleigh, N.C.), Aug. 11, 1931, at 2 (describing pursuit of suspect by a posse of 700); *The Wages of Sin Death by Rope*, NEWS & OBSERVER (Raleigh, N.C.), Nov. 17, 1904, at 1 (describing "enraged" posse and efforts to keep suspect alive for trial); *Will Black Dies in Electric Chair*,

suggestion of judicial propriety but with outcomes determined by popular anger, are sometimes termed "legal lynchings."[169]

Actual lynchings in the South occurred with some frequency in this period, persisting at least until the 1940s.[170] Many scholars view lynchings as a component of a punishment system that included the death penalty. Sociologist David Garland has observed that lynchings, like legal executions, were regularly occurring, scripted public events mounted in response to allegations of serious crime undertaken in the presence of a functioning justice system, and attended and defended by respectable members of a community.[171] At the time, many supporters and opponents of lynchings alike saw executions and lynchings as complementary in punishing African Americans for crimes against white victims. Opponents of lynchings, hoping to persuade the mob to let formal justice run its course, argued that courtroom trials could yield the same result as mob killings. Supporters threatened lynching as they demanded death sentences for certain capital defendants.[172] The demand for a lethal result, regardless

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NEWS & OBSERVER (Raleigh, N.C.), July 22, 1916, at 2 (noting that there was such anger over a rape that the suspect's father was lynched); *Will Graham Goes to Death Coolly*, NEWS & OBSERVER (Raleigh, N.C.), Dec. 19, 1906, at 4 (noting "hot pursuit" of suspects and effort to keep him safe after capture). Men suspected of other crimes might also be pursued by armed posses. *See, e.g.*, *Negro West in Swamp Surrounded by Posse*, NEWS & OBSERVER (Raleigh, N.C.), Feb. 8, 1911, at 1 (describing manhunt for murder suspect).

169. For some examples of legal lynchings, see Charles J. Ogletree, *Making Race Matter in Death Matters*, *in* FROM LYNCH MOBS TO THE KILLING STATE: RACE AND THE DEATH PENALTY IN AMERICA 55, 59–60 (Charles J. Ogletree, Jr. & Austin Sarat eds., 2006). *See generally* GEORGE C. WRIGHT, RACIAL VIOLENCE IN KENTUCKY, 1865–1940: LYNCHINGS, MOB RULE, AND "LEGAL LYNCHINGS" (1996) (exploring the relationship between "legal lynchings" and other forms of violence against African Americans).

170. *See* BRUCE E. BAKER, *supra* note 95, at 4. Many instances of mob murder of African Americans were not designated as lynchings. North Carolina's total placed it above Virginia and Missouri, but it was not among the leaders in lynchings in the South. *See* S. COMM'N ON THE STUDY OF LYNCHING, LYNCHINGS AND WHAT THEY MEAN 29 (1931).

171. *See* David Garland, *Penal Excess and Surplus Meaning: Public Torture Lynchings in Twentieth-Century America*, 39 LAW & SOC'Y REV. 793, 797–98 (2005) (describing six ways in which lynchings defied conventional wisdom that imagines them as violent acts of criminal deviance). For more on the relationship between these two forms of lethal punishment, *see* Stuart Banner, *Traces of Slavery: Race and the Death Penalty in Historical Perspective*, *in* FROM LYNCH MOBS TO THE KILLING STATE 96, 99–106 (Charles J. Ogletree, Jr. & Austin Sarat eds., 2006); James W. Clarke, *Without Fear or Shame: Lynching, Capital Punishment and the Subculture of Violence in the American South*, 28 BRIT. J. POL. SCI. 269 *passim* (1998); Charles J. Ogletree, Jr., *Black Man's Burden: Race and the Death Penalty in America*, 81 OR. L. REV. 15, 18 (2002). For more on this relationship in North Carolina, see E.M. Beck, James L. Massey & Stewart E. Tolnay, *The Gallows, the Mob, and the Vote: Lethal Sanctioning of Blacks in North Carolina and Georgia, 1882 to 1930*, 23 LAW & SOC'Y REV. 317 *passim* (1989); Charles David Phillips, *Exploring Relations Among Forms of Social Control: The Lynching and Execution of Blacks in North Carolina, 1889–1918*, 21 LAW & SOC'Y REV. 361 *passim* (1987).

172. Columnist Nell Battle Lewis wrote that "the mob lynches, the State electrocutes." Nell Battle Lewis, *Incidentally*, NEWS & OBSERVER (Raleigh, N.C.), Sept. 17, 1922, at 6.

of how it was reached, undoubtedly affected jurors' decision-making process.[173] As one judge termed it, there was a right way and the wrong way to administer justice,[174] but the outcome was the same.

2. Race and Execution for Rape and First Degree Burglary

For two crimes, rape and burglary, the percentage of African American defendants executed was particularly high. The fact that rape was a capital crime at all and the racially disproportionate way in which execution for rape was applied were products of fear among many whites of black male sexual aggression against—or even social contact with[175]—white women.[176] Thus, execution for rape was reserved almost exclusively for black men with white victims. Sixty-seven of the seventy-eight men executed for rape during this period were African American, and among those executions, it is possible to confirm that the victims were white in fifty-eight cases.[177] White men were rarely punished for rape, whether their

173. At Harvey Lawrence's 1930 trial for first degree burglary, his attorney argued that the armed national guardsmen present only heightened a dangerous atmosphere in which Lawrence's fate was clear. Lawrence's attorney described jurors' mindsets thus

> [Lawrence] surely must be guilty of a capital offense, otherwise their demands could not be so pronounced. They want him killed; and if we do not find him guilty of a capital offense so that he may be legally executed, then we have made a gross miscarriage of justice, and the populace will hold us in contempt. To save our own reputations we must by our verdict take his life. Therefore we, for our verdict, find the accused guilty as charged, which finding carried with it a legal death sentence; and we have saved the State a lynching!

Brief for Appellant-Defendant at 4, State v. Lawrence, 199 N.C. 481, 154 S.E. 741 (1930) (No. 90) (on file with the North Carolina Law Review). The Supreme Court of North Carolina denied Lawrence's appeal, *Lawrence*, 199 N.C. at 483, 154 S.E. at 742, and he was executed on October 10, 1930. *See* Espy File, *supra* note 8. Lawrence's crime was first degree burglary and contained the component of sexual threat against a white female victim. *See* Transcript of Record at 9, State v. Lawrence, 199 N.C. 481, 154 S.E. 741 (1930) (No. 90) (on file with the North Carolina Law Review); *infra* Part II.B.2.

174. *See* Woodrow Price, *Negro Facing Life Term Confesses Role in Crime*, NEWS & OBSERVER (Raleigh, N.C.), June 28, 1947, at 1; State v. Caldwell, 181 N.C. 519, 522–26, 106 S.E. 139, 140–43 (1921) (quoting statement of trial judge celebrating the successful efforts to prevent the lynching of the defendant and adding the endorsement of the appellate court to the trial court's decision to try the defendant in such a charged atmosphere, which was within two weeks of the crime's commission).

175. *See* BOWERS, *supra* note 102, at 56 (suggesting the essential role of race in the death penalty for rape in the South).

176. *See* JACQUELYN DOWD HALL, REVOLT AGAINST CHIVALRY: JESSIE DANIEL AMES AND THE WOMEN'S CAMPAIGN AGAINST LYNCHING 145–49 (rev. ed. 1993) (explaining the unique social role of black-on-white rape in the American South).

177. In the remaining nine cases, the victims were African American in six, Native American in one, and cannot be determined in two. *See* Espy file, *supra* note 8; *Death Chair Claims Two Confessed Negro Slayers*, NEWS & OBSERVER (Raleigh, N.C.), Nov. 8, 1930, at 14 (identifying murder victim as a "Negress"); *The First Electrocution Ends Walter Morrison's Life*, NEWS & OBSERVER (Raleigh, N.C.), March 19, 1910, at 5 (identifying race of rape victim was Native

victims were white or black. No white man was executed for the rape of an African American woman in this period, and just ten whites were executed for particularly horrific crimes against exclusively white victims, most of them adolescents or young girls.[178]

Although the crime of burglary lacks the potent symbolism of rape, it provides a stark example of the racial character of the death penalty during this period, particularly the important impact of both the race of the defendant and the race of the victim. Noted University of North Carolina sociologist Guy B. Johnson explained that execution for first degree burglary represented a response to "a threat" of blacks entering white residences after dark.[179] The connection between burglary and sexual threat was so strong that one condemned burglar won a commutation after Governor Locke Craig determined that there was "no element of rape in this case."[180] Indeed, of the twelve people who were executed for first degree burglary in North Carolina between 1910 and 1961, all were African Americans, and available reports of the crimes show that the homes they entered were likely exclusively occupied by whites.[181] It is

American); *Greensboro Slayer Dies*, NEWS & OBSERVER (Raleigh, N.C.), July 16, 1955, at 1 (noting execution of black defendant without identifying race of victim).

The lives of condemned African American men were sometimes spared when their white victims had defied social mores. In other words, in some contexts, the racial subjugation that most often denied blacks protection denied whites protection, too. For example, Governor Cherry commuted the death sentences of four African American defendants who raped a white woman, explaining his decision arose from the victim's "failure to observe a sense of propriety." *Cherry Commutes Terms of Four Robeson Rapists*, NEWS & OBSERVER (Raleigh, N.C.), May 3, 1947, at 1. For more on the complexities of race, rape, and gender in the American South and in North Carolina, *see generally* LISA LINDQUIST DORR, WHITE WOMEN, RAPE, AND THE POWER OF RACE IN VIRGINIA, 1900–1960 (2004) (revealing how class and gender could interrupt the standard narrative of white use of the legal system against African Americans in interracial rape cases); ERIC W. RISE, THE MARTINSVILLE SEVEN: RACE, RAPE AND CAPITAL PUNISHMENT 51 (1995) (describing the complexities of a case of interracial rape wherein black defendants received consideration contrary to the traditional use of punishment to subordinate African Americans); Diane Miller Sommerville, *The Rape Myth in the Old South Reconsidered*, 61 J. S. HIST. 481 (1995) (revealing that postbellum whites were more fearful of black-on-white sexual violence than were antebellum whites).

178. No recorded case can be found in North Carolina of the execution of a white man for raping an African American woman. Five black men were executed for raping black women. Three of the victims in these cases were young, and one was a respected middle class woman. *See* Espy file, *supra* note 8.

179. Guy B. Johnson, *The Negro and Crime*, 217 ANNALS AM. ACAD. POL. & SOC. SCI. 93, 95 (1941).

180. Reasons for Pardons, Commutations, and Reprieves, 1912–1917, Locke Craig Papers, G.O. 55, at 371, N.C. State Archives, Raleigh, N.C. North Carolina was among just a handful of states (Alabama, Kentucky, and Virginia) that maintained burglary as a capital crime. *See* HUGO ADAM BEDAU, THE DEATH PENALTY IN AMERICA 44–45 (rev. ed. 1967).

181. *See* Memorandum of Race of Victim Information for African Americans Executed from Assorted Newspapers Supplementing Espy Data (on file with the North Carolina Law Review);

difficult to contest the view widely held among scholars that the execution of African Americans for first degree burglary and rape—and the retention of these capital crimes into the twentieth century, unique to southern and border states—is attributable to race.[182]

These crimes, where race-of-the-defendant and race-of-the-victim effects occur in combination and are exacerbated by the volatile element of sexual assault, present the strongest examples of the effect of race on the death penalty. However, the effect of race on the death penalty in North Carolina was not limited to cases of rape and burglary. Between 1910 and 1961, excluding executions for rape and first degree burglary, African Americans constituted nearly 74% (202 of the 272) of the defendants executed for murder, and in those cases in which it is possible to confirm the race of the murder victims, 62% of these victims were white.[183] Just one white person was executed for a crime, murder, committed against an African American, a result that the *News and Observer* reported was not only a rarity but also a "quirk of fate."[184]

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s*ee also* Espy File, *supra* note 8; *supra* note 173 (noting that the case of Harvey Lawrence fit this profile).

182. *See, e.g.*, BOWERS, *supra* note 102, at 56 (attributing the persistence of capital rape in southern and border states to the influence of racial prejudice); *see also* McCleskey v. Kemp, 481 U.S. 279, 332 (1987) (Brennan, J., dissenting) (noting that, although it did not explicitly cite race in its opinion, the Court's ruling in *Coker v. Georgia*, 433 U.S. 584 (1977), striking down the death penalty for rape was no doubt based on the fact that an extreme majority of those subject to capital punishment for rape were black men, particularly in cases where the victim was white, citing, inter alia, evidence that federally compiled statistics revealed that from 1930 to 1977 Georgia had executed sixty-two men for rape, fifty-eight of whom were black and four were white).

183. *See* Espy File, *supra* note 8. It is possible to confirm the race of 179 victims of murders by black defendants. *Id.* Of these, 107 had white victims. *Id.*

184. *Two White Men Face Gas Death Here Today*, NEWS & OBSERVER (Raleigh, N.C.), Feb. 18, 1938, at 1 (reporting that the execution for murder was avoidable but for the "quirk of fate").

On February 18, 1938, Milford Exum, a white man, was executed for the murder of an elderly, African American basket-maker while robbing him in his home. *Id.*; State v. Exum, 213 N.C. 16, 18, 195 S.E. 7, 8 (1938). Neither Exum nor his co-defendant testified, but they offered evidence that they had been drinking heavily and were incapable of the intent required for first degree murder. *Id.* at 21, 195 S.E. at 10. After the jury returned guilty verdicts against both men for first degree murder, with their automatic death sentences, Exum's co-defendant avoided the mandatory death penalty when the trial judge set aside the verdict and accepted a guilty plea as an accessory, giving the man a life sentence. *See id.* at 18, 195 S.E. at 8. Exum later explained that his intoxication at the time of the murder meant he could remember little that might give the judge reason for mercy. *See Two White Men Face Gas Death Here Today*, *supra*. Instead, he may have missed his opportunity for mercy by gambling on his appeal of a substantial voluntariness issue regarding his incrimination statement without which he may have been acquitted on retrial. *See Exum*, 213 N.C. at 19–22, 195 S.E. at 9–11 (describing challenge to admission of Exum's statement that was secured when the sheriff agreed to take him from jail in a secret location to meet with his family).

3. Racial Stereotypes of Black Criminality

The depiction of black capital suspects and criminals in North Carolina's newspapers reveal the social context that made this kind of disparity possible. Newspaper coverage of executions during this period showcased stereotypes about African American criminality.[185] Throughout this period, journalists regularly represented black prisoners as subhuman, including in the *News and Observer*, which reported on nearly every execution conducted in Raleigh. For instance, the paper reported that John Goss "looked the part of the picture that 'mean nigger' conjures up."[186] Goss was "short, squat, thick-bodied, and with the face of a gorilla. Even the eyes were muddy with the diffusion of the color of his skin."[187] After four shocks in the electric chair, no life remained "in the black carcass," which was "dumped into a basket" to be taken to a local medical school for dissection.[188]

That men convicted of brutal crimes were described in vile terms would not be notable if not for the fact that white perpetrators received very different treatment. Rather than ascribing white perpetrators' crimes to innate animal impulse, newspaper coverage of the executions of white criminals who committed similarly horrendous crimes against similar victims was characterized by a good deal more sobriety and even sympathy. For example, according to the *News and Observer*, Claude Shackelford, a white man sentenced to death for raping a ten-year-old girl sat "straight and calm" awaiting his asphyxiation. "He's a nice-looking fellow," one witness observed.[189]

185. *See also infra* Part III.B.2.b (discussing influence of stereotypes and subconscious racism on death penalty decisions in the modern era).

186. *John Goss Dies, Admitting Crime*, *supra* note 168.

187. *Id.*

188. *Id. See also Ed. Dill Groans Between Shocks*, NEWS & OBSERVER (Raleigh, N.C.), June 29, 1923, at 5 (reporting that Ed Dill entered the death chamber "[c]hanting a wildly incoherent incantation that must have echoed the savage death-madness of his tribal ancestors"); *Howard Craig Pays Penalty*, NEWS & OBSERVER (Raleigh, N.C.), Dec. 5, 1914, at 2 (describing a "gorilla-like negro" who "crept like a wild beast upon his innocent, unsuspecting victim"); *Two More Pay Penalty of Death*, NEWS & OBSERVER (Raleigh, N.C.), Dec. 4, 1920, at 2. Other portrayals suggest additional stereotypical images. *See, e.g., Asheville Negro Is Electrocuted*, NEWS & OBSERVER (Raleigh, N.C.), Apr. 27, 1918, at 1 (describing eighteen year-old Willie Williams as going to the electric chair "[s]inging happily").

189. Charles Craven, *State Finally Claims Life of Guilford County Rapist*, NEWS & OBSERVER (Raleigh, N.C.), July 22, 1950, at 1. Murderers received even more generous treatment. *See, e.g., Boy Who Led His Class Dies in Lethal Chamber*, NEWS & OBSERVER (Raleigh, N.C.), Sept. 23, 1939, at 14 (noting that the defendant calmly smoked a cigarette as he made his way to the death chamber and that "no trace of fear appeared in his clear, pale blue eyes").

4. An African American Call for Equal Treatment of African American Defendants and Victims

The African American community reacted to discrimination in capital cases with demands for equal justice. For example, an editorial in Durham's *Carolina Times* objected to the fact that African American women received scant protection from the law against sexual violence by white men.[190] The *Times* was a black newspaper, but its editors aimed its words equally at whites, arguing that tolerating white men's attacks on black women bred general lawlessness in the white community and that fairness would benefit both whites and African Americans. The editor of *The Carolinian*, a Raleigh-based black newspaper, agreed. The paper condemned rape "as one of the most detestable and inexcusable of all felonies. [*The Carolinian*] agrees with the southern white man and any other man worth his salt in calling for severe treatment of every case of actual rape, but entirely regardless of the ramifications of racial lines."[191] In these and similar statements, African Americans called for punishment that was racially fair to both defendants and victims.[192]

5. The Death Penalty and Race in Pre-*Furman* North Carolina Empirical Research

Given the limited availability of some sources of information on the death penalty system in North Carolina, contemporary scholarship is a boon. This examination benefits from the work of two highly regarded researchers who focused on this basic issue during the 1930s and 1940s.

Sociologist Harold Garfinkel gathered data on homicide cases for an eleven-year period from 1930 through the end of 1940. His study, obtained from Superior Court records in ten North Carolina Counties, covered 673 homicide cases involving 821 defendants.[193] He followed these cases from indictment through sentencing, grouping the results according to race of the defendant and race of the victim combinations. Starting with indicted first degree murder cases available in his data, the death sentences that result include the prosecutor's decision to charge the case as a capital offense and

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190. *See* Editorial, *Attackers of Negro Women and the Law*, CAROLINA TIMES (Durham), Apr. 15, 1939, at 4.

191. *See* Editorial, *Toward Straight Thinking*, CAROLINIAN (Raleigh, N.C.), Jan. 4, 1947, at 4.

192. *See, e.g.*, *Asks Governor to Commute Sentence to Life*, CAROLINIAN (Raleigh, N.C.), Feb. 22, 1947, at 1; Editorial, *Avoid Hysteria*, CAROLINIAN (Raleigh, N.C.), June 14, 1947, at 4; Editorial, *Governor to Rescue Again*, CAROLINIAN (Raleigh, N.C.) May 17, 1947, at 4; Editorial, *Inviting More Trouble*, CAROLINIAN (Raleigh, N.C.), Aug. 23, 1947, at 4; Editorial, *Justice Not Yet Color Blind*, CAROLINIAN (Raleigh, N.C.), Nov. 2, 1946, at 4; Editorial, *"Miscarriage" Not Unexpected*, CAROLINIAN (Raleigh, N.C.), Aug. 16, 1947, at 4.

193. *See* Harold Garfinkel, *Research Note on Inter- and Intra-Racial Homicides*, 27 SOC. FORCES 369, 369 (1948).

the jury's decision to convict for a capital crime.[194] Of course, such basic groupings do not control for other variables, but given the magnitude of the differences, they support the proposition that differences in results are the consequence of the groupings themselves.

	Black Defendant & White Victim	White Defendant & White Victim	Black Defendant & Black Victim	White Defendant & Black Victim
Total Cases	51	165	581	24
Indicted as First Degree Murder	48	138	530	17
# of Death Sentences	15	11	15	0
% of Indicted Cases	31.2%	7.9%	2.7%	0%[195]

The data show a tenfold difference in the rate of conviction for capital murder resulting in an automatic death sentence between cases involving black defendants and white victims and those involving black defendants and black victims. White defendant/white victim cases are almost three times more likely to result in death sentences than black defendant/black victim cases. Combining Garfunkel's data to examine race of the defendant differences shows a pronounced difference that explains some of that variation. Black victim cases resulted in death sentences only 2.5% of the time whereas white victim cases did so at a rate of 12.0%.[196]

194. Prosecutors' decisions to seek and juries' decisions to impose capital punishment are covered by the Racial Justice Act. *See* N.C. GEN. STAT. § 15A-2011(b) (2009) (focusing on whether race was "a significant factor in decisions to seek or impose the sentence of death"). In Garfinkel's study, prosecutors' decisions resulted in either the reduction of charges between indictment and trial or the acceptance of guilty pleas to lesser charges, and jury decisions to impose the death sentence were reflected in the verdict of guilty or not guilty of first degree murder, which carried an automatic death sentence. *See* Garfinkel, *supra* note 193, at 371 n.3.

195. These computations are obtained either directly or derived from Garfinkel, *supra* note 193, at 371 tbl. 2. In his table, Garfinkel computes similar percentages from all homicide cases rather than from only those that were indicted for first degree murder. Similar analysis of data from the same period and from five of the ten counties that Garfinkel studied was performed in Johnson, *supra* note 179, at 99 tbl. 1.

196. There are 216 white victim cases of which 26 were sentenced to death. There were 605 African American victim cases, of which 15 resulted in death sentences. *See* Garfinkel, *supra* note 193, at 371 tbl. 2 (presenting data from which these figures are computed).

Sociologist Guy B. Johnson examined the impact of race of the victim on decisions to execute in the years from 1933 through 1939. He found that, in cases with black defendants and white victims, 80.5% of cases resulted in execution as compared with 68.3% of cases with white defendants and white victims.[197] This difference in execution rates reveals the likely impact of the race of the victim in execution outcomes, whatever the race of the defendant. These detailed studies are consistent with the overall results in the data presented in this Part for the entire period.[198]

6. African American Jury Participation

The racially disproportionate results for defendants and victims occurred in trials conducted with few if any African Americans on the juries. The exclusion of African Americans from decisions about guilt and innocence began during slavery, when slaves were barred from service even if a slave was the defendant and charged with a crime against another slave.[199] The legal exclusion of newly freed African Americans was remedied as a formal matter by legal changes soon after the Civil War that gave freed slaves a right to sit on juries.[200] However, neither this change in the law nor other legal remedies removed the barriers to African American participation or resulted in actual change.[201] In the first half of the twentieth century, African Americans lacked a meaningful opportunity to serve on juries in North Carolina because they were not included in the jury pool in significant numbers, when not excluded entirely, and therefore had little chance to be drawn from the jury box as a potential juror to be questioned in voir dire.[202]

At the beginning of the twentieth century, the Supreme Court of North Carolina granted relief in one case where the defendant alleged purposeful exclusion of African Americans from the venire and the state had no explanation.[203] The court's language was unequivocal:

197. *See* Johnson, *supra* note 179, at 100 tbl. 2.

198. *See supra* notes 108–109 and accompanying text.

199. *See supra* notes 51–55 and accompanying text (noting that, even in the court system, the jury was to be comprised of slave owners).

200. Exclusion from jury service on account of race was eliminated as a legal matter by the enactment of the Fourteenth Amendment in 1868. In 1879, the United States Supreme Court in *Strauder v. West Virginia*, 100 U.S. 303 (1879), struck down a state law that excluded African Americans from jury service, and it declared under the Fourteenth Amendment a clear constitutional right, enforceable against the states, against de jure exclusion. *See id.* at 310–12 (ruling that Congress has the power, as it did, to authorize enforcement of this right by removal to federal court).

201. *See supra* note 44.

202. *See infra* notes 212–216 and accompanying text

203. *See* State v. Peoples, 131 N.C. 784, 784–91, 42 S.E. 814, 814–16 (1902) (reversing conviction based on challenge to grand jury composition, alleging use of jury list that was revised

> It is incomprehensible that while all white persons entitled to jury trials have only white jurors selected by the authorities to pass upon their conduct and their rights, and the negro has no such privilege . . . How can the forcing of a negro to submit to a criminal trial by a jury drawn from a list from which has been excluded the whole of his race purely and simply because of color, although possessed of the requisite qualifications prescribed by the law, be defended? Is not such a proceeding a denial to him of equal legal protection? There can be but one answer, and that is that it is an unlawful discrimination.[204]

However, inclusion of African Americans in the venire, and particularly participation in rough approximation to their proportion of the population of a jurisdiction, did not follow from this court ruling.[205]

Exclusion resulted from superficially neutral jury qualification provisions, combined with discretionary discriminatory practices. The statutory requirements for jury service during the first half of the century were simple, and on their face, they were not racially discriminatory: (1) payment of taxes for the preceding year, (2) good moral character, and (3) sufficient intelligence.[206] The first requirement had the effect of excluding a large percentage of African Americans from jury service.[207] The other two requirements permitted the exercise of virtually unlimited discretion through which officials could exclude African Americans without effective challenge unless the use of explicit racial grounds for exclusion was admitted.[208] Wide disparity between the proportion of African Americans in

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with partiality to exclude African Americans in Mecklenburg County, which had a one-third African American population who were qualified to serve under statutory requirements); *see also* State v. Perry, 248 N.C. 334, 335–39, 103 S.E.2d 404, 405–08 (1958) (reversing conviction where defendant alleged and supported with an affidavit that African Americans had been systematically excluded from grand jury service and from the grand jury that indicted him in Union County and the claim was denied without sufficient time to investigate).

204. *Peoples*, 131 N.C. at 790, 42 S.E. at 816.

205. It was not until after World War II that the Court granted relief when those responsible for jury selection produced evidence of non-discriminatory application of procedures regardless of their substantial disparate impact on African American participation. *See supra* note 27 and accompanying text.

206. *See Peoples*, 131 N.C. at 788, 42 S.E. at 815.

207. *See, e.g.*, State v. Daniels, 134 N.C. 641, 643–44, 46 S.E. 743, 744 (1904) (noting that there were only 528 African American males over the age of twenty-one in Jones County who had paid taxes the previous year out of a total African American population of 3,760).

208. *See id.* at 645, 46 S.E. at 745 (finding procedures valid where commissioners making eligibility decisions "discussed the qualifications of various negroes and white men and rejected their names when they decided they were not competent or fit" and did not "think of or discuss the race question"). When the commissioners responsible for producing the names of county residents from which the venire was selected denied the allegation of intentional discrimination and showed any inclusion of African Americans on the venire from which either the grand jury or the petit jury was picked, relief was denied. *See* State v. Perry, 250 N.C. 119, 129, 108 S.E.2d

the county and the proportion in the venire generally resulted,[209] and "the well known fact" that a higher proportion of whites qualified for service constituted a satisfactory basis for accepting exclusion of Africans Americans from the venire.[210] Instead, courts focused on the neutrality of the final selection process by having a child pick names from a box.[211]

Reported cases where practices were challenged come from a number of counties and demonstrate the widespread and extreme underrepresentation of African Americans: few were included in most venires and those few might all have been deemed unqualified,[212] never being selected to be questioned on *voir dire* for potential jury service. However, by mid-century, aided by the elimination of payment of taxes as a prerequisite to service,[213] the number of African Americans in the venire began to increase.[214] Thereafter, the reported cases began to reflect that some African Americans served on grand juries that indicted,[215] or on petit juries that convicted the defendant.[216]

447, 452 (1959) (finding no violation where two African Americans served on grand juries in Union County over the course of eight years); State v. Henderson, 216 N.C. 99, 104, 3 S.E.2d 357, 360 (1939) (finding it sufficient that a number of names were added to the jury box in New Hanover County two years earlier).

209. *See* State v. Koritz, 227 N.C. 552, 553–54, 43 S.E.2d 77, 79 (1947) (finding no violation despite the fact that only 255 names of African Americans were in jury box out of 4,900 eligible African Americans in Forsyth County); State v. Walls, 211 N.C. 487, 493, 191 S.E. 232, 237 (1937) (finding no violation where the names of only 650 African American were included in the jury box as compared with 10,000 names of whites in Mecklenburg County when local officials denied intentional discrimination despite their use of different colors of ink to designate jurors by race, the explanation being accepted that the colors made it helpful if the name were selected to "know whether to look for a white man or a colored man").

210. *See* Speller v. Crawford, 99 F. Supp. 92, 97 (E.D.N.C. 1951) (recognizing "the well known fact" that the proportion of African Americans qualifying for jury service in rejecting claim of purposeful discrimination based on proportion included in jury box).

211. *See Walls*, 211 N.C. at 494, 191 S.E. at 238 ("A more perfect system could hardly be devised to insure impartiality," which was the statutorily mandated selection system specified in N.C. GEN. STAT. § 9-3 (1943)).

212. *See* State v. Lord, 225 N.C. 354, 355, 34 S.E.2d 205, 206 (1945) (rejecting defendant's complaint that all African Americans in the venire were successfully challenged by the prosecutor for cause as not being "freeholders" in Cabarrus County where the trial was held).

213. *See Perry*, 250 N.C. at 125, 108 S.E.2d at 451–52 (describing changes in statutory requirements enacted in 1947 in response to a state constitutional amendment adopted in 1946 that made women eligible to serve on juries).

214. *See* State v. Speller, 231 N.C. 549, 550, 57 S.E.2d 759, 759 (1950) (including seven African Americans in venire selected from Vance County); State v. Reid, 230 N.C. 561, 562, 53 S.E.2d 849, 850 (1949) (noting that four or five African Americans were summoned for the trial venire in Wilson County where the defendant was tried).

215. *See* State v. Brown, 233 N.C. 202, 205, 63 S.E.2d 99, 101 (1951) (noting that one African American served on the grand jury that indicted the defendant in Forsyth County); *Reid*, 230 N.C. at 562, 53 S.E.2d at 850 (noting that one African American served on the grand jury in Wilson County where the defendant was indicted and tried).

216. In *Miller v. State*, 237 N.C. 29, 74 S.E.2d 513 (1953), a case involving an African American executed in 1953 for murder, three African American jurors served on the jury. *Id.* at

Thus, by the middle of the twentieth century, the entry-way barrier to meaningful participation—inclusion of African Americans in the jury pool—was beginning to fall. In a series of subsequent cases, the United States Supreme Court demonstrated a sustained interest in enforcing equal protection at this point in the selection process.[217] Using statistical evidence on differences between identifiable groups in the jury pool and the population and burden shifting, along with other factors,[218] the Court's ruling had the effect of requiring the use of broadly inclusive lists of the jurisdiction's eligible jurors to make up the jury pool from which venires are selected.[219] The result neither eliminated deviations between the African American percentage in the population and in the jury pool nor ended legal challenges on this issue.[220] However, by the mid-twentieth

40, 74 S.E.2d at 521. In *State v. Roman*, 235 N.C. 627, 70 S.E.2d 857 (1952), four African Americans served on the jury that convicted the defendant executed in 1953 for murder. *Id.* at 628, 70 S.E.2d at 857; *cf. Brown*, 233 N.C. at 205, 63 S.E.2d at 101 (noting that the defendant, who was executed in 1953, was tried by a jury containing no African Americans, but also noting that one African American was tendered to the defendant for service but excused by his counsel). Moreover, Clyde Brown, who was executed in 1953, was denied relief even though the statutory command was not followed and only names on the previous year's tax lists were used because intentional exclusion, which, the court required, was not shown. *Id.* at 206, 63 S.E.2d at 101 (stating that there was no right to relief in the absence of a showing of intentional exclusion and that the statute's provisions were "directory, and not mandatory, in the absence of proof of bad faith"); *see also Miller*, 237 N.C. at 46, 74 S.E.2d at 525 (stating there was no constitutional basis for a challenge based on disproportionate representation as to jury service).

217. *See* Batson v. Kentucky, 476 U.S. 79, 84 n.3 (1986) (listing some of the "numerous decisions of this Court" related to the issue).

218. A number of cases set the foundation for this body of law. *See, e.g.*, Sims v. Georgia, 389 U.S. 404, 407–08 (1967) (per curiam) (ruling that procedures purportedly implementing neutral statutes are void when the results demonstrate substantial disparities between racial composition of the lists used and the resulting venire); Whitus v. Georgia, 385 U.S. 545, 548–49 (1967) (same); Norris v. Alabama, 294 U.S. 587, 598–99 (1935) (declaring a practice invalid that assumed members of the defendant's race were not qualified to serve). Others developed the operative standard that is generally applied in contemporary litigation. *See* Duren v. Missouri, 439 U.S. 357, 364 (1979) (setting out three-factor test). Finally, the Court has explained the place of these cases in its framework for use of statistical evidence, disparate racial impact, and burden shifting. *See* Washington v. Davis, 426 U.S. 229, 242 (1976) (justifying this virtually automatic finding by the fact that "[i]t is also not infrequently true that the discriminatory impact—in the jury cases for example, the total or seriously disproportionate exclusion of Negroes from jury venires—may for all practical purposes demonstrate unconstitutionality because in various circumstances the discrimination is very difficult to explain on nonracial grounds"); *Batson*, 476 U.S. at 85–87 (basing justification for rigorous adherence to broad and equal inclusion on the requirement that the jury represent the broader society and its various components).

219. For example, counties in North Carolina have compiled their master list using lists of taxpayers, registered voters, and those with driver's licenses. *See* State v. Avery, 299 N.C. 126, 129, 261 S.E.2d 803, 805 (1980) (noting use of tax and voter registration lists in Mecklenburg County); State v. McCoy, 320 N.C. 581, 584, 359 S.E.2d 764, 766 (1987) (noting that Rutherford County used voter registration and driver's license lists).

220. *See, e.g.*, *Avery*, 299 N.C. at 134–35, 261 S.E.2d at 808 (rejecting challenge where disparity between population percentage and inclusion in the jury pool approached but was less

century, African Americans began to make their way into the jury pools throughout the state as a result of changes in the law and practice. However, progress in removing this previously critical legal barrier failed to eliminate the effect of race in jury selection. Instead, as examined in the next Part, exclusion through peremptory challenges provided a new barrier to African American participation on juries.[221]

7. Race and the Death Penalty 1910–1961 and Implications for the Present

Between 1910 and 1961, race played a major role in the use of the death penalty in North Carolina. The influence of overt racially motivated community conduct, the disproportionate execution of African American defendants, and the equally disproportionate use of the death penalty in cases where the victim was white demonstrate the remarkable continuity in the racially prejudicial application of death sentences over the course of this period. Indeed, despite substantial changes in legal structures, not to mention enormous social and political changes, execution patterns remained largely unchanged between the colonial period and the dawn of the civil rights era, demonstrating the resilient, and indeed dominant, power of race on the death penalty.

Historical evidence unmistakably demonstrates the enduring influence of racial prejudice on the death penalty process and its persistent impact well into the twentieth century. This evidence includes the mandatory death penalty for rape and burglary, punishments almost exclusively reserved for African American criminals with white victims; the imposition of death sentences for all crimes on African Americans in vast disproportion to their percentage of the population; and African Americans' consistent outsider status in the criminal justice process, maintained most effectively by their exclusion from jury service.[222] The endurance of race as a defining factor in the state's death penalty system suggests the tendency of the influence of racial prejudice to persist despite legal changes

than 10%); *see also* State v. Golphin, 352 N.C. 364, 394, 533 S.E.2d 168, 192 (2000) (noting that claims had been rejected in the state with absolute disparities of over 10%).

221. *See infra* Part III.B.3. A similar discretionary selection issue also arose as to racial discrimination in selection of a grand jury foreman by the superior court judge who selects the foreman. *See* State v. Cofield, 320 N.C. 297, 309, 357 S.E.2d 622, 629 (1987) (finding discrimination in the selection of one African American foreman out of thirty-three chosen over an eighteen year period in a county that had a 61% African American population).

222. The one exception that proved the rule occurred when juries were briefly integrated under federal military rule. *See supra* note 44. As the period ended, some promise existed that under federal constitutional command African American participation on juries would increase. However, as seen in *infra* Part III.B, those promising developments were limited by the continued use of peremptory challenges.

designed to eliminate it and social and political changes that diminish its acceptability.

This article next turns to an examination of the changes that occurred in the death penalty structure and the judicial principles intended to guide discretion and limit discrimination after the Supreme Court's decision in *Furman*. It concludes with an examination of the Racial Justice Act. The next part does not reach a conclusion regarding the persistence of the influence of racial prejudice into the modern period. Instead, it examines not only the potential of legal changes to reduce the role of race in the death penalty, but also the clear opportunities for racial prejudice to continue to influence that process. The central question that this analysis poses is whether the powerful force of racial discrimination has finally been eliminated. The answer to that question will come through the operation of the RJA.

III. THE DEATH PENALTY AND RACE

Furman v. Georgia[223] set aside the existing death penalty system and demanded the creation of a new system.[224] The changes were indeed substantial. However, as demonstrated below in Part A, the new legal framework did not eliminate the exercise of discretion and judgment by prosecutors and jurors. Instead, opportunities continued for racial motivation to operate through the expansive scope of death-eligible cases and the loose definition, multiplicity, and frequent presence of aggravating factors upon which a death sentence could be charged and imposed under North Carolina law.

Part B examines the results of the death penalty process after *Furman*, which as of July 1, 2010 had placed 159 defendants on death row. It focuses in turn on issues of race as they affected which defendants were sentenced to death and how jurors were excluded through peremptory challenges. This examination reveals an intriguing pattern of some change or moderation but also substantial continuity.

A. The Legal Framework of the Modern Death Penalty

In 1973, the year after the *Furman* decision, the Supreme Court of North Carolina ruled in *State v. Waddell,*[225] which involved a conviction for rape, that the portion of the rape statute that gave the jury discretion on the sentence was unconstitutional. However, with that provision eliminated, the statute survived as a constitutional mandatory death penalty statute for

223. 408 U.S. 238 (1972).
224. *Id.* at 240.
225. 282 N.C. 431, 194 S.E.2d 19 (1973).

rape. The court applied the same rationale to recast the murder statute as similarly requiring a death sentence upon a conviction for first degree murder.[226] In 1974, the North Carolina General Assembly followed the court's lead and enacted a statute that made the death penalty mandatory for first degree murder,[227] which was invalidated as noted above[228] by the United States Supreme Court in *Woodson*.[229] The legislature then enacted a new death penalty statute that adopted aspects of the systems approved by the United States Supreme Court,[230] which with some modifications is the present-day law.[231]

The command of *Furman* combined with *Woodson* was to constrain discretion but not to do so woodenly. The result, as developed below, was the creation of a statutory structure that imposed some restrictions on discretion but permitted substantial leeway in interpretation and application, allowing the continuation of both substantial discretion and broad definitions of death eligible cases. However, in a way that was unusual among the states, North Carolina attempted to strictly restrain the prosecutor's discretion. In its interpretation of the state's death penalty statute, the North Carolina Supreme Court sought to impose a different mandatory element requiring trial of death-eligible cases by restricting prosecutorial discretion in plea bargaining. The court prohibited plea agreements to first degree murder with a resulting sentence of life imprisonment in cases where the evidence established an aggravating factor because the plea agreement avoided a jury verdict on whether the death penalty should be imposed.[232] That restriction, which could be evaded at

226. *Id.* at 445, 194 S.E.2d at 28–29.

227. The murder statute, N.C. Gen. Stat. Sections 14–17 (Cum. Supp. 1975), defined first degree murder and stated that it "shall be punished with death." A similar statutory form was adopted for rape. *See* N.C. GEN. STAT. §§ 14-21 (Cum. Supp. 1975).

228. *See supra* notes 14, 29–31 and accompanying text (discussing North Carolina's mandatory death penalty provision and its subsequent invalidation).

229. Woodson v. North Carolina, 428 U.S. 280 (1976). A mandatory death penalty could theoretically reduce the impact of race on the death penalty. *See, e.g.*, Randall L. Kennedy, McCleskey v. Kemp: *Race, Capital Punishment, and the Supreme Court*, 101 HARV. L. REV. 1388, 1434 (1988) (arguing that one potential remedy for the racial disparities found in *McCleskey* would be for the Court to revise its rejection of mandatory death penalties for specified crimes although questioning whether it would eliminate race-of-the-victim discrimination since juries would likely continue to extend greater leniency to killers of African Americans). *But see* LOUIS MICHAEL SEIDMAN & MARK V. TUSHNET, REMNANTS OF BELIEF 160–61 (1996) ("Even a mandatory system does not eliminate prosecutorial and police discretion, jury nullification, or bias built into the definitions of the underlying crimes.").

230. *See* State v. Barfield, 298 N.C. 306, 343–55, 259 S.E.2d 510, 537–44 (1979) (comparing aspects of the North Carolina statute to various aspects of Georgia's, Texas's, and Florida's systems in finding it constitutional).

231. *See* N.C. GEN. STAT. § 15A-2000 (2009).

232. This restriction was either unique to North Carolina or quite uncommon. In *State v. Johnson*, 298 N.C. 47, 257 S.E.2d 597 (1979), Justice James Exum rejected the defendant's claim

greater cost to the prosecution's interest to punish severely those who commit first degree murder,[233] was eliminated by legislation in 2001.[234] The effect of limiting discretion appears to have been that many defendants were placed on death row unnecessarily since a death penalty trial often could not be avoided by a plea bargain acceptable to the prosecution.[235]

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that the trial judge erred by refusing to approve a plea agreement whereby the defendant would plead guilty to first degree murder and the state would recommend a life sentence. *Id.* at 77–80, 257 S.E.2d at 619–20. The court ruled that the intention of the legislature, as manifested in the capital punishment statute's language, was to submit the question of sentencing to the jury whether guilt was determined after trial or upon a guilty plea and that the alternative sought by the defendant might make the statute unconstitutionally arbitrary or impose an unconstitutional additional burden on a defendant exercising the constitutional right to trial. *Id.*; *see also* State v. Case, 330 N.C. 161, 163, 410 S.E.2d 57, 58 (1991) (finding reversible error where the State agreed not to submit an aggravating circumstance in return for the defendant's plea to felony murder because to permit such discretion would render the statute arbitrary and therefore unconstitutional).

233. Under the court's interpretation, a guilty plea that avoided a death penalty in a first degree murder case could only be imposed if the plea was to a reduced charge, such as second degree, or no statutory aggravating factor was found by the prosecutor. *See* State v. Britt, 320 N.C. 705, 710–11, 360 S.E.2d 660, 662–63 (1987) (ruling that, although not having the discretion to determine whether a first degree murder case was capital or not capital, the district attorney could declare the cases non-capital where the record showed no evidence of an aggravating factor). The alternative of a second degree murder plea was occasionally employed, although it had the cost of reducing the potential sentence and the severity of the crime too much to satisfy the prosecutor's interest in public safety, which sometimes made a plea bargain unreachable even in a case without any real contest on the issue of guilt.

This mechanism of a prosecutor who failed to submit an aggravating fact when it was arguably, but not clearly, available reputedly occurred, although at some point it was not legally authorized, *see id.* at 711, 360 S.E.2d at 663 (stating that the failure to submit an aggravating factor must be based on a genuine lack of evidence) and in cases where an aggravating factor was clear, it was not an option. Using this mechanism could be justified by the public interest in not only the certainty of a conviction but a conviction for first degree murder with the ensuing heavy sentence while avoiding the cost of a trial. For the defendant, it had the disadvantage of a certain conviction by the plea of guilty, but it avoided any risk of a death penalty.

234. N.C. Gen. Stat. Section 15A-2004 (2009), which explicitly gave prosecutors the discretion to try a first degree murder capitally or noncapitally regardless of the presence of aggravating factors and to agree to accept a plea of guilty and a sentence of life imprisonment for such a capital felony became effective on July 1, 2001. It has not been challenged successfully on constitutional grounds, and there is little reason to believe the argument meritorious.

235. How much this restriction did to limit arbitrariness in the entire system, particularly with the authorized and unauthorized mechanisms for avoidance, is unclear. A major indirect impact was apparently the large number of death sentences during the period this interpretation was operative among cases that might never have gone to trial if the alternative of a guilty plea had been available. T he differences are dramatic, and the likely important impact of the legal change in reducing unnecessary death sentences is hard to discount. The change became effective on July 1, 2001, and for simplicity, that transition year (fourteen death sentences) is omitted. In the eight years from 2002 through 2009 after enactment of the law, defendants were sentenced to death in thirty-four cases for an average of 4.2 death sentences a year; in the eight years before 2001, defendants were sentenced to death in 194 cases, for an average of 24.2 a year. *See* DOC Offenders on Death Row, *supra* note 34; DOC Persons Removed from Death Row, *supra* note 34; *see also* Adcock, *supra* note 9, at 137–46 (describing reasons, including the statutory change noted above, for the decline in death penalties imposed in North Carolina beginning in 1997).

1. The Continued Operation of Discretion under Expansive Definitions of Death-Eligible Murders

Furman, on its face, appeared to demand a radical departure from the previous system that was characterized by a death penalty broadly applicable to murder and to some additional crimes, chiefly rape, and gave largely unfettered discretion to the jury as to its imposition.[236] Although the system has been changed to limit jury discretion to a narrower group of murder cases[237] and procedural regulations have been imposed, the overall general pattern nationally and in North Carolina is that death eligibility remains remarkably broad.[238] The broad reach of the death penalty statute is particularly important with respect to the potential impact of race because researchers have found race to have little impact on the "worst" murders and murderers. In such cases, a death sentence is regularly imposed irrespective of race, but on those that are in an intermediate or low range of aggravation and culpability, sentences are more variable and discretionary and race plays a potentially decisive role.[239]

In *Furman*, the United States Supreme Court commanded that theoretically the death penalty was to be limited to those most deserving of receiving it, which is termed a "just deserts" theory.[240] The narrowing of death eligible cases was intended to eliminate the problem of "over inclusion" and help ensure that the death penalty was only sought and

236. *See generally* Carol S. Steiker & Jordan M. Steiker, *Sober Second Thoughts: Reflections on Two Decades of Constitutional Regulation of Capital Punishment*, 109 HARV. L. REV. 355, 364–66 (1995).

237. *See* Kennedy v. Louisiana, 554 U.S. __, 128 S. Ct. 2641, 2650–51 (2008) (ruling that the death penalty could not be imposed under the Eighth Amendment for the aggravated rape of a child where death did not result and was not intended); Coker v. Georgia, 433 U.S. 584, 660 (1977) (eliminating the death penalty for the rape of an adult). The application of the death penalty to extraordinary crimes, such as terrorism, that do not actually involve death but threatened it on a massive scale has not been determined and may prove constitutional.

238. *See* Steiker & Steiker, *supra* note 236, at 373 (arguing this point and stating that "indeed, [eligibility is] nearly as broad as under the expansive statutes characteristic of the pre-*Furman* era"); *see also* Scott W. Howe, *The Futile Quest for Racial Neutrality in Capital Selection and the Eighth Amendment Argument for Abolition Based on Unconscious Racial Discrimination*, 45 WM. & MARY L. REV. 2083, 2095–106 (2004) (describing the post-*Furman* death penalty system as characterized by four factors, which play central roles and permit the continued influence of racial discrimination: (1) broad application of the death penalty to non-negligent homicides; (2) decentralized decision-making by prosecutors and juries; (3) extreme deference by courts to prosecutors in charging and plea bargaining; and (4) expansive discretion afforded to capital sentencers).

239. *See* David C. Baldus & George Woodworth, *Race Discrimination and the Legitimacy of Capital Punishment: Reflections on the Interaction of Fact and Perception*, 53 DEPAUL L. REV. 1411, 1456 n.166 (2004) (setting out studies); Howe, *supra* note 238, at 2098–99; *infra* note 318 and accompanying text (discussing how further narrowing can eliminate or substantially curtail racial discrimination).

240. *See* Howe, *supra* note 238, at 2139–43.

imposed on those for whom the larger political community believed it was merited.[241] The Court ultimately authorized narrowing death eligible cases either through a restricted definition of capital murder, or by identifying aggravating factors beyond the definition of capital murder,[242] with North Carolina choosing the latter method.

Two aspects of the system the United States Supreme Court approved allow the definition of capital murder to broaden despite the intended effort to narrow it. This broad definition permits discretion to be exercised by the prosecutor in the charging decision and by the jury in its decision to impose the death penalty. The first is that some approved aggravating factors are vaguely defined, potentially expandable, and allow the exercise of largely undefined judgment.[243] The second is that the United States Supreme Court placed no limitation on the number of aggravating factors that could be authorized, some of which may be individually quite broad.[244]

2. The Broad Range of Circumstances that Permit Murder Cases to be Charged Capitally and Juries to Impose the Death Penalty

If only certain types of cases, objectively determined, could be submitted to the jury for its judgment as to whether death was the proper punishment, then prosecutorial discretion to charge inappropriate cases and

241. *See* Steiker & Steiker, *supra* note 236, at 364–66, 372.

242. As to the function of aggravating factors in narrowing, see *Zant v. Stephens*, 462 U.S. 862, 877 (1983), which found that requiring the jury to find an aggravating factor in addition to guilt worked to "genuinely narrow the class of persons eligible for the death penalty and . . . reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder."

243. *See* Steiker & Steiker, *supra* note 236, at 373.

244. *See id.* at 373–74. The actual narrowing impact of the Court's apparent restrictions was further diminished when it ruled that, if the jury reached a death verdict utilizing an invalid aggravating factor, the death sentence could still be affirmed upon an appellate court's determination that the error was harmless. *See* Clemons v. Mississippi, 494 U.S. 738, 754 (1990) (ruling that where error occurs in submission of an aggravating factor the result may be affirmed if the state appellate court engages in either harmless error analysis or reweighing of aggravating and mitigating factors); s*ee, e.g.*,. State v. Anthony, 354 N.C. 372, 433–34, 555 S.E.2d 557, 596 (2001) (utilizing harmless error review); State v. Alston, 341 N.C. 198, 255, 461 S.E.2d 687, 719 (1989) (same); State v. Taylor, 304 N.C. 249, 285–86, 283 S.E.2d 761, 784 (1981) (same). The finding of harmlessness can be made despite the impossibility of a reviewing court actually knowing what role the erroneously submitted aggravating factor played in the jury's determination. This is because

> [n]othing in the Sixth Amendment constued by our prior decisions indicates that a defendant's right to a jury trial would be infringed where an appellate court invalidates one of two or more aggravating circumstances found by the jury, but affirms the death sentence after itself finding that the one or more valid remaining aggravating factors outweigh the mitigating evidence. Any argument that the Constitution requires that a jury impose the sentence of death or make the findings prerequisite to imposition of such a sentence has been soundly rejected by prior decisions of this Court.

Clemons, 494 U.S. at 745.

juries to sentence in inappropriate cases could be eliminated, solving the problem of over-inclusion.[245] However, that is not the nature of post-*Furman* death penalty jurisprudence nationally or in North Carolina.

In particular, the aggravating factor that the murder is "especially heinous, atrocious, or cruel"[246] is potentially quite poor in meaningfully narrowing death eligible cases.[247] For the class of murders that lay observers would call brutal, this aggravating factor allows much the same discretionary judgment to be made in post-*Furman* days as existed pre-*Furman*.[248] The United States Supreme Court theoretically imposed an important limitation on that aggravating factor by requiring that it be limited to "core" cases,[249] but it subsequently removed most of the real impact of that ruling by approving lax enforcement of the requirement.[250]

245. This remedial measure would not eliminate the potential for racial discrimination, particularly race-of-the-victim discrimination as could occur if prosecutors chose not to prosecute capitally and/or jurors decided not to sentence to death defendants who committed crimes against African American victims.

246. N.C. GEN. STAT. § 15A-2000(e)(9) (2009) ("The capital felony was especially heinous, atrocious, or cruel.").

247. *See* Jeffrey L. Kirchmeier, *Aggravating and Mitigating Factors: The Paradox of Today's Arbitrary and Mandatory Capital Punishment Scheme*, 6 WM. & MARY BILL RTS. J. 345, 367–68 (1998) (describing academic literature that shows this aggravating factor is both applied broadly and to virtually every type of capital murder); Richard A. Rosen, *The "Especially Heinous" Aggravating Circumstance in Capital Case—The Standardless Standard*, 64 N.C. L. REV. 941, 970–88 (1986) (describing the experience in eleven states in which either the effort to limit discretion has been defeated by inconsistent judicial interpretations or in which the aggravator operates effectively as a catch-all aggravating factor without any meaningful effort to limit its scope). *See generally* Michael Mello, *Florida's "Heinous, Atrocious or Cruel" Aggravating Circumstance: Narrowing the Class of Death-Eligible Cases without Making It Smaller*, 13 STETSON L. REV. 523 (1984) (examining the inadequacy of this aggravating factor in the specific context of the Florida death penalty statute).

248. *See* Randall K. Packer, *Struck by Lightning: The Elevation of Procedural Form Over Substantive Rationality in Capital Sentencing Proceedings*, 20 N.Y.U. REV. L. & SOC. CHANGE 641, 657–58 (1993-94) (describing how North Carolina's aggravating factor gives the jury no guidance in distinguishing a murder that should be considered especially heinous, atrocious, or cruel from any other brutal murder).

249. In *Godfrey v. Georgia*, 446 U.S. 420 (1980), the Court, reviewing a statutory aggravating factor that the murder was "outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind; or an aggravated battery to the victim," *id.* at 422 (quoting GA. CODE § 27–2534.1(b)(7)(1978)), held that this aggravating factor was constitutional but must be limited to "core" cases. *Id.* at 428–31; *see also* Maynard v. Cartwright, 486 U.S. 356, 359, 364–65 (1988) (reversing an Oklahoma death sentence that involved a statutory provision that "the murder was "especially heinous, atrocious or cruel" (quoting OKLA. STAT. tit. 21, §§ 701.12(2), (4) (1981)).

250. *See* Arave v. Creech, 507 U.S. 463, 465, 471 (1993) (determining Idaho death sentence valid because of a judicial construction that interpreted its statute that defined an aggravating factor that "the defendant exhibited utter disregard for human life" to mean "cold-blooded, pitiless slayer" (quoting Idaho Code § 19–2515(g)(6) (1987)); Walton v. Arizona, 497 U.S. 639, 654–55 (1990) (finding an Arizona application of a similar statutory provision constitutional because of a construction that required "especially cruel" to mean infliction of mental anguish or physical abuse before death and "mental anguish" to include the victim's uncertainty as to his

North Carolina adopted this aggravating factor, which the Supreme Court of North Carolina subsequently found constitutional under the limiting interpretation it provided.[251] The court's decisions, however, did not in fact impose significant restrictions on the use of this aggravating factor but rather allowed the factor to apply quite broadly, taking advantage of the laxity afforded by the United States Supreme Court's inconsistent rulings.[252]

Similarly, the felony murder element of the North Carolina death penalty statute opens the possibility of a death sentence for a broad array of murders beyond those that are intentionally committed. Within this range of murders, it allows discretionary decisions to be made on who will be sentenced to death by the jury when one of the statutory aggravating facts

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ultimate fate). Even with these judicial interpretations, the statutes are substantively similar in operation to those ruled invalid in *Godfrey* and *Maynard* in that they do not genuinely narrow the class of death-eligible individuals, and they still apply potentially to a broad range of murders. *See* Steiker & Steiker, *supra* note 236, at 373–74.

251. The Supreme Court of North Carolina approved use of this statutory factor both before *Godfrey*, s*ee* State v. Goodman, 298 N.C. 1, 24–26, 257 S.E.2d 569, 585 (1979) (approving limits to the effect of this aggravating factor), and after the decision given its prior interpretations, *see* State v. Rook, 304 N.C. 201, 225–26, 283 S.E.2d 732, 747 (1981) (concluding that the problem identified by *Godfrey* had been avoided by requiring infliction of unusual suffering on the victim). *See* Rosen, *supra* note 247, at 970–88 (arguing that despite stating that the factor is to be given a limiting effect, multiple and inconsistent rulings of the state courts have rendered this admirable intention effectively a nullity and that under approved instructions jurors are free to approve a death sentence merely by finding that the killing was evil, wicked, or fierce). California is one of a limited number of states that has found this aggravating factor to violate a constitutional guarantee. *See* People v. Superior Court of Santa Clara County (Engert), 647 P.2d 76, 81 (Cal. 1982) (striking down the statute on vagueness grounds); s*ee also* Steven F. Shatz & Nina Rivkin, *The California Death Penalty Scheme: Requiem for* Furman?, 72 N.Y.U. L. REV. 1283, 1283, 1315–18 (1997) (noting that although other aggravating factors in California's death penalty statute give the appearance of narrowing the class of death eligible cases without meaningfully doing so, the state supreme court did find this particular aggravation factor invalid).

252. Although purporting to impose a narrowing interpretation, the Supreme Court of North Carolina has approved a broad construction of the factor. *See, e.g.*, State v. Brown, 315 N.C. 40, 66–67, 337 S.E.2d 808, 827–28 (1985) (concluding that the aggravating factor was justified where the victim was kidnapped at gun point, therefore suffering terror before her death, and according to the medical examiner, may have lived as long as fifteen minutes after being shot); State v. Oliver, 302 N.C. 28, 61, 274 S.E.2d 183, 204 (1981) (approving an especially heinous finding where one of the defendants shot the victim after he opened the cash register and said, "Please don't shoot me. Go ahead and take the money," because the victim begged for his life). Moreover, rather than requiring a rigorous screening of the evidence presented to determine if it could satisfy the statutory language to narrow its potentially dangerous reach, the court has mandated a generous analysis of the facts:

> In determining whether the evidence is sufficient to support a finding of essential facts which would support a determination that a murder was 'especially heinous, atrocious, or cruel,' the evidence must be considered in the light most favorable to the State, and the State is entitled to every reasonable inference to be drawn therefrom.

Brown, 315 N.C. at 66, 337 S.E.2d at 827 (citing State v. Moose, 310 N.C. 482, 313 S.E.2d 507 (1984); State v. Stanley, 310 N.C. 332, 312 S.E.2d 393 (1984)).

can be supported by a reasonable construction of the evidence. Among these cases prosecutors have the ability to choose which to charge capitally. Thus, discretionary decisions and the operation of a racial element may enter the judgment to seek or impose the death penalty under current law.[253]

Finally, the North Carolina death penalty statute provides a broadly available aggravating factor for many felony murders through its "pecuniary gain" aggravating factor that, if charged by the prosecutor and found by the jury, makes a murder case "death eligible."[254] This aggravating factor is a fruitful site for the exercise of discretion since a single aggravating factor will suffice. Unlike the narrow interpretation applied in some other states, which limit this aggravating factor to murders for hire or for murders targeted at obtaining known specific liquid assets, such as insurance proceeds or an inheritance,[255] this provision has been very broadly interpreted by North Carolina courts.[256] It potentially makes the death penalty applicable to all murders committed with the apparent intention of monetary gain, including those committed during robberies, attempted robberies, and many, perhaps most, first degree burglaries.[257]

253. *See* Richard A. Rosen, *Felony Murder and the Eighth Amendment Jurisprudence of Death*, 31 B.C. L. REV. 1103, 1117–20, 1131–33 (1990) (discussing the dangers of a felony murder in connection with the constitutionally mandated task of constraining discretion in the imposition of the death penalty, specifically its potential racial impact and the dangers of a statutory framework that includes a broadly defined "pecuniary gain" aggravating factor to create an illusion, rather than a reality, of meaningfully and rationally narrowing the class of death-eligible cases).

254. *See* N.C. GEN. STAT. § 15A-2000(e)(6) (2009) ("The capital felony was committed for pecuniary gain."). In *State v. Cherry*, 298 N.C. 86, 257 S.E.2d 551 (1979), the Supreme Court of North Carolina concluded that there was a disproportionately higher possibility that a defendant convicted of a felony murder will be sentenced to death than a defendant convicted of premeditated murder "due to the 'automatic' aggravating circumstance dealing with the underlying felony." *Id.* at 113, 257 S.E.2d at 568. Addressing this flaw, the court held that "when a defendant is convicted of first degree murder under the felony murder rule, the trial judge shall not submit to the jury at the sentencing phase of the trial the aggravating circumstance concerning the underlying felony." *Id.* In *State v. Oliver*, 302 N.C. 28, 274 S.E.2d 183 (1981), the Supreme Court of North Carolina held that pecuniary gain could be used as an aggravating factor, in addition to robbery being used as an element of felony murder, without violating its prohibition against using an essential element of felony murder again as an aggravating factor because it considered the motivation of pecuniary gain that constituted the aggravating factor as distinct from the role of robbery within felony murder. *Id.* at 62–63, 274 S.E.2d at 204–05. Accordingly, felony murder when committed to gain funds—e.g., an armed robbery—is automatically death eligible.

255. *See* Rosen, *supra* note 253, at 1132 (describing narrow "pecuniary gain" provisions in a number of states).

256. *See, e.g.*, State v. Irwin, 304 N.C. 93, 96, 106–07, 282 S.E.2d 439, 442, 448 (1981) (finding killing that occurred during the robbery of a drug store for drugs established the aggravating factor or pecuniary gain).

257. *See* Rosen, *supra* note 253, at 1132. Albeit in a more subtle way, the effect can be the same as existed at an earlier time when first degree burglary was a capital crime and had a strong racial identification with the threat of sexual violence by African American males against white

Thus, despite important changes in the post-*Furman* legal framework that were intended to constrain discretion and therefore might have had the effect of restricting or eliminating the impact of race, discretion continues to operate. As a result, opportunities continue to exist that allow race to significantly affect the prosecutor's decision to charge particular defendants with capital offenses and influence the jury's decision to impose death among those charged. For example, while aggravating factors must be charged by the prosecutor, reviewed by the court, and found by the jury for a crime to be charged as a capital offense and for the death penalty to be recommended by the jury, aggravating factors are not always clearly present in the facts of the case for charging purposes. The effort to develop marginal or non-obvious aggravators may be either vigorously or tepidly pursued in the investigation of the case and in making legal arguments to the court for their inclusion. Similarly, for the jury, proof of aggravation may not be clearly shown by the evidence, or it may be inherently a matter of judgment as to whether a murder is "especially heinous, atrocious, or cruel."

B. Race in the Modern Death Penalty System

In the roughly fifty years of executions conducted by the state of North Carolina before *Furman*, primarily African American defendants were executed for crimes committed against primarily white victims. Part III.A examined the differences in death penalty procedures developed in the wake of *Furman*, showing substantial change in form and highlighting the potential for continuity in the effect of race on the death penalty. This Part examines the operation of the modern system, which has resulted in a death row population of 159 and forty-three executions as of mid-year 2010. It analyzes the process by focusing on issues of race and defendants, then victims, and finally jurors. As in earlier periods, more African Americans than whites were sentenced to death after *Furman*,[258] but the

females when the house burglarized at night was occupied by a white female. *See infra* Part II.B.2.

258. The significance of the race-of-the-defendant figures must await careful statistical analysis. Only 21.6% of the state's population in 2000 was African American. *See* U.S. Census Bureau, North Carolina – County, Census 2000 Summary File, *available at* http://factfinder.census.gov/servlet/GCTTable?_bm=y&-geo_id=04000US37&-_box_head_nbr=GCT-P6&-ds_name=DEC_2000_SF1_U&-redoLog=false&-format=ST-2&-mt_name=DEC_2000_PL_U_GCTPL_ST2) (last visited July 1, 2010) [hereinafter 2000 Census]. The much larger figure of African Americans sentenced to death does not necessarily indicate discrimination. This is because a much larger percentage of murders that qualify under the death penalty statute are generally committed by African Americans than by whites. *See* Baldus & Woodworth, *supra* note 239, at 1432 (noting that, in many areas of the country, African Americans constitute over 50% of those arrested for death-eligible homicides).

degree of disparity has moderated.[259] However, with regard to victims, the picture remains much as it was in the earlier period, with the death penalty largely reserved for crimes against white victims.[260] African American participation on juries has clearly increased over earlier periods but remains limited, the analysis giving particular emphasis to the role of peremptory challenges by the prosecution in limiting that participation. For a substantial number of defendants on death row, no African Americans sat on their juries.[261]

Race-of-the-defendant discrimination has been most frequently found post-*Furman* in cases where the defendant is African American and the victim is white. *See* David C. Baldus & George Woodworth, *Race Discrimination in the Administration of the Death Penalty: An Overview of Empirical Evidence with Special Emphasis on Post-1990 Research*, 39 CRIM. L. BULL. 194, 213 (2003) (noting that in relatively recent post-*Furman* studies in Kentucky and Maryland researchers documented that African American defendants whose victims were white were at particular risk of more punitive treatment); *cf.* Jennifer L. Eberhardt et al., *Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital-Sentencing Outcomes*, 17 PSYCHOL. SCI. 383, 385 (2006) (finding stereotypical image of African American defendants most powerful in cases where the victim was white). Of the 159 defendants on North Carolina's death row, thirty-eight of them are African Americans convicted of killing a white person (three of these also killed one or more African Americans during the same crime), and an additional seven are Native Americans convicted of killing whites. *See* DOC Offenders on Death Row, *supra* note 34; Memorandum Detailing Race of Victim of Death Row Defendants (on file with the North Carolina Law Review).

259. Professor David Baldus summarizes post-*Furman* studies as a group showing that, although it continues in some localities, the death penalty is no longer generally characterized by systemic discrimination against African American defendants that existed in many states before *Furman*. *See* Baldus & Woodworth, *supra* note 239, at 1412; *see also id.* at 1419–22 (describing equivocal results from many studies regarding race-of-the-victim discrimination but a strong "main effect" for race-of-the-defendant in Philadelphia, Pennsylvania and in occasional other studies). *But see* David C. Baldus et al., *Racial Discrimination and the Death Penalty in the Post-*Furman *Era: An Empirical and Legal Overview, With Recent Findings from Philadelphia*, 83 CORNELL L. REV. 1638, 1675–79 (1998) (detailing analysis that shows racial discrimination against African American defendants in Philadelphia death penalty prosecutions based on jury decision making). *See generally* Heather T. Keenan et al., *Race Matters in the Prosecution of Perpetrators of Inflicted Traumatic Brain Injury*, 121 PEDIATRICS 1174 (2008) *available at* http://www.pediatrics.org/cgi/content/full/121/6/1174 (reporting the results of an empirical study showing that in North Carolina, when children died as a result of traumatic brain injury, the initial charges and the final charges were principally related to the death of the child but that as the sentencing decision, even after controlling aggravating and mitigating factors, was best predicted by the defendant's minority status).

260. In contrast to the mixed picture with race-of-the-defendant discrimination, post-*Furman* analysis in other jurisdictions has continued to find relatively consistent race-of-the-victim discrimination. *See* Baldus & Woodworth, *supra* note 239, at 1413; *see also id.* at 1419–22 (detailing strong evidence in many jurisdictions that, after controlling for a number of alternative explanations, cases with white victims are substantially more likely to result in death sentences and that the most common source of the effect is the prosecutor's charging decision).

261. *See infra* note 356 (listing thirty such cases).

1. The Continuing Predominance of African American Defendants Sentenced to Death

The results of the death penalty sentencing process in North Carolina since it was reinstated after the *Furman* decision show substantial continuity with the past in the predominance of African Americans sentenced to death but significant diminution in the percentage of African Americans executed. Since the death penalty was reinstated in North Carolina after *Furman* and *Woodson*, 391 defendants have been sent to death row.[262] Of these, 49% are African American (55% are minority[263]), and 44% are white.[264] As of the July 1, 2010, the death row population was 159.[265] Of these, 54% are African American (62% are minority), and 38% are white.[266] A slightly larger group of 163 were either granted executive clemency or won reversal of either their conviction or death sentence.[267] Among this group, 51% are African American (58% are minority) and 42% are white.[268]

Twenty-six prisoners have left death row because they died of natural causes or committed suicide.[269] A majority of this group was white, principally the result of a higher suicide rate among white defendants on death row.[270] Forty-three defendants have been executed.[271] Among those

262. *See* DOC Offenders on Death Row, *supra* note 34; DOC Persons Removed from Death Row, *supra* note 34.

263. "Minorities" include defendants who are African American, Native American, and Latino.

264. The numbers are 192 African Americans, 170 whites, 18 Native Americans, 6 Latinos, 2 Asians and 1 of Middle Eastern origin. The Department of Corrections lists Latinos, Asians, and those of Middle Eastern origin as "other." DOC Persons Removed from Death Row, *supra* note 34.

265. DOC Offenders on Death Row, *supra* note 34. The group of defendants who left death row because of reversals and clemencies and those remaining on death row are roughly the same size. Among all defendants sentenced to death nationally from 1973 until 2004, these groups are also roughly the same size. *See* Samuel R. Gross & Barbara O'Brien, *Frequency and Predictors of False Conviction: Why We Know So Little and New Data on Capital Cases*, 5 J. EMPIRICAL L. STUD. 927, 944 (2008) (showing that 41% were removed from death row because their sentences or convictions were reversed and 42% remain on death row).

266. The numbers are eighty-seven African American, sixty white, eight Native American, three Latino, and one Asian; of the four listed as "other" by the Department of Corrections, three are Latino (Fernando Garcia, Ryan Garcell, and Angel Guevara), and one is Asian (Clifford Miller). *See* DOC Offenders on Death Row, *supra* note 34.

267. *See* DOC Persons Removed from Death Row, *supra* note 34.

268. The numbers are eighty-three African American, sixty-nine white, seven Native American, three Latino, and one Asian. Of the four listed as "other" by the Department of Corrections, three are Latinos (Frederick Camacho, Francisco Tirado, and Bernardino Zuniga), and one is Asian (Johnny Benson). *See id.*

269. *Id.*

270. *Id.* Nineteen died of natural causes: Elwell Barnes, Gary Greene, George Heathwole, David Huffstetler, Caeser Johnson, John Jones, George Kelly, Daniel Lee, Edward Lemons,

executed, 30% were African American (33% are minority) and 65% were white.[272]

Executive clemency and judicial action reversing convictions and/or death sentences removed 163 from death row. Most defendants were either automatically excluded from eligibility for execution or sent back into the process where they were either sentenced to a prison term or granted their freedom, although a few still face resentencing.[273] The examination of these cases begins with clemency exercised by the governor.

While clemency was used quite broadly in the earlier period,[274] it has been used only sparingly by North Carolina governors since the resumption of executions in the wake of the *Furman* decision.[275] Five defendants were granted clemency by Governors James Martin, James Hunt, and Michael

Thurman Martin, Doc McKoy, Jr., LeRoy McNeill, General Miller, Charles Munsey, George Page, William Porter, James Roper, Norris Taylor, James Vereen, and Robert Wall. *Id.* Nine were white, nine were African American, and two were Native American. *Id.* Nine of the total spent more than ten years on death row before their deaths. *See id.* Some avoided an earlier execution by winning a new trial or sentencing hearing through a successful legal claim under due process (*Brady v. Maryland*, 373 U.S. 83, 86 (1963); *see infra* note 279), ineffective assistance of counsel (*Strickland v. Washington*, 466 U.S. 668, 694 (1984); *see infra* note 280), or a violation of the Eighth Amendment (*McKoy v. North Carolina*, 494 U.S. 433, 442–43 (1990); *see infra* note 285). Six committed suicide: Eddie Howell, Randy Payne, Rayford Piver, Ricky Price, Eric Queen, and Daniel Webster. DOC Persons Removed from Death Row, *supra* note 34. Five of the six were white, the other was African American. Roughly half of those who died of natural causes and suicide spent more than ten years on death row before they took their own lives. *Id.*

271. *Id.*

272. *See id.* One other defendant, Elias Syriani, was of Middle Eastern origin. *Id.* He is listed under the category of "other" by the Department of Corrections and was executed on November 18, 2005 for murdering his wife, who, like him, was Jordanian. *Id.*; *see also* Facing Controversy: Struggling with Capital Punishment in North Carolina, Biographies, Elias Syriani, http://www.lib.unc.edu/mss/exhibits/penalty/syriani.html.

273. Reversal rates by the Supreme Court of North Carolina were higher in the period before the mid-1990s than they have been since that time. *See* Adcock, *supra* note 9, at 131–32 (noting that some of the difference can be explained by the *McKoy* case in the earlier period that resulted in a large number of reversals and perhaps can be explained in the later period by the law becoming more settled). The information provided by the Department of Corrections for approximately a dozen persons lacks indication that resentencing is pending. *See* DOC Offenders on Death Row, *supra* note 34.

274. As noted earlier, in pre-*Furman* days, clemency was a major way in which the rigidity and harshness of the death penalty law was moderated. *See supra* note 9 and accompanying text. Those who note that the current death row population is out of step with the apparent lack of contemporary enthusiasm for the death penalty have argued that clemency should be reinvigorated. *See* Adcock, *supra* note 9, at 148–52, 155 (describing various ways in which clemency powers should be used).

275. *Id.* Had this group, which was approaching imminent execution when clemency was granted, been executed, the total number of executions would have increased to forty-eight and the racial composition of the executed group would have changed slightly, with twenty-eight (58.3%) whites, seventeen (35.4%) African Americans, two (4.2%) Native Americans, and one (2.1%) "other." These modest changes in percentages would not have meaningfully altered the unusual racial composition of the group of those executed.

Easley after all avenues of relief available under the legal system had apparently been fully exhausted.[276] Four of these defendants were African Americans and one was Native American.[277] The fact that all of these defendants were minorities poses an intriguing question: are the most serious abuses of the death penalty that escape all legal mechanisms linked to race?[278] If so, should we be worried that the limitations of review in the clemency process means that other problematic cases have escaped correction?

In addition to disproportionate removal by clemency, African Americans were disproportionately removed from death row because they were denied rights going to the basic fairness of the trial process or to values fundamental to the integrity of the death penalty. Denials of basic fairness include violations of due process by prosecutors or criminal investigators in failing to turn over potentially exculpatory evidence that is material to guilt or punishment[279] and ineffective assistance of counsel.[280]

276. *Id.* at 133, 141–43, 148.

277. *See id.*

278. The first was Anson Maynard, a Native American, who was granted clemency by Governor James Martin in 1992. *Id.* at 133. Governor Jim Hunt granted clemency to Wendell Flowers in 1999 and Marcus Carter in 2000, both of whom were African American. *Id.* at 141–42. Governor Mike Easley granted clemency to Robert Bacon, Jr. in 2001 and Charles Alston in 2002, who were also both African American. *Id.* at 142–43, 148.

In granting clemency to Anson Maynard, Governor Martin explicitly cited his uncertainty about Maynard's guilt. Although he was not convinced that Maynard was "totally innocent," he was also "not convinced that Anson Maynard pulled the trigger to kill [the victim]." *Anson Maynard: Governor Commutes Death Sentence*, WILMINGTON MORNING STAR, Jan. 11, 1992, at A4. The basis for Charles Alston's successful clemency presentation was also based on his innocence. *See* Clemency Petition for Charles M. Alston (on file with the North Carolina Law Review). The centerpiece of Robert Bacon's petition, supported by an affidavit of one of the jurors who described overtly racial discussions among jurors during deliberations, was that race played a critical role in the jury's decision to impose the death sentence, which was supported circumstantially by the disparity between Bacon's death sentence and the life sentences for the arguably more culpable white co-defendant. *See* Adcock, *supra* note 9, at 148 (describing racial influences in the Bacon case and clemency); Eric Frazier, *Juror: Race Tainted Decision on Execution*, CHARLOTTE OBSERVER, May 13, 2001, at 1A; Clemency Petition of Robert Bacon, Jr. and Affidavit of Pamela Bloom Smith (on file with the North Carolina Law Review).

279. Rights flowing from *Brady v. Maryland*, 373 U.S. 83, 86 (1963), which require the government to provide helpful evidence to the defense that is material to guilt or punishment, and corresponding denials of this right produced reversals in at least eleven cases. Those removed from death row on this basis include: Steven Bishop, Glenn Chapman (also ineffective assistance of counsel found and case ultimately dismissed), Jamey Cheeks, Alan Gell (acquitted on retrial), Stephan Goode (also ineffective assistance found), Jerry Hamilton, Jonathan Hoffman (case dismissed), Robert McDowell, Charles Munsey (natural death), John Oliver, Michael Pinch, Charles Walker, and Curtis Womble. *See* Opinions and Orders in Specific Cases (July 1, 2010) (on file with the North Carolina Law Review) [hereinafter Opinions & Orders]. Seven of these are African American, and six are white. *See* DOC Persons Removed from Death Row, *supra* note 34.

280. In *Strickland v. Washington*, 466 U.S. 668, 694 (1984), the Court held that a new trial must be granted only when evidence not introduced or actions taken because of the incompetence

Both require a finding that the error likely had an impact on the outcome of the trial, which means that the fundamental issue of guilt and innocence should have been placed in doubt.[281] Denials of values fundamental to the integrity of capital punishment include the prohibition against executing the mentally retarded and juveniles. Executing the mentally retarded violates the Eighth Amendment's ban on cruel and unusual punishment.[282] A similar pattern of differential treatment of defendants based on race is found for the expansion of the prohibition against executing defendants who were minors at the time of their crimes.[283] The statistics suggest that

of counsel create "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," *id.*, stating that to grant relief, the judgment should be that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result," *id.* at 686. Violations of the right to effective assistance of counsel resulted in the reversal of at least twelve death penalties. Those who were granted relief on this ground include: Kyle Berry, Thomas Brown, Glenn Chapman (also *Brad*y violation found and case dismissed), Willie Gladden, Stephan Goode (also *Napue/Brady* violation), William Gray, Melvin Hardy, Levon Jones (case dismissed), Elmer McNeill, LeRoy McNeill (natural death), Michael Pinch, Phillip Robbins, James Roper (natural death), and Donald Scanlon. *See* Opinions & Orders, *supra* note 279. Seven of these defendants are African American, and seven are white. DOC Persons Removed from Death Row, *supra* note 34.

281. As described in the preceding note, the Court in *Strickland* set out the requirement of "a reasonable probability" that, except for counsel's unprofessional errors, "the result of the proceeding would have been different." In *United States v. Bagley*, 473 U.S. 667, 682 (1985), the Supreme Court adopted the *Strickland* standard for *Brady* violations. A reversal on either ineffective assistance or *Brady* grounds does not prove that the defendant was innocent, but the required finding means that these are cases where, but for the error, the jury could find reasonable doubt, which are the types of cases where innocent defendants would be located, and absent rarely available dispositive evidence reasonable doubt is likely all that many innocent defendants can demonstrate.

282. Atkins v. Virginia, 536 U.S. 304, 321 (2002). In apparent anticipation of the United States Supreme Court's ruling, the North Carolina legislature enacted N.C. Gen. Stat. Section 15A-2005, effective October 1, 2001, banning execution of the mentally retarded as a matter of state law and defined the proof required at trial to warrant relief. *See* Act of July 25, 2001, 2001 N.C. Sess. Law 346. The next year, in *Atkins*, the United States Supreme Court ruled that executing the mentally retarded violated the Eighth Amendment's ban on "cruel and unusual punishment." *Atkins*, 536 U.S. at 321. In combination, the effect of the statutory and constitutional remedies removed approximately fourteen cases from death row and, for appropriately decided cases, required the substitution of a life sentence for the previously imposed death sentence without further litigation. At least fourteen of those on death row were removed as a consequence of either the statutory or the constitutional development. *See* Opinions & Orders, *supra* note 279. Those granted relief on this ground include: Melanie Anderson, Anthony Bone, Renwick Gibbs, Anthony Hipps, Russell Holden, Jonathan Leeper, Robert McClain, Elton McLaughlin, Lorenza Norwood, Dwight Robinson, Sherman Skipper, Clinton Smith, Johnnie Spruill, and Larry Williams. *Id.* Twelve of these defendants are African American, and two are white. *See* DOC Persons Removed from Death Row, *supra* note 34.

283. In *Roper v. Simmons*, 543 U.S. 551, 568 (2005), the United States Supreme Court declared capital punishment unconstitutional for defendants under eighteen. Thus, a final group whose death sentences were converted automatically to life imprisonment consists of those who committed their crimes before they became adults. These defendants include: Thomas Adams, LeMorris Chapman, Kevin Golphin, Francisco Tirado, and Travis Walters. Opinions & Orders,

the defendant's mental retardation and youth, which could on their own produce a jury judgment of life imprisonment, have had less significance as mitigating factors to predominantly or exclusively white jurors when the defendant is African American. Almost two-thirds of the forty-four defendants denied these fundamental rights were racial and ethnic minorities, with all but two being African American; including clemencies, 69% were minority defendants.[284] The actions of governors and reviewing courts may have moderated the unfairness to minority defendants, but they also suggest the operation of a pernicious impact of race on the initial process of reaching a death sentence. [285]

supra note 279. Of these five, three are African Americans, one is Latino, and one is white. *See* DOC Persons Removed from Death Row, *supra* note 34.

284. A total of at least forty-nine cases were removed from death row by clemency or these four types of claims. *See id.*; Opinions & Orders, *supra* note 279. Of those, thirty-two involved African American defendants, with one Latino defendant, and one Native American defendant for a total of thirty-four defendants who are minority group members (69.4%). *See* DOC Persons Removed from Death Row, *supra* note 34. Fifteen members of the group are white (30.6%). *Id.* The African Americans are: Charles Alston (clemency), Robert Bacon, Jr. (clemency), Anthony Bone (mental retardation), Marcus Carter (clemency), Glenn Chapman (*Brady* and ineffective assistance and dismissal of charges), LeMorris Chapman (juvenile status), Wendell Flowers (clemency), Renwick Gibbs (mental retardation), Willie Gladden (ineffective assistance), Stephan Goode (*Napue/Brady* violation and ineffective assistance), Kevin Golphin (juvenile status), Melvin Hardy (ineffective assistance), Anthony Hipps (mental retardation), Jonathan Hoffman (*Brady*), Russell Holden (mental retardation), Levon Jones (ineffective assistance and dismissal of charges), Jonathan Leeper (mental retardation), Robert McClain (mental retardation), Robert McDowell (*Brady*), Elton McLaughlin (mental retardation), Elmer McNeill (ineffective assistance), LeRoy McNeill (ineffective assistance and natural death), Lorenza Norwood (mental retardation), John Oliver (*Brady*), Phillip Robbins (ineffective assistance); Dwight Robinson (mental retardation), Clinton Smith (mental retardation), Johnnie Spruill, (mental retardation), Charles Walker (*Brady*), Travis Walters (juvenile status), Larry Williams (mental retardation), and Curtis Womble (*Brady*). *See Id.*; Opinions & Orders, *supra* note 279. Two additional African American defendants, Francis Anthony and Andrew Craig, might appropriately be included in this list, but the orders in their cases do not specify the grounds upon which relief was granted, although the court in each case had previously ordered an evidentiary hearing on what were apparently among the defendants' strongest claims, *Brady* and ineffective assistance of counsel. *See* Orders & Opinions, *supra* note 279. One Latino, Francisco Tirado (juvenile status), and one Native American, Anson Maynard (clemency), are in the group. *See id.* The white defendants are Thomas Adams (juvenile status), Melanie Anderson (mental retardation), Kyle Berry (ineffective assistance), Steven Bishop (*Brady*), Thomas Brown (ineffective assistance), Alan Gell (*Brady* and acquittal on retrial), Jamey Cheeks (Brady), William Gray (ineffective assistance), Jerry Hamilton (*Brady*), Elmer McNeill (ineffective assistance), Charles Munsey (*Brady* and natural death), Michael Pinch (*Brady* and ineffective assistance), James Roper (ineffective assistance and natural death), and Donald Scanlon (ineffective assistance), and Sherman Skipper (mental retardation). *See* DOC Persons Removed from Death Row, *supra* note 34; Opinions & Orders, *supra* note 279.

285. The decision of the United States Supreme Court in *McKoy v North Carolina*, 494 U.S. 433, 442–44 (1990), had the greatest impact on North Carolina's death row population. *McKoy* concluded that the North Carolina death penalty statute improperly restricted individual jurors in considering a mitigating factor, supported by the evidence, in violation of the Eighth Amendment. *Id*. at 435. Forty-five defendants received new sentencing hearings as a result of *McKoy*, of

One set of figures is anomalous—the racial makeup of those executed since the reinstatement of the death penalty. Prior to *Furman*, the vast majority of those executed were African American.[286] Among the forty-three defendants executed after *Furman*, only 30.2% (thirteen) were African American, while 65.1% (twenty-eight) were white.[287] Of course, the African American majority among those removed by judicial action from death row and the white majority among those executed are not independent of each other. Executions occur when legal processes, review of compliance with legal standards, and clemency review have been completed. This suggests that more white defendants were executed in the initial years after the death penalty was resumed because reviewing courts found errors in a lower percentage of their cases. The compliance with death penalty law and procedure was higher in the cases of white defendants than of minorities.

Anyone who might be tempted to conclude from this initial execution pattern that the historical connection between race and the death penalty has been eliminated should delay judgment.[288] The percentage of minority group members, African Americans in particular, among those executed is likely to increase substantially in future executions as documented below.[289]

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which five were executed after being sentenced to death at a subsequent sentencing hearing (Kenneth Boyd, Harvey Green, William Jones, Ricky Sanderson, Pierre Simpson), and five are currently on death row (Jerry Cummings, Roland Hedgepeth, Jeffrey Meyer, Eddie Robinson, and James Thomas). *See* Memorandum of *McKoy* Litigation Outcomes (on file with the North Carolina Law Review). The remaining thirty-five either received life sentences or died while on death row or are pending resentencing. *Id.* The cumulative impact of all judicial rulings is that ninety-four minority defendants (57.7%) and sixty-nine whites (42.3%) were removed from death row. *See* DOC Persons Removed from Death Row, *supra* note 34.

286. *See supra* text accompanying note 108.

287. *See* DOC Post-*Furman* N.C. Executions, *supra* note 31. In addition, one Native American, Henry Hunt, and one defendant of Middle Eastern origin, Elias Syriani, were executed. *See id.* Thus, minorities constituted 32.6% (14) of those executed since 1984. *See id.*

288. *Cf.* Joint Caucus Press Release, Phil Berger, North Carolina Senator, and Paul Stam, North Carolina Representative, Legislature Must Not Interfere With Resumption of Death Penalty 3 (May 5, 2009) (on file with the North Carolina Law Review) ("Sixty-five percent of those actually executed have been white, which puts a new light on the claim most were minorities."); Written Statement of Special Deputy Attorney General Barry S. McNeill, The Death Penalty in North Carolina: Case Law & Statutory Protections 7 (Dec. 13, 2006) (on file with the North Carolina Law Review) (presenting these figures on race of the defendant to the N.C. House of Representatives Capital Punishment Study Committee as part of the "Overview of North Carolina's Death Row Population").

289. Another reason for concern about the upcoming executions is that more than one hundred of those facing execution were sentenced before 2001 and would likely not have been sentenced to death currently because of both changed attitudes and enhanced procedural protections. *See* Thomas K. Maher, *Worst of Times, and Best of Times: The Eighth Amendment Implication of Increased Procedural Reliability on Existing Death Sentences*, 1 ELON L. REV. 95, 96, 99–102 (2009) (listing a number of reforms including: expanded discovery, post-conviction

Those most likely to be executed in the next cohort can be roughly identified, and, unlike those executed, they are predominately African American and other minorities. The further a case has proceeded through the review process without relief being granted, the more likely the defendant will be executed. A particularly significant point in the process is reached when state court review has been completed, and the case enters the stage where federal court review begins. The Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA") commands deference to the results of state-court review at this point,[290] and although relief can be granted at this stage or in the clemency process, based on past experiences, this group of cases comprises the probable cohort of those next executed. The racial composition of the defendants who have reached or completed federal court review is quite different from the forty-three who have been executed. The group numbers fifty-five.[291] African Americans and Native Americans constitute a majority, 58.1% (thirty-two), and the white percentage is 41.9% (twenty-three).[292]

The execution pattern, with regard to the race of defendants for the first forty-three executed since 1977, appears largely inexplicable. This change in racial makeup of North Carolina's post-*Furman* executions follows the general trend nationally and in the South, but it is more extreme.[293] The most striking fact is that the execution pattern started with

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DNA testing, creation of Indigent Defense Services and its efforts to remedy problems of inadequate appointed counsel, authorization of life without parole, and allowance of plea bargaining covering first degree murder).

290. *See* Antiterrorism & Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (codified as amended in scattered sections 8, 18, 22, 28 and 42 U.S.C.). In *Uttecht. v. Brown*, 551 U.S. 1, 10 (2007), the Supreme Court stated: "The requirements of the Antiterrorism and Effective Death Penalty Act of 1996 [AEDPA] . . . create an independent, high standard to be met before a federal court may issue a writ of habeas corpus to set aside state-court rulings." In addition, the federal courts overseeing North Carolina cases, particularly the Fourth Circuit, have not shown an eagerness to overturn death sentence cases. *See* Adcock, *supra* note 9, at 132 n.100 (noting that no relief was granted to a North Carolina capital defendant by the Fourth Circuit between 1992 and 2000).

291. *See* Memorandum of Death Row Defendants with Federal Court Filings (on file with the North Carolina Law Review).

292. *See id.* The majority, twenty-nine (52.7%), are African American, and three (5.5%) are Native American. *See id.* One defendant who abandoned his appeals after an initial federal court filing is also included. *Id.*

293. Nationally, 34.6% (421 of 1,217) of those executed between 1976 and June 30, 2010 were African American, and 56.0% (682 of 1,217) those executed were white. Death Penalty Information Center, Searchable Execution Database, http://deathpenaltyinfo.org/executions (last visited July 1, 2010). The 34.6% figure for African Americans in the post-*Furman* period compares to 53.5% (2,066 of 3,859) African Americans for all offenses and 48.9% (1,630 of 3,334) African Americans of those executed for murder from 1930 through 1968 nationally. *See* U.S. BUREAU OF PRISONS, CAPITAL PUNISHMENT: 1930–1968, NAT'L PRISONER STAT. BULL. NO. 45, at 10 tbl.3 (Aug. 1969). In the South, in the post-*Furman* period, 36.6% (367 of 1,003) of those executed were African American, 53.2% (534 of

an even more dramatic break from past history—the first twelve inmates executed were all white.[294] As detailed in earlier figures, the executed group does not resemble in racial composition those sent to death row from 1977–2009, those removed from death row by legal action of the courts, or those on the present death row. It resembles only the group that died on death row, a majority of who were white because of those who committed suicide.[295]

1,003) were white, 8.5% (85 of 1,003) were Latino, 1.1% (11 of 1,003) were Native American, and 0.7% (7 of 1,003) were of other races. *See* Death Penalty Information Center, *supra*. This percentage is substantially lower than the 71.9% (1,659 of 2,306) figure for African Americans for all offenses and 67.4% for murder in the South from 1930 to 1968. *See* U.S. BUREAU OF PRISONS, *supra*, at 11, tbl. 3.

294. Three of these men self-selected by dropping their legal challenges: Phillip Ingle, Ricky Sanderson, and James Rich. *See* Information on Persons Executed Since 1976 and Designated as "Volunteers," Death Penalty Information Center, http://www.deathpenaltyinfo.org/information-defendants-who-were-executed-1976-and-designated-volunteers (last visited July 1, 2010). Charles Roache, who was executed in 2004, was also a "volunteer." *Id.*

Timing issues do play a role in defendants leaving death row other than through execution, but timing and case selection may have played a role in who has been executed. The first three executed, who were white, moved through the entire process in less than six years, which has not been equaled since that time except with those who abandoned their appeals. *See* DOC Removed from Death Row, *supra* note 34 (showing less than six years on death row for James Hutchins, Margie Barfield, and John Rook, the first three executed, and less than five years for Ingle, Sanderson, and Rich).

Also, in the North Carolina system, prosecutors largely control the selection of cases to be advanced and somewhat control the pace that cases move. Defense counsel generally do not seek a speedy resolution of cases once a death sentence has been affirmed by the Supreme Court of North Carolina since those cases have a presumption of finality and the movement forward is toward the ultimate punishment, so the passage of time while the client is confined in prison is not to be avoided but is often the entire goal of the litigation—the passage of time until the defendant dies a natural death in prison at the end of a life sentence.

Avoiding a quick execution can also mean more than a slight extension of life before execution. For many of those who died a natural death, won a new sentencing hearing, or automatic life sentence when courts recognized the legal significance of the issues their cases presented (such as *McKoy* error, mental retardation, or the prohibition against executing minors), remaining alive for a longer period meant not being executed at all. For example, half of the fourteen who received life sentences because they were mentally retarded were on death row for more than ten years before their claims were granted because of a developing societal recognition that mental retardation was an important limitation on the death penalty, which was not recognized at the time their sentence were imposed or during much of the period they awaited execution. *See supra* note 282. These defendants are Renwick Gibbs, Elton McLaughlin, Dwight Robinson, Sherman Skipper, Clinton Smith, Johnnie Spruill, and Larry Williams. *Id.*

295. White defendants comprise 44% of all those sent to death row during this period. *See supra* note 264 and accompanying text. However, that percentage jumps to 65% of those executed, *see supra* text accompanying note 272, and it falls to 38% of those on death row. *See supra* text accompanying note 266. Thus, racial and ethnic minorities comprise a majority of the 391 defendants sent to death row since 1977 but only approximately one-third of those executed. By contrast, these figures show that racial and ethnic minorities then increase to represent over three-fifths of those awaiting execution. Specifically, of the 159 inmates on death row, only sixty

In broad sweep, more African Americans and other minorities than whites entered North Carolina's death row after *Furman*. Among those removed from death row because errors were made in the death penalty proceedings, more were members of minority groups than whites. Many more whites than African Americans left death row through executions. As a result of these processes, the current death row population is weighted more toward minorities than the entering population, as is the group most likely to face execution next. Therefore, African Americans are likely soon to predominate among those executed. Also, perhaps more significantly, the race-of-the-victim pattern among those executed has remained virtually constant even when race-of-the-defendant percentages have changed.[296]

2. The Continuing Heavy Predominance of White Victims in Death Sentences

Since slightly more than 70% of the state's population is white, the fact that a heavy majority of victims are white among those sentenced to death and executed in North Carolina should not come as a surprise.[297] In addition, the vast majority of murders occur between members of the same race (intra-racial crime) rather than with victims and defendants from different racial groups (inter-racial).[298] Thus, one would normally expect

(37.7%) are white, eighty-seven (54.7%) are African American, eight (5.0%) are Native American, and three (1.9%) are Latino. *See* DOC Offenders on Death Row, *supra* note 34.

296. Both with respect to the race of the defendants executed after *Furman* and with regard to the race of the defendants on the current death row, North Carolina's percentages move in a common direction with the South as a region. However, North Carolina's percentage deviations are somewhat more exaggerated, with a larger percentage of whites among those executed post-*Furman* and a higher percentage of African Americans among those currently on death row awaiting execution than in the region generally. In the South, 53.2% of those executed post-Furman were white and 36.6% African American, *see supra* note 293, whereas in North Carolina 65.1% were white and 30.2% were African American. *See* DOC Post-*Furman* N.C. Executions, *supra* note 31. At the end of September 2009, a plurality, 45.3%, of the defendants currently on death row in the South were white and 43.7% were African American. *See* NAACP LEGAL DEFENSE & EDUCATION FUND, INC., DEATH ROW U.S.A. 32–33 (Fall 2009), *available at* http://www.naacpldf.org/content/pdf/pubs/drusa/DRUSA_Fall_2009.pdf (giving state data from which statistics for those in the South under U.S. Census definition were computed). In North Carolina, the majority, 54.7%, is African American and a minority, 37.7%, is white. *See* DOC Offenders on Death Row, *supra* note 34.

297. In 2000, 72.1% of the population was white, 21.6 % was African American, and 1.2% was Native American. *See* 2000 Census, *supra* note 258.

298. According to the most recent national data from the Bureau of Justice Statistics, over 85% of homicides in 2005 were intra-racial with 44.6% (4,755) of the cases having white victims and perpetrators and 42.2% (4,497) involving African American victims and perpetrators. Inter-racial homicides constituted less than 15% of murders in that year, with African American victims and white perpetrators involved in only 3.2% (337) of the cases and white victims and African American perpetrators in 8.8% (934) of the cases. 1.3% (137) involved defendants and/or victims of other racial groups. Where African Americans are the perpetrators, the victims are white in only 17.1% (934) of the cases, African American in 82.4% (4,497) of the cases, and

that most white defendants would have murdered white victims, and most African American defendants murdered other African Americans and not whites. However, since African American and other minority defendants predominate on death row, the overall heavy majority of white victims suggests a disparate impact based on race.[299]

When race of the victim is examined, similar patterns emerge in executions conducted during the first fifty years of the period examined and those carried out since executions resumed in 1984 after the *Furman* decision. In the 1910 to 1961 period, despite the high percentage of African American defendants, 75% of the victims were white.[300] In the forty-three post-*Furman* executions, 79.1% (thirty-four) were executed for the murder of white victims.[301] In only 18.6% (eight) of those cases were the victims African American.[302] Only one of the twenty-eight white

other in 0.5% (25) of the cases. *See* Bureau of Justice Statistics, Dep't of Justice, *available at* http://bjs.ojp.usdoj.gov/content/homicide/race.cfm.

These basic racial characteristics of inter-racial and intra-racial crime statistics are largely stable over time and are reflected generally in state data around the country, including North Carolina. States differ in the main, varying principally and in predictable directions as the percentages of African Americans and other minorities increase in the state's population. From 1993–1997 in North Carolina, for example, racial data is available for 3,592 of the 3,990 homicides that occurred in the state. *See* ISAAC UNAH & JOHN C. BOGER, RACE AND THE DEATH PENALTY IN NORTH CAROLINA—AN EMPIRICAL ANALYSIS: 1993–1997 (Initial Findings) 18, 23 (2001), *available at* http://www.deathpenaltyinfo.org/race-and-death-penalty-north-carolina (providing data for the period 1993–1997 in North Carolina). Of the total, cases involving white defendants and white victims constitute 35.9% (1291), those involving non-white defendants and victims constitute 46.5% (1670), those with white defendants and non-white victims constitute 3.2% (116), and finally, those involving non-white defendants and white victims constitute 14.3% (515). *See id.* at 23.

299. Although these figures are suggestive of race-of-the-victim discrimination, their significance must await careful statistical analysis. This is because of factors involving the nature of the crimes involved and the characteristics of the defendants and victims, which in other statistical studies have been shown to reduce the apparent significance of these figures. *See* Baldus & Woodworth, *supra* note 239, at 1447–48. However, they have generally not eliminated that significance. *Id.*

300. Although complete data on victim race cannot be found and is sometimes a bit uncertain, of the 325 cases where race can be determined, the victim was white in 244 (75%) of the cases, African American in seventy-eight (24%) of the cases, and Native American in three (1%) cases. *See supra* note 109 and accompanying text.

301. *See* DOC Post-*Furman* N.C. Executions, *supra* note 31. This percentage is consistent with figures for executions in the South generally in the post-*Furman* period with 77.0% (772 of 1,003) having at least one white victim. *See* Death Penalty Information Center, *supra* note 293. Nationally, since executions were resumed, 78.3% of the defendants executed (953 of 1,217) had at least one white victim. *Id.* Only 13.6% (165 of 1,217) were executed when exclusively African Americans were the victims. *Id.*; *see also* DEATH ROW U.S.A., *supra* note 296, at 7 (showing that through the end of September 2009, in cases where the defendant was executed, 78.0% of victims (1357) were white and 14.5% (252) were African American).

302. In one case (2.3%), the victim was Native American. *See* DOC Post-*Furman* N.C. Executions, *supra* note 31.

defendants, Kermit Smith, was executed for killing a non-white victim.[303] Of the thirteen African Americans executed, six were executed for murdering white victims, and seven were executed for murdering African American victims.[304]

The murder victims of those on death row were also predominately white with little change from earlier eras. In 67.3% of the cases (107), at least one victim was white, and in 64.2% of the cases (102), the victim(s) were exclusively white,[305] with the other five involving multiple victims of whom one or more were white.[306] Thus, two-thirds of the defendants on death row (67.3%) are there for murders that involved at least one white victim. Only 30.8% of the cases (forty-nine) involved exclusively African American victims.[307]

In contrast to the situation with white victims, who predominate with most defendant racial groups,[308] when African Americans are exclusively the victims and the defendant is on death row, the defendant is almost always African American. Of the forty-nine cases in this group where African Americans were exclusively victims (no additional white victims),

303. *Id.* (showing Smith as alone among white defendants executed in having a non-white victim).

304. The six African American defendants executed for murdering white victims are David Brown, Desmond Carter, Harvey Green, Robbie Lyons, Michael Sexton, and Perrie Simpson. The seven executed for murdering African American victims are Willie Brown, John Daniels, Willie Fisher, William Jones, Sammy Perkins, Earl Richmond, and David Ward. *See* DOC Post-*Furman* N.C. Executions, *supra* note 31.

The victim of the one Native American executed was Native American, *id.*, and the lone victim of Middle Eastern descent was also killed by a defendant who was Middle Eastern. Henry Hunt, who was Native American, was executed for the murders of two Native Americans. Both Elias Syriani and his victim were Jordanian. *See id.; supra* note 270.

305. *See* Memorandum Detailing Race of Victim of Death Row Defendants, *supra* note 258. The medical examiner's racial identification is followed where available. Two of the victims identified as white, Robert Buitrago and Macidonio Gervacio, have an added notation, "hispanic." *Id*.

306. Four of the cases involved either one or two additional African American victims (Linwood Forte, Mitchell Marcos, Abner Nicholson, and Davy Stephens), and one involved an additional victim who was Asian (Jerry Connor). *Id.*

307. In the three remaining cases, the victims were Native American in two and Latino in one. *Id.*

308. Among the sixty whites on death row, fifty-four were sentenced to death for killing exclusively white victims and two more cases involved a white victim along with victims who were Asian and African American. *Id.* One white defendant on death row currently was sentenced to death for killing an African American (female) and one for killing two Native Americans. *Id.* Among the eleven Native Americans and Latino defendants on death row, their victims were white in nine cases (81.8%), and one was an African American and one Native American. *Id.* Only among African American defendants do white victims not form the majority, but even there a substantial percentage, 43.6% (38) of the cases, involved white victims. *Id*.

forty-seven of the defendants are African Americans.[309] Cumulatively, examination of the victim's race shows great continuity in the predominance of white victims across changes in legal structures and defendant groups. The next section examines the developing recognition of the frequency and the theoretical and practical importance of race-of-the-victim discrimination in death penalty decisions. One potential explanation of unconscious motivation among prosecutors and jurors, a majority of whom are white, is then explored in Part III.B.2.b.

a. The Significance of Race-of-the-Victim Discrimination

Race-of-the-victim discrimination violates the ordinary demands of the law by basing the decision as to whom is executed on an irrelevant characteristic; the race of the victim. When the victim's race determines the result of a capital trial, it is just as irrelevant to the principles that justify execution as would be the race of the defendant.[310] Moreover, the race of the victim can be decisive; it can constitute the but-for cause of the charging decision of the prosecutor or the decision of the jury to impose the sentence.[311]

This type of racial discrimination does not ground the death penalty decision in animus toward African American defendants. However, it shares the moral opprobrium of race-based distinctions that cause them to be rejected by society. The major moral failing of race-of-the-victim discrimination can be seen in the long history of the governing white society diminishing the importance of African American crimes and African American victims, both specifically in North Carolina and generally on a national level.[312]

309. Of the other two, one defendant is white (Eric Lane) and the other is Native American (Darrell Strickland). *Id.*

310. *See* Baldus & Woodworth, *supra* note 239, at 1446.

311. *See id.* at 1450–51.

312. These attitudes reveal themselves occasionally in the words of even some of the state's most accomplished leaders. Then-Judge Susie Marshall Sharp, who later served as Chief Justice of the Supreme Court of North Carolina, wrote in private correspondence the following: "'In Greensboro last week I put a colored woman who was guilty of murder in the first degree on probation and a colored man who was guilty of rape got off with a suspended sentence after a week in jail. You simply cannot judge animals by human standards.'" ANNA R. HAYES, WITHOUT PRECEDENT: THE LIFE OF SUSIE MARSHALL SHARP 198 (2008). The race of the victims is not given but cannot be understood to have been anything other than African American in this context of racial stereotype and diminishment. *See also supra* note 77 and accompany text (discussing the much diminished status of African American victims during slavery); *supra* Part II.B.2 (describing the failure to punish whites for rape of African American women and the exclusive execution of blacks for burglary of white occupied homes); *supra* Part II.B.4 (discussing the call of African American newspapers for equal justice for African American victims of rape).

Race-of-the-victim discrimination has a real impact upon African Americans in three ways. First, the losses suffered by African American murder victims and their families are undervalued because they are treated less seriously than the losses to white victims and their families.[313] Second, this discrimination results in unfair treatment of the African American community because it undermines the goals of retribution and deterrence that justify the use of capital punishment.[314] Third, this discrimination sends the unacceptable message that the overriding objective of capital punishment is the protection of white victims.[315]

Although apparently widespread in post-*Furman* death penalty decisions, race-of-the-victim discrimination can be vastly reduced. This is because racial factors have been shown to have little impact on sentencing of the most culpable defendants.[316] Limiting death sentences to such cases generally reduces arbitrariness while preserving the retributive goal of capital punishment for the most deserving crimes.[317] Moreover, such cases are generally the ones that reviewing courts affirm and that actually result in execution.[318]

b. The Importance of Unconscious Racial Motivation in Contemporary Death Penalty Sentencing

Conscious, intentional, or purposeful racism is sometimes still seen in contemporary death penalty cases. For example, apparently conscious racial animus appeared in Robert Bacon's clemency motion, which described the racially discriminatory statements and conduct of jurors against this African American defendant.[319] Similar allegations of

313. *See* Baldus & Woodworth, *supra* note 239, at 1446.

314. *See id.* at 1451.

315. *See id.* at 1450.

316. *See id.* at 1456–57, 1484.

317. *See id.*

318. *See id.* Professor Baldus finds evidence in the experience of several states using different procedural mechanisms that such limitation is also feasible. *See id.* at 1458–66; *see also supra* note 239 and accompanying text (discussing the general impact of narrowing death eligibility on reducing arbitrariness articulated generally in *Furman*).

Another way to theoretically eliminate racial disparities would be to increase the number of executions among those who kill African American defendants; however the "remedy" is likely unworkable as a constitutional matter because it would require either suspect racial consciousness by the prosecution or an increase in the likelihood of arbitrariness by expansion of death eligibility. Moreover, this "remedy" is at odds with the societal trend to reduce, rather than expand, executions. *See* Howe, *supra* note 239, at 2132–35; Kennedy, *supra* note 229, at 1436–39. A further, even more substantial problem is that this "remedy" could only work for future death sentences and executions and cannot cure the effects of past race-of-the-victim discrimination where it existed.

319. For a discussion of the basis of Bacon's successful clemency petition, see *supra* note 278.

purposeful racial motivation are found in the case of Kenneth Rouse, an African American. In that case, a juror expressed racial animus against African Americans and purposefully failed to disclose his mother's murder under very similar circumstances to those in Rouse's case in order to avoid being dismissed for cause during jury selection.[320] Racially motivated conduct is unfortunately not a relic of the past,[321] but it is rarely displayed openly in contemporary death penalty cases. Instead, racial prejudice more often operates covertly rather than openly, and it often goes unrecognized even by the individual who responds unconsciously to such motivation.[322] One of the important features of the RJA is that it does not require proof of intentional racial motivation and instead authorizes proof by use of statistical and disparate impact evidence. The result is that relief is to be granted when race was a significant factor in the decision on death both if the evidence of racial discrimination was effectively hidden from view and even if its operation was unconscious.[323]

As described in Part III.A, both the prosecutor and the jury retain broad discretion under the current structure. This discretion provides opportunities for racial considerations to affect those decisions. This may occur through racially stereotypical thinking, which is generally experienced by the individual as a factual perception rather than a biased

320. *See* Rouse v. Lee, 339 F.3d 238, 266 (4th Cir. 2003) (Motz, J., dissenting) (summarizing Rouse's position as follows: "Kenneth Rouse faces his death with reason to believe that one of the twelve citizens entrusted with doing impartial justice in his case sought so eagerly to condemn him that the juror deliberately misled the court, hiding basic facts as to his particular bias against Rouse and his contempt for all African Americans."); *see also* Affidavit of Joseph Scott Baynard, State v. Rouse, 91 CRS 3316–17, 92 CRS 2 (Apr. 17, 1996) (Apr. 15, 1996) (on file with the North Carolina Law Review) (containing juror's own description of his conduct and attitudes); Affidavit of Renee Wathall, State v. Rouse, 91 CRS 3316-17, 92 CRS 2 (Apr. 17, 1996) (on file with the North Carolina Law Review) (providing investigator's conversations with juror).

321. Former District Attorney Kenneth Honeycutt wore a gold lapel pen shaped like a noose and awarded similar pins to assistant prosecutors who won death penalty cases. *See* John Stevenson, *Condemned Man "Delusional": Lawyers Trying to Save His Life Say He Won't Talk to Them*, HERALD-SUN (Durham, N.C), Nov. 23, 2006, at A1. The use of this symbol is obviously more ambiguous than the other examples given, but it is suggestive of attitudes that were at one time common and openly expressed but are more infrequently encountered currently. The decisions made by superior court judges in the discretionary decision of selecting grand jury foreman resulted in one of thirty-three grand jury foremen being African American over an eighteen year period in a county with a 61% African American population. *See* State v. Cofield, 320 N.C. 297, 308–09, 357 S.E.2d 622, 629 (1987). Even if based solely on inference from statistics, the decisions seem unlikely to have been unconscious.

322. *See generally* Charles R. Lawrence, *The Id, The Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 323 (1987) (seminal article criticizing the requirement in much constitutional litigation that requires proof of intentional motivation because it ignores much of what is understood about the working of the human mind and its disregard for both the irrationality of racism and the profound effect of the history of American race relations on individual and collective unconsciousness).

323. *See generally infra* Part IV.A–D.

stereotype and thus operates unconsciously.[324] Unconscious racial motivation may be observed in fears of the threat posed by African American defendants or in judgments regarding the heinousness of crimes that differ when the crime is committed against a white victim rather one who is African American.[325] These unconscious racial reactions can operate against a defendant who may be perceived as an unfamiliar outsider or feared. Conversely, unconscious motivation in the form of empathy is more likely experienced by prosecutors or jurors of the majority race on behalf of victims of that same race.[326]

Unconscious racial motivation can operate in a number of ways. Prosecutors may seek and jurors may impose the death penalty in response to their perception that community sentiment supports more punitive action when the victim is white than when African American.[327] If the defendant is African American, prosecutors may be influenced to seek the death penalty more frequently in cases where the victim is white because of a belief of the likely higher jury support for execution in such cases. If an African American commits a crime against another African American, the prosecutor may conclude that it must be highly aggravated to actually receive the death penalty.[328] All of these are situations in which racial motivation can enter the decision without conscious intention to discriminate. Whether a decision, driven by unconscious racial motivation,

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324. *See generally* Lawrence, *supra* note 322 (describing theoretical basis and operation of unconscious racial motivation).

325. *See* Baldus et al., *supra* note 259, at 1652.

326. To be powerful, racial influences need not be intentional and explicitly entertained or even perceived by the individual subject to those influences. Unconscious racial bias, known in the psychological field as implicit bias or implicit social cognition, operates "without conscious awareness or conscious control but nevertheless influence fundamental evaluations of individuals and groups." Jerry Kang & Mahzarin R. Banaji, *Fair Measures: A Behavioral Realist Revision of "Affirmative Action,"* 94 CAL. L. REV. 1063, 1064 (2006). A substantial body of scholarship and research document these effects in a variety of settings including the death penalty. *See, e.g.*, Eberhardt et al., *supra* note 258, at 383, 385 (concluding that stereotypes regarding African Americans can affect jury evaluation of blameworthiness and was a significant predictor of death sentences where the victim was white, rendering race and stereotyping especially salient); Kang & Banaji, *supra*, at 1073–75 (reviewing studies that document implicit bias in hiring behavior and medical diagnosis); Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489, 1491–1535 (2005) (describing recent social cognition research that provides evidence of the existence of the operation of implicit racial bias and describing how it alters behavior). *See generally* Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering*, 57 DUKE L.J. 345 (2007) (describing the process of unconscious bias and jury misremembering of facts because of racial stereotyping).

327. *See* Baldus et al., *supra* note 259, at 1653. Lack of public pressure from the black community for capital punishment could account for reduced pressure on prosecutors and jurors to seek the death penalty. *See* Howe, *supra* note 238, at 2121 (citing Hans Zeisel, *Race Bias in the Administration of the Death Penalty: The Florida Experience*, 95 HARV. L. REV. 456, 467 (1981)).

328. *See* Baldus & Woodworth, *supra* note 239, at 1422.

to treat an African American defendant more punitively than a white defendant, constitutes purposeful discrimination under the Equal Protection Clause of the Fourteenth Amendment may be open to question. However, the use of statistical proof under the RJA makes those judgments relevant when the result is that death penalty decisions are more frequently sought against or imposed on members of one race than another race.[329]

The very heavy predominance of white victims described in Part III.B.2 strongly suggests that race-of-the defendant discrimination has continued in contemporary death penalty cases. Unless it is explained by non-racial factors in a careful statistical analysis, then this result should be considered the product of racial motivation of a prosecutor to seek the death penalty or jurors to impose it. While race-of-the-defendant discrimination is often explained as a result of conscious racial animus directed against the defendant, generally termed intentional or purposeful discrimination, it can also result from unconscious motivation such as stereotypical assumptions about the dangerousness of an African American defendant. On the other hand, race-of-the-victim discrimination is usually not based on racial antipathy and is therefore not on conscious racial motivation.

Empirical results show that race-of-the-victim discrimination results most frequently from decisions by the prosecutor at the time of charging.[330] For example, prosecutors may sincerely—but erroneously—perceive that families of white victims more strongly support the imposition of a death penalty or that such families have expressed their views of support more strongly to the prosecutor.[331] However, such perceptions may result not from actual differences in the families' actions but instead from factors associated with social standing, notoriety of the offense, and assumptions correlated with race.[332] Elected prosecutors may pursue the death penalty more vigorously for murderers of whites, not because of the personal inclinations of these prosecutors, but because of their understanding of the likely reactions of the electorate.[333] While observed less frequently in past

329. *See* N.C. GEN. STAT. §15A-2011 (b)(1)–(2) (2009) (defining evidence relevant to find race as a significant factor in death penalty decisions).

330. *See* Baldus & Woodworth, *supra* note 239 at 1426.

331. *See id.* at 1449–50.

332. *See* Stephen B. Bright, *Discrimination, Death and Denial: The Tolerance of Racial Discrimination in Infliction of the Death Penalty*, 35 SANTA CLARA L. REV. 433, 452–54 (1995) (describing evidence from cases in Georgia, particularly one county, where the prosecutor did not contact most of the families in cases involving African American victims to determine the sentence preferred while in cases involving prominent white victims family contact was prompt).

333. *See* Evan Tsen Lee & Ashutosh Bhagwat, *The* McCleskey *Puzzle: Remedying Prosecutorial Discrimination Against Black Victims in Capital Cases*, 1998 SUP. CT. REV. 145, 155.

studies, discrimination may also be the result of jury decision making when jurors view white victims more sympathetically than African American victims.[334] As noted above, the roots of such results are not in race-based hostility but rather in race-based empathy.[335] Both racial antipathy and empathy violate the RJA's command to remove the effects of racial motivation from the operation of North Carolina's death penalty.[336]

The greater participation of members of all races in the criminal justice system and better representation of defendants are clearly having a positive effect in reducing the operation of racial motivation. However, the influences of race have not necessarily been eliminated. Most prosecutors nationally and in North Carolina, despite changes in the electorate, remain white.[337] Also, for demographic and other reasons,[338] most jurors in North Carolina are white. Greater media attention may accompany the murder of a white victim than one who is African American and may result in greater pressure on the prosecutor to charge the case capitally.[339] Differences in sentencing policies between jurisdictions may be the consequence of differences in policy or in racial motivation in the form of differing views regarding the worth of victims or defendants related to race.[340] The key point is that the continued role of discretionary judgments by prosecutors and jurors permits the operation of unconscious racial motivation to affect death penalty decisions, and the RJA includes consideration of that motivation, whether it is founded on racial animus or racial empathy, when it affects the frequency that members of one race are prosecuted capitally or sentenced to death in comparison with members of another race.

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334. *See* Baldus & Woodworth, *supra* note 239, at 1448.

335. *See id.* at 1438.

336. *See id.* at 1482. This race-related motivation may be unconscious or conscious. *Id.*

337. During much of the relevant period, there were at most two African American District Attorneys in North Carolina (Carl Fox and Belinda Foster in an earlier period and currently Tracey Cline and Robert Evans), sometimes one, *see* Amanda S. Hitchcock, Recent Development, *"Deference Does Not by Definition Preclude Relief": The Impact of* Miller-El v. Dretke *on* Batson *Review in North Carolina Capital Appeals*, 84 N.C. L. REV. 1328, 1344 & n.106 (2006) (noting that thirty-eight of thirty-nine prosecutors in the state were white in 2006), and for a brief period none (from the departure of Belinda Evans until the election of Tracey Cline). *See* Mike Hixenbaugh, *Perdue Chooses New DA*, ROCKY MOUNT TELEGRAM (Rocky Mount, N.C.), Apr. 30, 2009, at 1A (describing appointment of Robert Evans in April 2009); *cf.* Matt Saldana, *District Attorneys Differ on Racial Justice Act*, INDEP. WKLY. (Durham, N.C.), June 10, 2009, at 9 (describing support for the Racial Justice Act by Durham County District Attorney Tracey Cline in contrast to opposition of the N.C. Conference of District Attorneys).

338. *See infra* Part III.B.3 (discussing apparent failure of *Batson v. Kentucky*, 476 U.S. 79 (1986), effectively to police peremptory strikes).

339. *See* Baldus & Woodworth, *supra* note 239, at 1449.

340. *See* Baldus & Woodworth, *supra* note 257, at 213–14 (describing results from Nebraska where urban jurisdictions were the harshest, which produced a substantial disparity in race-of-the-defendant sentencing, and New Jersey where suburban jurisdictions had the harshest policies that produced race-of-the-defendant disparities).

3. The Continuing Exclusion of African Americans from Jury Selection

Undeniably, North Carolina and the nation have moved a considerable distance in guaranteeing African Americans the right to serve on juries and defendants of all races to have juries drawn from a fair cross-section of their communities since *Strauder v. West Virginia.*[341] However, its declaration that de jure exclusion was unconstitutional had little effect on practices in many jurisdictions. In a series of cases, the Court focused on discrimination largely with regard to selection of the jury pool from which jury venires are selected, effectively demanding broad inclusion of citizens of all races, thereby doing much to bring about a meaningful African American presence and a chance for jury service.[342]

However, until its decision in *Batson v. Kentucky*[343] in 1986, the Supreme Court had given relatively weak protection against racially motivated selection of the trial jury from the venire.[344] Until *Batson*, although discrimination by the prosecutor in selecting a trial jury, which would principally occur by use of peremptory challenges, was unconstitutional, showing a pattern of striking African American jurors in the present case was not sufficient to warrant relief or even require judicial inquiry. Previously, the Court in *Swain v. Alabama*,[345] recognizing that historically peremptory challenges are exercised without statement of reason or need for justification, had required proof of discrimination. This requirement could be satisfied only through direct evidence of racial motivation or proof of a systemic pattern of removal of African Americans by the prosecutor in the particular jurisdiction.[346] As *Batson* recognized, this was a crippling burden that made prosecutors' peremptory challenges largely immune from constitutional scrutiny.[347]

341. 100 U.S. 303 (1879). *See generally supra* Part II.B.6.

342. *See, e.g.*, Duren v. Missouri, 439 U.S. 357 (1979); Simms v. Georgia, 389 U.S. 404 (1967) (per curiam); Whitus v. Georgia, 385 U.S. 545 (1967); Norris v. Alabama, 294 U.S. 587 (1935), discussed in *supra* note 218.

343. 476 U.S. 79 (1986).

344. *Id.* at 88 (acknowledging its focus on the venire and relative lack of attention to the selection process for the petit jury despite the fact that racial discrimination in the trial jury's selection was also clearly prohibited).

345. 380 U.S. 202 (1965).

346. *See id.* at 202–12.

347. *See Batson*, 476 U.S. at 92–93. *State v. Jackson*, 322 N.C. 251, 368 S.E.2d 838 (1988) provides an example of the type of broad justification that can excuse racial discrimination. The prosecution defended the exercise of its peremptory strike against "one black woman because she was unemployed [and] . . . the prosecution did not feel that an unemployed person had as significant a stake in an orderly society as an employed person." *Id.* at 253, 368 S.E. 2d at 839. The Supreme Court affirmed the trial court's ruling that the justification was racially neutral. *Id.* at 258–59, 368 S.E.2d at 841–42. It was part of the prosecutor's stated criteria for selecting jurors who were "'stable, government oriented, employed and had sufficient ties to the community, and a mind-set . . . that would pay more attention to the needs of law enforcement

Batson altered the picture somewhat by recognizing that a prima facie showing of discrimination could be established in the peremptory challenges made in an individual case, but it required only a reasonable, non-racial explanation for the prosecutor to overcome the challenge.[348] The *Batson* decision certainly made it easier to establish a claim that peremptory challenges were racially motivated, and conceptually it should also have made those challenges easier to win. However, while the prosecution is frequently required to provide a non-racial explanation, rarely does the defense prevail as long as the response includes any of a substantial number of accepted justifications.[349] The result is a relatively ineffective framework established by federal constitutional law. Indeed, some knowledgeable commentators argue that in modern death penalty practice, race discrimination is most deeply embedded and most often manifest in jury selection practices that are designed to reduce or hold African American participation as jurors to a minimum.[350]

Racially motivated peremptory challenges are often particularly effective because the number of minorities in the original panel is small. Minorities can be removed from the panel by "for cause" challenges for a number of predictable reasons.[351] Typically, the most significant is the

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than the fine points of individual rights.'" *Id.* at 255, 368 S.E.2d at 840. In his concurring opinion, Justice Frye protested that accepting such profiles could have the effect of systematically excluding African Americans, thwart the purpose of *Batson*, and turn the equal protection clause in this context into a right without a remedy. *Id.* at 259–61, 368 S.E.2d at 842–43 (Frye, J., concurring).

348. *See Batson*, 476 U.S. at 96–98 ("Once the defendant makes a prima facie showing [of racial discrimination through the use of peremptory challenges in his or her case], the burden shifts to the State to come forward with a neutral explanation for challenging black jurors.").

349. *See* Hitchcock, *supra* note 337, at 1345, 1351–55 (cataloging some of the justifications approved by the Supreme Court of North Carolina in capital cases); State v. Wright, 189 N.C. App. 346, 353–54, 658 S.E.2d 60, 64–65 (2008) (granting a new trial on *Batson* grounds where the prosecutor failed to provide any justifications for several peremptory strikes and the trial court did not make findings as to each strike as required by precedent); *see also* Baldus et al., *The Use of Peremptory Challenges in Capital Murder Trials: A Legal and Empirical Analysis*, 3 U. PA. J. CONST. L. 3, 123 (2001) (observing in empirical research on Philadelphia, Pennsylvania, trials that *Batson* and its progeny have had only marginal effect).

350. *See* Bryan A. Stevenson & Ruth E. Friedman, *Deliberate Indifference: Judicial Tolerance of Racial Bias in Criminal Justice*, 51 WASH. & LEE L. REV. 509, 515–27 (1994) (detailing prosecution practices that despite *Batson* continue to produce juries in which all or most African Americans have been excluded).

351. *See* Brief for Defendant Appellant at 21–22, State v. Noell, 284 N.C. 670, 202 S.E.2d 750 (1974) (challenging exclusion of jurors of defendant's race because of their knowledge of the defendant) (on file with the North Carolina Law Review); State v. Noell, 284 N.C. 670, 701, 202 S.E.2d 750, 770 (1974) (upholding conviction and death sentence and rejecting challenge to them based on the prosecutor's use of peremptory strikes to remove all African Americans from the jury); *see also* State v. Cole, 343 N.C. 399, 412–14, 471 S.E.2d 362, 367–69 (1996) (recounting defendant's request for change of venue, inter alia, because so many of the potential African American jurors in the rural county were likely to know the victims or the defendant that it would

"death qualifying" of the panel members for service on a capital jury,[352] which precedes the peremptory strike process and excludes a disproportionate number of minorities with "for cause" challenges.[353] As

be difficult to seat any African American jurors, which proved true in that thirteen of the sixteen jurors who were questioned during voir dire indicated such knowledge, nine of them being stricken for cause, and ultimately no African American serving).

Litigation in the Motion for Appropriate Relief (MAR) in the challenge to the death sentence of John Oliver in Robeson County illustrates some of the ways in which African American jurors can be excluded during jury selection. A combination of processes resulted in the exclusion of all African Americans in a jurisdiction where approximately one-fourth of the population was African American from a jury that in 1982 recommended death sentences for two African American defendants charged with murdering two white men. *See* Motion for Appropriate Relief, Exhibit VIII, State v. Oliver, 78 CRS 25575 (Nov. 12, 1986) (on file with the North Carolina Law Review) (recounting racial characteristics of defendants, victims, members of the venire, and the voting age population, 23% of whom were African American at that time). The death sentence was vacated on the basis of a violation of the defendant's due process rights under *Brady v. Maryland*, 373 U.S. 83 (1963). *See* Order at 56–62, State v. Oliver, 78 CRS 25575 (Jan. 25, 1994) (on file with the North Carolina Law Review).

In the death qualifying process, sixty-eight jurors were questioned, and thirty-three of them were excused for cause, many with only three highly leading questions from the prosecutor and no allowance of clarification. *See* Motion for Appropriate Relief at 41–45, State v. Oliver, 78 CRS 25575 (Apr. 27, 1988). This high percentage of jurors unable to impose a death sentence appeared unlikely given the attitudes of the public and according to interviews with jurors by counsel during development of the Motion for Appropriate Relief and was more likely attributable to the opportunity the procedure provided to simply avoid jury service. *Id.* at 45–46. That process eliminated seven of the fourteen African American jurors who were questioned during voir dire. One additional juror was eliminated by a challenge for cause for another purpose. The prosecutor used five of his nine peremptory challenges against African Americans. The final African American juror was excused on a peremptory challenge by the co-defendant's attorney. *See id.* 53–55. Despite the expenditure of weeks of work amassing the data on the race of jurors, which is usually not available or noted in any fashion in criminal case records, and its presentation in the MAR supported by affidavits, the issue was never addressed by the trial court judge who heard the motion because they were dismissed on the State's motion on procedural grounds. *See* Order, *supra*, at 6 (affirming earlier rulings of another Superior Court judge who ruled on the pleadings to bar the majority of claims on grounds of procedural bar).

352. A venire member is considered "death-qualified" if the prospective juror is not incapable of fairly imposing a death sentence under appropriate facts. In *Witherspoon v. Illinois*, 391 U.S. 510, 521-22 (1968), the Court set out the standards for striking venire members for cause because of their opposition to, and reservations about, capital punishment. *See also* Wainwright v. Witt, 469 U.S. 412, 416–26 (1984) (more recent discussion of same issue). In *Morgan v. Illinois*, 504 U.S. 719, 729 (1992), the Court established standards for the less frequently encountered situation of striking venire members for cause because they would automatically sentence a defendant to death upon his conviction for capital murder.

353. Although the United States Supreme Court has rejected the challenge to death qualification that it denies the defendant the right to a fair cross section of the community, *see* Lockhart v. McCree, 476 U.S. 162, 174–77 (1986), researchers demonstrate that the process of death qualification predictably removes a larger percentage of African Americans than whites because of the relatively greater opposition to capital punishment among African Americans. *See, e.g.*, Lockhart v. McCree, 476 U.S. 162, 187 (1986) (Marshall, J., dissenting) (noting the findings of researchers that death qualification removes a disproportionate percentage of African Americans and women); Frank P. Williams III & Marilyn D. McShane, *Inclinations of Prospective Jurors in Capital Cases*, 74 SOC. SCI. REV. 85, 87–89 (1990);

demonstrated in research in Philadelphia, Pennsylvania, by Professor Baldus, the limited number of African Americans in the typical jury pool magnifies the impact of any discriminatory pattern of strikes by the prosecution that cannot be offset by a compensating strategy of defense counsel.[354] Moreover, social psychologists have demonstrated that to affect the outcome of a typical jury of twelve, more than one person espousing a minority position must be on the jury, for when voiced by just one person, the minority argument does not receive significant consideration. As a result, the inclusion of a single minority member will generally have only limited effect.[355]

Despite changes in the laws and practices governing jury selection, those who exercise discretion in imposing the death sentence—jurors—remain disproportionately white, and African American service on juries is often limited. Indeed, in a number of the cases of defendants presently on death row, the jury was all white even though a number of these cases were tried in counties with substantial African American populations.[356]

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354. *See* Baldus et al., *supra* note 349, at 125 (noting that the "cancelling out" hypothesis of prosecution strikes and defense strikes, which appeared to be happening, favored the prosecution because "the prime targets of the Commonwealth typically were substantially smaller in number than were defense counsel's prime targets").

355. According to social science research, the presence of one or more allies, in other words at least two and perhaps three jurors who share a minority position, is usually critical to a minority effectively voicing its position in the deliberation process.

> [F]or one or two jurors to hold out to the end, it would appear necessary that they had companionship at the beginning of the deliberations. The juror psychology recalls a famous series of experiments by the psychologist Asch and others which showed that in an ambiguous situation a member of a group will doubt and finally disbelieve his own correct observation if all other members of the group claim that he must have been mistaken. To maintain his original position, not only before others but even before himself, it is necessary for him to have at least one ally.

HARRY KALVEN, JR. & HANS ZEISEL, THE AMERICAN JURY 463 (1966); *see also* John J. Francis, *Peremptory Challenges,* Gutter, *and Critical Mass: A Means of Reclaiming the Promise of* Batson, 29 VT. L. REV. 297, 327–36 (2005) (describing the benefits of multiracial juries for resisting stereotypical reasoning and the importance of a critical mass of minority jurors); Baldus et al., *supra* note 349, at 124 (finding that in juries in Philadelphia, Pennsylvania that juries with five or more African American jurors were significantly less likely to impose death sentences than those with four or fewer African American members). Also, social science research and theory indicate another potential impact of minority presence. A single juror espousing a minority position is quite unlikely to prevail in either holding out against the majority's position in the determination of the case, but even a lone juror of a minority race can have the effect of sensitizing majority jurors to different perspectives that might otherwise be ignored, often because it is not articulated or perceived. *See* Samuel R. Sommers & Phoebe C. Ellsworth, *White Juror Bias*, 7 PSYCHOL. PUB. POL'Y & L. 201, 221 (2001).

356. Among defendants currently on death row, at least thirty were tried by juries that had no African American members. The defendants are listed alphabetically by race with the county where the case originated shown in parentheses. The cases include: African American defendants—Quintel Augustine (Cumberland), Roger Blakeney (Union), Paul Brown (Wayne), Rayford Burke (Iredell), Wade Cole (Camden), Phillip Davis (Buncombe), Keith East (Surry),

In addition to inviting a broad examination of statistical evidence regarding race-of-the-defendant and race-of-the-victim discrimination, the RJA authorizes a systemic examination of the use of race in the examination of peremptory challenges during jury selection. This cumulative examination within relevant geographical areas for prosecution should address the apparent ineffectiveness of *Batson* in individual case litigation to eliminate the racial exclusionary effects of the prosecution's use of peremptory challenges. This article now turns to analysis and interpretation of the RJA as it implements the task of ensuring that racial motivation does not affect the operation of the death penalty in North Carolina with regard to significant differences in the race of defendants and victims and the prosecution's exercise of prosecutorial peremptory challenges.

IV. THE RACIAL JUSTICE ACT

A number of important issues must be addressed by courts in interpreting the RJA. Its key features and their role in ensuring that race is eliminated from decisions affecting defendants, victims, and jurors in the operation of the North Carolina death penalty system are examined below. The analysis relies on legislative intent, placement within the context of other remedial legislation employing statistical evidence, and clear distinctions between the RJA and the Kentucky statute.

A. Accepting McCleskey's Invitation to Legislatures to Receive Statistical Evidence in Addition to Proof of Intentional Discrimination

In enacting the Racial Justice Act, North Carolina determined that its inquiry would not be limited by *McCleskey v. Kemp*[357] and its rejection of statistical evidence when examining constitutional claims under the Equal Protection Clause. In *McCleskey*, the Court ruled that "to prevail under the

Andre Fletcher (Rutherford), Mitchell Holmes (Johnston), Cerron Hooks (Forsyth), Guy LeGrande (Stanly), Thomas Larry (Forsyth), Terry Moore (Davie), Andrew Ramseur (Iredell), Martin Richardson (Union), Kenneth Rouse (Randolph), and Russell Tucker (Forsyth); Native American defendants—Alexander Polke (Randolph) and Darryl Strickland (Union); white defendants—Eric Call (Ashe), Chris Goss (Ashe), James Jaynes (Polk), Wayne Laws (Davidson), Carl Moseley (Forsyth & Stokes), Ted Prevatte (Stanly), William Raines (Henderson), Tony Sidden (Alexander), Gary Trull (Randolph), George Wilkerson (Randolph), and James Williams (Randolph). *See* Jury Information Memorandum (on file with the North Carolina Law Review).

According to 2000 census data, the African American percentage in Cumberland, Forsyth, and Wayne Counties exceeded the state-wide average of 21.6%, and Wake County, with 19.7% of its population African American, was close to the state-wide percentage. Camden, Iredell, Johnston, Rutherford, and Stanly Counties all had African American populations that exceeded 10% but were less than 20%. In the remaining counties listed above, the African American population was less than 10%. *See* 2000 Census, *supra* note 258.

357. 481 U.S. 279 (1987).

Equal Protection Clause, [the defendant] must prove that the decisionmakers in *his* case acted with discriminatory propose."[358] The legislature understood that it was creating a different system of proof than that prescribed by *McCleskey*, explicitly accepting the Court's invitation to legislatures to act because they, rather than the United States Supreme Court, are best able to judge how statistical studies should be used in regulating the death penalty.[359]

In the debate on May 14, 2009, the day when the North Carolina Senate first approved Senate Bill 461, which became the RJA, Senator Doug Berger set out how it differs from *McCleskey*:

> [W]ithout this legislation, previous attempts to raise this issue would have been to no avail because of the *McCleskey* decision. . . . The *McCleskey* decision . . . said that while statistics may show race discrimination, it doesn't rise to the level of being a constitutional violation of the equal protection clause and specifically directed that if states wanted to provide this additional protection and making it a means by which someone could prove racial discrimination, then they could do it. And that's what we're doing here today. I want to step back and explain, very quickly, where this idea of using statistics to prove race discrimination comes from and why it's needed. Race discrimination is very hard to prove. Rarely, particularly in today's time, do people outright say, "I am doing this because of the color of your skin." Imagine if our civil rights act that was passed in '64 said that the only way that you can prove race discrimination is that kind of evidence—an admission by the person engaging in racial discrimination. We would have had very little change in our society and culture in terms of the hiring practices. What we did in the civil rights act in '64 is said, "In addition to using direct evidence in proving discrimination, you could use statistics." And, in fact, what we did, and there's a parallel to what we're doing in this bill.[360]

358. *Id.* at 292 (emphasis in original). The *McCleskey* decision's insistence on proof of purposeful racial discrimination for proof of constitutional claims under the Equal Protection doctrine in death penalty cases, drastically limited the use of statistical evidence and the significance of proof of disparate racial impact, and because of the virtual impossibility of meeting the burden imposed, effectively ended federal court scrutiny of such claims. *See* Baldus & Woodworth, *supra* note 239, at 1466; *see also* John H. Blume et al., *Post*-McCleskey *Racial Discrimination in Capital Cases*, 83 CORNELL L. REV. 1771, 1778–79 (1998) (noting that the limitation in *McCleskey* to proof regarding the defendant's particular case effectively limits proof to the individual prosecutor or office).

359. *See McCleskey*, 481 U.S. at 319.

360. *See* Sen. Doug Berger, Senate Floor Debate on Racial Justice Act (May 14, 2009) (transcript on file with the North Carolina Law Review) (responding in opposition to an amendment offered by Senator Phil Berger to limit the use of statistical evidence as set out in *McCleskey*). His statement that the model being used was that of statistical evidence in

By contrast to *McCleskey*, the RJA explicitly authorizes proof by "statistical evidence" that race was a significant factor in decisions to seek or impose death sentences in the county, the prosecutorial district, the judicial division, or the State at the relevant time.[361] It also declares that based on the process set out and the proof admitted, including statistical evidence, if the court finds that race was a significant factor in such decisions in any one of the four relevant geographical areas, relief is to be granted.[362] The death sentence is to be vacated, and the defendant is to be resentenced to life without parole.[363]

B. Proof of Discrimination through Statistical Evidence and Burden Shifting

The legislature set out in the RJA a statutory test for "[p]roof of racial discrimination, [364] which replaces *McCleskey*'s almost impossible-to-establish constitutional requirement of direct proof of intention to discriminate. The statute states that the "finding that race was *the* basis of the decision to seek or impose a death sentence *may* be established if the court finds that race was *a significant factor* in decisions to seek or impose the sentence" in one of four designated areas at the time the decision was made.[365]

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employment cases was echoed in the House by Rep. Rick Glazier during the debate in the North Carolina House on July 14, 2009 when it adopted Senate Bill 461. *See* Rep. Rick Glazier, House Floor Debate on Racial Justice Act (July 14, 2009) (transcript on file with the North Carolina Law Review) ("Well, I'm here to tell you, at least from my perspective, that unstated motivation is extraordinarily difficult to ferret out. That is why we use statistical evidence in employment discrimination cases, and if we are using statistical evidence in employment cases to protect property rights, I fail to see why credible statistical evidence ought not be a legislative reason or a legislative priority to allow people to use to fight for their life."). Sen. Doug Berger's explicit acceptance of *McCleskey*'s invitation to legislatures to determine the appropriate use of statistical evidence regarding racial discrimination was echoed in that same debate by Rep. Deborah Ross. *See* Rep. Deborah Ross, House Floor Debate on Racial Justice Act (July 14, 2009) (transcript on file with the North Carolina Law Review) ("In a 5-4 decision, the US Supreme Court said that you don't have the *constitutional right* to present statistical evidence . . . [t]hough at the end of his opinion for the five judge majority, Justice Lewis Powell said 'these arguments are best presented to legislative bodies. It is the Legislatures, the elected representatives of the people that are constituted to respond to the will and consequently the moral values of the people. Legislatures are also better qualified to weigh and evaluate the results of statistical studies in terms of their local conditions and with a flexibility of approach that is not available to the court.'") (quoting from *McCleskey*, 481 U.S. at 319).

361. *See* N.C. GEN. STAT. § 15A-2010(b) (2009).

362. *See* N.C. GEN. STAT. § 15A-2012(a)(3) (2009).

363. *See id.*

364. *See* N.C. GEN. STAT. § 15A-2011 (2009) (using "racial discrimination" in the statutory title as the only use of that term in the RJA); s*ee also* N.C. GEN. STAT. § 15A-2010 (2009) (prohibiting a death sentence that "was sought or obtained on the basis of race").

365. *See* N.C. GEN. STAT. § 15A-2011(a) (2009) (emphasis added).

The RJA sets out the framework of relevant concerns. The two decisions of interest are the decision to seek the death penalty, which is made by the prosecutor, and the decision to impose the death penalty, which is made by the jury.[366] Proof regarding the effect of race on these decisions "may include statistical evidence," direct testimony, or other evidence.[367] Statistical evidence may show disproportionate racial impact and therefore that race was the "significant factor" in the decisions regarding whether to seek or impose the death penalty. First, the RJA authorizes proof by introducing evidence that "[d]eath sentences were sought or imposed significantly more frequently upon persons of one race," which makes the race of the defendant critical.[368] Second, it authorizes proof that "[d]eath sentences were sought or imposed significantly more frequently as punishment for capital offenses against persons of one race than as capital offenses against persons of another race," which focuses on the race of the victim.[369] Third, it recognizes that "[r]ace was a significant factor in decisions to exercise peremptory challenges during jury selection," which directs examination of the race of jurors who were excused.[370] As long as made at the time of the decision to seek or impose the death sentence, this statistical showing may be made in "the county, the prosecutorial district, the judicial division, or the State."[371]

In one section, the statute describes a finding that race was "the basis" of a decision to seek or impose a death sentence, which "may" be established if the court finds that race was a significant factor in the decision in one of the four identified geographical areas.[372] Elsewhere, the statute states more directly the connection between the requirement of relief and proof of disparate impact:

> If the court finds that race was *a significant factor* in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time death was sought or imposed, *the court shall order* that the death sentence not be sought, or that the death sentence imposed by the judgment shall

366. *Id.*

367. *See* N.C. GEN. STAT. § 15A-2011(b) (2009). In addition to statistical evidence, the statute permits sworn testimony from witnesses drawn from the criminal justice system. *See id.*

368. *See id.* § 15A-2011(b)(1).

369. *See id.* § 15A-2011(b)(2).

370. *See id.* at § 15A-2011(b)(3). In combination with § 15A-2012(b), which gives the defendant the right to raise claims under the RJA "[n]ot withstanding any other provision or time limitation contained in Article 89 of Chapter 15A," this provision allows defendants to litigate racial discrimination regarding peremptory strikes even if objections were not made at trial or might be subject to other procedural bars in Article 89.

371. *See* N.C. GEN. STAT. § 15A-2012(b) (2009).

372. *See* N.C. GEN. STAT. § 15A-2011(a) (2009).

> be vacated and the defendant resentence to life imprisonment without the possibility of parole.[373]

In combination with others, these provisions set out a burden shifting process. The defendant has the burden to prove "race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time death was sought or imposed."[374] If he or she does so, then the state may rebut the defendant's proof, again using ether statistical or other evidence.[375] However, if the state does not refute the defendant's proof, the language of the statute commands that "the judgment *shall* be vacated and the defendant resentenced to life without the possibility of parole."[376]

Thus, the RJA follows the familiar pattern of the use of statistical evidence in civil rights law.[377] However, in setting out the remedy, it does more than permit use of statistical evidence to establish a "prima facie" case. A "prima facie" case under North Carolina law permits the finder of fact to grant relief.[378] The RJA at least does that much. It also appears to

373. *See* N.C. GEN. STAT. § 15A-2012(a)(3) (2009) (emphasis added).

374. *See id.* § 15A-2012(c).

375. *See id.*

376. *See* N.C. GEN. STAT. § 15A-2012(a)(3) (2009) (emphasis added).

377. Statistical evidence is used to satisfy the claimant's burden and to shift the burden to the opponent to rebut the inference established by the statistical evidence in voting rights and employment discrimination cases and in criminal law as to fair representation of the community in jury venires and the use of peremptory strikes in jury selection. *See* Alex Lesman, *State Responses to the Specter of Racial Discrimination in Capital Proceedings: The Kentucky Racial Justice Act and the New Jersey Supreme Court's Proportionality Review Project*, 13 J. L. & POL'Y 359, 371–72 (2005); Baldus & Woodworth, *supra* note 239, at 1467 (noting the Kentucky Racial Justice Act is modeled on the Federal Racial Justice Act, which was based on the model of proof used in challenging a pattern of apparent race-based peremptory strikes in *Batson*). This was the model used as well in the proposed federal Racial Justice Act as developed in the United States House of Representatives. *See* Don Edwards & John Conyers, Jr., *The Racial Justice Act—A Simple Matter of Justice*, 20 U. DAYTON L. REV. 699, 704–06, 708–09 (1995) (describing the mechanism of the proposed federal Racial Justice Act, which follows the pattern of civil rights statutes where statistical evidence produces an inference of racial discrimination that establishes a prima facie case, shifting the burden to the state to rebut the inference if it is to avoid relief); H.R. REP. NO. 103-458, at 3–5 (1994) (noting that because few people readily admit to an intent to discriminate, illegal discrimination can be established in a number of areas of federal law by showing that the results of the process have a discriminatory impact); Maxine Goodman, *A Death Penalty Wake-Up Call: Reducing the Risk of Racial Discrimination in Capital Punishment*, 12 BERKELEY J. CRIM. L. 29, 57–58 (2007) (describing the operation of the statistical evidence of disparate impact to create an inference of discrimination that the state could then rebut, which it must do to avoid invalidation of the death sentence); *Batson v. Kentucky*, 476 U.S. 79, 96–98 (1986) (authorizing use of a pattern of peremptory strikes against members of a racial group by the prosecutor to establish an inference of discrimination that shifts the burden to the state to explain with neutral reasons to avoid a finding of discriminatory action).

378. Under North Carolina terminology, establishing a prima facie case may result in the party prevailing in the absence of rebuttal evidence, but it does not formally shift the burden of

go further and not only permits but compels relief upon if the defendant's proof is not refuted that race was a significant factor in the decision to seek or impose the death penalty in one of the four geographical areas identified by the statute.

C. Requirement of Particularity Regarding Race as a Significant Factor in Decisions in a Relevant Geographical Area, Not in the Individual Case

The key limitation in *McCleskey*—proof of intentional or purposeful discrimination in the defendant's case—is not required under the RJA, although it would be permitted.[379] Moreover, differences between the North Carolina RJA and the Kentucky legislation of the same name reveal how the North Carolina Act avoids indirectly limiting the defendant's use of statistical proof. The Kentucky statute indirectly limits the defendant's use of statistical proof by its requirement of particularity in proof that requires linking the statistical evidence to the defendant's specific case.[380] By contrast, the North Carolina RJA focuses the particularity of proof on how statistical evidence supports "a claim that race was a significant factor in decisions . . . in the county, the prosecutorial district, the judicial division, or the State."[381] It requires the defendant "to state with

proof. *See* 1 KENNETH S. BROUN, BRANDIS & BROUN ON NORTH CAROLINA EVIDENCE § 32, at 120–21 (6th ed. 2004) (noting that establishing a prima facie case does not truly shift the burden).

379. The recognition in the statute of the propriety of use of testimony from various witnesses in the criminal justice system is appropriate to such proof. *See* N.C. GEN. STAT. § 15A-2011(b) (2009).

380. *See* KY. REV. STAT. ANN. § 532-300(4) (2008). This provision has apparently had the effect of limiting the use of statistical evidence in Kentucky. Although the Kentucky racial justice act authorizes use of statistical evidence on a state-wide basis to establish a finding that race was the basis of the decision to seek death, *see id.* § 532-300(2), the force of that authorization to meet the defendant's burden was undercut by the statute's requirement that the defendant state "with particularity" how racial considerations played a significant part in the decision to seek death "in his or her case." *Id.* § 532-300(4). The phrasing of the latter requirement has the ring of *McCleskey*'s requirement of proof that "the decisionmakers in *his* case acted with discriminatory propose." McCleskey v. Kemp, 481 U.S. 279, 292 (1987) (emphasis in original). Some observers believe the effect of this provision has been to focus proof by statistical evidence in the specific prosecutorial district. *See* Baldus & Woodworth, *supra* note 239, at 1468 & n.218 (quoting an observation of a defender); *see also* Gerald Neal, *Not Soft on Crime, but Strong on Justice: The Kentucky Racial Justice Act*, 26 THE ADVOCATE 9, 19 (Mar. 2004) (Frankfurt, KY) *available at* http://apps.dpa.ky.gov/library/advocate/pdf/2004/adv032004.pdf (analyzing defender responses to the Kentucky act). North Carolina's differently directed "particularity requirement" does not invite that effect.

381. *See* N.C. GEN. STAT. § 15A-2012(a) (2009). Earlier versions of the North Carolina Racial Justice Act introduced in the North Carolina House of Representatives bore strong resemblance to the Kentucky statute, and thus changes in the legislation before enactment to modify those provisions that limited its effectiveness are significant indicators of legislative intent. H.B. 1291, which was introduced in 2007 but not adopted tracked the major provisions of

particularity how the evidence supports" the claim that race was a significant factor in decisions of the prosecutor or jury in any of these geographical areas at the time of decision, focusing the particularity requirement on proof of the impact of race in one of those areas.[382] Thus, compared to the Kentucky statute, the North Carolina RJA imposes a particularity requirement regarding proof as to the four relevant geographical areas and not the individual defendant's case.[383]

The administration of the death penalty in North Carolina is best understood as a state-wide system with a combination of local and centralized authority. The state legislature has passed laws establishing the death penalty and setting out broad rules for its operation.[384] Local prosecutors, who are elected from and serve in districts, are given significant discretion in applying the state laws to prosecution of particular cases. Resident superior court judges, who are also elected locally, serve within a judicial division and have a home district. They preside over

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the Kentucky act and contained the major limitations described in supra note 380 and discussed below.

The North Carolina statute also differs from the Kentucky Racial Justice Act, *see* KY. REV. STAT. ANN. §§ 532.300–.309 (1998), in a number of significant ways. First, the Kentucky act applies only to the decision "to seek the sentence of death." *Id.* § 532-300(2). The North Carolina statute applies to death sentences "sought or obtained on the basis of race" and where "race was a significant factor in decisions to seek or impose a death penalty." N.C. GEN. STAT. §§ 15A-2010 & 15A-2011(a) (2009). The effect of the Kentucky statute is to limit the impact of its legislation to the charging decision while the North Carolina act clearly covers decisions by the jury to impose the sentence. Indeed, the North Carolina statute specifically permits proof of race as a significant factor in the exercise of peremptory challenges, *see* N.C. GEN. STAT. § 15A-2011(b)(3) (2009), which are applicable only to jurors. It also explicitly authorizes testimony from jurors. *See id.* § 15A-2011(b). The North Carolina act also potentially covers other official action that goes to how the death sentence was "obtained," which is not otherwise defined. Also, the Kentucky act places the burden of proof on the defendant by "clear and convincing evidence." KY. REV. STAT. ANN. § 532-300(5) (1998). The North Carolina act places the burden of proof on the defendant but does not impose any higher burden than the normal preponderance of evidence standard. *See* N.C. GEN. STAT. § 15A-2011(c) (2009). Both the Kentucky act and the North Carolina act permit proof that both the race of the defendant and the race of the victim provided the basis of decisions regarding the death sentence. *See* KY. REV. STAT. ANN. § 532-300(3)(a) (race of the defendant—"[u]pon persons of one race") & (b) (race of the victim—"offenses against persons of one race"). *See* N.C. GEN. STAT. § 15A-2011(b)(1) (race of the defendant—"upon persons of one race") & 15A-2011(b)(2) (race of the victim—"offenses against persons of one race").

382. N.C. GEN. STAT. § 15A-2011(a) (2009).

383. § 15A-2012(a); *see also supra* note 358 (discussing the significant limitation imposed on proof where, instead of the jurisdiction-wide focus of the RJA, the claim is instead a constitutional action under the Equal Protection Clause and *McCleskey*, which results almost inevitably in a very narrow focus on prosecutorial practices).

The only point at which the statute relates a showing to the particular case involves rebuttal evidence from the state where the statute authorizes receiving evidence that any program established by the state for the purpose of eliminating race as a factor in death sentence decisions had an "impact upon the defendant's trial." § 15A-2011(c).

384. *See* N.C. GEN. STAT. § 15A-2000 *et. seq.* (2009).

hearings and trials in capital cases where they interpret and apply the law. Jurors, who render the verdicts in capital cases, are drawn from the county where the capital crime occurred, unless the court moves the trial to another county. The Supreme Court of North Carolina reviews cases where the death penalty has been imposed and establishes rules supplemental to state law regarding trial and appellate procedure in capital cases.[385]

This system has changed significantly since its initial adoption. Few, if any, government actors remain from the beginning of our modern death penalty. The laws and the application of the laws have changed significantly. Racial attitudes of the public and public officials have likely changed over the last thirty years. Thus, the examination of the impact of race called for by the RJA is an examination of this multi-level system of death penalty administration at the time relevant to each case. If the system, when examined at the state-wide level, reveals the systemic improper influence of race at a relevant time, then the death verdicts that are a product of that system at that time period cannot stand. If, however, no state-wide systemic problem is found, then the capital defendant may press his case based on an examination of the data by judicial division, judicial district, or county.

D. Rebuttal by the State

Statistical proof that meets the defendant's initial burden entitles and likely compels relief unless rebutted by the state. The statute recognizes that such rebuttal evidence may include, but is not limited to, statistical evidence.[386] The statute also recognizes that rebuttal evidence may be offered in the form of programs designed to eliminate race as a factor, but only as to its "impact upon the defendant's trial."[387]

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385. *See* N.C. GEN. STAT. § 7A-33 & 34 (2009).

386. *See* N.C. GEN. STAT. § 15A-2011(c) (2009). Because the RJA grants relief upon a finding that "race was a significant factor in decisions to seek or impose" the death penalty in either "the county, the prosecutorial district, the judicial division, *or* the State," § 15A-2012(a)(3) (emphasis added), with treatment of the geographical units written in the disjunctive, statistical evidence offered by the prosecution in rebuttal as a matter of logic must respond at the same geographical level as the defendant's proof to avoid relief. For example, the defendant's proof that disparate impact occurred in the county level where the case was tried would generally not be rebutted by the prosecution's state-wide evidence of no significant disparate impact at that geographic level when all individual units are cumulated. Similarly, the defendant's proof of state-wide disparate impact cannot logically be rebutted by the prosecution's evidence that there was no discrimination in a particular county since that would not show that cumulatively the decisions showed such disparate impact.

387. N.C. GEN. STAT. § 15A-2011(c) (2009). As noted earlier, this linking of the impact of the program to the defendant's case is in distinction to the linkage of defendant's statistical showing to one of the relevant jurisdictions within which his or her case was handled. *See supra* notes 379–381 and accompanying text (contrasting the North Carolina RJA to both the

In rebutting the defendant's statistical evidence, the prosecution may demonstrate that the disparate impact resulted from any statutorily authorized factor, some of which may correlate with race and thereby eliminate significance of the apparent impact of race in producing that disparate impact.[388] The structure developed in the RJA is a straightforward but important application of the burden shifting pattern followed in other remedial civil rights legislation, which gives the defense the opportunity and in many situations the obligation to rebut the moving party's statistically based proof if relief is to be avoided.

E. Standing to Raise the Claim

The RJA, which is explicitly retroactive, applies to claims by all defendants, whether sentenced in the past or facing trial on capital charges.[389] As long as the defendant produces disparate impact evidence tending to show that race was a significant factor in decisions to seek or impose the death sentence in the relevant county, prosecutorial district, or judicial division or in the state at the time of the decision to seek or impose his or her death sentence, the statute provides grounds for relief.[390] Disparate impact of race is relevant if it relates to the defendant, the victim, or jurors excused by peremptory strikes.[391] Because the defendant would be entitled to relief, any defendant facing a death sentence who can provide evidence on these issues obviously has standing to seek such relief. Therefore, if a defendant produces disparate impact evidence on any of these issues as to any of these geographic units at that the relevant time, he or she has standing under the statute to challenge his or her death sentence.

The RJA does not, on its face or even theoretically, limit standing based on race of the defendant or victim. Under established jury selection law, defendants of any race may challenge discriminatory exercise of peremptory challenges. Indeed, even as to more restrictive procedural requirements for federal constitutional claims, standing and "cognizable injury" does not require that the defendant and the excluded juror be of the

requirements of *McCleskey* regarding proof of discrimination under the Equal Protection Clause and the Kentucky Racial Justice Act).

388. The RJA's only reference that relates to this obvious point is a limitation on evidence relevant to the defendant's showing, which allows proof "irrespective of statutory factors." N.C. GEN. STAT. § 15A-2011(b) (2009). Such evidence is logically relevant as well to refute the defendant's statistical proof.

389. *See* 2009 N.C. Sess. Laws. 464 § 2 (requiring claims of those presently under a death sentence to be filed within a year of the effective date of the RJA). It became effective August 11, 2009, *id.*, establishing a deadline for filing of August 10, 2010. As noted earlier, *see supra* note 370, claims regarding jury selection are not precluded by failure to previously raise them as long as the RJA challenge is timely filed.

390. *See* N.C. GEN. STAT. § 15A-2012(a)(3) (2009).

391. *See* § 15A-2011(b)(1)–(b)(3).

same race.[392] As a result, defendants regardless of their race have standing under the RJA to challenge their death sentence if they produce evidence of disparate racial impact regarding peremptory strikes against any race by the prosecution.

Two different types of disparate impact are clear bases both for standing and for relief. First, the defendant may have been harmed by the operation of race; his or her prospects of a death sentence may have been increased by the irrationality that race introduced into the operation of the death penalty. That harm could arise from decisions based either on the defendant's race or the race of the victim. In the first situation, the defendant would be the object of discrimination in the decision to seek a death sentence or by the jury to impose a death sentence. It could also occur when the race of the victim had an effect on the decision of the prosecutor to seek a death sentence or the jury to impose it, which occurs typically through racial empathy.[393]

Another rationale for invalidation of the death sentence where there is disparate impact regarding victims is the undervaluation of African American lives and the unfairness visited on the African American community when the murder of one if its members is denigrated a result of lesser punishment based on the victim's race. The history of capital punishment in North Carolina shows that executions have been far less common when the victim was African American regardless of the race of the defendant, and very rare if the defendant was white.[394] Disparate execution rates based on the race of the defendant could justify removing defendants from death row on two rationales. One is that such discrimination devalues African American lives and thereby has a negative

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392. *See* Powers v. Ohio, 499 U.S. 400, 410–16 (1991). In *Powers*, the Court stated:

> The discriminatory use of peremptory challenges by the prosecution causes by the prosecution causes a criminal defendant cognizable injury, and the defendant has a concrete interest in challenging the practice . . . . This is not because the individual jurors dismissed by the prosecution may have been predisposed to favor the defendant; if that were true, the jurors might have been excused for cause. Rather, it is because racial discrimination in the selection of jurors "casts doubt on the integrity of the judicial process," . . . and places the fairness of a criminal proceeding in doubt.

Id. at 411 (quoting Rose v. Mitchell, 443 U.S. 545, 556 (1979)). The result in *Powers* is consistent with an earlier ruling regarding exclusion of African Americans from the grand jury, which the Court found unconstitutional in *Peters v. Kiff*, 407 U.S. 492 (1972), a challenge brought by a white defendant.

393. *See supra* Part III.B.2.a (discussing of unconscious motivation and race-of-the-defendant discrimination through empathy between predominately white prosecutors and jurors and white victims).

394. *See supra* notes 18, 23, 36, 65–77, and 109 and accompanying text (showing that only four whites have been executed for crimes against African Americans in North Carolina's history and describing strong predominance of white victims among cases where executions occurred).

impact on that community. The second is that, although not designed to serve this end, a death penalty system that in practice operates to punish primarily those who take the lives of white citizens is incompatible with North Carolina's egalitarian values.[395] Whether it is discrimination against defendants based on their race and/or race-of-the-victim discrimination that helps produce a death sentence against the defendant, not only is standing clear, but so is "injury in fact." This is because as to both types of discrimination, disparate racial impact supports the operation of race as a "but for" cause of the death penalty.[396]

Thus, assuming appropriate evidence of disparate impact, standing should not be an issue. Indeed, standing is likely to exist in multiple ways for all those sentenced to death under the RJA if the requisite statistical showing is produced. That is the intention of the statute according to the judgment of the North Carolina Department of Justice as indicated in its Fiscal Research note.[397]

F. Systemic Relief and "Injury In Fact"

The availability of relief might ordinarily be in doubt in a situation where the defendant cannot as a matter of theory claim that race-of-the-defendant or race-of-the-victim discrimination increased the likelihood of a death sentence for the defendant, but it is arguably called for under the

395. *See* Baldus & Woodworth, *supra* note 239, at 1453.

396. Even under the restrictive reading of constitutional challenges to use of statistical evidence in *McCleskey*, the Supreme Court ruled that the defendant had standing to base a claim for relief on the race of the victim, which the Court treated the same as allegations regarding the race of the defendant. McClesky v. Kemp, 481 U.S. 279, 291–92 (1987). It stated that race infected the administration of the death penalty statute as to victims by making it more likely that defendants who murdered whites would be sentenced to death than defendants who murdered African Americans. The defendant is not, the Court observed, asserting the rights of third persons. Instead, he is arguing that

> application of the State's statute has created a classification that is "an irrational exercise of governmental power," . . . because it is no 'necessary to the accomplishment of some permissible state objective." . . . It would violate the Equal Protection Clause for a State to base enforcement of its criminal laws on "an unjustifiable standard such as race, religion, or other arbitrary classification."

Id. at 291 n.8 (quoting the petitioner's brief, Loving v. Virginia, 388 U.S. 1, 11 (1967), and Oyler v. Boles, 368 U.S. 448, 456 (1962)). On that basis, it found McCleskey had standing.

397. *See* Memorandum prepared by Danielle Seale & Denise Thomas, N.C. Dept. of Justice, Fiscal Research Division (July 14, 2009) (on file with the North Carolina Law Review) (stating "[a]s presently written, the bill allows all current death row inmates regardless of race to file a motion alleging that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the judicial division at the time the death sentence was sought or imposed"). As noted earlier, when a disparity is shown in the jurisdiction at the relevant time on the basis of the race of the victim, the rationale for relief can also relate to the undervaluation of African American lives and the unfairness visited to the African American community in addition to the irrationality of the system's operation.

RJA.[398] The RJA is broadly animated by an effort to remove the irrational impact of race from the death penalty, and it may render the death penalty illegal when it significantly affects decisions to seek or impose the death sentence in the state or one of the relevant judicial or prosecutorial units recognized by the RJA.[399] *Furman* declared all the death penalty statutes of that era unconstitutional on such a theory of general irrationality in imposition of the death penalty that one opinion compared to the capriciousness of being struck by lightning, which could not justify the extraordinary punishment of death.[400] None of the defendants who were removed from death row when their sentences were invalidated by *Furman* were required to show that the random quality of the system made their sentence more likely than under a properly designed system, and, indeed, as to those defendants with the worst personal histories who committed the most horrific crimes, their best chance of avoiding execution was under a system that replicated the chance event of being hit by lightning.

The RJA may be read to recognize a similar basis for invalidating death sentences if the process is shown to have been infected by the irrationality of race upon the finding of the court "that race was a significant factor in decisions to seek or impose the sentence of death in the

398. The question of entitlement to relief sometimes arises under a challenge to standing because ordinarily standing requires a showing of cognizable injury to the defendant, which could incorporate an inquiry into standing. However, the linkage between standing and injury to the defendant has been eliminated for the issue of peremptory challenges, *see* Powers v. Ohio, 499 U.S. 400, 411 (1991), which is one of the inquiries under the statute. Moreover, without resolving issues regarding the substantive purpose of the RJA, whether cognizable injury has occurred to any defendant cannot be determined. This is because the statute, *see* N.C. GEN. STAT. § 15A-2011(c) (2009), directs that procedural issues, such as establishing the defendant's case, the nature of the burden of proof, and the meaning of prejudice are to be found in Section 15A-1420(c)(6). Under that statute, "prejudice" consists, not only of outcome determinative actions, but also errors "as a matter of law." § 15A-1443(a). The RJA may create an entitlement to relief as a matter of law in requiring relief upon the court's finding "that race was a significant factor in decisions to seek or impose" death in one of the relevant geographical units. *See* § 15A-2012(a)(3). Thus, the standing issue is not separable from the substantive issue in the small number of cases where standing might ordinarily be challenged because of the lack of impact on the outcome in the defendant's case.

399. *Cf.* Paul Schoeman, Note, *Easing the Fear of too much Justice: A Compromise Proposal to Revise the Racial Justice Act*, 30 HARV. C.R.-C.L. L. REV. 542, 552 (1995) (concluding that the federal racial justice act, which has similar language, would have barred all sentences in the jurisdiction where the discriminatory pattern is found). If this were strictly a constitutional adjudication rather than adjudication under the RJA that was designed to remedy the limitations of such litigation, the failure to be able to show causation would likely be a significant argument against standing. *See* Lee & Bhagwat, *supra* note 333, at 184–85.

400. Furman v. Georgia, 408 U.S. 238, 309–10 (1972) (Stewart, J., concurring) ("These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. [From among] many just as reprehensible as these, the petitioners are among a capriciously selected random handful upon whom the sentence of death has in fact been imposed.").

county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed."[401] In North Carolina law, an analogy exists in the treatment of the prohibition in the North Carolina Constitution regarding discrimination in jury service.[402] To prevail, defendants need not show that exclusion affected the prospects in their case; instead, the case is reversed because the challenged practice damaged the integrity of the system.[403]

The above analysis does not answer all the interpretative questions posed by this new legislation, but it does resolve many of the most

401. N.C. GEN. STAT. § 15A-2011(c). Moreover, the statute grants this relief in any one of four geographic units, using the term "or," which on its face would appear to mean that the death penalty is invalid if race was a significant factor state-wide even if not in the county or prosecutorial district where the case was decided.

402. In construing the RJA, courts may find an analogy in *State v. Cofield*, 320 N.C. 297, 357 S.E.2d 622 (1987), which requires reversal upon a showing of discrimination in selection of the grand jury foreman without any showing of harm to the defendant. It stated:

> Our state constitutional guarantees against racial discrimination in jury service are intended to protect values other than the reliability of the outcome of the proceedings. Central to these protections, as we have already noted, is the perception of evenhandedness in the administration of justice. [The constitutional provision] is intended to protect the integrity of the judicial system, not just the reliability of the conviction obtained in a particular case. The question, therefore, is not whether discrimination in the foreman selection process affected the outcome of the grand jury proceedings; rather, the question is whether there was racial discrimination in the selection of this officer at all.

Id. at 304, 357 S.E.2d at 626.

403. Divorced from even the above-described theoretical justification, those who opposed the passage of the RJA in their final statements of opposition to it construed the legislation as having basically exactly this type of broad impact, and assuming statistical proof of disparate impact was produced at the state-wide level, argued the RJA would effectively end the death penalty in the state. *See* Statement of Rep. N. Leo Daughtry, House Floor Debate on Racial Justice Act (July 15, 2009) (transcript on file with North Carolina Law Review). Representative Daughtry stated:

> It is my opinion, after reading the bill that if you keep that part in the bill that was put in by the House that was not in it when the Senate went through it that the State or the State at the time the death sentence was sought or imposed, if you use the statistics of the state, then those advocates for the death penalty are going to lose because there is complete evidence of racial discrimination from the state. So, I don't see any way that this bill will ever allow us to use the death penalty again until this is straightened out it's simply a way to stop executions. I hope you'll vote against the bill.

Id.; *see also* Statement of Sen. Phil Berger, Senate Floor Debate on Racial Justice Act (Aug. 5, 2009) (transcript on file with the North Carolina Law Review) ("It's just a matter of the statistics and a matter of making a statistical determination in an area that may not have or probably has no particular relevance to the particular case at hand. . . . It will make it so that imposition of the death penalty in North Carolina probably will not occur any longer."); *but see* Statement of Rep. Rick Glazier, House Floor Debate on Racial Justice Act (July 15, 2009) (transcript on file with the North Carolina Law Review) (disputing in opposing Rep. Daughtry's argument that invalid statistical evidence would be used but not the broad application of the RJA, focusing on the requirement of "particularity as to how the evidence supports the claim that race was a significant factor in the decision to seek or impose the sentence of death"). The RJA was nevertheless passed in the face of that construction of it by its opponents.

important ones regarding the basic structure of this burden shifting statute using statistical evidence. The statute creates a powerful tool for the examination and elimination of discriminatory racial motivation whether exercised intentionally and openly or covertly and unconsciously. Its interpretation in individual cases will require care and reasoned judgment, but it should be done against a clear background of legislative intent that courts examine carefully the prospect that racial discrimination skews death penalty outcomes and substantially reduces minority jury participation and that any death sentence be vacated and life imprisonment without parole be imposed if race has played a significant role in prosecution or jury decision making or a prosecutor's peremptory challenges.

CONCLUSION

The RJA opens a new chapter in North Carolina's history. Many factors made its enactment possible,[404] including a heightened concern for innocence inspired by exonerations of death row prisoners in North Carolina and around the nation,[405] a concern that has also played an important role in the decline of death penalties in the state in recent years.[406] Another factor was quite important. Throughout the state's

404. The new forces include growing concern among criminal justice experts about the inherent flaw in the capital punishment system, *see* Adam Liptak, *Shapers of Death Penalty Give Up on Their Work*, N.Y. TIMES, Jan. 5, 2010, at A11 (describing decision of the American Law Institute, which in 1962 created the intellectual framework for the modern capital justice system of guided discretion to abandon its involvement with the death penalty and disavow the structure it had created "in light of the current intractable institutional and structural obstacles to ensuring a minimally adequate system for administering capital punishment."), and recognition of its excessive financial cost. *See* Philip J. Cook, *Potential Savings from Abolition of the Death Penalty in North Carolina*, 11 AM. L. ECON. REV. 498, 499, 525 –26 (2009) (estimating based on 2005 and 2006 fiscal year data that North Carolina's criminal justice system would have saved almost $11 million per year if it had abolished the death penalty); Mandy Locke, *Study: End Death Cases, Save Money*, NEWS AND OBSERVER (Raleigh, N.C.) Dec. 28, 2009, at B1 (describing the major points of the study).

405. One can never firmly know what motivates broad public trends, but the exoneration of hundreds of defendants, many of whom faced execution, based on DNA technology strongly appears to have been a major factor in changes in attitudes toward the death penalty. *See generally* FRANK R. BAUMGARTNER ET AL., THE DECLINE OF THE DEATH PENALTY AND THE DISCOVERY OF INNOCENCE IN AMERICA (2008) (describing how the stories of exonerations of those on death row through DNA transformed American attitudes toward the death penalty). In North Carolina, the stories of three African American defendants—Glenn Chapman, Jonathan Hoffman, and Levon Jones—whose cases were dismissed outright after fundamental errors were found, served as powerful symbols. *See* Shalia Dewan, *Releases from Death Row Raise Doubts over Quality of Defense*, N.Y. TIMES, May 7, 2008, at A1. They combine the innocence movement's concern that innocent defendants have been sentenced to death with the danger that the defendant's race may have influenced their death sentences.

406. In 2009, only a total of eight cases were tried capitally in the entire state of North Carolina (Mark Andrews, Hasson Bacote, Myron Britt, Lawrence Flood, John Hester, Anthony McMillan, Louis Scates, and Michael Sherrill), and only two death sentences were returned

history, many politicians, judges, prosecutors, and jurors have worked sincerely on behalf of all the state's citizens to fairly dispense justice. Nevertheless, throughout much of the state's history, African Americans were not involved in making important criminal justice system decisions. For example, until well into the twentieth century, almost exclusively white jurors determined death penalty decisions for victims and defendants of all races, and whether African Americans have been effectively included in the modern period is subject to debate. In contrast, African Americans played a major role in fashioning and enacting the RJA, which mandates that the effects of race be removed from the death penalty process. Standing behind Governor Perdue when she signed the RJA into law were leaders of all races, including prominent members of the state's African American political and civil rights leadership.[407]

(Bacote and Sherrill). *See* Memorandum from M.R. Hunter, Center For Death Penalty Litigation, to Professor Robert Mosteller (Mar. 8, 2010) (on file with the North Carolina Law Review); DOC Offenders on Death Row *supra* note 34. In 2008, only twelve cases were tried capitally (James Blue, Charles Dickerson, Kenneth Hartley, Asian Johnson, James Little, Jonte McLaurin, Eric Oakes, Pliney Purser, John Ross, Neil Sargeant, James Stitt, and Jakiem Wilson, and one (Little) was sentenced to death. Memorandum from M.R. Hunter, *supra*; DOC Offenders on Death Row, *supra* note 34. In the first half of 2010, two defendants have been added to North Carolina's death row (Michael Ryan and Andrew Ramseur). *See* DOC Offenders on Death Row, *supra* note 34. Nationally, only 106 were added to death rows in 2009, the lowest number since the death penalty was reinstated in 1976. *See* DEATH PENALTY INFORMATION CENTER, THE DEATH PENALTY IN 2009: YEAR END REPORT, DEATH PENALTY, *available at* http://www.deathpenaltyinfo.org/documents/2009YearEndReport.pdf. Also only 52 individuals were executed in the United States in 2009 and 37 in 2008, down from a high of 98 executions in 1999. *See* DEATH PENALTY INFORMATION CENTER, FACTS ABOUT THE DEATH PENALTY *available at* http://www.deathpenaltyinfo.org/documents/FactSheet.pdf.

407. Two leaders were given special praise for their work to win passage of the RJA at the ceremony where Perdue signed it into law. One was Rev. William Barber, President of the North Carolina NAACP and the other was Charmaine Fuller Cooper, executive Director of the nonprofit Carolina Justice Policy Center. *See* Cash Michaels, *Racist Justice Act Now NC Law*, WILMINGTON J. (Wilmington, N.C.), Aug. 23, 2009, at 1. Both Barber and Cooper are prominent African American leaders in the state. The RJA was co-sponsored by Senator Floyd McKissick and Representatives Larry Womble, Earline Parmon, Paul Lubke, and Pricey Harrison. *Id.* McKissick, Womble, and Parmon are African Americans. The RJA, for many in the African American community, became a civil rights issue. *Id.* (noting that the national NAACP organization embraced passage of the North Carolina Racial Justice Act as one of its concerns).

Those who supported the RJA viewed it as an effort to eliminate inequities in death sentences, reflecting the desire of multiple groups to provide fairness to all defendants and victims by ensuring that justice is dispensed without the distorting effect of race. *See, e.g.*, Statement of Rep. Kelly Alexander, Jr., House Floor Debate on Racial Justice Act (July 14, 2009) (transcript on file with the North Carolina Law Review) ("This bill is not about statistics; this bill is about trying to eliminate and end bias in our system."). Similar arguments about the need for racial fairness if the state is to maintain a death penalty have been made at earlier times. *See supra* Part II.E (describing calls for equal justice by African American newspapers in the 1930s and 1940s). Those who opposed passage viewed it as badly misguided legislation that threatened the continued operation of the death penalty. *See, e.g.*, Statement of Rep. Paul Stam, House Floor Debate on Racial Justice Act (July 14, 2009) (transcript on file with the North Carolina Law

This article has detailed the strong, pernicious, and persistent influence of race upon the death penalty in North Carolina from the state's first execution well into the twentieth century. It has found that race and the death penalty have been constant companions throughout history, with racial discrimination exerting a profound and discriminatory impact on the imposition and disposition of death sentences. In short, the race of defendants and victims played a crucial role in determining who died and who did not.

The RJA creates a testing ground to evaluate whether the set of changes that were in process in the middle and latter part of the twentieth century, symbolized by the United States Supreme Court's decision in *Furman*, broke the link between race and the death penalty in North Carolina. The legal analysis in Part III.A shows post-*Furman* changes in structure that restricted discretion but maintained numerous judgment determinations for both the prosecution and the jury. Nothing about those particular legal changes necessarily curbed the powerful effect of race, although data regarding the race of defendants sentenced to death shows some reduction in the degree of disparity. However, the frequency of judicial reversals for fundamental failures of justice and grants of clemency for minority defendants suggests that during trials the effects of race may override justice. Moreover, jury service information shows minimal change in African American participation in many cases, and data on the race of victims of defendants on death row demonstrates remarkable continuity with earlier eras. Thus, the answer to the question of the persistence of racial discrimination in operation of North Carolina's death penalty demands the careful and sophisticated analysis that the RJA provides.

North Carolina's willingness to undertake this examination reflects the state's tradition of self-examination and its citizens' interest in its fair administration of the death penalty. With the RJA the legislature has instructed the courts to address directly and openly the factor that was always somewhere in the process—the potential of racial prejudice to deny both fairness and justice. While supporters and opponents of the RJA may never fully resolve their disagreement,[408] the judgment of history regarding

Review) (stating "[t]his bill is really not about race, it's about the death penalty" and listing some of major flaws in the reasoning of the RJA and its strong negative impact on the operation of the death penalty in the state).

408. Speaker of the North Carolina House Joe Hackney, a lawyer and supporter of the RJA, stated, "I've spent my life in courtrooms across North Carolina, and I have seen the subtle impact of race in our courtrooms." Editorial, *NC Racial Justice Act Aims at Fairness*, CHARLOTTE OBSERVER, Aug. 17, 2009, at 10A. By contrast, Senate Minority Leader Phil Berger stated, "Make no mistake, this law has little to do with justice and nothing to do with guilt or innocence." *Id.*

the RJA will rest upon the results of the studies, examination, and litigation conducted under its authorization. This part of history is yet to be written. It will not only reveal a great deal about the degree to which race has influenced the operation of the death penalty in North Carolina in the past, but also will determine whether the unfairness and injustice introduced long ago into the state's death penalty system by racial prejudice is finally at an end.[409]

409. In its editorial supporting passage of the RJA, the *Winston-Salem Journal* quoted Criminologist Matthew Robinson, a criminologist at Appalachian State University as follows:

> The Racial Justice Act won't fix the myriad problems with the administration of capital punishment in North Carolina. But it would encourage the court system to tackle questions of bias in these cases and attempt to resolve, once and for all, whether there is a widespread pattern of bias. Before this state returns to executions, it should do whatever it can to answer all the questions tied to them.

Editorial, *Death Penalty Bias*, WINSTON-SALEM J., July 23, 2009, at A12. He sets out both its challenge and its promise.

APPENDIX – NORTH CAROLINA RACIAL JUSTICE ACT

N.C. GEN. STAT. § 15A-2010.

No person shall be subject to or given a sentence of death or shall be executed pursuant to any judgment that was sought or obtained on the basis of race.

N.C. GEN. STAT. § 15A-2011. Proof of racial discrimination.

(a) A finding that race was the basis of the decision to seek or impose a death sentence may be established if the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed.

(b) Evidence relevant to establish a finding that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed may include statistical evidence or other evidence, including, but not limited to, sworn testimony of attorneys, prosecutors, law enforcement officers, jurors, or other members of the criminal justice system or both, that, irrespective of statutory factors, one or more of the following applies:

(1) Death sentences were sought or imposed significantly more frequently upon persons of one race than upon persons of another race.

(2) Death sentences were sought or imposed significantly more frequently as punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race.

(3) Race was a significant factor in decisions to exercise peremptory challenges during jury selection.

A juror's testimony under this subsection shall be consistent with Rule 606(b) of the North Carolina Rules of Evidence, as contained in G.S.8C-1.

(c) The defendant has the burden of proving that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed. The State may offer evidence in rebuttal of the claims or evidence of the defendant, including statistical evidence. The court may consider evidence of the impact upon the defendant's trial of any program the purpose of which is to eliminate race as a factor in seeking or imposing a sentence of death.

N.C. GEN. STAT. § 15A-2012. Hearing procedure.

(a) The defendant shall state with particularity how the evidence supports a claim that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed.

(1) The claim shall be raised by the defendant at the pretrial conference required by Rule 24 of the General Rules of Practice for the Superior and District Courts or in postconviction proceedings pursuant to Article 89 of Chapter 15A of the General Statutes.

(2) The court shall schedule a hearing on the claim and shall prescribe a time for the submission of evidence by both parties.

(3) If the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed, the court shall order that a death sentence not be sought, or that the death sentence imposed by the judgment shall be vacated and the defendant resentenced to life imprisonment without the possibility of parole.

(b)Notwithstanding any other provision or time limitation contained in Article 89 of Chapter 15A of the General Statutes, a defendant may seek relief from the defendant's death sentence upon the ground that racial considerations played a significant part in the decision to seek or impose a death sentence by filing a motion seeking relief.

(c) Except as specifically stated in subsections (a) and (b) of this section, the procedures and hearing on the motion seeking relief from a death sentence upon the ground that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed shall follow and comply with G.S.15A-14 20, 15A-1421, and 15A-1422.

Section 2 of Session Law 2009-464.

This act is effective when it becomes law [August 11, 2009] and applies retroactively. For persons under a death sentence imposed before the effective date of this act, motions under this act shall be filled within one year of the effective date of this act; for persons whose death sentence is imposed on or after the effective date of this act, motions shall be filled as provided in this act.

EXHIBIT 5

North Carolina Medical Examiner's Office Data
Anson (1980-2006); Moore (1980-1996); Richmond (1980-2006); Stanly (1980-2006); Union (1980-2006)

Name of Victim	Age	Race	Hispanic	Sex	County: Residence	County: Death	Date of Death
LILES, HAROLD	32 yrs	Black		M	Anson	Anson	27-Jul-80
LITTLE, BARBARA LEAK	31 yrs	Black		F	Anson	Anson	27-Jul-80
LINDSEY, WILLIAM JR	37 yrs	Black		M	Anson	Anson	2-May-81
RATLIFF, WILLIE EUGENE	37 yrs	Black		M	Anson	Anson	11-Jul-81
BENNETT, MAGGIE MELTON	57 yrs	Black		F	Anson	Anson	4-Oct-81
GADDY, CLISSIE BENNETT	27 yrs	Black		F	Mecklenburg	Anson	4-Oct-81
MORROW, REBECCA BURNS	27 yrs	Black		F	Anson	Anson	10-Feb-82
WALTERS, LINDA KAY	33 yrs	White		F	Anson	Anson	15-Feb-82
HONEYCUTT, MARYLOU KIKER	48 yrs	White		F	Anson	Anson	9-Aug-82
TAYLOR, SARAH BELLE	43 yrs	White		F	Anson	Anson	9-Aug-82
LEDBETTER, JAMES RAY	37 yrs	Black		M	Anson	Anson	5-Dec-82
SMITH, DORETHA POLK	44 yrs	Black		F	Anson	Anson	18-May-83
CHAMBERS, MINNIE IRENE	28 yrs	Black		F	Anson	Anson	6-Nov-83
TIBBS, MARY	32 yrs	Black		F	Anson	Anson	17-Mar-84
SMITH, ROSWELL	51 yrs	Black		M	Anson	Anson	4-May-84
LINDSEY, WILLIE J	35 yrs	Black		M	Anson	Anson	11-Aug-84
BAILEY, BRENDA JAHALA	41 yrs	White		F	Anson	Anson	6-May-85
RAGLAND, SAMUEL DEAN	28 yrs	White		M	Anson	Anson	25-Jun-85
MOORE, CLEAVLAND	47 yrs	Black		M	Anson	Anson	16-Aug-85
OXENDINE, BILLY	40 yrs	Native American		M	Anson	Anson	13-Sep-85
LITTLE, LLOYD LARONE	23 yrs	Black		M	Anson	Anson	20-Sep-85
SMITH, JAMES EDWARD	21 yrs	Black		M	Anson	Anson	17-Aug-86
ADAMS, STANMORE MAXIE	69 yrs	White		M	Anson	Anson	30-Aug-86
CARPENTER, ANGELA ANN	0 yrs	White		F	Anson	Anson	14-Jan-87
BELL, ASA LEE SR	56 yrs	Black		M	Anson	Anson	30-Mar-87
HARLEY, J V	75 yrs	Black		M	Anson	Anson	28-Mar-88
HOUGH, PRENTIS MAURICE	26 yrs	White		M	Anson	Anson	14-Apr-88
GATEWOOD, LEE DAVIS	56 yrs	Black		M	Anson	Anson	4-Jul-88
FRYE, NEIL MCARTHUR	44 yrs	Black		M	Anson	Anson	11-Jul-88
SHEPPARD, JAMES ALLEN	24 yrs	White		M	Anson	Anson	18-Sep-88
WILLIAMS, RICHARD EUGENE	40 yrs	White		M	Anson	Anson	18-Sep-88
STURDIVANT, GLENN	45 yrs	Black		M	Anson	Anson	15-Oct-88
JONES, JOHN CLARK JR	35 yrs	White		M	Anson	Anson	16-Oct-88
GRIFFIN, JOHN TEROW III	38 yrs	White		M	Anson	Anson	10-Nov-88

North Carolina Medical Examiner's Office Data
Anson (1980-2006); Moore (1980-1996); Richmond (1980-2006); Stanly (1980-2006); Union (1980-2006)

PARKER, LEE WALLACE	74 yrs	White		M	Anson	Anson	20-Mar-89
PATTERSON, KENNETH DELMONTE	26 yrs	Black		M	Randolph	Anson	26-May-89
LILES, JAMES WILLIS	23 yrs	Black		M	Anson	Anson	27-May-89
COLSON, JOHNNY EDWARD	30 yrs	Black		M	Anson	Anson	23-Dec-89
MCLENDON, PATRICE JOANETTE	14 yrs	Black		F	Anson	Anson	4-Jan-90
STURDIVANT, DONALD LEE	36 yrs	Black		M	Anson	Anson	24-Mar-90
LILES, RICKY LEE	29 yrs	Black		M	Anson	Anson	8-May-90
CASH, VIRGINIA FAUCETT	73 yrs	Black		F	Anson	Anson	10-May-90
COLORADO, ANGEL HERMENEGILDO	27 yrs	White		M	Union	Anson	19-May-90
GOLDSTON, RICKY WILSON	30 yrs	Black		M	Richmond	Anson	16-Jun-90
SIMON, JANIE RENE	34 yrs	Black		F	Anson	Anson	28-Jun-90
SMITH, CHARLIE THOMAS JR	24 yrs	Black	N	M	Anson	Anson	4-Jun-91
ROSS, CECIL JESSE JR	46 yrs	Black	N	M	Anson	Anson	1-Aug-91
GRAY, GLENN JR	18 yrs	Black	N	M	Anson	Anson	16-Aug-91
POLK, ALEXANDER LEVANDER	17 yrs	Black	N	M	Anson	Anson	28-Dec-91
ALLEN, ODELL	56 yrs	Black	N	M	Anson	Anson	4-Feb-92
SMITH, DEBORAH A WALL	27 yrs	Black	N	F	Anson	Anson	22-Feb-92
ANDREWS, REGINALD LAMONT	19 yrs	Black	N	M	Anson	Anson	20-Mar-92
SUESS, MARY JANE POLSON	38 yrs	White	N	F	Anson	Anson	28-Jun-92
LEAK, RICKY	35 yrs	Black	N	M	Anson	Anson	23-Aug-92
MCCORMICK, EDWARD THOMAS JR	31 yrs	Black	N	M	Anson	Anson	23-Aug-92
MARSHALL, SHERRY ANNETTE	22 yrs	Black	N	F	Anson	Anson	25-Aug-92
CHAMBERS, SAMUEL THOMAS	32 yrs	Black	N	M	Anson	Anson	8-Mar-93
MCINTYRE, CYNTHIA BACON	32 yrs	White	N	F	Anson	Anson	1-Jun-93
LYNCH, KATHERINE SARAH LITTLE	80 yrs	Black	N	F	Anson	Anson	9-Jul-93
OLIVER, AARON HERBERT	45 yrs	White	N	M	Anson	Anson	21-Aug-93
LITTLE, MICHAEL LEE	38 yrs	Black	N	M	Anson	Anson	4-Sep-93
MERRITT, DONNIE	20 yrs	Black	N	M	Anson	Anson	14-Sep-93
MARSH, WADE RICHARD	15 yrs	White	N	M	Anson	Anson	15-Oct-93
BRIDGES, JAMES FRANKLIN	44 yrs	Black	N	M	Anson	Anson	23-Jan-94
ALLEN, FRANCES HAMILTON	48 yrs	Black	N	F	Anson	Anson	24-Feb-94
JONES, DONALD LEE	31 yrs	Black	N	M	Anson	Anson	7-Jun-94
CHRISTIAN, WILLIE LAWRENCE	47 yrs	Black	N	M	Anson	Anson	8-Aug-94
MASKE, SHIRLEEN D	22 yrs	Black	N	F	Anson	Anson	4-Dec-94
DAWKINS, WENDY ANN CHILDERS	27 yrs	White	N	F	Richmond	Anson	13-Dec-94
BURRIS, JAMES OSBORN	50 yrs	White	N	M	Anson	Anson	4-Apr-95
OATES, KEVIN EUGENE	18 yrs	Black	N	M	Richmond	Anson	3-Mar-96

North Carolina Medical Examiner's Office Data
Anson (1980-2006); Moore (1980-1996); Richmond (1980-2006); Stanly (1980-2006); Union (1980-2006)

CLARK, MILLARD ALPHONZO	40 yrs	Black	N	M	Anson	Anson	17-Mar-96
TYSON, LEON JERMEL	10 mos	Black	N	M	Anson	Anson	24-Jul-96
LILES, JAMES EDWARD	31 yrs	Black	N	M	Anson	Anson	14-Sep-96
DEESE, BUFORD LAMAR JR	31 yrs	White	N	M	Anson	Anson	26-Sep-96
WATKINS, JAMES THOMAS	52 yrs	Black	N	M	Anson	Anson	27-Sep-96
MACKEY, BETTY ANN	40 yrs	Black	N	F	Anson	Anson	8-Oct-96
BENNETT, JAMES HUBERT	50 yrs	Black	N	M	Anson	Anson	21-Sep-97
MCGHEE, ERNEST DAVID	32 yrs	White	N	M	OHIO	Anson	31-Jan-98
STREATER, DANETTE MAYE	43 yrs	White	N	F	Anson	Anson	7-Feb-98
WILLIAMS, MICHAEL ANTHONY	18 yrs	Black	N	M	Anson	Anson	22-May-98
BENNETT, CARLTON LOUIS	42 yrs	Black	N	M	Union	Anson	8-Aug-98
LEAK, MICHAEL EUGENE	21 yrs	Black	N	M	Anson	Anson	20-Sep-98
GADDY, JOHN HUBERT	42 yrs	Black	N	M	Anson	Anson	29-Mar-99
KNOTTS, RICHMOND JR	55 yrs	Black	N	M	Anson	Anson	17-Apr-99
LEAK, FLETCHER WILLIAM	49 yrs	Black	N	M	Anson	Anson	10-Sep-99
SHORT, TIMOTHY BERNARD	20 yrs	Black	N	M	Anson	Anson	26-Dec-99
BARRINGER, EARNEST RAYVON LEAK	19 yrs	Black	N	M	Anson	Anson	4-Jun-00
POLK, MARY LOUISE	41 yrs	Black	N	F	Anson	Anson	6-Jul-00
MARSHALL, CASEY A	28 yrs	Black	N	M	Anson	Anson	24-Aug-00
HOWELL, JENNIFER D	18 yrs	White	N	F	Anson	Anson	12-Nov-00
LITTLE, ALISHA	24 yrs	Black	N	F	Anson	Anson	1-Apr-01
GADDY, DARREN ANTHONY	34 yrs	Black	N	M	Anson	Anson	21-Oct-01
SMITH, JACKIE	36 yrs	Black	N	M	Anson	Anson	2-Nov-01
DAWKINS, SANDRA MARIE	34 yrs	White	N	F	Anson	Anson	17-Mar-02
LILES, LACY MAE ALLEN	56 yrs	Black	N	F	Anson	Anson	15-Apr-02
HILL, AMANDA JEAN	31 yrs	White	N	F	Anson	Anson	1-Jul-02
BEVERLY, KERRI ANNE FOWLER	20 yrs	White	N	F	Stanly	Anson	15-Jul-02
THOMAS, ANDY RUSS	37 yrs	Black	N	M	Anson	Anson	15-Jul-02
POLK, CLARENCE EDWARD	30 yrs	Black	N	M	Anson	Anson	3-Feb-03
WILLOUGHBY, PAUL DEJUAN	25 yrs	Black	N	M	Anson	Anson	23-May-03
GRIFFIN, BETTY TAYLOR	72 yrs	White	N	F	Anson	Anson	28-Jun-03
LILES, KOSHA MONIQUE	27 yrs	Black	N	F	Anson	Anson	29-Jul-03
RATLIFF, VIRGIL LEVON	33 yrs	Black	N	M	Anson	Anson	24-Dec-03
CROWDER, FRIEDA MALOY	53 yrs	Black	N	F	Anson	Anson	4-Apr-04
GAINEY, ROBERT THOMAS	24 yrs	Black	N	M	Anson	Anson	1-May-04
BENNETT, TRAVIS DARNELL	20 yrs	Black	N	M	Anson	Anson	2-Jul-04
GATHINGS, BRIAN LEE	29 yrs	White	N	M	Anson	Anson	1-Dec-04

North Carolina Medical Examiner's Office Data
Anson (1980-2006); Moore (1980-1996); Richmond (1980-2006); Stanly (1980-2006); Union (1980-2006)

LILES, DAVID	35 yrs	Black	N	M	Anson	Anson	13-Mar-06
VIRGIL, TINA L	42 yrs	Black	N	F	Union	Anson	22-Mar-06
CONNELLY, DORA LEE BLACKMON	72 yrs	White	N	F	Anson	Anson	23-Mar-06
NEWTON, CONNIE LYNN CHAPMAN	37 yrs	White	N	F	Anson	Anson	30-Mar-06
STREATER, GEORGE OSCAR	55 yrs	Black	N	M	Anson	Anson	7-Oct-06
LITTLE, KADERRICK MECIAH	2 yrs	Black	N	M	Anson	Anson	2-Dec-06
DOWDY, MELVIN	37 yrs	Black		M	Moore	Moore	7-Aug-80
CHALFLINCH, DIANE FRYE	26 yrs	White		F	Moore	Moore	25-Aug-80
CHALFLINCH, SHELLEY CHRISTINE	9 yrs	White		F	Moore	Moore	25-Aug-80
COLLINS, PORTER MAE	69 yrs	Black		F	Richmond	Moore	31-Aug-80
STUTTS, EARL CHARLES	63 yrs	White		M	Moore	Moore	18-Sep-80
HARDY, SUE KEYES	24 yrs	White		F	Scotland	Moore	8-Nov-80
EDWARDS, RUBY OAKLEY	62 yrs	White		F	Moore	Moore	2-Jan-81
BOWDEN, WILLIAM	48 yrs	Black		M	Montgomery	Moore	21-Jun-81
MCKEITHEN, WILLIAM ROBERT JR	54 yrs	Black		M	Moore	Moore	12-Sep-81
HINSCH, DANIEL JOSEPH	21 yrs	White		M	Moore	Moore	6-Nov-81
LEE, LAMONT	17 yrs	Black		M	Moore	Moore	11-Feb-82
SMITH, LEROY	27 yrs	Black		M	Moore	Moore	2-Jun-82
TILLMAN, LEVI	67 yrs	Black		M	Richmond	Moore	29-Aug-82
MCCAIN, WILBERT JUNIOR	23 yrs	Black		M	Moore	Moore	31-Oct-82
MCLENDON, BENJAMIN FRANKLIN	31 yrs	White		M	Richmond	Moore	9-Jan-83
LOWE, PAUL HOWARD	39 yrs	White		M	Moore	Moore	12-Mar-83
EWING, MARY ALMA	30 yrs	Black		F	Moore	Moore	30-Apr-83
MCLAURIN, JAMES	70 yrs	Black		M	Hoke	Moore	15-Jul-83
WALL, FLORENCE LOUISE	31 yrs	Black		F	Montgomery	Moore	13-Aug-83
DAVENPORT, BARRY DAVID	29 yrs	White		M	Moore	Moore	5-Jan-84
WILSON, JAMES GARY	35 yrs	White		M	Richmond	Moore	27-May-84
MILLER, CHARLES RAY	26 yrs	White		M	Richmond	Moore	19-Jun-84
SCOTT, MARSHALL CLESON	22 yrs	White		M	Randolph	Moore	7-Sep-84
DIXON, JAMES EARL	44 yrs	Black		M	Moore	Moore	15-Oct-84
SAVAGE, DARREL RAY	32 yrs	White		M	Moore	Moore	6-May-85
FORREST, CLYDE ERNEST	83 yrs	White		M	Moore	Moore	24-Dec-85
SUITE, WILBUR OTTO	62 yrs	White		M	Richmond	Moore	29-Dec-85
MONROE, MARVIN L	27 yrs	Black		M	Moore	Moore	25-Jan-86
SPENCER, BRANDON JAMAAL	2 yrs	Black		M	Moore	Moore	23-Feb-86
RATLIFF, LESTER III	21 yrs	Black		M	Richmond	Moore	30-Apr-86
CURRIE, EDITH MAE	47 yrs	White		F	Moore	Moore	15-Aug-86

North Carolina Medical Examiner's Office Data
Anson (1980-2006); Moore (1980-1996); Richmond (1980-2006); Stanly (1980-2006); Union (1980-2006)

VERBAL, RALPH EDWARD	33 yrs	Black		M	Moore	Moore	18-Sep-86
COMER, LLOYD RUSSELL	47 yrs	White		M	Moore	Moore	5-Apr-87
VUNCANNON, JOSEPH MARTIN	23 yrs	White		M	Montgomery	Moore	13-Jun-87
PERHAM, JOHN REED	26 yrs	White		M	Moore	Moore	15-Jul-87
ALLRED, JAMES JUNIOR	51 yrs	White		M	Moore	Moore	19-Sep-87
ROBINSON, JAMES ARCHIE	46 yrs	Black		M	Moore	Moore	3-Oct-87
GARRISON, EDGAR JOHN	40 yrs	White		M	Cumberland	Moore	26-Feb-88
HEATWOLE, ALTA HAMILTON	58 yrs	White		F	Moore	Moore	27-Feb-88
BALDWIN, CHARLES LEONARD	22 yrs	Black		M	Moore	Moore	8-May-88
SHORT, MAXINE	19 yrs	Black		F	Moore	Moore	6-Aug-88
COLE, DAVID GREGORY	26 yrs	Black		M	Moore	Moore	2-Sep-88
WILLIAMS, EVELYN STRIEGEL	71 yrs	White		F	Moore	Moore	27-Jan-89
KELLY, ALEXANDER	62 yrs	Black		M	Moore	Moore	8-Apr-89
INGRAM, PATRICK RAY	31 yrs	Black		M	Moore	Moore	16-Apr-89
REAVES, GEORGE JR	48 yrs	Black		M	Moore	Moore	16-Apr-89
DUTTON, MARY GRANT	48 yrs	White		F	Moore	Moore	21-Apr-89
MCKENZIE, DANIEL ROBERT	33 yrs	White		M	Moore	Moore	22-Apr-89
LAGRAND, SAMUEL E	28 yrs	Black		M	Moore	Moore	24-Jun-89
DIX, JOHNNIE DWAYNE	31 yrs	White		M	Richmond	Moore	25-Aug-89
RING, CURTIS LEE	48 yrs	White		M	Moore	Moore	17-Sep-89
HILLIARD, DONALD EDWARD	29 yrs	White		M	Moore	Moore	27-Jan-90
MILLS, TIMOTHY RAY	21 yrs	White		M	SOUTH CAROLINA	Moore	2-Mar-90
SIMPKINS, LESTER IRBY	67 yrs	White		M	VIRGINIA	Moore	11-Jul-90
BOWDEN, CHESTER JR	35 yrs	Black		M	Moore	Moore	21-Jul-90
WILLIAMS, LLOYD HENRY	43 yrs	Black		M	Moore	Moore	10-Aug-90
ELLIOTT, JACK EUGENE	58 yrs	White		M	Hoke	Moore	26-Aug-90
MCALLISTER, RODNEY	17 yrs	Black		M	Moore	Moore	21-Sep-90
BROWN, CHARLES LEE	36 yrs	Black		M	Moore	Moore	1-Oct-90
TURNEY, ROBERT RAY	27 yrs	White		M	Moore	Moore	12-Oct-90
BURNETTE, ANDREW	25 yrs	Black	N	M	SOUTH CAROLINA	Moore	23-Nov-90
TOWNSEND, TIMOTHY DREW JR	11 mos	Black	N	M	Moore	Moore	9-Jan-91
WISE, VIRGINIA GAIL	42 yrs	White	N	F	Wayne	Moore	15-Mar-91
HARRIS, CHARLES EDWARD	45 yrs	White	N	M	Hoke	Moore	4-Apr-91
MINOR, CARL DEAN SR	61 yrs	White	N	M	Moore	Moore	5-Jul-91
MARCRUZ, JORGE ALBERTO	22 yrs	White	Y	M	Moore	Moore	17-Aug-91

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COLE, LARRY DEAN	33 yrs	Black	N	M	Scotland	Moore	18-Aug-91
CADDELL, THURMAN RAY	50 yrs	White	N	M	Moore	Moore	17-Nov-91
WADDELL, ANTHONY MAURICE	21 yrs	Black	N	M	Moore	Moore	7-Dec-91
LONG, TAMMY EILEEN	27 yrs	White	N	F	Moore	Moore	18-Jun-92
LOVE, WARREN	38 yrs	Black	N	M	Hoke	Moore	23-Aug-92
CRAWFORD, NANCY ELIZABETH	63 yrs	White	?	F	VIRGINIA	Moore	29-Aug-92
MCMANNEN, EDWARD	68 yrs	Black	N	M	Moore	Moore	5-Sep-92
MONROE, VINCENT EDWARD	24 yrs	Black	N	M	Moore	Moore	15-Sep-92
STANCIL, DOROTHY GARRETT	70 yrs	Black	N	F	Moore	Moore	18-Oct-92
HARDY, MARY JO	44 yrs	White	N	F	Moore	Moore	14-Jan-93
SPEER, JUDITH LYNN	37 yrs	White	N	F	Moore	Moore	25-Apr-93
DENNIS, REXIE HOBERT	86 yrs	White	N	M	Montgomery	Moore	4-May-93
DEGRAFFENREID, JAMES EARL ALEXANDER	39 yrs	Black	N	M	Moore	Moore	10-Jun-93
LITTLE, FETUS	1 days	Black	N	?	Moore	Moore	21-Nov-93
MCKINNON, BESSIE SPENCER	86 yrs	Black	N	F	Moore	Moore	9-Feb-94
SPENCER, SHULA MAE	84 yrs	Black	N	F	Moore	Moore	9-Feb-94
YOUNG, CHRISTIE CAY	24 yrs	White	N	F	Moore	Moore	14-May-94
SHANLEY, EARL WILLIAM	63 yrs	White	N	M	Moore	Moore	29-May-94
BOSTIC, RONTERIO A	18 yrs	Black	N	M	SOUTH CAROLINA	Moore	10-Aug-94
HERNANDEZ, PADRO	24 yrs	White	Y	M	Moore	Moore	31-Aug-94
ROSY, WILLIAM ALEX III	38 yrs	White	N	M	Moore	Moore	15-Oct-94
MCQUEEN, BOBBY	39 yrs	Black	N	M	Scotland	Moore	18-Oct-94
INGRAM, SAMUEL NAKIA	20 yrs	Black	N	M	Montgomery	Moore	11-Dec-94
PATTERSON, WILLIAMM DALE JR	19 yrs	Black	N	M	Richmond	Moore	2-Mar-95
FLOYD, CHANDRA	16 yrs	Black	N	F	Moore	Moore	4-Mar-95
BLUE, JERRY WAYNE	36 yrs	White	N	M	Moore	Moore	4-Jun-95
THOMAS, RICKY EDWARD	23 yrs	Black	N	M	Richmond	Moore	18-Jun-95
CAMERON, ORAL ROBERT	20 yrs	Black	N	M	Moore	Moore	8-Sep-95
CAGLE, JAMES EARL	19 yrs	Black	N	M	Hoke	Moore	16-Oct-95
JONES, TERRANCE MAURICE	17 yrs	Black	N	M	Moore	Moore	20-Nov-95
MOORE, JOSHUA PAUL	20 yrs	Black	N	M	NEW YORK	Moore	1-Feb-96
LONG, HAZEL	72 yrs	White	N	F	Scotland	Moore	7-Feb-96
BLYTHER, HATTIE	85 yrs	Black	N	F	Moore	Moore	6-Jul-96
HUCKABEE, JACQUELINE SUE	30 yrs	White		F	Scotland	Richmond	20-Jul-80
DAVIS, JANICE CAROLL	31 yrs	White		F	Richmond	Richmond	9-Sep-80
MCCRAY, CALVIN	28 yrs	Black		M	Richmond	Richmond	18-Oct-80

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RUCKER, EUNICE MAY	39 yrs	Black		M	Richmond	Richmond	16-Nov-80
DUNLAP, CARL ROBERT JR	35 yrs	White		M	Richmond	Richmond	24-Dec-80
BYRD, ROOSEVELT	34 yrs	Black		M	Richmond	Richmond	11-Jan-81
DIGGS, EMANUEL CARL	72 yrs	Black		M	Richmond	Richmond	4-Apr-81
FOWLER, DEBRA LAUGHLIN	24 yrs	White		F	Richmond	Richmond	8-Jul-81
LILES, JAMES JR	52 yrs	Black		M	Richmond	Richmond	18-Oct-81
MEGGS, JAMES ALLEN	48 yrs	White		M	Richmond	Richmond	29-Nov-81
FERGUSON, JOHN ANTHONY	16 yrs	Black		M	Richmond	Richmond	2-Mar-82
THOMAS, GARY EUGENE	18 yrs	White		M	Richmond	Richmond	11-Mar-82
MCAULEY, GEORGE THOMAS JR	71 yrs	White		M	Montgomery	Richmond	24-Mar-82
BETHEA, ANNIE ALBERTA	40 yrs	Black		F	Richmond	Richmond	24-Apr-82
SMITH, CHRISTINA LOUISE	24 yrs	White		F	Richmond	Richmond	28-Jun-82
STROMAN, MELVIN LEWIS	28 yrs	Black		M	Richmond	Richmond	18-Jul-82
NICHOLSON, WILLIAM ERAL	32 yrs	Black		M	Richmond	Richmond	22-Aug-82
MILLIGAN, LISTON RAY	42 yrs	White		M	Richmond	Richmond	3-Nov-82
OTTINGER, DEBORAH JOHNSON	26 yrs	White		F	Richmond	Richmond	3-Nov-82
JOHNSON, THERESA DELORES	37 yrs	Black		F	Richmond	Richmond	6-Dec-82
DIXON, EL BEE	61 yrs	White		M	Richmond	Richmond	31-Jan-83
MILLER, SAMUEL JEROME	31 yrs	Black		M	Richmond	Richmond	15-Feb-83
ROLLER, DEWEY	56 yrs	White		M	Richmond	Richmond	1-May-83
DAVIS, HENRY STERLING	64 yrs	Black		M	Richmond	Richmond	1-Jul-83
ZAROBINSKI, MONA ADELLE	31 yrs	White		F	Richmond	Richmond	26-Nov-83
WATKINS, BILLY ORLANDO	25 yrs	Black		M	Richmond	Richmond	25-Dec-83
MORGAN, LACY	28 yrs	Black		M	Richmond	Richmond	4-Jan-84
BYRD, SARAH MARGARET	31 yrs	Black		F	Richmond	Richmond	14-Jan-84
WALL, WANDA LEE	30 yrs	Black		F	Richmond	Richmond	20-Jan-84
GROOMS, CHRISTOPHER WESLEY	1 yrs	White		M	Richmond	Richmond	23-Feb-84
COBBLER, CHARLES RAY	40 yrs	White		M	Richmond	Richmond	10-Jun-84
BARRINGTON, FREDERICK WARREN	9 yrs	White		M	Richmond	Richmond	8-Aug-84
LOWRY, GLENN	23 yrs	Native American		M	Robeson	Richmond	12-Sep-84
WILSON, CARL LEONARD JR	36 yrs	White		M	Richmond	Richmond	22-Nov-84
PEARSON, MYRAE ALICE	47 yrs	White		F	Richmond	Richmond	3-Mar-85
DAVIS, JAMES MICHAEL	37 yrs	White		M	Anson	Richmond	9-Aug-85
HARRIS, JERROLD LYNN	15 yrs	Black		M	Richmond	Richmond	7-Feb-86
HAMILTON, PHILLIP	24 yrs	Black		M	Richmond	Richmond	14-Mar-86
HUDSON, BILLY BENNETT	50 yrs	White		M	Richmond	Richmond	24-Apr-86

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Anson (1980-2006); Moore (1980-1996); Richmond (1980-2006); Stanly (1980-2006); Union (1980-2006)

ROBBINS, STEVEN NEWALL	44 yrs	White		M	Cleveland	Richmond	11-Sep-86
WARD, JESSIE COBB	33 yrs	Black		F	Richmond	Richmond	30-Nov-86
SWINNEY, ISIAH	63 yrs	Black		M	Richmond	Richmond	8-Jan-87
MCBRIDE, JOHNNY LACY	24 yrs	Black		M	Richmond	Richmond	21-Jan-87
MCDONALD, REE VIRGINIA	30 yrs	Black		F	Richmond	Richmond	20-Feb-87
THOMPSON, JAMES M	38 yrs	White		M	OREGON	Richmond	6-Mar-87
QUICK, CHARLIE MACK	78 yrs	Black		M	Richmond	Richmond	5-Apr-87
SCOTT, SHIRLEY DELORIS	26 yrs	Black		F	Richmond	Richmond	8-Sep-87
SCHOLL, CLYDE EVERETT	47 yrs	White		M	Richmond	Richmond	14-Oct-87
WALLACE, HADDIE BELLE	42 yrs	White		F	Richmond	Richmond	15-Dec-87
CROUCH, LINDA LOUISE	34 yrs	Black		F	Richmond	Richmond	30-Jan-88
LARIMOR, DALTON HENRY	40 yrs	White		M	Richmond	Richmond	16-Jun-88
CLARK, JAMES ALLEN	27 yrs	Native American		M	Richmond	Richmond	28-Aug-88
BLUE, ROOSEVELT	39 yrs	Black		M	Richmond	Richmond	15-Sep-88
RANSOM, BURTON LESLEY	64 yrs	White		M	Richmond	Richmond	19-Dec-88
BENTON, JAMES LEROY	59 yrs	White		M	Richmond	Richmond	20-Dec-88
MOORE, JOE ROBERT	58 yrs	White		M	Forsyth	Richmond	5-Feb-89
MARSH, FLORENCE REBECCA	39 yrs	White		F	Richmond	Richmond	16-Feb-89
PITCHFORD, MAYNARD DEAN SR	45 yrs	White		M	Richmond	Richmond	27-Mar-89
LIPHAM, JOHNNY FRANK	29 yrs	White		M	GEORGIA	Richmond	27-Apr-89
NICHOLSON, ROBERT LEE	22 yrs	Black		M	Richmond	Richmond	4-Jun-89
BURNS, WILLIAM HENRY	69 yrs	White		M	Richmond	Richmond	22-Jul-89
LOCKLEAR, UTLEY	56 yrs	Native American		M	Richmond	Richmond	22-Jan-90
LITTLE, WILLIAM TONY	25 yrs	Black		M	Richmond	Richmond	29-Jan-90
GILLIS, LARRY JAMES	36 yrs	White		M	Richmond	Richmond	14-Apr-90
LOCKLEAR, JOHN HOLLIS	20 yrs	White		M	Richmond	Richmond	5-Jul-90
TILLMAN, PATRICIA ALEXANDER	39 yrs	Black	N	F	Richmond	Richmond	25-Dec-90
WATSON, ROBERT LEWIS	40 yrs	Black	N	M	Richmond	Richmond	2-Feb-91
MCEACHERN, MACEO RAINES	44 yrs	Black	N	M	Richmond	Richmond	12-Apr-91
MCEACHERN, VELA DORIS RAINES	81 yrs	Black	N	F	Richmond	Richmond	12-Apr-91
LEE, ROBERT WAYNE	25 yrs	White	N	M	Richmond	Richmond	28-Apr-91
MARSHALL, PATRICIA LYNN	27 yrs	Black	N	F	Richmond	Richmond	14-May-91
PIERCE, MICHAEL ROBERT	29 yrs	White	N	M	Richmond	Richmond	3-Jul-91
HINES, SEDRICK	16 yrs	Black	N	M	Richmond	Richmond	14-Aug-91
CALLAHAN, PAUL DEWITT	26 yrs	White	N	M	Richmond	Richmond	22-Aug-91

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WEATHERFORD, THOMAS AMOS	21 yrs	White	N	M	Richmond	Richmond	22-Aug-91
GARNER, NANCY LEE	49 yrs	White	N	F	Richmond	Richmond	7-Sep-91
QUICK, HENRY JR	32 yrs	Black	N	M	Richmond	Richmond	26-Oct-91
INGRAM, ANTHONY LEVON	32 yrs	Black	N	M	Richmond	Richmond	14-May-92
MABE, ROBERT SWANSON	49 yrs	White	N	M	Richmond	Richmond	13-Jul-92
JAIMES, JERONIMO GONZALES	32 yrs	White	Y	M	Montgomery	Richmond	26-Jul-92
BARBER, CHARLES DAVID	42 yrs	White	N	M	Richmond	Richmond	5-Aug-92
BILES, LEON CLEVELAND	66 yrs	White	N	M	Richmond	Richmond	15-Oct-92
MARTIN, JOHN THOMAS	44 yrs	Black	N	M	Richmond	Richmond	15-Nov-92
RICHARDSON, KENNETH L	21 yrs	Black	N	M	Anson	Richmond	24-Dec-92
THOMAS, BENJAMIN ODELL	28 yrs	Black	N	M	Richmond	Richmond	4-Jan-93
BREWINGTON, ORA LEE	31 yrs	Black	N	F	Richmond	Richmond	15-Jan-93
MCDONALD, DONALD EDWARD	29 yrs	Black	N	M	Richmond	Richmond	15-Jan-93
DELVALLE, GERMAN	38 yrs	White	Y	M	Richmond	Richmond	2-Apr-93
BROWN, WILLIAM LARRY JR	28 yrs	White	N	M	Richmond	Richmond	5-Apr-93
SHORT, VIOLA BERNICE	82 yrs	Black	N	F	Richmond	Richmond	17-Apr-93
STONE, JEFFERY WAYNE	25 yrs	White	N	M	Richmond	Richmond	21-Apr-93
ROBINSON, MARLON BRANDO	27 yrs	Black	N	M	Richmond	Richmond	16-Jul-93
MAZYCK, TERESA ROLLINS	25 yrs	Black	N	F	Richmond	Richmond	24-Sep-93
HERNANDEZ, JUAN	30 yrs	White	Y	M	FLORIDA	Richmond	3-Oct-93
SHORT, TIMOTHY N	25 yrs	Black	N	M	Richmond	Richmond	3-Oct-93
RILEY, ANNIE REYNOLDS	61 yrs	White	N	F	Richmond	Richmond	25-Nov-93
HARRIS, BILLY JR	21 yrs	Black	N	M	Richmond	Richmond	23-Mar-94
JOHNSON, TERRY LYNN	40 yrs	White	N	M	Richmond	Richmond	31-Mar-94
PEARSON, LLOYD BROWN II	24 yrs	White	N	M	Davidson	Richmond	13-May-94
DURDEN, JUDY ELAINE DEAL	38 yrs	White	N	F	Richmond	Richmond	24-Sep-94
HARRINGTON, LYNETTE	32 yrs	Black	N	F	Richmond	Richmond	5-Nov-94
BRYANT, CATHERINE DELANE	42 yrs	White	N	F	Richmond	Richmond	23-Nov-94
COYNE, ASHLEY JEANETTE	1 yrs	White	N	F	Richmond	Richmond	12-Dec-94
GOEBEL, JOY ELAINE	32 yrs	White	N	F	Richmond	Richmond	3-Jan-95
KNIGHT, RICKY GENE	36 yrs	White	N	M	Richmond	Richmond	16-Jan-95
TILLMAN, DEMETRIOS A	18 yrs	Black	N	M	Anson	Richmond	11-Feb-95
RIVENBARK, TINA LOUISE	20 yrs	White	N	F	Richmond	Richmond	19-Mar-95
BOYD, GUY WILLIAM	21 yrs	White	N	M	Richmond	Richmond	18-Apr-95
EVERETT, DONALD RAY	40 yrs	Black	N	M	Anson	Richmond	6-May-95
GOODWIN, REBECCA TAYLOR	16 yrs	White	N	F	Richmond	Richmond	1-Jul-95
BRASWELL, NANNIE JEWEL	67 yrs	White	N	F	Richmond	Richmond	5-Jul-95

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JENKINS, OLIVER SR	50 yrs	Black	N	M	Richmond	Richmond	22-Jul-95
INMAN, LLOYD EUGENE	68 yrs	White	N	M	Richmond	Richmond	14-Aug-95
STEELE, MICHAEL EDWARD	34 yrs	Black	N	M	Richmond	Richmond	25-Aug-95
HARRINGTON, LACY LEE	26 yrs	Black	N	M	Richmond	Richmond	23-Sep-95
RANKIN, JERRY RAY	25 yrs	White	N	M	Richmond	Richmond	14-Oct-95
SELLERS, MICHAEL WAYNE	31 yrs	White	N	M	Richmond	Richmond	24-Oct-95
HARRIS, LEVON	38 yrs	Black	N	M	Richmond	Richmond	20-Nov-95
CHEEK, REBEKAH DANIELLE	19 yrs	White	N	F	Richmond	Richmond	10-Dec-95
LYNCH, CARRIE WANDA	36 yrs	White	N	F	Richmond	Richmond	28-May-96
BARBER, LISA MARIE	31 yrs	White	N	F	Richmond	Richmond	13-Jul-96
GALES, HARVEY ANTHONY JR	18 yrs	Black	N	M	Richmond	Richmond	31-Jul-96
FELDER, OZIE S SR	69 yrs	Black	N	M	Richmond	Richmond	1-Aug-96
ENNALS, AALIYAH ARIES	2 mos	Black	N	F	Richmond	Richmond	28-Aug-96
PINERO, ALFRED JR	34 yrs	White	N	M	Richmond	Richmond	15-Jun-97
PICKETT, JAMES EDWARD	33 yrs	Black	N	M	Anson	Richmond	14-Sep-97
BENITEZROJEL, JOSE	35 yrs	White	Y	M	Richmond	Richmond	5-Oct-97
DIAZ, LAURENTINO VIVAR		White	Y	M	Richmond	Richmond	5-Oct-97
DIAZ, MAGDALENO VIVAR	23 yrs	White	Y	M	Richmond	Richmond	5-Oct-97
GARCIA, JORGE VELAZCO		White	Y	M	Richmond	Richmond	5-Oct-97
ZOLOSANO, JOSE SANCHEZ		White	Y	M	Richmond	Richmond	5-Oct-97
HESTER, JAMES WALTER JR	38 yrs	White	N	M	Richmond	Richmond	8-Jan-98
GRIFFIN, ELAINE	40 yrs	Black	N	F	Richmond	Richmond	27-May-98
WATKINS, DENNIS WAYNE	26 yrs	Black	N	M	Richmond	Richmond	13-Jun-98
MARTIN, LEOTIS	56 yrs	Black	N	M	Moore	Richmond	11-Dec-98
GOODWIN, JAMES RICHARD JR	22 yrs	Native American	N	M	Richmond	Richmond	1-Jan-99
QUICK, ANTHONY LAMONT	24 yrs	Black	N	M	Richmond	Richmond	1-Jan-99
BROWER, ROSE MARY	37 yrs	Black	N	F	Richmond	Richmond	14-Mar-99
GRAHAM, FLOYD	39 yrs	Black	N	M	Richmond	Richmond	21-Mar-99
HARRIS, DONNA KAYE YOUNG	39 yrs	White	N	F	Richmond	Richmond	21-Mar-99
SIMON, ROGER CARLTON	60 yrs	White	N	M	Richmond	Richmond	11-Jul-99
LIGHT, WALTER RICHARD	40 yrs	White	N	M	Richmond	Richmond	2-Aug-99
MILLER, KENNETH ALPHONSO	25 yrs	Black	N	M	Richmond	Richmond	26-Aug-99
BLANTON, DAVID EDWARD	36 yrs	White	N	M	Richmond	Richmond	7-Oct-99
DOWDY, ARTHUR G JR	20 yrs	Black	N	M	Richmond	Richmond	17-Nov-99
QUICK, JAMES WILLIAM JR	41 yrs	White	N	M	Richmond	Richmond	23-Jan-00
BAILEY, LESSIE	80 yrs	Black	N	F	Richmond	Richmond	15-Feb-00

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SCHNELL, ALLEN BENJAMIN	44 yrs	White	N	M	Richmond	Richmond	1-Mar-00
SPENCER, SAMUEL WILLIAM ATTAH	30 yrs	Black	N	M	Moore	Richmond	31-May-00
FARRELL, GWENDOLYN D	35 yrs	Black	N	F	Richmond	Richmond	7-Jan-01
DOUGLAS, EMMA JEAN	44 yrs	Black	N	F	Lee	Richmond	16-May-01
OWEN, DONALD KARR	42 yrs	White	N	M	SOUTH CAROLINA	Richmond	10-Jul-01
YOUNG, MARY CATHERINE	46 yrs	White	N	F	Richmond	Richmond	7-Dec-01
HARRIS, STEPHON LARUNN	40 yrs	Black	N	M	Guilford	Richmond	18-Apr-02
HARRIS, OCTAVIUS JEVON	24 yrs	Black	N	M	Richmond	Richmond	17-Sep-02
RUSSELL, VIRGIL EDWARD	20 yrs	Black	U	M	Richmond	Richmond	18-Feb-03
LITTLE, DABREAU	29 yrs	Black	N	M	Richmond	Richmond	23-Mar-03
LITTLE, TERRELL ROGENIA	28 yrs	Black	N	F	Richmond	Richmond	23-Mar-03
VELAFUENTES, JUAN ENRIQUE	34 yrs	Unknown	Y	M	MEXICO	Richmond	18-Aug-03
BULLARD, ROY LEE SR	50 yrs	White	N	M	Richmond	Richmond	19-Oct-03
BENNETT, CHARLES NAPOLEAN	52 yrs	Black	N	M	Richmond	Richmond	6-Nov-03
DAWKINS, DONALD GLEN JR	32 yrs	White	N	M	Richmond	Richmond	23-Dec-03
LUCKEY, PETER JAMES	30 yrs	Black	N	M	Richmond	Richmond	17-Jan-04
BIGGS, TONY DALE	46 yrs	White	N	M	Richmond	Richmond	6-Feb-04
ADDISON, ANTHONY LEON	50 yrs	Black	N	M	Richmond	Richmond	4-Jul-04
BYNUM, MARNITA ANETTE LYNN SHANNON	40 yrs	Black	N	F	Moore	Richmond	2-Aug-04
BROWN, TYQAN LAMAR	20 yrs	Black	N	M	Richmond	Richmond	13-Apr-05
LITTLE, JERRY L JR	21 yrs	Black	N	M	Anson	Richmond	7-May-05
JONES, DWAYNE EDWARD	36 yrs	Black	N	M	Richmond	Richmond	11-Oct-05
WALL, TYASIA MONAE	8 mos	Black	N	F	Richmond	Richmond	13-Dec-05
KAMARA, AHMEED FODAY	25 yrs	Black	N	M	Richmond	Richmond	25-Dec-05
MCLEAN, MICHAEL	41 yrs	Native American	N	M	Richmond	Richmond	20-Jan-06
HENRY, LAXAVIER JAMIEL	26 yrs	Black	N	M	Richmond	Richmond	24-Mar-06
MEDFORD, BILLY GLEN SR	47 yrs	White	N	M	Richmond	Richmond	24-Mar-06
LOCKLEY, CHERYL DENISE	36 yrs	White	N	F	Richmond	Richmond	29-Sep-06
DIGGS, ELLANETTE	24 yrs	Black	N	F	Richmond	Richmond	22-Dec-06
DAVIS, BILLY BROADUS	42 yrs	White		M	Anson	Stanly	21-Sep-80
GURLEY, HENRY DON	47 yrs	White		M	Stanly	Stanly	7-Oct-80
GARDNER, BOBBY CLYDE	44 yrs	White		M	Stanly	Stanly	12-Nov-80
BLALOCK, LARRY BENTON	32 yrs	White		M	Stanly	Stanly	24-Dec-80
JACKSON, JOSEPH ROBERT	52 yrs	White		M	VIRGINIA	Stanly	29-Jan-81
JONES, SANDY CORNELIUS	54 yrs	Black		M	Stanly	Stanly	3-Jul-81

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RIDENHOUR, CLAUDE LEE	59 yrs	White		M	Stanly	Stanly	31-Aug-81
PITTMAN, EARL RAY JR	15 yrs	White		M	Stanly	Stanly	3-Aug-82
HOLDAWAY, WILLIAM PRESTON JR	32 yrs	White		M	Stanly	Stanly	8-May-83
JOHNSON, DAVID	28 yrs	Black		M	Stanly	Stanly	9-Jul-84
COLE, RONNIE LEE	30 yrs	Black		M	Stanly	Stanly	6-Mar-85
WHITLEY, RONNIE CONNELL	35 yrs	White		M	Stanly	Stanly	1-Nov-85
FARMER, WILLIAM DAVID JR	45 yrs	White		M	Stanly	Stanly	11-Apr-86
GENTRY, THOMAS HAROLD	48 yrs	White		M	Stanly	Stanly	13-Jul-86
CANUPP, ANNIE BILES	71 yrs	White		F	Stanly	Stanly	5-Apr-87
BELL, HARRY LEONARD	40 yrs	White		M	Stanly	Stanly	6-Oct-87
EFIRD, WILLIAM FRANKLIN	30 yrs	White		M	Stanly	Stanly	28-Mar-88
ALMOND, JEFFREY DALE	24 yrs	White		M	Stanly	Stanly	31-May-88
THOMPSON, LANNY DAN	44 yrs	White		M	Stanly	Stanly	8-Jun-88
SNUGGS, GERALD KEVIN	39 yrs	Black		M	Stanly	Stanly	23-Oct-88
SMITH, GWENDOLYN WARF	31 yrs	White		F	Stanly	Stanly	1-Feb-89
TILLMAN, DONALD ALLEN	28 yrs	Black		M	Anson	Stanly	7-Apr-89
HORTON, MICHAEL	31 yrs	Black		M	Stanly	Stanly	5-Apr-90
CARPENTER, HAYWOOD	56 yrs	Black		M	Stanly	Stanly	13-Sep-90
WILLIAMS, MARK ANTHONY	24 yrs	White		M	Stanly	Stanly	29-Sep-90
GULLEDGE, ERIC EUGENE	19 yrs	Black	N	M	Stanly	Stanly	11-Jan-91
RUSSELL, DEAN ALLEN	21 yrs	White	N	M	Stanly	Stanly	9-Jun-91
HARGETT, CYNTHIA DARLENE	30 yrs	White	N	F	Stanly	Stanly	5-Oct-91
MORRIS, LUKE DWIGHT JR	38 yrs	White	N	M	Montgomery	Stanly	5-Oct-91
DOUTHIT, JUDD HENRY	85 yrs	White	N	M	Stanly	Stanly	1-Dec-91
DOUTHIT, JULIA FLORENCE	81 yrs	White	N	F	Stanly	Stanly	1-Dec-91
JACOBS, CURTIS LEE	25 yrs	White	N	M	Stanly	Stanly	22-Mar-92
VANHOY, GEORGE ADAM	48 yrs	White	N	M	Stanly	Stanly	19-Jan-93
SASSER, ETHEL BLENDENA TEETER	60 yrs	White	N	F	Stanly	Stanly	22-Jan-93
KENNEDY, JEREMY MARCUS	19 yrs	White	N	M	Stanly	Stanly	9-May-93
MUNFORD, ELLEN HINSON	26 yrs	White	N	F	Stanly	Stanly	27-Jul-93
CONNOR, KEVIN	21 yrs	Black	N	M	Mecklenburg	Stanly	23-Feb-94
CAMPBELL, TONY DEMETRIC	27 yrs	Black	N	M	Stanly	Stanly	10-Dec-94
ROBINSON, ALLEN GLEN	45 yrs	Black	N	M	Stanly	Stanly	11-Feb-95
BURTON, JIMMY ONEAL	26 yrs	Black	N	M	Stanly	Stanly	19-May-95
LEE, CHARLES ANTHONY	26 yrs	Black	N	M	Stanly	Stanly	20-May-95
HOWELL, RICHARD EDWARD	54 yrs	Black	N	M	Stanly	Stanly	10-Nov-95
LOFLIN, STEPHEN DAVID	47 yrs	White	N	M	Stanly	Stanly	14-Dec-95

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CROCKER, JEFFREY NEIL	35 yrs	White	N	M	Stanly	Stanly	11-Jan-96
SMITH, DAMON FRANKLIN	29 yrs	White	N	M	Stanly	Stanly	15-Apr-96
BIVENS, OTIS DOUGLAS	46 yrs	Black	N	M	Stanly	Stanly	18-Sep-96
KELLY, MARK ANTHONY	29 yrs	Black	N	M	Stanly	Stanly	23-Sep-96
HOWARD, LELA POPLIN	88 yrs	White	N	F	Stanly	Stanly	18-Mar-97
HOWARD, LUKE PHILLIP	91 yrs	White	N	M	Stanly	Stanly	18-Mar-97
COBLE, MARGIE SANDERS	74 yrs	White	N	F	Stanly	Stanly	25-Jun-97
COBLE, SANDRA PARKER	30 yrs	White	N	F	Stanly	Stanly	12-Oct-97
MCCORMICK, WILBERT BERNARD	31 yrs	Black	N	M	Stanly	Stanly	28-Nov-97
CHAPMAN, BARRY WAYNE	30 yrs	White	N	M	Stanly	Stanly	10-Jan-98
RUSSELL, CARL VERNON	78 yrs	White	N	M	Stanly	Stanly	25-Mar-98
TOLLEY, DEBORAH JEAN	28 yrs	White	N	F	Stanly	Stanly	19-Jul-98
MCCAULEY, ELIZABETH MCSWAIN	24 yrs	White	N	F	Stanly	Stanly	7-Nov-98
MILTON, RICKY DARRIN	36 yrs	White	N	M	Stanly	Stanly	18-Mar-99
LOPEZ, HONORATO JARAMILLO	28 yrs	Unknown	Y	M	Stanly	Stanly	28-Mar-99
DIAL, JEFFREY ALBERT	27 yrs	White	N	M	Stanly	Stanly	30-Mar-99
RIDENHOUR, TIMOTHY CHARLES	28 yrs	Black	N	M	Stanly	Stanly	10-May-00
MEGGS, TRACEY JOLLEY	23 yrs	White	N	F	Stanly	Stanly	5-Jul-00
BURNETTE, LINDA CHARLEEN AKERS	39 yrs	White	N	F	Stanly	Stanly	8-Oct-00
COGGINS, JAMES EDWARD JR	43 yrs	White	N	M	Stanly	Stanly	8-Dec-00
PICKETT, DEXTER ONEIL	23 yrs	Black	N	M	Stanly	Stanly	31-Dec-00
LINDSAY, BOBBY LEE JR	23 yrs	Black	N	M	Stanly	Stanly	31-Mar-01
WIMER, GLENDA GERLDINE	59 yrs	White	N	F	Stanly	Stanly	27-Apr-01
NEWTON, TRAVIS JERMANE	26 yrs	Black	N	M	Richmond	Stanly	10-Oct-01
FURR, AREIL CORRINNE	19 yrs	White	N	F	Stanly	Stanly	7-Mar-02
HAMILTON, JAMES EDWARD	27 yrs	Black	N	M	Stanly	Stanly	19-Mar-02
HUNTLEY, RONNIE ALTON	20 yrs	Black	N	M	Stanly	Stanly	21-Mar-02
KENDALL, MARCUS DANIEL	23 yrs	Black	N	M	Stanly	Stanly	21-Mar-02
XIONG, YONG	28 yrs	Asian	N	M	Stanly	Stanly	25-May-02
DIGES, LINDA SWARINGEN	53 yrs	White	N	F	Stanly	Stanly	23-Jun-02
THOMPSON, JOEY LYNN	21 yrs	White	N	M	Stanly	Stanly	5-Nov-02
SINK, JAMES CLINTON	53 yrs	White	N	M	Stanly	Stanly	29-Dec-02
BRIGHAM, SANDY HARLAN SR	39 yrs	Black	N	M	Stanly	Stanly	24-Feb-03
SOSSAMON, MICHAEL ROY	25 yrs	White	N	M	Stanly	Stanly	17-Jun-03
SMITH, CHANCE DOUGLAS	6 yrs	White	N	M	Stanly	Stanly	14-Dec-03
WALL, RALPH LANE III	25 yrs	Black	N	M	Forsyth	Stanly	19-Sep-04
BILES, TIMOTHY LEE	23 yrs	White	N	M	Stanly	Stanly	30-Mar-05

CRUMP, ROSHAWN OMAR	20 yrs	Black	N	M	Stanly	Stanly	4-Apr-05
COLEY, BRENDA KAY	48 yrs	White	N	F	Stanly	Stanly	22-May-05
WHITE, CINDY MORTINE	24 yrs	Black	N	F	Stanly	Stanly	20-Nov-05
DRYE, JIMMY ALLEN	66 yrs	White	N	M	Stanly	Stanly	17-Mar-06
EAGLE, MICHAEL JOSEPH JR	16 yrs	Black	N	M	Stanly	Stanly	22-Jun-06
ROBINSON, JEFFREY BERNARD	43 yrs	Black	N	M	Stanly	Stanly	8-Jul-06
CABBLE, LEROY	47 yrs	Black		M	Union	Union	8-Feb-81
MARBLE, ALONZO	59 yrs	Black		M	Union	Union	11-Sep-81
CHAMBERS, ONELLIE	70 yrs	Black		F	Union	Union	28-Sep-81
HELMS, HAROLD LEE	39 yrs	White		M	Union	Union	8-Nov-81
EDWARDS, MONTY JOE	29 yrs	White		M	Rowan	Union	20-Nov-81
GIBSON, GEORGE CHARLIE	35 yrs	Black		M	Union	Union	13-Feb-82
MELTON, PAUL EDWARD	20 yrs	White		M	Union	Union	8-Jun-82
ALEXANDER, DERRICK EDWARD	15 yrs	Black		M	Union	Union	6-Sep-82
LEAKS, LLOYD HENRY	38 yrs	Black		M	Union	Union	21-Aug-83
HAMMOND, COY MADISON	42 yrs	Black		M	Anson	Union	7-Oct-83
ASHCRAFT, ELEANOR SUE	27 yrs	Black		F	Union	Union	11-Nov-83
SIMPSON, ALLEN STEELE	74 yrs	White		M	Union	Union	20-Dec-83
BOYD, LEROY	18 yrs	Black		M	Mecklenburg	Union	16-Jan-84
STUBBS, JAMES PRENTIS	49 yrs	White		M	Rowan	Union	5-Mar-84
BARRETT, FLOYD BRUTUS	30 yrs	Black		M	Union	Union	2-Jul-84
HAILEY, SANDRA MCCAULEY	23 yrs	Black		F	Union	Union	8-Aug-84
WALLACE, BYRON ROGER	68 yrs	White		M	TENNESSEE	Union	6-Jun-85
DAVADI, JULIO	29 yrs	White		M	MISSISSIPPI	Union	11-Dec-85
BLALOCK, CARL HAROLD	33 yrs	White		M	SOUTH CAROLINA	Union	1-Jan-86
CRAIG, BOBBY LEE	22 yrs	Black		M	Union	Union	4-Apr-86
THOMAS, BENJAMIN	28 yrs	Black		M	Union	Union	18-May-86
ALLEN, JIMMY	50 yrs	Black		M	Union	Union	27-Oct-86
HANEY, DESSIE WALLACE	84 yrs	White		F	Union	Union	8-Dec-86
CARELOCK, ROY LYNN	23 yrs	Black		M	Union	Union	26-Jan-87
MINGUS, MARK ALAN	29 yrs	White		M	Union	Union	21-Oct-87
CHAMBERS, TARRY	30 yrs	Black		M	Union	Union	25-Nov-87
MCCLENDON, TERESA KING	26 yrs	Black		F	Union	Union	25-Nov-87
MICHAEL, ROBERT PAUL	26 yrs	White		M	Union	Union	8-May-88
HARRELL, JAMES HUBERT	40 yrs	Black		M	Union	Union	17-Jul-88
KNOTTS, LARRY SPENCER	33 yrs	Black		M	Union	Union	16-Sep-88

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WILLIAMS, WRISTON	42 yrs	Black		M	Union	Union	6-Oct-88
HALL, LARRY DWAYNE	1 yrs	White		M	SOUTH CAROLINA	Union	15-Oct-88
ALLEN, DANNY WILSON	16 yrs	Black		M	Union	Union	1-Nov-88
GRIFFIN, WILLIAM KIRKLAND	60 yrs	White		M	Union	Union	14-Jan-89
BIVENS, DELVIE	28 yrs	Black		M	Union	Union	16-Feb-89
HAMILTON, KENNETH RAY	29 yrs	Black		M	Union	Union	6-Apr-89
BYRUM, GLADYS MAE	59 yrs	White		F	Union	Union	14-May-89
AUTRY, DENNIS DEAN	42 yrs	White		M	SOUTH CAROLINA	Union	17-Jun-89
GLANDER, BEVERLY LOUISE	27 yrs	White		F	Union	Union	9-Aug-89
STURDIVANT, IVORY WAYNE	44 yrs	Black		M	Union	Union	24-Mar-90
MITCHELL, RAYMOND EARL	38 yrs	Black		M	Mecklenburg	Union	10-Apr-90
SLOAN, ODELL LAFAYETTE	22 yrs	Black		M	Union	Union	17-May-90
CRAWFORD, DONALD GENE JR	24 yrs	Black		M	Mecklenburg	Union	11-Aug-90
HOOD, JOHN ROBERT JR	20 yrs	Black		M	Union	Union	17-Aug-90
SMITH, RICHARD EDWARD	26 yrs	White		M	Union	Union	10-Sep-90
BLAKENEY, GREGORY	30 yrs	White	N	M	SOUTH CAROLINA	Union	6-Oct-90
JONES, ROBERT MICHAEL	17 yrs	White		M	Union	Union	23-Nov-90
GREENE, MARGARET JUANITA	63 yrs	White	N	F	Union	Union	29-Jan-91
MACK, TERESA LYNNHAWFIELD	34 yrs	White	N	F	Union	Union	30-Jan-91
HITE, LUCIAN LEO	59 yrs	White	N	M	Union	Union	23-Mar-91
MCBRIDE, BILLY	30 yrs	Black	N	M	SOUTH CAROLINA	Union	13-Apr-91
MCMANUS, WAYNE	24 yrs	Black	N	M	SOUTH CAROLINA	Union	14-Aug-91
COUSIN, THOMAS JUNIUS JR	39 yrs	Black	N	M	Union	Union	31-Aug-91
BLAKENEY, BOBBY	38 yrs	Black	N	M	SOUTH CAROLINA	Union	28-Sep-91
PALARDY, ROBERT	37 yrs	White	N	M	Union	Union	23-Nov-91
PATTERSON, DAVID WAYNE	35 yrs	Black	N	M	Union	Union	16-May-92
MCCOY, CRYSTAL LOU ANN	8 yrs	White	N	F	Union	Union	9-Jun-92
PARKER, WILLIAM ANDERSON	19 yrs	White	N	M	Union	Union	19-Jun-92
VERGARA, MERCED XALTIPA	24 yrs	White	Y	M	Union	Union	5-Jul-92
BAKER, DONALD EUGENE	44 yrs	White	N	M	Union	Union	8-Aug-92

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MYERS, DANNY LEE	19 yrs	White	N	M	SOUTH CAROLINA	Union	18-Sep-92
TEAL, HUBERT JR	35 yrs	Black	N	M	Union	Union	18-Oct-92
GUIN, ERIC WAYNE	20 yrs	White	N	M	Union	Union	1-Dec-92
ST GERMAIN, SHARON MARY CLARK	26 yrs	White	N	F	Union	Union	11-Dec-92
MULLIS, JERRY PAUL	45 yrs	White	N	M	Union	Union	13-Dec-92
HOUSTON, FELICIA HOPE	16 yrs	Black	N	F	Union	Union	29-Dec-92
TYSON, DONALD DEON	21 yrs	Black	N	M	SOUTH CAROLINA	Union	17-Jan-93
LUTHER, DONNIE EARL	20 yrs	White	N	M	Anson	Union	9-Mar-93
HENDRICKSON, MARIA PEREZ	30 yrs	White	N	F	Union	Union	1-Apr-93
MANUS, MARGIE FLO	59 yrs	White	N	F	Union	Union	9-Apr-93
EFIRD, DOUGLAS WILLIAM	32 yrs	White	N	M	Union	Union	14-Jun-93
FIGEROHA, DANIEL CASTRELLON	20 yrs	White	Y	M	Union	Union	20-Aug-93
MURRAY, TAMMY	20 yrs	Black	N	F	Union	Union	3-Jan-94
HOUGH, JOYCE	43 yrs	Black	N	F	Union	Union	16-Jan-94
MILLER, BRIAN BERNARD	20 yrs	Black	N	M	Union	Union	16-Feb-94
BENSON, RICHLEN	17 yrs	Black	N	M	Union	Union	9-May-94
HARGETTE, THOMAS FLOYD	41 yrs	White	N	M	SOUTH CAROLINA	Union	15-Jul-94
CROWELL, DEBORAH CHRISTINE	41 yrs	White	N	F	Union	Union	29-Jul-94
STEWART, WILLIAM RUSSELL	47 yrs	White	N	M	Union	Union	9-Sep-94
DUNCAN, VICKIE T	33 yrs	Black	N	F	Union	Union	26-Nov-94
BROWN, HENRY NATHANIEL	33 yrs	Black	N	M	Union	Union	2-Jan-95
BLAKENEY, DONALD KEITH	36 yrs	Black	N	M	Union	Union	9-Jan-95
SECHRIST, LISA MARIE	32 yrs	White	N	F	Union	Union	5-Feb-95
DYNESIUS, RICHARD ERIC	28 yrs	White	N	M	Union	Union	3-Mar-95
MILLS, FRED JUNIOR	74 yrs	White	N	M	Union	Union	8-Mar-95
MUNGO, MARK ANTHONY	23 yrs	Black	N	M	Union	Union	19-Apr-95
BROOKS, ERIC LAMAR	24 yrs	Black	N	M	Union	Union	13-May-95
JOHNSON, TWONREON DESMONICUS	21 yrs	Black	N	M	FLORIDA	Union	1-Aug-95
GARCIA, GREGORIO AGUILAR	33 yrs	White	Y	M	Union	Union	8-Oct-95
KOPPLIN, RICK ALLEN	28 yrs	White	N	M	Union	Union	11-Nov-95
COOK, DANNY RICHARD	35 yrs	White	N	M	Mecklenburg	Union	27-Nov-95
MELTON, CHARLES RAY	45 yrs	White	N	M	Union	Union	9-Jan-96
HATCHEL, JAMES CURTIS JR	37 yrs	White	N	M	Union	Union	12-Jan-96
CURETON, RUSSELL	32 yrs	Black	N	M	Union	Union	21-Jan-96

North Carolina Medical Examiner's Office Data
Anson (1980-2006); Moore (1980-1996); Richmond (1980-2006); Stanly (1980-2006); Union (1980-2006)

JOHNSON, MARSHA ANN	24 yrs	Black	N	F	Union	Union	21-Jan-96
CHAMBERS, KENNETH JR	34 yrs	Black	N	M	Union	Union	1-Apr-96
HUNTLEY, CALLIE WASHINGTON	76 yrs	Black	N	M	Union	Union	15-Apr-96
MCCAIN, GRAYLAND DONNELL	24 yrs	Black	N	M	Union	Union	6-Jun-96
PARKER, MARVIN DWAIN	39 yrs	White	N	M	Union	Union	13-Aug-96
HUNTER, KENT ALLEN	34 yrs	White	N	M	Union	Union	23-Aug-96
WALLS, JOHN RAY	42 yrs	Black	N	M	Union	Union	31-Aug-96
WORRILL, WILLIAM WESLEY	37 yrs	White	N	M	Gaston	Union	13-Sep-96
BELK, MARGARET W	33 yrs	Black	N	F	SOUTH CAROLINA	Union	22-Nov-96
MANLEY, WANDA SUE	37 yrs	White	N	F	Madison	Union	28-Nov-96
MEDLIN, KIMBERLY JO MILLEN	26 yrs	White	N	F	Union	Union	29-Mar-97
KIRKLEY, CHRISTOPHER DALE	17 yrs	White	?	M	SOUTH CAROLINA	Union	3-Apr-97
THOMAS, BILLY JOE II	40 yrs	White	N	M	Union	Union	18-Apr-97
VILLALOBOS, JOSE	22 yrs	White	Y	M	Union	Union	16-Jul-97
HAMILTON, HAZEL YOLANDA	23 yrs	Black	N	F	Union	Union	10-Sep-97
PRESSLEY, SHARON LEIGH HOUSE	37 yrs	White	N	F	Mecklenburg	Union	19-Sep-97
RIVERA, FERNANDO MORENO	23 yrs	White	Y	M	Union	Union	25-Dec-97
BRADLEY, JEFFERY FRANKLIN	34 yrs	White	N	M	Mecklenburg	Union	1-Feb-98
CRUZ, ANTONIO JUAREZ	24 yrs	White	Y	M	Union	Union	15-Apr-98
PRICE, CHRISTOPHER MELTON	21 yrs	Black	N	M	Union	Union	13-May-98
BIVENS, CAROLYN DELOISE	37 yrs	Black	N	F	Union	Union	18-May-98
THOMPSON, TROY LAMAR	29 yrs	Black	N	M	Union	Union	19-May-98
PATEL, RAJESH BABULAL	32 yrs	Other Race	N	M	Mecklenburg	Union	13-Jun-98
LEE, VERNICE CALVIN	49 yrs	Black	N	M	Union	Union	22-Aug-98
DUNN, MATTHEW	33 yrs	White	N	M	Union	Union	1-Sep-98
HORNE, BLAND	45 yrs	Black	N	M	Anson	Union	1-Sep-98
MCCAULEY, JAMES MOSES	46 yrs	Black	N	M	Union	Union	12-Sep-98
FOSTER, CIARA MONIQUE	3 yrs	Black	N	F	Union	Union	28-Mar-99
WALKER, ERIC DEON	23 yrs	Black	N	M	Union	Union	9-May-99
FUNDERBURK, LEMUEL	44 yrs	Black	N	M	Union	Union	3-Jul-99
PENA, EDWIN	38 yrs	Unknown	Y	M	Union	Union	20-Jul-99
MORGAN, RAY DENNIS	57 yrs	White	N	M	Union	Union	8-Aug-99
MILLER, SHAQUELLAGH MASSEY	1 mos	Black	N	F	Union	Union	30-Sep-99
SAWYERS, NANCY ANTHONY	34 yrs	White	N	F	Union	Union	20-Jan-00
HAMILTON, WALLACE B	59 yrs	Black	N	M	Union	Union	27-Apr-00

North Carolina Medical Examiner's Office Data
Anson (1980-2006); Moore (1980-1996); Richmond (1980-2006); Stanly (1980-2006); Union (1980-2006)

KASTANIS, GEORGE NIKOLAOY	41 yrs	White	N	M	Union	Union	29-Apr-00
HUDDLESTON, WILLIAM HENRY III	12 yrs	White	N	M	Stanly	Union	25-Jul-00
SMITH, MARSHA ANN IVEY	35 yrs	White	N	F	Union	Union	29-Aug-00
NICHOLSON, JOHNNY EDWARD	23 yrs	Black	U	M	SOUTH CAROLINA	Union	24-Sep-00
HERNANDEZ, JOSE DE JESUS MARTINEZ	23 yrs	Unknown	Y	M	Mecklenburg	Union	14-Oct-00
ROBERTSON, CHRISTOPHER LEE	33 yrs	White	N	M	Union	Union	1-Dec-00
GHANT, SCARLET SECO	46 yrs	White	N	F	Mecklenburg	Union	23-Jan-01
LOPEZGARCIA, ALEJANDRO	33 yrs	Unknown	Y	M	Union	Union	8-Sep-01
OATES, BRAD ANTHONY	29 yrs	White	N	M	Mecklenburg	Union	8-Feb-02
MOJZIK, TIMOTHY JOHN	54 yrs	White	N	M	Mecklenburg	Union	5-Mar-02
MCCLENDON, ARTHUR MAURICE	37 yrs	Black	N	M	Union	Union	23-Mar-02
DYE, LAQUINNIS SHAWN	22 yrs	Black	N	M	Alexander	Union	6-May-02
ALLEN, EUGENE JUNIOR	36 yrs	Black	N	M	Union	Union	19-Sep-02
VALLESANDE, VICENTE	36 yrs	Unknown	Y	M	Union	Union	19-Oct-02
LONG, JAMES RICHARD	48 yrs	Black	N	F	Union	Union	5-Dec-02
HERNANDEZ, JOSE ALFREDO BARCELO	24 yrs	Unknown	Y	M	Union	Union	8-Feb-03
HANLEY, CHARLES JAMES JR	75 yrs	White	N	M	Union	Union	10-Jun-03
HELMS, TRACEY BROOK	25 yrs	White	N	F	Union	Union	18-Oct-03
DRYE, MARY FASTJE	52 yrs	White	N	F	Union	Union	6-Nov-03
PARKER, CHRISTINA DENISE	33 yrs	White	N	F	Mecklenburg	Union	5-Jan-04
MEJIA, LUIS PEREZ	33 yrs	Unknown	Y	M	Union	Union	27-Jun-04
STAFFORD, JOHN HENRY	47 yrs	Black	N	M	Union	Union	8-Sep-04
HORTON, JEFFERY LEE	25 yrs	Black	N	M	SOUTH CAROLINA	Union	18-Sep-04
DEESE, RONNIE JOE	19 yrs	White	N	M	Union	Union	28-Oct-04
FAULK, RONALD EUGENE	52 yrs	White	N	M	Union	Union	28-Oct-04
SCHRADER, CHRISTOPHER ANDREW	26 yrs	White	N	M	SOUTH CAROLINA	Union	28-Oct-04
WYZANOWSKI, MICHELLE FAULK	31 yrs	White	N	F	Union	Union	28-Oct-04
NAVARRETE, ERNESTO GARCIA	20 yrs	Unknown	Y	M	Union	Union	9-Nov-04
FUNDERBURK, CLIFTON JR	27 yrs	Black	N	M	SOUTH CAROLINA	Union	28-Nov-04
KISIAH, CHONG SUN	51 yrs	Asian	N	F	Union	Union	14-Dec-04
SANTAMARIA, ROBERTO GOMEZ	37 yrs	Unknown	Y	M	Union	Union	18-Jan-05
MCGILL, BABY	7 days	Black	N	F	Union	Union	10-Jun-05
MARSH, NORRIS ROCHELL	20 yrs	Black	N	M	Union	Union	2-Oct-05

North Carolina Medical Examiner's Office Data
Anson (1980-2006); Moore (1980-1996); Richmond (1980-2006); Stanly (1980-2006); Union (1980-2006)

MCCLENDON, KENNETH	44 yrs	Black	N	M	Union	Union	9-Dec-05
GARMON, CLEVELAND DONNELL	41 yrs	Black	N	M	Union	Union	20-Dec-05
HARTSELL, RICKY DUANE	45 yrs	White	N	M	Stanly	Union	20-Dec-05
STONE, SHARON TUCKER	46 yrs	White	N	F	Union	Union	2-Jan-06
CURETON, BRYANT JACOBY	13 yrs	Black	N	M	Union	Union	6-Jan-06
CURETON, MARCUS LEON	27 yrs	Black	N	M	Union	Union	26-Jul-06
MCCLENDON, PATRICK ANTWONE	20 yrs	Black	N	M	Union	Union	27-Aug-06
BLAKNEY, TONY LORIN	40 yrs	Black	N	M	Union	Union	1-Sep-06
MOBLEY, JOHN DAVID	39 yrs	Black	N	M	Union	Union	11-Sep-06
BRYNARSKY, CHRISTOPHER JOHN	32 yrs	White	N	M	Union	Union	11-Oct-06
HAMPTON, SHERRY DEKCENIA	45 yrs	Black	N	F	Mecklenburg	Union	11-Oct-06
DUBOSE, DOM DELUIS	35 yrs	Black	N	M	Union	Union	15-Oct-06
ALSOBROOKS, LEON ALONZO	26 yrs	Black	N	M	Union	Union	20-Oct-06
PATE, DAVID WALTER	29 yrs	White	N	M	Union	Union	12-Dec-06

EXHIBIT 6

NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
STANLY COUNTY	95 CRS 567
STATE OF NORTH CAROLINA)	
)	
vs.)	
)	
GUY TOBIAS LEGRANDE,)	
)	
Defendant.)	

AFFIDAVIT OF GEORGE PATRICK CORVIN, M.D.

NOW COMES George Patrick Corvin, M.D., first being duly sworn, deposes and says:

1. I am a citizen and resident of Wake County, North Carolina, am over eighteen years of age and am under no disability.

2. I am a psychiatrist licensed to practice medicine in the state of North Carolina. I obtained my medical degree from the University of Alabama at Birmingham in 1992. I completed a residency in Psychiatry in 1996 at the Medical College of Georgia in Augusta, Georgia. I then completed a Fellowship in Forensic Psychiatry with the United States Department of Justice. During this period of my education I worked primarily at the Federal Correctional Institution in Butner, North Carolina. I earned board certification in General Psychiatry in 1997 and in Forensic Psychiatry in 1998 having successfully completed certification examinations administered by the American Board of Psychiatry and Neurology. I have maintained these board certifications continuously since that time.

3. Since January 1999, I have maintained an active inpatient practice at Holly Hill Hospital in Raleigh, North Carolina. I serve as Medical Staff President at that hospital, and also am Medical Director of the substance abuse/dual diagnosis treatment program at that facility. I also have a private outpatient practice at North Raleigh Psychiatry.

4. I am a member in good standing of the American Psychiatric Association, the North Carolina Psychiatric Association, the North Carolina Psychiatric Association Psychiatry and Law Committee, and the American Academy of Psychiatry and Law.

5. A detailed Curriculum Vitae is attached hereto as Exhibit A. To date, I have conducted forensic psychiatric evaluations on over 400 individuals. I have been accepted as an expert in Forensic Psychiatry in over 70 court cases, including federal and state court. I have been retained by private attorneys as well as agencies of the state and federal government to perform forensic psychiatric services.

6. I have been provided with numerous documents related to this case and Mr. LeGrande's mental health history. Attached hereto as Exhibit B is an index of the documents provided to me by Mr. LeGrande's attorney.

7. On October 31, 2006, I visited Central Prison to interview and evaluate Mr. LeGrande; however, prison officials informed me he refused to meet with me.

8. Based upon my review of the documents provided to me by counsel, it is my opinion to a reasonable degree of medical certainty that Mr. LeGrande is and has been psychotic for many years. Unfortunately, due to his self-representation throughout much of his case, a complete analysis of Mr. LeGrande's psychosocial functioning and his family psychiatric history has never been performed. Without a thorough understanding of this data, completion of an adequate (and accurate) psychiatric assessment was not possible, particularly given that by his own efforts, Mr. LeGrande has for the most part effectively avoided judicial inquiry into his psychiatric condition. Mr. Legrande was found competent to stand trial in 1996. However, no expert psychiatric testimony was offered during this hearing, and the Court was unaware of numerous critical pieces of information, either because no investigation was performed or the facts were otherwise learned after that date:

a. Mr. LeGrande's sister, [redacted] suffers from an Axis I psychiatric disorder, specifically, Bipolar Disorder (significantly increasing Mr. Legrande's vulnerability for suffering from serious psychiatric pathology);

b. Mr. LeGrande's half-sister, [redacted], suffers from an Axis I psychiatric disorder, specifically Chronic Paranoid Schizophrenia (significantly increasing Mr. LeGrande's vulnerability for suffering from serious psychiatric pathology – including Schizophrenia);

c. Mr. LeGrande's wife, Denise Chavous, describes many episodes of Mr. LeGrande "foaming at the mouth" and talking to himself while watching himself in the mirror, strongly suggestive of the presence of active psychotic symptoms or a severe mood disorder;

d. Mr. LeGrande has exhibited wild mood swings (mood lability) from calmness to extreme anger in an instant as described by both his wife and sister, [redacted]

e. Sister [redacted]'s description of Mr. LeGrande's pacing back and forth in the basement, ranting and raving to himself;

f. Sister [redacted] describes Mr. LeGrande's behavior beginning when he was in his 20's as being very similar to the behavior she saw in her sister, [redacted], who suffers from Schizophrenia;

g. Mr. LeGrande believed Oprah Winfrey and Dan Rather were talking to him through the television, beliefs which are obviously delusional in nature;

h. Mr. LeGrande believed his attorneys and family members were assisting the prosecution in his case;

i. Based upon recent letters written by Mr. LeGrande, it is clear that he believes that his pending execution is meaningless because he is going to receive an executive pardon. He also believes that he will receive a large settlement (between 1.5 and 3 billion dollars) from the State following his release from prison. He has written to his family indicating that he plans to move out of

North Carolina following his release, and has also written of plans for a "first meal" to celebrate his release from prison.

9. Upon information and belief, none of the facts referenced in the aforementioned paragraph were known to Dr. Rollins at the time he opined that Mr. LeGrande was competent to proceed to trial. When Mr. LeGrande was evaluated by Dr. Rollins for competency to proceed to trial, the trial was not imminent. It is important to note that patients who suffer from chronic psychiatric pathology often experience sudden and severe exacerbation of their symptoms during periods of elevated stress. For example, after Mr. LeGrande was found guilty, he became extremely agitated and testified to the jury in an incredibly hostile and antagonizing manner. At the time he did this Mr. LeGrande was not in a rational state of mind. Specifically, he remained grandiose and paranoid, and adhered to a number of delusional beliefs about his case and the workings of the Court during his trial. These beliefs predisposed him to engage in the aforementioned inappropriate behaviors in open court (which no doubt had a very detrimental effect on the ultimate outcome of his case).

10. The presence of Schizophrenia and Bipolar Disorder among Mr. LeGrande's siblings (particularly when viewed in the context of his own long-standing bizarre behavior/thought processes) makes it more likely than not that Mr. LeGrande also suffers from a serious mental illness.

11. While I believe Mr. LeGrande is psychotic, without interviewing him I cannot be certain of his particular diagnosis. However, based upon his family history and reports, the volumes of filings and writings he has undertaken, the statements of Mr. LeGrande within the writings, the psychiatric records and other documents, it is my belief that Mr. LeGrande most likely suffers from one of the following Axis I psychiatric conditions:

a. Schizoaffective Disorder, Bipolar Type;

b. Bipolar I Disorder, Manic with psychotic features; and/or

c. Delusional Disorder.

12. Based upon my review of the information provided, Mr. LeGrande is not currently competent to proceed with any legal proceedings in his case or to be punished for the crime for which he has been convicted in that:

a. He is unable to understand the nature and object of the proceedings against him at this time;

b. He cannot comprehend his situation in reference to the proceedings against him;

c. He cannot assist his attorneys in a rational or reasonable manner; and

d. He cannot and does not comprehend that his execution is imminent, but rather believes he is being pardoned, receiving a large financial settlement from the State and that he will be soon be released.

13. Because a determination of competency is time and situation specific and requires information about numerous variables, it is difficult for any forensic psychiatrist to opine

whether a defendant was competent at a time in the distant past to a reasonable degree of medical certainty. However, based on the extensive record that I have reviewed and on the types of evidence that are available to me (for example, that Mr. LeGrande was telling his standby counsel at the time that he was receiving signals through the television), I strongly believe that it is very likely that Mr. LeGrande was incompetent during his trial and clearly warranted an extensive contemporaneous evaluation of his competency. While I am aware Dr. Rollins opined that Mr. LeGrande was competent three to four months prior to trial, I do not believe this adequately addressed Mr. LeGrande's competency at the time of trial because (i) Dr. Rollins did not have all of the necessary information to make such a determination; and (ii) the evaluation did not address the likelihood that Mr. LeGrande would experience an exacerbation of his illness (further impacting his competency) when faced with the stress of his trial.

14. While Mr. LeGrande's history is replete with evidence of delusional thinking that adversely affected his judgment during the time in question, one of these delusional beliefs warrants specific comment due to the damaging effect this psychotic belief had upon his behavior during trial (particularly during the sentencing phase of the trial). At the time of trial, Mr. LeGrande was laboring under a delusion that he was being persecuted by white people, causing him to have a deep mistrust of all white people. This was not rational thinking; however he was somehow tried before a jury consisting solely of white jurors. Furthermore, one of the key witnesses against him at trial referred to him in a pejorative manner through the use of a racial epithet. These factors served to reinforce and increase the intensity of his delusional ideation on the subject. His behavioral decompensation before the jury and challenge to the jury to kiss his ass and pull the switch was a product of his psychotic illness coupled with (i.e. exacerbated by) the finding of the all-white jury.

Further affiant sayeth not.

This the 8th day of November, 2006.

George P. Corvin, M.D.

Sworn to and subscribed before me,
this the 8th day of November, 2006.

Notary Public

My commission expires: 1-31-11

Stacy Sutton
Notary Public
Durham County, NC
My Commission Expires Jan. 31, 2011

EXHIBIT A

NORTH RALEIGH PSYCHIATRY, P.A. • 5530 MUNFORD RD, STE 119 •
RALEIGH, NORTH CAROLINA 27612
PHONE (919) 782-9431 • FAX (919) 782-9130 •
E-MAIL GCORVIN@NC.RR.COM

GEORGE PATRICK CORVIN, M.D.

CITIZENSHIP

United States of America

CERTIFICATION AND LICENSURE

- Board Certified, Forensic Psychiatry, American Board of Psychiatry & Neurology #788 (1998)
- Board Certified, General Psychiatry, American Board of Psychiatry & Neurology # 43632 (1997)
- North Carolina Medical License # 97 - 00519
- National Board of Medical Examiner - Part I (1990),Part II (1991), Part III (1993)

EDUCATION

- **FELLOWSHIP** - (July 1996 - June 1997)
  Forensic Psychiatry
  United States Department of Justice
  Federal Bureau of Prisons
  Federal Correctional Institution
  Butner, North Carolina
- **RESIDENCY** - (July 1992 - June 1996)
  Psychiatry
  Medical College of Georgia
  Augusta, Georgia
- **MEDICAL SCHOOL** (July 1988 - June 1992)
  University of Alabama at Birmingham
  Birmingham, Alabama
  Degree: M.D.
- **COLLEGE** (August 1984 - May 1988)
  Birmingham - Southern College
  Birmingham, Alabama
  Degree: Bachelor of Science (Biology & Psychology)

MEMBERSHIP

- American Psychiatric Association
- American Academy of Psychiatry & Law
- North Carolina Psychiatric Association
- North Carolina Psychiatric Association Psychiatry and Law Committee

CLINICAL EXPERIENCE

- Private Psychiatric Practice (August 1997 - Present)
  North Raleigh Psychiatry, P.A.
  920-A Paverstone Drive
  Raleigh, North Carolina
- Medical Staff President (January 2002 - Present)
  Holly Hill Hospital
  Raleigh, North Carolina
- Service Director of the Chemical Dependency Program (January 1999 - Present)
  Holly Hill Hospital
  Raleigh, North Carolina
- Fee Basis Physician Scheduling Coordinator (June 1994 - June 1996)
  Georgia Regional Hospital at Augusta
  Augusta, Georgia
- Compensation & Pension Examiner (Psychiatry) (August 1995 - June 1996)
  Department of Veteran Affairs
  Augusta, Georgia

AWARDS AND HONORS

- Chief Psychiatric Resident - Medical College of Georgia (June 1995 - 1996)
- Psychiatric Representative to the Medical College of Georgia Residency Council (1995 - 1996)
- Residency Education Committee (1992 - 1996)
- Residency Selection Committee (1996 - 1996)
- Journal of Clinical Psychiatry Resident Advisory Board (1994 - 1996)
- Resident Representative to the Georgia Psychiatric Physicians' Association (1995 - 1996)
- Hervey Cleckley Award for Best Resident Paper (1995)
- Hervey Cleckley Award for Best Resident Paper (1996)
- Social Psychiatry Award (1995 - 1996)
- E. J. MacCranie Award for Clinical Excellence (1996)
- Alabama Board of Medical Scholarships - Merit Scholarship (1988 -1992)
- Summa Cum Laude - Birmingham Southern College (1988)
- Phi Beta Kappa
- Kappa Alpha Order - President (1987 - 1988)

RESEARCH

- "Combined Buspirone & Carbamazepine in the Treatment of Agitation & Delirium Associated with Closed Head Injury"
- "Endogenous Opioids in Psychiatry: Implications for the Treatment of chronically Self-Injurious Patients"
- "Offenders With Mental Disease or Defect: Historical Perspectives & Emerging Issues" (Co-authored with students participating in the Forensic Psychiatry Seminar Series - Duke University Law School - Spring (1997)

EXHIBIT B

I. Correspondence from Guy LeGrande

A. Letters to Family Members

1.	Undated	Letter #1 to Florence LeGrande and Tamika Sills
2.	Undated	Letter #2 to Florence LeGrande and Tamika Sills
3.	Undated	Letter #3 to Florence LeGrande and Tamika Sills
4.	Undated	Letter #4 to Florence LeGrande
5.	5-9-01	Letter to Florence LeGrande and Tamika Sills
6.	1-14-02	Letter to Florence LeGrande and Tamika Sills
7.	May 02	Letter to Florence LeGrande and Tamika Sills
8.	6-4-03	Letter to Florence LeGrande
9.	9-26-03	Letter to Florence LeGrande
10.	9-28-03	Letter to Florence LeGrande
11.	3-10-04	Letter to Alice Tyson
12.	4-20-04	Letter to Alice Tyson
13.	6-21-04	Letter to Florence LeGrande
14.	7-11-04	Letter to Florence LeGrande
15.	9-25-04	Letter to Alice Tyson
16.	11-2-04	Letter to Alice Tyson
17.	8-20-06	Letter to Alice Tyson
18.	8-22-06	Letter to Florence LeGrande
19.	9-25-06	Letter to Tim and Charmain LeGrande
20.	9-28-06	Letter to Florence LeGrande
21.	Various	Envelopes from letters to Alice Tyson

B. Letters to Stanly News and Press

1.	11-23-93	Letter to the editor from Mr. Entity
2.	Undated	Letter to Mr. Ben Jolly
3.	Various	Envelopes from letters to Stanly News and Press

C. Letters from Guy LeGrande to Thomas Munford

1.	Undated	Letter #1 to Thomas Munford
2.	Undated	Letter #2 to Thomas Munford
3.	10-20-93	Letter to Jay's Downtowner c/o Thomas Munford
4.	Undated	Letter #3 to Thomas Munford
5.	Undated	Letter #4 to Thomas Munford
6.	Undated	Letter #5 to Thomas Munford
7.	Undated	Letter #6 to Thomas Munford
8.	Undated	Letter #7 to Thomas Munford
9.	Various	Envelopes for letters to Thomas Munford and Jay's Downtowner

D. Pre-trial and trial correspondence from Guy LeGrande to various parties

1.	11-12-93	Waiver and police statement of Guy LeGrande
2.	1994	Letter to Tim Caulder
3.	Undated	Letter to Barbara Taylor
4.	Undated	Letter to Barbara Taylor
5.	Undated	Letter to Captain Page
6.	Undated	9 Letters to Ira Pittman
7.	3-27-96	Letter to Wanda Holt
8.	4-19-96	Letter to Carolyn Parker
9.	4-22-96	Letter to Ms. Jackie Britt
10.	5-2-96	Letter to Wanda Holt

E. Post-conviction correspondence from Guy LeGrande to various parties

1.	Undated	Letter to Mike Winter
2.	8-4-97	Letter to Hugh Eason at People of Faith Against the Death Penalty
3.	8-4-97	Letter to People of Faith Against the Death Penalty
4.	8-4-97	Letter to Hugh Eason
5.	9-4-97	Letter to Hugh Eason
6.	10-3-97	Letter to Steve Dean
7.	Undated	Letter to Daniel Givelber
8.	Undated	Letter to Malcom Hunter Jr.
9.	Undated	Letter to Kenneth Rose
10.	10-3-97	Letter to Steve Dean
11.	5-6-98	Letter to Steve Dean
12.	4-30-99	Letter to Frank W. Bullock, Jr.
13.	5-10-99	Letter to Frank W. Bullock, Jr.
14.	6-25-99	Letter to Frank W. Bullock, Jr.
15.	Undated	Letter to Center for Death Penalty Litigation
16.	Undated	Letter to Malcolm Ray Hunter Jr.
17.	Undated	Letter to Malcolm Ray Hunter Jr.
18.	Undated	Letter to Appellate Defender
19.	Undated	Letter to Kenneth Rose
20.	Various	Envelopes from various correspondences
21.	9-10-00	Attempted letter to Starr Jones
22.	4-22-03	Letter to Bill Osteen
23.	Undated	Letter to J.P. Creedmoor
24.	Undated	Letter to J.P. Creedmoor

F. Correspondence with Department of Corrections

1.	4-23-00	Letter to Drop Post-Conviction Appeals
2.	4-26-00	Response from DOC

3.	9-25-00	Notice to warden of application for unconditional pardon
4.	9-27-00	DOC letter concerning LeGrande's letter to Starr Jones
5.	9-27-00	Letter to warden Roby Lee
6.	12-14-00	Claim for pecuniary loss against the State of NC
7.	12-15-00	Response to claim for pecuniary loss from DOC
8.	6-25-01	Notice to drop appeals and withdraw Federal review
9.	10-9-01	Letter to warden Roby Lee
10.	10-9-01	Response from warden Roby Lee
11.	11-14-01	Notice to drop all appeals a fifth and last time
12.	11-26-01	Letter to Roby Lee
13.	11-22-01	Claim for pecuniary loss against the State of NC
14.	1-14-02	Notice of clemency petition to the Governor
15.	1-14-02	Hearing demand on pecuniary loss claim
16.	1-22-02	Notification for claim against the State for erroneous convictions
17.	1-22-02	Letter from Jane Garvey to Guy Legrande
18.	2-7-02	Letter to Ms. Jane Garvey
19.	3-13-02	Letter to Roby Lee
20.	1-22-03	Notification Memo
21.	4-29-03	Letter to Roby Lee
22.	12-29-03	Letter to Warden Marvin Polk
23.	1-29-04	Letter from John Maness, DOC
24.	8-15-05	Memo to Warden Marvin Polk
25.	9-14-05	Complaint to SBI
26.	91-19-05	Response from SBI
27.	9-28-05	Letter to Warden Marvin Polk
28.	10-6-05	Letter from Warden Marvin Polk
29.	Various	Envelopes

G. Guy LeGrande Correspondence with NC State Bar

1.	9-24-96	Bar complaint
2.	9-27-96	Bar complaint
3.	9-29-96	Bar complaint
4.	Undated	Bar complaint
5.	Undated	Bar complaint #2

II. Court filings from Guy LeGrande

A. Pre-trial Motions

1.	2-9-96	Letter to Judge Helms from Guy regarding firing Walter Johnson

2.	2-16-96	Motion for videos and audio cassettes to be excluded at trial
3.	2-16-96	16 various motions from Guy
4.	2-19-96	Evidence request and request that no motions filed by Harry Crow be recognized in court
5.	2-19-96	Motions and Requests
6.	2-19-96	8 Motions
7.	2-20-96	3 Motions
8.	2-20-96	2 Motions
9.	2-20-96	Motion pursuant to a stay
10.	2-22-96	To the Clerk of Superior Court from Guy: Error in Order
11.	2-23-96	Request for change of venue
12.	2-26-96	Motion to strike some discovery items
13.	2-27-96	Request for autopsy report of the victim Ellen Munford
14.	2-27-96	Autopsy report request
15.	2-28-96	Request for judicial notice of certain facts and information
16.	3-1-96	Request for Judicial Notice
17.	3-4-96	Letter to Wanda Holt: Subpoena request
18.	3-5-96	Request that copies of motions be served on DA Honeycutt
19.	3-20-96	Request for blank subpoena forms
20.	3-27-96	Letter to Wanda Holt
21.	4-1-96	Suggestion of Incapacity to Proceed filed by Attorneys Crow and Pittman
22.	4-3-96	Amended Suggestion of Incapacity to Proceed
23.	4-8-96	Letter to Wanda Holt: Request for a notary seal
24.	4-9-96	Letter to Wanda Holt: Various comments
25.	4-11-96	Request for judicial notice

B. LeGrande Pro Se Filings in Federal Court

1.	2-27-98	Informal Brief
2.	11-26-98	Supplemental Brief on Petition for Writ of Certiorari
3.	4-20-99	Petition for Writ of Habeas Corpus
4.	4-20-99	Memorandum in support of Petition for Writ of Habeas Corpus
5.	4-20-99	Request for Judicial Notice
6.	4-20-99	Motion for Judgment, Settlement and Release
7.	4-20-99	Motion for FBI Inquest

8.	4-20-99	Motion for U.S. Department of Justice Civil Rights inquiry
9.	4-20-99	Motion for Protection from Possible Imminent Danger
10.	4-20-99	Motion for Discovery with Sanctions
11.	4-20-99	Motion for Expansion of Record
12.	4-20-99	Motion for Evidentiary Hearing and Sanctions
13.	4-20-99	Motion for Inquiry Pursuant to Independent Counsel Act
14.	4-23-99	Motion for Hearing of Defendant's M.A.R.
15.	5-3-99	Superseding Motion for Inquiry pursuant to Independent Counsel Act
16.	5-3-99	Superseding Request for Expansion of the Record
17.	5-3-99	Superseding Motion for Discovery with Sanctions
18.	5-6-99	Superseding Motion for Evidentiary Hearing
19.	5-17-99	Superseding Motion for Evidentiary Hearing
20.	5-25-99	Motion to Deny State's Motion for Extension of Time
21.	5-27-99	Motion to Compel Judgment
22.	6-14-99	Motion to Waive State jurisdiction and invoke Federal Jurisdiction
23.	6-17-99	Superseding Motion for Emergency Protection from Imminent Danger
24.	6-25-99	Motion in Opposition to Respondent's Answer
25.	6-28-99	Motion in Opposition to Respondent's Answer
26.	8-4-99	Superseding Motion for Dismissal of All Charges and Settlement and Release and Judgment in Petition for Writ of Habeas Corpus
27.	8-6-99	Amended Superseding Request for Expansion of the Record
28.	9-23-99	Amendment to Petitioner's Motion in Opposition of Answer
29.	9-23-99	Motion to Overturn Convictions and Sentence of Death
30.	10-12-99	Motion for a New Trial
31.	11-18-99	Motion for Judicial Notice
32.	11-22-99	Amendment to Motion for Judicial Notice
33.	12-3-99	Motion in Opposition to Respondent's Amended Motion
34.	12-6-99	Memorandum in Support of Opposition to Respondent's Motion
35.	12-10-99	Motion for Judicial Notice
36.	12-10-99	Motion to Impose Sanctions
37.	12-13-99	Motion for Additional Judicial Notice
38.	12-29-99	Superseding Consolidated Motion to Compel Settlement

39.	1-9-00	Motion for Judgment of the Pleadings
40.	2-2-00	Memorandum in Support of Motion for Judgment on the Pleadings
41.	2-14-00	Superseding Memorandum in Support of Motion for Judgment on the Pleadings
42.	2-27-00	Objection to Next Friends Motion to Intervene
43.	4-6-00	Request for Judicial Notice
44.	4-26-00	Motion to Drop All Appeals
45.	11-29-00	Motion to Drop Federal Appeals a Second Time with a reason
46.	5-9-01	Civil Claim against the State of North Carolina for Malicious and Deliberate Back-to-Back Erroneous Convictions, Imprisonments, and Sentence of Death.
47.	5-11-01	Superseding Civil Claim against the State of NC, etc.
48.	5-15-01	Civil Complaint Lawsuit against the State of NC, etc.
49.	6-6-01	Petition for Writ of Habeas Corpus
50.	6-25-01	Notification to Drop any Appeals and Waive Federal Review
51.	10-24-01	Notification for Federal Appeals to Remain and Stay Forever Dropped
52.	11-14-01	Notification to Drop Petitioner's Federal Appeals a Fifth and Absolute Final Time
53.	11-16-01	Notice of Petitioner's Refusal to Sign Habeas Corpus Petition and Cooperate with Appointed Counsel
54.	12-26-01	Motion to Voluntarily Dismiss Habeas Corpus Petition
55.	1-25-02	Notification for Federal Appeals to Stay and Remain Forever Dropped
56.	8-8-02	Notification to Drop Federal Appeals
57.	12-30-02	Notification to Drop Federal Habeas Corpus Appeals

C. LeGrande Filings in State Court

1.	6-27-06	Writ of Habeas Corpus
2.	7-29-06	Motion to Waive my Right to Counsel
3.	8-5-06	Motion for Copies of all Material Concerning my Appeal
4.	8-9-06	Motion to Bypass Appeal
5.	8-14-96	Motion Requesting Judicial Notice
6.	2-28-97	Motion Demanding Penalty for Refusal to Grant
7.	6-12-97	Motion to Drop Appeal Pending in Supreme Court

8.	9-10-07	Dismissal of Court-Appointed Attorney J. Clark Fischer
9.	5-11-98	Motion for Stay of Execution.
10.	1-25-99	Petition and Memorandum in Support of Writ of Habeas
11.	1-28-99	Motion for Order and Release on Petition of Writ of Habeas
12.	1-28-99	Motion for Judgment and Settlement on Petition for Writ of Habeas
13.	7-7-99	Petition for Writ of Certiorari
14.	7-9-99	Motion to Waive Oral Argument on Collateral Review
15.	7-12-99	Memorandum in Support of Discretionary Review
16.	7-13-99	Motion for Dismissal of Charges on Discretionary Review
17.	7-19-99	Motion for Judicial Notice
18.	7-23-99	Request for Judicial Notice
19.	7-27-99	Motion for Dismissal of All Charges
20.	8-16-99	Amendment to Amend Memorandum in Support of Proposed Order
21.	8-16-99	Proposed Order and Amended Memorandum in Support of Petition for Writ of Certiorari on Discretionary Review
22.	8-17-99	Objection to Motion to Hold Def.'s Cert Petition in Abeyance
23.	8-26-99	Petition for A Remedied Writ of Habeas Corpus
24.	8-27-99	Letter to Chief Justice Henry Frye
25.	9-7-99	Memorandum in Support of Petition for Remedial Writ of Habeas
26.	9-7-99	Consolidated Motion for Dismissal of All Charges, Settlement, and to Compel Judgment
27.	9-7-99	Letter to Chief Justice Henry Frye
28.	9-15-99	Defendant's Motion in Opposition of State's Motion in Opposition to Defendant's Petition for Writ of Certiorari
29.	9-17-99	Consolidated Motion Dismissal of Charges, Settlement and to Compel Judgment
30.	9-23-99	Motion to Overturn Defendant's Conviction of Death
31.	10-1-99	Motion to Pose Sanctions
32.	10-5-99	Motion for New Trial
33.	10-12-99	Motion for Deferral of a New Trial
34.	10-19-99	Consolidated motion for Deferral of a New Trial
35.	10-19-99	Consolidated Motion for a SBI Inquiry
36.	11-29-99	Petition for Rehearing
37.	12-10-99	Amended Petition for Rehearing

38.	3-16-00	Petition for Writ of Habeas Corpus
39.	4-6-00	Request for Judicial Notice
40.	11-14-00	Special Proceeding Civil Complaint against the State of North Carolina
41.	11-21-00	Application for a Contemporaneous Petition for Writ of Habeas Corpus in Conjunction with Applicants Civil Complaint Claim Lawsuit against the State of North Carolina
42.	11-22-00	Request for Judicial Notice
43.	5-14-01	Civil Claim against the State of North Carolina
44.	5-15-01	Superseding Civil Claim against the State of North Carolina
45.	6-6-01	Writ of Habeas Corpus
46.	6-18-01	Civil Claim against the State of North Carolina
47.	7-9-01	Application for Writ of Habeas Corpus
48.	Undated	Letter to Chief Justice Henry Frye
49.	4-22-05	Writ of Certiorari
50.	6-10-05	Civil Claim against the State of North Carolina

D. LeGrande's Filings with the Governor's Office

1.	9-10-98	LeGrande letter to Mr. Jack Jenkins.
2.	10-21-99	LeGrande's Pro Se Clemency Petition
3.	10-25-99	LeGrande's Pro Se Amendment to Clemency Petition
4.	10-27-99	Letter from Mr. Jenkins to LeGrande informing him that Executive Clemency is not an option at present time
5.	10-29-99	Amendment to Memo on Defendant's Clemency Petition.
6.	11-3-99	Letter to LeGrande from Governor's office noting receipt of his Motions
7.	11-9-99	Letter for Governor's Office to LeGrande
8.	11-9-99	Memo on LeGrande's Pro Se Clemency Petition
9.	11-24-99	Letter from LeGrande to Barry Jenkins at the Governor's office
10.	11-29-99	Letter from Governor's Office to LeGrande stating that it will be the last correspondence he receives from their office.
11.	3-2-00	LeGrande's Clemency Petition Supplement
12.	5-1-00	Superseding Revised Clemency Petition
13.	5-10-00	Motion to Drop all Appeals
14.	5-30-00	Petition for Unconditional Pardon
15.	6-2-00	Letter from LeGrande to Barry Jenkins at Governor's Clemency Administration

16.	6-15-00	Superseding Application for Unconditional Executive Pardon
17.	6-15-00	Attachment to Application for Unconditional Executive Pardon
18.	6-18-00	Superseding Memo in Application for Unconditional Pardon
19.	6-30-00	Memo in Application for Unconditional Executive Pardon
20.	7-6-00	Perfected Application for an Unconditional Executive Pardon
21.	8-3-00	Hearing Request for an Unconditional Executive Pardon
22.	9-6-00	Adjunct filing to Compel Issuance of Unconditional Executive Pardon
23.	9-6-00	Application for an Unconditional Executive Pardon
24.	9-6-00	Another Application for an Unconditional Executive Pardon
25.	9-12-00	Adjunct Filing to Compel a Hearing on Application for an Unconditional Executive Pardon
26.	9-25-00	Notification of Application for an Unconditional Executive Pardon
27.	10-5-00	Adjunct submission to Compel Hearing for an Unconditional Executive Pardon
28.	10-6-00	Attachment memo to Pardon Application
29.	10-16-00	Letter to Barry Jenkins
30.	10-23-00	Attachment to Superseding Petition for Pecuniary Loss Claim Against the State of North Carolina
31.	12-15-00	Superseding Petition Claim Against the State for Pecuniary Loss
32.	12-15-00	Application for Unconditional Executive Pardon
33.	12-28-00	Superseding Petition for Unconditional Executive Pardon
34.	1-17-01	Application for Unconditional Executive Pardon
35.	2-2-01	Application Petition Claim for Pecuniary Loss Against the State of North Carolina
36.	2-23-01	Application for Unconditional Executive Pardon
37.	2-23-01	Amendment to Application for Unconditional Executive Pardon
38.	3-11-01	Application for Unconditional Executive Pardon
39.	4-4-01	Application for Unconditional Executive Pardon
40.	4-4-01	Letter to Governor's Clemency Office
41.	5-7-01	Application for Unconditional Pardon
42.	6-19-01	Application for Unconditional Pardon
43.	7-11-01	Application for Unconditional Pardon
44.	7-31-01	Application for Unconditional Pardon
45.	8-9-01	Letter to Governor's Clemency Office

46.	8-15-01	Application for Unconditional Pardon
47.	8-28-01	Civil Claim against Stanley County
48.	9-18-01	Multiple Civil Claims Against the State of NC, County of Stanly, County of Union, County of Montgomery and Town of Albemarle
49.	10-19-01	Application for Unconditional Pardon
50.	11-21-01	Application for Unconditional Pardon
51.	11-21-01	Letter to Governor's Clemency Administration
52.	11-27-01	Application for Unconditional Pardon
53.	12-17-01	Application for Unconditional Pardon
54.	12-31-01	Application for Unconditional Pardon
55.	1-1-02	Request for Executive Notice
56.	1-11-02	Clemency Petition from Guy LeGrande
57.	1-11-02	Letter to Governor Easley
58.	1-29-02	Clemency Petition
59.	1-29-02	Clemency Petition
60.	1-29-02	Application for Unconditional Pardon
61.	2-1-02	Application for Unconditional Pardon
62.	2-8-02	Demand for Clemency Hearing on Applications for Unconditional Executive Pardon
63.	2-27-02	Application for Unconditional Executive Pardon
64.	3-5-02	Application for Unconditional Pardon
65.	3-6-02	Application for Unconditional Pardon
66.	2-21-02	Memos to Governor Easley
67.	3-23-02	Application for Unconditional Pardon
68.	4-23-02	Complaint under the Civil Rights Act 42 U.S.C. 1983
69.	5-25-02	Application for Unconditional Pardon
70.	6-15-02	Application for Unconditional Pardon
71.	7-17-02	Application for Unconditional Pardon and Request for Hearing
72.	8-1-02	Application for Unconditional Pardon
73.	9-25-02	Application for Unconditional Pardon
74.	10-21-02	Motion for Departmental Notice on Application for Unconditional Pardon
75.	10-21-02	Application for Unconditional Pardon
76.	10-27-02	Application for Unconditional Pardon
77.	1-9-03	Application for Unconditional Pardon and Court Files from Trial
78.	3-17-03	Memo to Governor's Office
79.	4-1-03	Letter to Governor's Office
80.	4-2-03	Civil Claim against the State of NC for Wrongful Conviction
81.	4-9-03	Notification to Governor's office of Pardon Application, etc.

82.	4-25-03	Application for Unconditional Pardon w/ Trial Court Documents

E. LeGrande Pro Se Filings with U.S. 4th Circuit Court of Appeals

1.	11-14-05	Motion for Judicial Notice on Appeal
2.	11-14-05	Motion for Disqualification of Luttig, Williams, and Neimeyer Panel of Justices
3.	11-15-05	Motion for Protection from Imminent Danger
4.	11-18-05	Motion for Federal Civil Rights Violations Investigation and Referral to U.S. Attorney to File Charges for Prosecution under Federal Law

III. Court Transcripts

A.	12-18-95	Pretrial motions pp. 1-46
B.	2-9-96	Pretrial motions pp. 1-36
C.	2-15-96	Pretrial motions pp. 1-16
D.	4-17-96	Trial pp. 1-1492
E.	4-23-99	Competency Hearing pp. 1-116
F.	4-20-00	Middle District pp. 1-68

IV. Medical Records

A.	Various	Guy LeGrande's DOC Medical Records pp. 1-77
B.	Various	Guy LeGrande's Dorothea Dix Records pp. 1-98
C.	Various	Florence LeGrande's Northwest Records pp. 1-9
D.	Various	Veronica Green's Buttonwood Records pp. 1-21

V. Miscellaneous Documents

A.	12-21-95	Motion and Order committing LeGrande to Dorothea Dix
B.	2-9-96	Evaluation by Dr. Bob Rollins
C.	3-18-96	Letter from Ronald Barbee to Alice Tyson
D.	3-28-96	Samantha Thompson's Motion to Quash Subpoena
E.	4-3-96	Amended suggestion of Incapacity to Proceed by Attorney Harry Crow
F.	4-15-98	Interview of Alice Tyson and Dara Thomas
G.	4-27-98	Order of Judge W. Earl Britt in LeGrande v. Hogewood
H.	5-5-98	Letter from Marc Bookman to Guy LeGrande
I.	7-14-98	Mike Winter Interview with Keith East at Central Prison
J.	9-2-98	Affidavit of Ira Pittman
K.	9-3-98	Affidavit of Dara Tyson Thomas
L.	9-3-98	Affidavit of Dr. Richard Dudley

M.	9-3-98	Affidavit of Ronald Barbee
N.	9-4-98	Affidavit of Dr. Claudia Coleman
O.	9-4-98	Affidavit of Harry Crow
P.	9-4-98	Affidavit of Anne Nicholson Hogewood
Q.	9-98	Affidavit of Ken Rose
R.	9-16-98	Affidavit of Mike Winter
S.	11-9-98	Evaluation by Dr. Nichole Wolfe
T.	8-26-99	Order denying Next Friend Motion
U.	Various	Letters from Mike Winter to Dr. Richard Dudley
V.	10-20-06	Memo to Dr. Corvin