
DEATH PENALTY FOR WOMEN IN NORTH CAROLINA

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| | |
|-------------------------------------------------------------------------------------------------------|----|
| INTRODUCTION | 65 |
| I. NATIONAL HISTORY OF THE DEATH PENALTY FOR WOMEN . | 67 |
| A. <i>Executions Nationally</i> | 67 |
| B. <i>Death Sentences in Current Era Nationally</i> | 72 |
| II. NORTH CAROLINA HISTORY OF THE DEATH PENALTY FOR WOMEN | 76 |
| A. <i>Executions in North Carolina</i> | 76 |
| B. <i>Death Sentences in the Current Era in North Carolina</i> ... | 76 |
| III. ANALYSIS OF THE DEATH PENALTY AND GENDER IN THE CONTEMPORARY ERA | 79 |
| A. <i>Small Numbers: Why U.S. Death Rows are less than 2% Female</i> | 81 |
| B. <i>Women Sentenced to Die in North Carolina in the Contemporary Era</i> | 86 |
| C. <i>Admission to Death Row: Execution, Removal and Remaining on Death Row</i> | 90 |
| CONCLUSION | 94 |

INTRODUCTION

There is also overwhelming evidence that the death penalty is employed against men and not women It is difficult to understand why women have received such favored treatment since the purposes allegedly served by capital punishment seemingly are applicable to both sexes.

(Justice Thurgood Marshall)¹

Is Justice Marshall right? Have women received “favored treatment” under our death penalty laws and procedures? The national

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¹ *Furman v. Georgia*, 408 U.S. 238, 365 (1972) (Marshall, J., concurring).

data might lead to such a presumption, given that over 99% of the people executed in the United States are men,² but the analyses and explanations are far from simple. The authors have written about this national phenomenon for the past two decades, sharing a strong interest in the issue but not always agreeing in their explanations.³ Now we examine the North Carolina experience within the national context.⁴ This article reports the results of that examination, beginning with North Carolina's history of executing women and then moving to its current practices.

² In the current death penalty era, 1973-2008, 1,136 offenders have been executed. Only 11 (1%) of those 1,136 executed offenders were women. DEATH PENALTY INFORMATION CENTER, THE DEATH PENALTY IN 2008: YEAR END REPORT 2-3 (Dec. 2008), <http://www.deathpenaltyinfo.org/2008YearEnd.pdf> [hereinafter YEAR END REPORT]; *Women and the Death Penalty*, Death Penalty Information Center, <http://www.deathpenaltyinfo.org/women-and-death-penalty> (last visited April 1, 2009) [hereinafter *Women*]; VICTOR L. STREIB, DEATH PENALTY FOR FEMALE OFFENDERS, JANUARY 1, 1973, THROUGH JUNE 30, 2008, 8 (July 3, 2008) [hereinafter STREIB, FEMDEATH] (report issued quarterly since 1984).

³ See, e.g., Elizabeth Rapaport, *Capital Murder and the Domestic Discount: A Study of Capital Domestic Murder in the Post-Furman Era*, 49 S.M.U. L. REV. 1507 (1996) [hereinafter Rapaport, *Capital Murder and the Domestic Discount*]; Elizabeth Rapaport, *The Death Penalty and Gender Discrimination*, 25 LAW & SOC'Y REV. 367 (1991); Elizabeth Rapaport, *Equality of the Damned: The Execution of Women on the Cusp of the 21st Century*, 26 OHIO N.U. L. REV. 581 (2000); Elizabeth Rapaport, *Some Questions About Gender and the Death Penalty*, 20 GOLDEN GATE U. L. REV. 501 (1990); Elizabeth Rapaport, *Staying Alive: Executive Clemency, Equal Protection, and the Politics of Gender in Women's Capital Cases*, 4 BUFF. CRIM. L. REV. 967 (2001) [hereinafter Rapaport, *Staying Alive*]; Victor L. Streib, *Death Penalty for Battered Women*, 20 FLA. ST. U. L. REV. 163 (1992); Victor L. Streib, *Death Penalty for Female Offenders*, 58 U. CIN. L. REV. 845 (1990); Victor L. Streib, *Death Penalty for Lesbians*, 1 NAT'L J. SEX. ORIENT. L. 104 (1995), available at <http://www.ibiblio.org/gaylaw/issue1/streib.html>; Victor L. Streib, *Gendering the Death Penalty: Countering Sex Bias in a Masculine Sanctuary*, 63 OHIO ST. L.J. 433 (2002); VICTOR L. STREIB, THE FAIRER DEATH: EXECUTING WOMEN IN OHIO (2006) (on file with author); Victor L. Streib, *Rare and Inconsistent: The Death Penalty for Women*, 33 FORDHAM. URB. L.J. 609 (2006); Victor L. Streib & Lynn Sametz, *Executing Female Juveniles*, 22 CONN. L. REV. 3 (1989).

⁴ Our North Carolina analysis is aided considerably by an excellent student article on this topic, Elizabeth Marie Reza, *Gender Bias in North Carolina's Death Penalty*, 12 DUKE J. GENDER L. & POL'Y 179 (2005).

I. NATIONAL HISTORY OF THE DEATH PENALTY FOR WOMEN⁵A. *Executions Nationally*

Actual execution of female offenders is quite rare, with only 568 instances in the 377 years from 1632 through mid-2008.⁶ These are documented cases of lawful executions of females and exclude lynchings and similar deaths imposed upon females. Beginning with the earliest American colonial period, these 568 female executions constitute about 2.8% of all American executions. From 1900 through mid-2008, 0.6% (50 / 8,433) of all executions have been of female offenders.⁷ Comparing these post-1900 data with data from previous American eras reveals that this practice is even rarer now than in previous centuries.

Virginia led off with the execution of Jane Champion in June of 1632, and Virginia went on to lead all other states in American history by far in the execution of female offenders.⁸ Perhaps the best known early era saw the execution of so many witches in Massachusetts and other states during the late 1600s.⁹ However, leadership in this practice was not long lived. Virginia last executed a female in 1912, and Massachusetts last executed a female in 1837.¹⁰ Dominating the current era in the death penalty for men is Texas, but its history of the execution of female offenders is hardly comparable. Texas executed three women during the Civil War Period (1854-1863) and three more recently (1998-2005), but none during the 135-year period in-between those two periods.¹¹

If consistency in this practice is a virtue, perhaps North Carolina can be our benchmark. It began executing women in 1720 and marched through the next two centuries at a steady pace of at least one

⁵ In order to maintain a consistent cutoff point, the data and information reported about women in this article are current as of June 30, 2008. However, as of the final drafting of this article (March 2009), apparently no additional women have been sentenced to death, no additional women have been executed, and no executions of women are currently scheduled. *Women*, *supra* note 2.

⁶ See generally VICTOR L. STREIB, AMERICAN EXECUTIONS OF FEMALE OFFENDERS: AN INVENTORY OF NAMES, DATES, AND OTHER INFORMATION (7th ed. July 1, 2005) (unpublished research report on file with author) [hereinafter STREIB, AMERICAN EXECUTIONS].

⁷ STREIB, FEMDEATH, *supra* note 2.

⁸ STREIB, AMERICAN EXECUTIONS, *supra* note 6.

⁹ See generally M.V.B. PERLEY, A SHORT HISTORY OF THE SALEM VILLAGE WITCHCRAFT TRIALS (1911).

¹⁰ STREIB, AMERICAN EXECUTIONS, *supra* note 6.

¹¹ *Id.*

per decade.¹² However, North Carolina drastically altered this execution metronome in 1892, now having executed only three additional female offenders in over a century.¹³ Table 1 provides the list of leading states in this practice.¹⁴

TABLE 1
LAWFUL EXECUTIONS OF FEMALE OFFENDERS DURING ENTIRE HISTORY
OF THE UNITED STATES

| State | Number | Time Period |
|-----------------------|-----------|--------------------|
| Virginia: | 123 | 1632 - 1912 |
| Massachusetts: | 49 | 1638 - 1789 |
| Maryland: | 47 | 1664 - 1871 |
| New York: | 42 | 1669 - 1953 |
| South Carolina | 35 | 1738 - 1947 |
| Pennsylvania | 32 | 1724 - 1946 |
| Louisiana | 28 | 1730 - 1942 |
| Kentucky | 25 | 1798 - 1868 |
| North Carolina | 24 | 1720 - 1984 |
| Georgia | 22 | 1735 - 1945 |
| Alabama | 20 | 1825 - 2002 |
| Mississippi | 18 | 1833 - 1944 |
| New Jersey | 15 | 1717 - 1881 |
| Connecticut | 14 | 1648 - 1786 |
| Delaware | 8 | 1688 - 1935 |
| [21 other states] | [74] | 1648 - 2002 |
| 35 States Total | 568 | 1632 - 2005 |

Documenting older executions of female offenders is quite challenging, but we do have fairly complete documentation of these executions since 1900 (see Table 2 below).¹⁵ During the past 109 years, nineteen states and the federal government have executed female offenders.¹⁶ These were approximately half of the United States jurisdictions that had the death penalty during that century-plus time period.¹⁷ The exe-

¹² *Id.*

¹³ *Id.*

¹⁴ Information in Table 1 taken from *id.*

¹⁵ See STREIB, FEMDEATH, *supra* note 2, at 6-7; *Women Executed in the U.S. Since 1900*, Death Penalty Information Center, <http://www.deathpenaltyinfo.org/women-executed-us-1900> [hereinafter, *Women Executed in the U.S.*].

¹⁶ *Id.*

¹⁷ *Id.*

cuted female offenders ranged in age from seventeen-year-old Virginia Christian in Virginia¹⁸ to fifty-eight-year-old Louise Peete in California.

All fifty of these women except for Ethel Rosenberg were executed for the crime of murder. This one exception was one-half of the well-known executions of Julius and Ethel Rosenberg on June 19, 1953 for espionage.¹⁹

TABLE 2
EXECUTIONS OF FEMALE OFFENDERS BY STATE, JANUARY 1, 1900,
THROUGH JUNE 30, 2008

| State of Execution | Date of Execution | Name of Offender | Race of Offender | Age at Crime of Offender |
|--------------------|-------------------|-------------------------------|------------------|--------------------------|
| Alabama | 01-24-1930 | Gilmore, Selena | Black | [adult] |
| | 09-04-1953 | Dennison, Earle | White | 54 |
| | 10-11-1957 | Martin, Rhonda Belle | White | 48 |
| | 05-10-2002 | Block, Linda Lyon | White | 45 |
| Arizona | 02-21-1930 | Dugan, Eva | White | 49 |
| Arkansas | 05-02-2000 | Riggs, Christina Marie | White | 26 |
| California | 11-21-1941 | Spinelli, Eithel Leta Juanita | White | 52 |
| | 04-11-1947 | Peete, Louise | White | 58 |
| | 06-03-1955 | Graham, Barbara | White | 32 |
| | 08-08-1962 | Duncan, Elizabeth Ann | White | 58 |
| Delaware | 06-07-1935 | Carey, May H. | White | 52 |
| Federal (NY) | 06-19-1953 | Rosenberg, Ethel ¹ | White | 32 |
| Federal (MO) | 12-18-1953 | Heady, Bonnie Brown | White | 41 |
| Florida | 03-30-1998 | Buenoano, Judias | White | 28 |
| | 10-09-2002 | Wuornos, Aileen | White | 33 |
| Georgia | 03-05-1945 | Baker, Lena | Black | 44 |
| Illinois | 1-28-1938 | Porter, Marie | White | 38 |
| Louisiana | 02-01-1929 | LeBoeuf, Ada | White | 38 |
| | 02-08-1935 | Moore, Julia (Powers) | ??? | [adult] |
| | 11-28-1942 | Henri, Toni Jo (Annie) | White | 26 |

¹⁸ VICTOR L. STREIB, *DEATH PENALTY FOR JUVENILES 89-90* (1987); Streib & Sametz, *Executing Juvenile Females*, *supra* note 3, at 10.

¹⁹ JOHN F. NEVILLE, *THE PRESS, THE ROSENBERGS, AND THE COLD WAR 131-33* (1995).

| | | | | |
|----------------|------------|---------------------------|-------|---------|
| Mississippi | 01-13-1922 | Perdue, Pattie | Black | [adult] |
| | 10-13-1922 | Knight, Ann | Black | [adult] |
| | 04-29-1937 | Holmes, Mary | Black | 32 |
| | 05-19-1944 | Johnson, Mildred Louise | Black | 34 |
| New York | 03-29-1909 | Farmer, Mary | White | 29 |
| | 01-12-1928 | Snyder, Ruth Brown | White | 33 |
| | 08-09-1934 | Antonio, Anna | White | 27 |
| | 06-27-1935 | Coo, Eva | White | 40 |
| | 07-16-1936 | Creighton, Mary Francis | White | 36 |
| | 11-16-1944 | Fowler, Helen | Black | 37 |
| | 03-08-1951 | Beck, Martha | White | 29 |
| North Carolina | 01-01-1943 | Phillips, Rosana Lightner | Black | 25 |
| | 12-29-1944 | Williams, Bessie May | Black | 19 |
| | 11-02-1984 | Barfield, Velma | White | 52 |
| Ohio | 12-07-1938 | Hahn, Anna Marie | White | 32 |
| | 01-15-1954 | Dean, Dovie Smarr | White | 55 |
| | 06-12-1954 | Butler, Betty | Black | 25 |
| Oklahoma | 07-17-1903 | Wright, Dora | Black | [adult] |
| | 01-11-2001 | Allen, Wanda Jean | Black | 29 |
| | 05-01-2001 | Plantz, Marilyn Kay | White | 27 |
| | 12-04-2001 | Smith, Lois Nadeen | White | 41 |
| Pennsylvania | 02-23-1931 | Schroeder, Irene | White | 22 |
| | 10-14-1946 | Sykes, Corrine | Black | 22 |
| South Carolina | 01-15-1943 | Logue, Sue Stidman | White | 43 |
| | 01-17-1947 | Stinette, Rose Marie | Black | 49 |
| Texas | 02-03-1998 | Tucker, Karla Faye | White | 38 |
| | 02-24-2000 | Beets, Betty Lou | White | 46 |
| | 09-14-2005 | Newton, Francis Elaine | Black | 21 |
| Vermont | 12-08-1905 | Rogers, Mary Mabel | White | 21 |
| Virginia | 08-16-1912 | Christian, Virginia | Black | 17 |

¹ Ethel Rosenberg's capital crime was espionage, the only one of these 20th and 21st century executions of female offenders that was for a crime other than murder.

In contrast, the entire northwest quarter of the United States has not seen any executions of female offenders since 1900.²⁰ This northwest quarter consists of the fifteen contiguous northwestern states west of the Mississippi and north of the southern-most western states.²¹

²⁰ *Women Executed in the U.S.*, *supra* note 15.

²¹ These states include Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

Twelve of these fifteen northwestern states have never executed any female offenders in their entire histories.²²

The current death penalty era began in 1973, even though it did not result in actual executions of any offenders until that of Gary Mark Gilmore on January 17, 1977, in Utah. We finally saw executions of women offenders in 1984 (North Carolina's Velma Barfield), and the last execution of a woman was that of Frances Newton in Texas on September 14, 2005. Table 3 below lists those eleven cases,²³ of which three were in Oklahoma (all in 2001) and three were in Texas. The other five executions of women in the current era were scattered around several southeastern states.

TABLE 3
LAWFUL EXECUTIONS OF FEMALE OFFENDERS DURING CURRENT DEATH
PENALTY ERA, 1973-2008

| Date of Execution | Date of Crime | Executing State | Name of Offender | Race & Age at Crime & Execution |
|-------------------|---------------------------------------------------------|-----------------|------------------------|---------------------------------|
| 11-02-1984 | 02-01-1978 | North Carolina | Barfield, Velma | white; ages 52 & 58 |
| 02-03-1998 | 06-13-1983 | Texas | Tucker, Karla Faye | white; ages 23 & 38 |
| 03-30-1998 | 09-16-1971 | Florida | Buenoano, Judias | white; ages 28 & 54 |
| 02-24-2000 | 08-06-1983 | Texas | Beets, Betty Lou | white; ages 46 & 62 |
| 05-02-2000 | 11-04-1997 | Arkansas | Riggs, Christina Marie | white; ages 26 & 29 |
| 01-11-2001 | 12-01-1988 | Oklahoma | Allen, Wanda Jean | black; ages 29 & 41 |
| 05-01-2001 | 08-26-1988 | Oklahoma | Plantz, Marilyn Kay | white; ages 27 & 40 |
| 12-04-2001 | 07-04-1982 | Oklahoma | Smith, Lois Nadeen | white; ages 41 & 61 |
| 05-10-2002 | 10-04-1993 | Alabama | Block, Linda Lyon | white; ages 45 & 54 |
| 10-09-2002 | 12-01-1989; 05-24-1990; 07-30-1990; 09-11-1990 | Florida | Wuornos, Aileen | white; ages 33 & 46 |
| 09-14-2005 | 04-07-1987 | Texas | Newton, Francis Elaine | black; ages 21 & 40 |

In the almost three years since the execution of Francis Newton, 145 men but no women have been executed nationally.²⁴ The annual execution rate has dropped significantly overall, falling from sixty in 2005

²² M. WATT ESPY & JOHN ORTIZ SMLKA, EXECUTIONS IN THE U.S. 1608-2002: THE ESPY FILE, <http://www.deathpenaltyinfo.org/ESPYstate.pdf>; *Women Executed in the U.S.*, *supra* note 15 (Colorado, Idaho, Iowa, Kansas, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming).

²³ See STREIB, FEMDEATH, *supra* note 2, at 8; *Women Executed in the U.S.*, *supra* note 2.

²⁴ See DEBORAH FINS, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., DEATH ROW U.S.A. (WINTER 2008), <http://www.naacpldf.org/content/pdf/pubs/drusa/>

to only thirty-seven in 2008.²⁵ This overall 2008 annual execution rate is the lowest since 1994.²⁶ Executions of female offenders, however, have totally disappeared from the national landscape since 2005, and no executions of women are currently scheduled anywhere nationally.²⁷

Table 3 reveals a similar three-year hiatus in executions of women from 2002 to 2005 and a thirteen-year hiatus from 1984 to 1998. This suggests that these rare events are sporadic at best, but we can assume that another such execution might occur in the reasonably near future.

B. *Death Sentences in Current Era Nationally*²⁸

From 1973 through mid-2008, the leading states for sentencing women to death are California and Texas with eighteen each.²⁹ Close behind are North Carolina and Florida with sixteen each.³⁰ As of mid-2008, California has fifteen women on death row, and Texas has nine.³¹ Currently on death row are thirteen women who killed their husbands or boyfriends, and another eleven women who killed their children.³² Two other women killed both their husbands and their children.³³ These twenty-six intra-family murderers account for almost half of the fifty-three women now on death row.³⁴ The most unusual recent development is the explosion of federal death penalties for women. No women had received federal death sentences in the entire current era (beginning in 1973) until one such sentence was imposed in late 2005 and another in early 2008.³⁵

DRUSA_Winter_2008.pdf [hereinafter FINS, DEATH ROW U.S.A.]; YEAR END REPORT, *supra* note 2.

²⁵ See YEAR END REPORT, *supra* note 2; FINS, DEATH ROW U.S.A., *supra* note 24.

²⁶ YEAR END REPORT, *supra* note 2.

²⁷ *Upcoming-Executions: Executions Scheduled for 2009*, Death Penalty Information Center, <http://www.deathpenaltyinfo.org/upcoming-executions> (last visited April 14, 2009).

²⁸ The “current era” of the death penalty in the United States began in 1973 and runs through the present. See Streib, *Rare and Inconsistent*, *supra* note 3, at 621-22.

²⁹ STREIB, FEMDEATH, *supra* note 2, at 5.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 3.

³⁵ A third federal death sentence is still pending for Valerie Suzette Friend in West Virginia, having been recommended by the jury in 2007 but not yet imposed by the

A total of 163 death sentences have been imposed upon female offenders from 1973 through mid-2008. These 163 death sentences for female offenders constitute just 2% of all death sentences during this time period. The typical annual death sentencing rate for female offenders during the last decade has been between two and eight such sentences per year. Table 4 below provides these data by individual year.³⁶

TABLE 4
DEATH SENTENCES IMPOSED UPON FEMALE OFFENDERS,
JANUARY 1, 1973, THROUGH JUNE 30, 2008

| Year | Total Death Sentences | Death Sentences For Females | Portion of Total |
|------|-----------------------|-----------------------------|------------------|
| 1973 | 42 | 1 | 2.4% |
| 1974 | 149 | 1 | 0.7% |
| 1975 | 298 | 8 | 2.3% |
| 1976 | 233 | 3 | 1.3% |
| 1977 | 137 | 1 | 0.7% |
| 1978 | 185 | 4 | 2.1% |
| 1979 | 151 | 4 | 2.6% |
| 1980 | 173 | 2 | 1.1% |
| 1981 | 223 | 3 | 1.3% |
| 1982 | 267 | 5 | 1.8% |
| 1983 | 252 | 4 | 1.6% |
| 1984 | 284 | 8 | 2.8% |
| 1985 | 262 | 5 | 1.9% |
| 1986 | 300 | 3 | 1.0% |
| 1987 | 287 | 5 | 1.7% |
| 1988 | 291 | 5 | 1.7% |
| 1989 | 258 | 11 | 4.2% |

federal judge as of mid-2008. Andrew Clevenger, *A Year Later, No Sentence in Federal Death Penalty Case*, CHARLOTTE GAZETTE (West Virginia), June 1, 2008, at B1.

³⁶ See STREIB, FEMDEATH, *supra* note 2, at 4.

| | | | |
|---------|--------|-----|------|
| 1990 | 251 | 6 | 2.4% |
| 1991 | 268 | 7 | 2.6% |
| 1992 | 287 | 10 | 3.5% |
| 1993 | 287 | 6 | 2.0% |
| 1994 | 315 | 5 | 1.6% |
| 1995 | 326 | 7 | 2.1% |
| 1996 | 323 | 2 | 0.6% |
| 1997 | 281 | 2 | 0.7% |
| 1998 | 306 | 7 | 2.3% |
| 1999 | 284 | 4 | 1.4% |
| 2000 | 235 | 8 | 3.4% |
| 2001 | 167 | 2 | 1.2% |
| 2002 | 169 | 5 | 3.0% |
| 2003 | 153 | 2 | 1.3% |
| 2004 | 140 | 5 | 3.6% |
| 2005 | 138 | 5 | 3.6% |
| 2006 | 115 | 5 | 4.3% |
| 2007 | 110* | 1 | 0.9% |
| 2008** | 50* | 1 | 2.0% |
| Totals: | 7,997* | 163 | 2.0% |

* estimates

** as of 6-30-2008

The wide fluctuations in annual death sentencing rates are unexplained by changes in statutes, court rulings, or public opinion. These 163 death sentences for female offenders since 1973 have been imposed by twenty-five individual states and by the federal government, comprising about two-thirds of the thirty-nine death penalty jurisdictions during this time period. The top five states (California, North Carolina, Florida, Texas, and Ohio) account for almost half (80/163) of all such sentences since 1973. Virginia, a leading death penalty state for male offenders, has imposed only one death sentence on a female offender since 1973. Table 5 below provides these data by jurisdiction and race of offender.³⁷

These data indicate that we have executed only eleven of the 163 women sentenced to death nationally since 1973. Subtracting the fifty-three women still on death row awaiting a final outcome in their cases,

³⁷ *Id.* at 5.

TABLE 5
STATE-BY-STATE BREAKDOWN OF DEATH SENTENCES FOR FEMALE
OFFENDERS, JANUARY 1, 1973, THROUGH JUNE 30, 2008

| State: | Total Death Sentences | White Offenders | Black Offenders | Latina Offenders | Amer. Indian Offenders |
|-----------------|-----------------------|-----------------|-----------------|------------------|------------------------|
| California: | 18 | 9 | 3 | 6 | 0 |
| Texas: | 18 | 11 | 7 | 0 | 0 |
| North Carolina: | 16 | 10 | 4 | 0 | 2 |
| Florida: | 16 | 12 | 3 | 1 | 0 |
| Ohio: | 12 | 6 | 6 | 0 | 0 |
| Alabama: | 10 | 7 | 3 | 0 | 0 |
| Mississippi: | 9 | 7 | 2 | 0 | 0 |
| Oklahoma: | 8 | 7 | 1 | 0 | 0 |
| Illinois: | 7 | 1 | 4 | 2 | 0 |
| Pennsylvania: | 7 | 3 | 4 | 0 | 0 |
| Georgia: | 6 | 5 | 1 | 0 | 0 |
| Missouri: | 5 | 4 | 0 | 1 | 0 |
| Indiana: | 4 | 2 | 2 | 0 | 0 |
| Arizona: | 3 | 3 | 0 | 0 | 0 |
| Federal: | 2 | 2 | 0 | 0 | 0 |
| Kentucky: | 3 | 3 | 0 | 0 | 0 |
| Louisiana: | 3 | 2 | 1 | 0 | 0 |
| Maryland: | 3 | 1 | 0 | 0 | 2 |
| New Jersey: | 3 | 3 | 0 | 0 | 0 |
| Arkansas: | 2 | 2 | 0 | 0 | 0 |
| Idaho: | 2 | 2 | 0 | 0 | 0 |
| Nevada: | 2 | 1 | 1 | 0 | 0 |
| Tennessee: | 2 | 2 | 0 | 0 | 0 |
| Delaware: | 1 | 1 | 0 | 0 | 0 |
| South Carolina: | 1 | 1 | 0 | 0 | 0 |
| Virginia: | 1 | 1 | 0 | 0 | 0 |
| Totals: | 163 | 107 | 42 | 10 | 4 |

this means that a total of 110 women's cases have been finally resolved. With only eleven executions, this gives us a 10% execution rate thus far for these post-1973 death sentences. Stated conversely, among those cases finally resolved, 90% of the women sentenced to death nationally since 1973 were never executed. We do not have similar data for the

pre-1973 eras, but we also have no reason to believe that the ratios were different.

II. NORTH CAROLINA HISTORY OF THE DEATH PENALTY FOR WOMEN

A. Executions in North Carolina

Within the national context sketched above, we now move to the history of the death penalty for women specifically in North Carolina. Table 6 below lists twenty-four executions of women in North Carolina that have been identified and documented at this stage of our research. Specific information is scarce, particularly for the older cases, but this overview provides some interesting conclusions. Not surprising, sixteen (84%) of the nineteen women executed prior to the end of the Civil War were slaves. Essentially all of these slave cases involved attacks against the white master, mistress, or overseer

Twenty (83%) of the total twenty-four women executed in North Carolina were black. Indeed, Velma Barfield, the last woman executed in North Carolina, was the first North Carolina execution of a white woman since that of Frankie Silver 150 years earlier. Race of victim plays at least an equally strong role in execution patterns, and almost all of these crimes had apparently white victims. Essentially all were murder cases, with a few having multiple victims. The mode of execution for these twenty-four North Carolina cases generally mirrors the national history of this practice. For the first two centuries (1720 through 1892), seventeen (81%) of the women were hanged and four (19%) were burned. Moving into the “civilized” twentieth century, the two women executed in the 1940s died in the gas chamber and Velma Barfield was administered lethal injections in 1984.

B. Death Sentences in the Current Era in North Carolina

We have reliable data for women sentenced to death but apparently never executed only in the current era, 1973 to present. Undoubtedly many, many women have suffered that fate prior to 1973, but no systematic compilation of their cases is known to the authors of this article. However, we do have reliable data and information about the sixteen women sentenced to death in North Carolina in the current era. Table 7 below lists these sixteen women.³⁸

³⁸ Excerpted from STREIB, *FEMDEATH*, *supra* note 2, at 10-23. Note that the first four women on this list, sentenced in 1973 through 1976, came under the previous death penalty statute.

TABLE 7
DEATH SENTENCES IMPOSED ON FEMALES IN NORTH CAROLINA,
JANUARY 1, 1973, THROUGH JUNE 30, 2008

| Name, and Race of Offender | Date of Birth | Date of Crime | Date of Sentence | Current Status |
|------------------------------------|---------------|---------------|------------------|----------------------------|
| Ward, Mamie Lee; (black) | | 07-19-1973 | 09-17-1973 | reversed in 1976 |
| Hunt, Rozell O.; (American Indian) | | 07-01-1973 | 06-10-1974 | reversed in 1976 |
| Boykin, Margie; (white) | | 08-14-1975 | 12-01-1975 | reversed in 1976 |
| Brown, Faye B.; (black) | | 09-02-1975 | 01-05-1976 | reversed in 1977 |
| Detter, Rebecca; (white) | 06/29/1941 | 06-02-1977 | 09-26-1978 | reversed in 1979 |
| Barfield, Velma; (white) | 10/29/1932 | 02-01-1978 | 12-02-1978 | <i>executed 11-02-1984</i> |
| Cox, Sue (aka Allen); (white) | 04/06/1959 | 07-12-1986 | 10-30-1987 | reversed in 1992 |
| Stager, Barbara; (white) | 10/30/1948 | 02-01-1988 | 05-19-1989 | reversed in 1991 |
| Jennings, Patricia; (white) | 08/24/1942 | 09-19-1989 | 11-05-1990 | now on death row |
| Mahaley, Marilyn; (white) | 09-03-1955 | 03-17-1990 | 12-17-1990 | reversed in 1992 |
| Moore, Blanche; (white) | 02/17/1933 | 10-07-1986 | 01-18-1991 | now on death row |
| Gay, Yvette; (black) | 02/07/1963 | 05-30-1990 | 08-10-1991 | reversed in 1993 |
| Anderson, Melanie (white) | 04/11/1963 | 08/24/1994 | 09/26/1996 | reversed in 2003 |
| Parker, Carlette; (black) | 06/12/1963 | 05-12-1998 | 04-01-1999 | now on death row |
| Walters, Christina; (Amer. Indian) | 07/15/1978 | 08-17-1998 | 07-06-2000 | now on death row |
| Kemmerlin, Chris; (white) | 10/11/1968 | 03-24-1999 | 10-18-2000 | reversed in 2002 |

North Carolina was first out of the gate nationally in sentencing women to death in the current era. Only one woman was sentenced to death nationally in 1973 and only one in 1974; both were in North Carolina.³⁹

No other states sentenced women to death in the current era until 1975. In the first six years of this era (1973-1978), North Carolina accounted for six (33%) of the eighteen women sentenced to death nationally, by far the leader in this sentencing practice. However, of the 145 women sentenced to death nationally in the last twenty years (1979-2008), North Carolina has accounted for only ten (15%). Of the total of sixteen North Carolina women sentenced to death, ten (63%) were white, only slightly less than the sixty-seven percent white women nationally. Only four American Indian women have been sen-

³⁹ *Id.* at 10.

tenced to death nationally, two in North Carolina and two in Maryland.

As indicated in Table 7 above and earlier in this article, only one (Velma Barfield) of these sixteen women sentenced to death in North Carolina has actually been executed. Of the other fifteen women, only four remain under death sentences. This means that North Carolina has seen only one execution for the twelve finally resolved death cases. This is an 8% actual execution rate for women sentenced to death in North Carolina. That is, compared to the national data of 90% of death-sentenced women never being executed, North Carolina has 92% of death-sentenced women never being executed.

III. ANALYSIS OF THE DEATH PENALTY AND GENDER IN THE CONTEMPORARY ERA

Women comprise a tiny fraction of those who have been sentenced to die or have suffered execution in North Carolina in the contemporary era, just as they do in the broad historical sweep from colonial times to the present in North Carolina and elsewhere in what is now the United States of America. To understand the significance of those small numbers, and to appreciate the meaning of gender in the post-1976 capital punishment story, requires looking at both the men and women of death row in North Carolina and in other death penalty states. North Carolina is a leader in sentencing women to die and executing women, but the same trends with respect to gender that are to be observed in other death penalty states are in evidence in the Old North State.

No executions took place in the United States from 1968 to 1977, a moratorium period during which North Carolina and other states awaited an expected Supreme Court decision on the constitutionality of capital punishment. In 1976 the Supreme Court began elaborating new and complex constitutional standards to which states desiring to employ capital punishment must adhere.⁴⁰ Under this regime, the death penalty may be imposed only for murder,⁴¹ and only for subclasses of murders and murderers deemed especially aggravated or cul-

⁴⁰ *Gregg v. Georgia*, 428 U.S. 153 (1976); *Roberts v. Louisiana*, 428 U.S. 325 (1976); *Woodson v. North Carolina*, 428 U.S. 280 (1976).

⁴¹ *Kennedy v. Louisiana*, 128 S. Ct. 2641 (2008); *Coker v. Georgia*, 433 U.S. 584 (1977).

pable.⁴² For North Carolina, the contemporary era begins with murders committed on or after June 1, 1977.⁴³ The record we have of capital punishment in the contemporary era is not only more complete than that available for earlier periods; it captures distinctions and gradations among homicide defendants that are often unrecoverable from the historical record in earlier periods. The question addressed in this section of the paper is, whether women are favored in the capital punishment system in North Carolina and elsewhere in the United States in the contemporary death penalty system. The answer offered, it will be discovered, is that the small numbers of women sentenced to die is not best explained by bias in favor of women. However, once sent to death row, women's survival rates are superior to men's and may reflect disinclination to execute, as well as other factors.

North Carolina has been among the most active capital punishment states in the contemporary death penalty era, just as it was earlier in the twentieth century. North Carolina maintains the seventh largest death row among the thirty-five death penalty states, and also ranks seventh in the number of executions carried out since the first post-moratorium execution was performed in 1977.⁴⁴

North Carolina has also been conspicuous in the number of women condemned in the contemporary era (twelve),⁴⁵ and for conducting the first execution of a woman since 1977. Velma Barfield, executed in 1984, was the first woman executed in the United States after the moratorium. Hers was the second execution to be carried out in North Carolina.⁴⁶ North Carolina has been among the leading

⁴² *Gregg v. Georgia*, 428 U.S. 153 (1976). Such express standards would cure capital punishment of bias and arbitrariness.

⁴³ In 1976, *Woodson v. North Carolina*, *supra* note 40, held that North Carolina's mandatory death penalty for all first degree murders violated the new constitutional standards. North Carolina thereafter enacted its current death penalty statute to conform to the new requirements.

⁴⁴ North Carolina has performed forty-three executions since 1976. Death Penalty Information Center, <http://www.deathpenaltyinfo.org/FactSheet.pdf> (last visited Apr. 10, 2009).

⁴⁵ Part IV of this article addresses only the capital punishment system brought into being by the U.S. Supreme Court beginning in 1976. North Carolina's first legislation designed to satisfy the new federal constitutional requirements became effective June 1, 1977. Therefore, the tally of women sentenced to die is reduced from the sixteen so sentenced 1973 to the present, to those twelve so sentenced since 1977.

⁴⁶ James W. Hutchins was executed eight months before Barfield in 1984. Executions in North Carolina, <http://www.doc.state.nc.us/dop/deathpenalty/executed.htm> (last visited Apr. 7, 2009).

TABLE 8
10 STATES WITH LARGEST DEATH ROW POPULATIONS 1976-2009*

| | |
|-------------|-----|
| California | 667 |
| Florida | 397 |
| Texas | 373 |
| Penn. | 228 |
| Alabama | 203 |
| Ohio | 188 |
| N. Carolina | 173 |
| Arizona | 126 |
| Georgia | 107 |
| Tennessee | 102 |

* Death Row USA, March 18, 2009, Death Penalty Information Center Website

states in sentencing women to death, keeping pace with states with far larger populations. It is one of only six states that have executed a woman in the contemporary era: Alabama (1), Arkansas (1), Florida (2), North Carolina (1), Oklahoma (3), and Texas (3).⁴⁷ Of the twelve women sentenced to die in North Carolina, one was executed, four remain on death row, and seven were resentenced to prison terms. To make sense of capital sentences for women in the state of North Carolina, it will be necessary to do more than examine those twelve cases. It will be necessary examine capital punishment for men in North Carolina and to place North Carolina in the context of capital punishment in the thirty-five states that practice capital punishment in the contemporary United States.

A. Small Numbers: Why U.S. Death Rows are less than 2% Female

As of the beginning of 2008, an authoritative report listed fifty-six women and 3,253 men on death row.⁴⁸

That same report listed eleven executions of women and 1,088 executions of men. A leading hypothesis offered for the small number of women on death row, fewer than two percent, is that women are the beneficiaries of chivalrous disinclination to impose capital punishment

⁴⁷ See Table 3, *supra*.

⁴⁸ FINS, DEATH ROW U.S.A., *supra* note 24.

TABLE 9
10 STATES WITH MOST EXECUTIONS SINCE 1976 REINSTATEMENT*

| | |
|-------------------|-----|
| 1. Texas | 435 |
| 2. Virginia | 103 |
| 3. Oklahoma | 89 |
| 4. Florida | 67 |
| 5. Missouri | 66 |
| 6. Georgia | 44 |
| 7. North Carolina | 43 |
| 8. South Carolina | 41 |
| 9. Alabama | 40 |
| 10. Ohio | 28 |

* Death Penalty Information Center Website, March 18, 2009

on the female sex.⁴⁹ However, it can be demonstrated that chivalry is not the most important, or even a major, reason for the small number of women on death row. Rather, the single most important reason why there are so few women on death row is that women rarely commit the types of homicides that trigger capital trials and lead to capital outcomes. Table 10 provides the most current data available.

TABLE 10
HOMICIDES AND ADMISSIONS TO DEATH ROW, 2005,
US AND NORTH CAROLINA

| Homicides | | Admissions to Death Row |
|----------------|---------------------|-------------------------|
| USA | 16,692 ^a | 128 ^c |
| North Carolina | 585 ^b | 6 ^c |

^a Homicide Trends in the US, 1950-2005, DOJ BJS website

^b Uniform Crime Reports DOJ

^c Table 4, Persons Under Sentence of Death by Region, state and race, Capital Punishment 2005, DOJ BJS.

Very few homicides committed by either men or women in the death penalty states are eligible for capital trials or result in death sentences. Let us consider homicide in the year 2005. In that year,

⁴⁹ Elizabeth Marie Reza, *Gender Bias in North Carolina's Death Penalty*, 12 DUKE J. GENDER L. & POL'Y 179 (2005).

there were 585 homicides in North Carolina⁵⁰ and six persons were admitted to death row in North Carolina. Nationally, there were more than 16,500 homicides⁵¹ and 128 admissions to death row.⁵² Contemporary law in North Carolina, as in the other death penalty states, as required by the Eighth Amendment capital jurisprudence developed by the Supreme Court since 1976, permits capital punishment only for the most heinous categories of murder and the most culpable murderers.⁵³ We shall see that men commit such murders, as defined by the statutes of the death penalty states, with far greater frequency than do women. Women are responsible for approximately one in eight or 11.2% of homicides in the United States;⁵⁴ thus, the upper limit of the representation of women one might expect to find on U.S. death rows, if no factor other than percentage of homicides committed by each sex were considered, would be less than 12%. But women commit only a small fraction of death penalty echelon homicides.

TABLE 11
SOME TYPES OF HOMICIDE, BY GENDER 1976-2005*

| | Offenders | |
|------------------|-----------|--------|
| | Male | Female |
| All Homicides | 88.8% | 11.2% |
| Intimate Victims | 65.5% | 34.5% |
| Felony Murder | 93.2% | 6.8% |
| Multiple Victims | 93.5% | 6.5% |

* BJS, Homicide Trends in the US, BJS website

Capital murders, or the lion's share of them, are predatory crimes, committed in the course of wresting something, most often money or sex, from others. Typically, but not always, crimes of these types are committed against strangers or acquaintances, not friends or intimates of the murderer. In the universe of homicides, the converse, or class

⁵⁰ FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES, 2005, tbl.5 (2005).

⁵¹ *Id.* at tbl.1. According to the FBI's published statistics, 16,692 homicides occurred nationwide in 2005, excluding justifiable homicides and negligent manslaughter.

⁵² Press Release, The Number Of Death Row Inmates Declined For Fifth Straight Year During 2005, Bureau of Justice Statistics, U.S. Dept of Justice (Dec. 10, 2006), available at <http://www.ojp.usdoj.gov/bjs/pub/press/cp05pr.htm>.

⁵³ Paul Marcus, *Capital Punishment in the United States and Beyond*, 31 MELB. U. L. REV. 837 (2007).

⁵⁴ JAMES ALAN FOX & MARIANNE W. ZAWITZ, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, HOMICIDE TRENDS IN THE UNITED STATES 42 (2007).

complement, of capital cases are those whose victims are typically family members or other intimates and friends. The converse of a capital murder is a killing in a sudden quarrel or the killing of family or lovers arising from soured, painful intimate relationships. Almost two thirds of the victims of women's homicides are intimates and family.⁵⁵ Only seven percent of women's homicides have stranger victims while twenty-five percent of men's victims are strangers.⁵⁶ More than seventy-five percent of those on death row nationally killed in the course of violent felonies such as robbery and rape.⁵⁷ Women's involvement in homicide in the course of other felonies, much less violent felonies, is modest—less than seven percent of all such crimes. Thus, one would not expect North Carolina's death row to be 11.2 or more percent female. Women who kill are far less likely than men to be predatory killers.

North Carolina, like the majority of death penalty states, stipulates that a murder defendant can be sentenced to die only if the jury determines that at least one aggravating circumstance enumerated in the statute characterizes the crime or the defendant. The statutory list of aggravating circumstances, therefore, details the characteristics of death penalty cases. These characteristics, we will see, are many times more likely to be found in the cases of men who kill than in the cases of women who kill. The North Carolina Capital Punishment statute lists eleven aggravating factors:

Aggravating Circumstances.—Aggravating circumstances which may be considered shall be limited to the following:

- (1) The capital felony was committed by a person lawfully incarcerated.
- (2) The defendant had been previously convicted of another capital felony or had been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a capital felony if committed by an adult.
- (3) The defendant had been previously convicted of a felony involving the use or threat of violence to the person or had been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a Class A, B1, B2, C, D, or E felony involving the use or threat of violence to the person if the offense had been committed by an adult.
- (4) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or affecting an escape from custody.

⁵⁵ LAWRENCE A. GREENFELD & TRACY L. SNELL, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, Special Report: Women Offenders 4 (Dec. 1999).

⁵⁶ *Id.* at tbl.7.

⁵⁷ See Rapaport, *Capital Murder and the Domestic Discount*, *supra* note 3 (study of Texas death row).

(5) The capital felony was committed while the defendant was engaged, or was an aider or abettor, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any homicide, robbery, rape or a sex offense, arson, burglary, kidnapping, or aircraft piracy or the unlawful throwing, placing, or discharging of a destructive device or bomb.

(6) The capital felony was committed for pecuniary gain.

(7) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(8) The capital felony was committed against a law-enforcement officer, employee of the Department of Correction, jailer, fireman, judge or justice, former judge or justice, prosecutor or former prosecutor, juror or former juror, or witness or former witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duty.

(9) The capital felony was especially heinous, atrocious, or cruel.

(10) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

(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.⁵⁸

These eleven aggravators may be grouped into three broad categories for purposes of analysis: predatory killing, killing challenging state authority, and extreme or excessive violence.

Two aggravators target predatory killing: aggravators (5) and (6) respectively elevate killing in the course of such grave violent felonies as rape or robbery and killing for pecuniary gain to capital murder.

Four of the eleven aggravators address challenges to the authority of the state: (1) and (4) elevate killing while in state custody or resisting state custody to capital murder; (7) and (8) place governmental and judicial functions, and their personnel, under the protection of the capital sanction.

The third category, extreme or excessive violence, targets murderers with violent criminal histories. Defendants with previous convictions for dangerous or violent felonies are placed at risk of capital punishment by aggravators (2) and (3). It also targets defendants who kill with excess or extreme brutality per aggravator (9). Defendants who commit murders that also do violence to, or risk violence to, more

⁵⁸ N.C. GEN. STAT. § 15A-2000(e) (2008).

than one person may be sentenced to die in accordance with aggravators (10) and (11).

Note that in addition to selecting certain types of crimes, such as robbery and rape murder for death eligibility, the statute also selects people with previous criminal records of violent felonies and those who commit exceptionally brutal or violent crimes. Once again, women are much less likely than men to possess violent felony histories, and thus are less likely to be tried capitally and less likely to be capitally sentenced if tried. Although women commit fourteen percent of all violent crimes including such relatively minor crimes as simple assault, they are responsible for a much smaller percentage of such serious violent felonies as robbery – 7% – and sexual assaults – 2%.⁵⁹ Excessive brutality is notoriously difficult to measure and highly susceptible to the subjective responses of juries and courts. It is a truism that all homicide is violent and shocking. One aggravating factor in the extreme or excessive category is capable of objective measure, namely, multiple homicides. Multiple homicides are also very highly correlated with death sentences. Women commit only a small fraction of multiple homicides, seven percent. So once again, we should not expect to find eleven out of one hundred denizens of death row to be female but rather a much smaller percent.

The examination of the gender patterns of homicide in the United States, and the constitutionally and statutorily mandated selection criteria for capital trials and capital sentences in the contemporary era, establish the most important reason why there are so few women sent to death row: women rarely commit death penalty echelon crimes. While we cannot rule out chivalry altogether, it is the gender patterning of crime and the societal ordering of offense seriousness among homicides that together operate powerfully to explain the sex ratio of those sent to death row.

B. *Women Sentenced to Die in North Carolina in the Contemporary Era*

Twelve women have been sentenced to die in North Carolina under the contemporary death penalty statute.⁶⁰ Of these twelve, eight women were sent to death row for the murder of husbands or boyfriends. Of these eight, seven were capitally sentenced for killing hus-

⁵⁹ GREENFELD & SNELL, *supra* note 55 at 2, tbl.3.

⁶⁰ See Table 7, *supra*, omitting the first four death sentences which were imposed under an earlier statute.

bands and boyfriends for money. In North Carolina, as in other death penalty states, the women of death row are more likely to be sent there for killing intimates than killing strangers. Their crimes are predatory like those of their male counterparts but they are very much more likely to be predatory crimes with intimate victims.⁶¹ Nationally approximately ten percent of males on death row killed intimates while approximately fifty percent of females on death row killed intimates.⁶² Seven of the eight North Carolina females sentenced to die murdered husbands or lovers for pecuniary gain.

Three of the eight were poisoners. One of these three, Rebecca Detter, used rat poison to rid herself of a husband who was unwilling to divorce in Forsyth County in 1977.⁶³ Detter's case is devoid of the pecuniary motive uniform in the remaining seven women's capital domestic cases. The two other poisoners are notorious. They are Blanche Moore and Velma Barfield, the latter the first woman to be executed in the post-moratorium era. Velma "Margie" Barfield poisoned her boyfriend in Robeson County in 1978.⁶⁴ There was evidence at her trial that she had poisoned several other people, including both members of a couple who employed her to look after them, her mother, and a husband.⁶⁵ Her motive for poisoning her boyfriend Stewart Taylor was to conceal her forgeries of checks with which to purchase painkillers, to which she was addicted, and to allow her to continue to forge checks and buy drugs.⁶⁶

Blanche Moore administered arsenic successfully to two husbands, her father and a boyfriend.⁶⁷ A subsequent husband, Reverend Dwight Moore, survived several doses of arsenic, but his diagnosis led to the discovery of Moore's previous murders.⁶⁸ She was sentenced to die in Forsyth County in 1986 for the murder of her boyfriend, Raymond Reid. There was considerable evidence at trial of her interest in laying claim to Reverend Moore's estate as he clung to life in the hospital despite Moore's repeated visits bearing arsenic laced banana pudding.⁶⁹

⁶¹ FOX & ZAWITZ, *supra* note 54 at 53.

⁶² See Rapaport, *Capital Murder and the Domestic Discount*, *supra* note 3.

⁶³ State v. Detter, 260 S.E.2d 567, 572-73 (N.C. 1979).

⁶⁴ State v. Barfield, 259 S.E.2d 510, 519-22 (N.C. 1979).

⁶⁵ See *id.* at 529.

⁶⁶ *Id.*

⁶⁷ See State v. Moore, 440 S.E.2d 797 (N.C. 1994).

⁶⁸ *Id.* at 802.

⁶⁹ *Id.* at 804.

Barbara Stager, another notorious capitally sentenced North Carolina woman, shot her sleeping husband, Durham High School baseball coach Russell Stager, as he slept.⁷⁰ She had designs on his life insurance and also hoped to conceal the massive credit card debt she had surreptitiously accumulated.⁷¹ She had shot a previous husband to death ten years earlier; the earlier death had been considered an accident. At her trial evidence of the death of her first husband in circumstances similar to that of Russell Stager's was admitted into evidence.⁷²

Barbara Stager is not the only capitally sentenced wife who dispatched a husband with brutal, direct application of force. Patricia Jennings met her future husband in a Wilson nursing home where she was a nurse and he a recovering alcoholic.⁷³ She was forty-four and he seventy-seven when they married. She abused and terrorized Jennings, demanding the transfer of his assets to her name. Eventually she stomped him to death with her cowboy boots after torturing him cruelly.⁷⁴

Two North Carolina women sent to death row killed men they lived with in league with their boyfriends who did the killing. In 1986 in Robeson County, Donna Sue Cox and her boyfriend, the boyfriend wielding a crow bar, killed the man who kept Cox, providing her with a house, car and credit cards.⁷⁵ In 1990 Marilyn Mahaley's boyfriend killed her husband.⁷⁶ Mahaley, of Alamance County, was convicted and sentenced to die for conspiring with him to kill and rob her husband.

Christine Kemmerlin of Rockingham County hired someone to kill her husband with a view to collecting the insurance on his life.⁷⁷

Two of the women were sentenced to die for murders of family or intimates not husbands or lovers. Yvette Gay was an accomplice to her boyfriend Renwick Gibbs in the triple murder of his wife Anne's father and two of her children.⁷⁸ The motive was revenge on his wife for leav-

⁷⁰ See *State v. Stager*, 406 S.E.2d 876 (N.C. 1991).

⁷¹ *Id.* at 902.

⁷² *Id.* at 888-89.

⁷³ *State v. Jennings*, 430 S.E.2d 188, 192 (N.C. 1993).

⁷⁴ *Id.*

⁷⁵ See *State v. Willis*, 420 S.E.2d 158 (N.C. 1992).

⁷⁶ See *State v. Mahaley*, 423 S.E.2d 58 (N.C. 1992).

⁷⁷ See *State v. Kemmerlin*, 573 S.E.2d 870 (N.C. 2002).

⁷⁸ See *State v. Gay*, 434 S.E.2d 840 (N.C. 1993).

ing him and her father for sheltering his fleeing wife.⁷⁹ Yvette Gay claimed at her trial that Gibbs beat her and forced her to accompany him to the home of Anne's father, where he killed the three victims.⁸⁰ Gibbs had at various points driven his wife to a battered women's shelter and to take refuge with her family, which lent some weight to Gay's testimony.⁸¹

Melanie Anderson murdered the two and one half year old niece of the man with whom she lived in Wilkes County.⁸² There was no motive for the crime other than the momentum of habitual brutality. Anderson and her boyfriend, Ronald Pierce, persuaded relatives to allow the pair to take Pierce's niece Tabitha to their home for several weeks. The child arrived in July and died in August at Anderson's hands after several weeks of child abuse and torture inflicted by both adults.⁸³ Anderson was convicted of premeditated and deliberate murder and also felony murder predicated on felony child abuse.⁸⁴ A superior court in Wilkes County subsequently reduced her sentence to life in prison as a result of the *Atkins v. Virginia* decision that prohibited the execution of persons with documented mental retardation.⁸⁵

North Carolina also sent women to death row whose crimes had stranger victims. Carlette Parker kidnapped and murdered a frail, elderly woman, the friend of an elderly man for whom she provided home care services in Raleigh.⁸⁶ She withdrew \$2,500 from her victim's bank at a drive through teller window while her inert victim lolled in the car. Later, she drowned the eighty-eight pound, eighty-six year old victim in her bathtub.⁸⁷

Christina Walters was a member of a gang in Cumberland County that aspired to affiliation with the Crips. She and several other members of the gang went on a senseless crime spree, stealing two cars, killing two people, nearly killing a third, and netting virtually nothing. Walters shot robbery victim Debra Cheeseborough eight times at pointblank range, in part to establish her bone fides as a member of

⁷⁹ See *State v. Gibbs*, 436 S.E.2d 321 (N.C. 1993).

⁸⁰ *Gay*, 434 S.E.2d at 844-45.

⁸¹ *Gibbs*, 436 S.E.2d at 330.

⁸² See *State v. Pierce*, 488 S.E.2d 576 (N.C. 1997).

⁸³ *Id.* at 580-81.

⁸⁴ See *State v. Anderson*, 350 N.C. 152 (1999).

⁸⁵ See *Atkins v. Virginia*, 536 U.S. 304 (2002).

⁸⁶ See *State v. Parker*, 553 S.E.2d 885 (N.C. 2001).

⁸⁷ *Id.* at 890.

the gang. Cheeseborough, left for dead and feigning death, survived to testify against Walters.⁸⁸

Of the twelve women, seven are white, four are black and one is Native American. Nationally, the percentage of women on death row who are white is greater than the percentage of men. Death Row nationally is nearly 45% white and 41.7% black.⁸⁹ Approximately two thirds of the fifty-four women currently on death row are white.⁹⁰

Of the twelve women sentenced to die in North Carolina, Velma Barfield has been executed, while Blanche Moore, Rebecca Jennings, Marilyn Mahaley, and Christina Walters remain on death row, and seven have been the beneficiaries of sentence reduction and are serving life terms.⁹¹ No women have received executive clemency, although five men have had their sentences reduced by North Carolina governors.⁹²

C. Admission to Death Row: Execution, Removal and Remaining on Death Row

In the contemporary capital punishment system, fewer than 15% of those sentenced to die have been executed; the average time elapsed before execution is carried out in those cases where death is exacted rose to over twelve years by the end of 2006, and continues to rise. Therefore, the story of gender, as with all other aspects of the capital system, continues to unfold long after sentence is pronounced. For in this system, the condemned are more likely to remain on death row or to have their sentences reduced during the long and complex appellate and post-conviction process than to suffer execution. Thus far, women have fared better than men after condemnation. Interestingly, blacks have also fared better than whites. Let us examine these statistics nationally and in North Carolina.

Of the 7,433 persons sentenced to death nationally from 1977 through 2006, 1,057 (14.2%) have been executed, 3,148 (42.4%) have been removed from death row, and 3,228 (43.4%) remain on death row. The great majority of those who have received another disposi-

⁸⁸ See *State v. Tirado*, 599 S.E.2d 515 (N.C. 2004).

⁸⁹ FINS, DEATH ROW U.S.A., *supra* note 24.

⁹⁰ *Id.*

⁹¹ See Table 7, *supra*.

⁹² Persons removed from death row, <http://www.doc.state.nc.us/DOP/deathpenalty/removed.htm>.

tion have been resentenced to life imprisonment or a term of years due to the statute under which they were sentenced being held unconstitutional or errors found in their cases. Some died on death row, whether by murder, suicide or natural causes, and a fortunate few received executive clemency. However, 43.4% of those sentenced to die since 1977 remain on death row.

If we look at national distaff death row, women have been executed at about half the rate of men, approximately 7%, and, at almost 60%, are about one half times as likely to have left death row alive rather than to be on death row awaiting an uncertain fate. Although the advantage of being black after condemnation is not as great as the advantages of being female, blacks are less likely to have been executed, 11.8% as compared with 16.8% for whites. Hispanics are executed at the same rate as blacks, but Hispanics have not been as successful at leaving death row alive; that is, both blacks and whites are more likely to be removed to general prison population than Hispanics. Table 12 provides an overview of these data.

TABLE 12
 U.S. DEATH SENTENCES & OUTCOMES BY GENDER AND BY RACE,
 1977-2006*

Death Sentences & Outcomes by Gender, 1977-2006

| | Gender | | | |
|-----------------|--------|--------|------|--------|
| | Female | | Male | |
| Death Sentences | 161 | | 7272 | |
| Executions | 11 | 6.83% | 1046 | 14.38% |
| Death Row | 54 | 33.54% | 3074 | 43.65% |
| Removals | 96 | 59.62% | 3052 | 41.97% |

Death Sentences & Outcomes by Race, 1977-2006

| | White | Black | Hispanic |
|-----------------|--------------|--------------|----------|
| Death Sentences | 3,633(48.87) | 3,047(40.99) | 636 |
| Executions | 16.8% | 11.8% | 11.8% |
| Death Row | 40.5% | 44% | 56.3% |
| Removals | 42.7% | 44.2% | 31.9% |

* BJS DOJ Capital Punishment 2006

Let us now compare North Carolina’s post-condemnation profile to the national profile. North Carolina has executed somewhat fewer of the condemned than the 14.2 national percentage, 11%. By virtue

of her one female execution, North Carolina, at 8.33%, slightly exceeds the 7% national rate of executions of condemned women. North Carolina women closely approximate the success of death row women nationally in exiting death row for general population and in exceeding their death row brethren in this regard. 58% of condemned women but only 47% of men have been removed from death row.

TABLE 13
NORTH CAROLINA DEATH SENTENCES AND OUTCOMES 1977-11/14/08

| | |
|-----------------|--------------|
| Death Sentences | 392 |
| Executions | 43 (10.97%) |
| Death Row | 163 (41.58%) |
| Removals | 184 (47.45%) |

Gender

| | Female | Male |
|-----------------|------------|--------------|
| Death Sentences | 12 | 392 |
| Executions | 1 (8.33%) | 42 (11.05%) |
| Death Row | 4 (3.33%) | 159 (41.84%) |
| Removals | 7 (58.33%) | 179 (47.11%) |

Race

| | White | Black |
|-----------------|-------------|-------------|
| Death Sentences | 172 | 188 |
| Executions | 28 (16.28%) | 13 (6.91%) |
| Death Row | 61 (35.47%) | 86 (45.74%) |
| Removals | 83 (48.26%) | 89 (47.34%) |

Derived from North Carolina Dept of Corrections data available at <http://www.doc.state.nc.us/DOP/deathpenalty/index.htm>.

North Carolina's black death row outpaces national black death row in staying alive after condemnation. Over 16% of whites but less than 7% of blacks have been executed. While whites and blacks are removed at comparable rates, more blacks remain on death row in North Carolina, perhaps reflecting the greater success of blacks in avoiding execution.

Women nationally and in North Carolina enjoy an advantage in staying alive after condemnation. Blacks enjoy an advantage over whites, although of less ample dimension, in staying alive. Nationally, Hispanics do as well as blacks in avoiding execution but are more likely to remain on death row rather than escape the threat of execution by removal to general population. What do these statistics tell us? Whatever else they might mean, we should understand that in a capital punishment system that takes so long to fully resolve cases, and has executed only fourteen percent of those thus far condemned, much of the story of gender as well as race remains to be told after condemnation.

There are at least three possible explanations for women's advantage, all admittedly speculative. Nor are they mutually exclusive; they may all be in play.

First speculation: Women's cases are rare; there aren't very many women in the system. As rarities they get more attention and therefore errors are more likely to be found by reviewing courts.⁹³ One could also speculate that the review of black death sentences get more careful attention because there has been so much criticism of excessive sentencing of blacks. We might even speculate that the languishing of Hispanics on death row while more blacks (and whites) are removed to general population might be attributable in some measure to the greater political power of blacks as well as the substantial extent to which the critique of capital punishment as racist (towards blacks) has won acceptance.

Second speculation: It may be that the women sent to death row, as a class, have less aggravated cases and records, exhibit fewer or weaker indicia of capital echelon criminality, than do the men of death row. This would account for women receiving more consideration in appellate and post-conviction review. If this were so, it would imply that despite the small number of women on death row, women are over-represented on death row rather than benefiting from chivalry. Similarly, because blacks are more likely to receive death sentences than similarly situated whites,⁹⁴ it may be that death row blacks are to

⁹³ Rapaport, *Staying Alive*, *supra* note 3.

⁹⁴ See *McCleskey v. Kemp*, 481 U.S. 279 (1987); DAVID C. BALDUS, GEORGE WOODWORTH, & CHARLES PULASKI, JR., *EQUAL JUSTICE AND THE DEATH PENALTY: A LEGAL AND EMPIRICAL ANALYSIS* (1990).

some degree more successful than whites in avoiding execution due to the actions of reviewing courts alert to deficits in these cases.

Third speculation: Another explanation for the relative success of women in staying alive after condemnation would be the operation of chivalry, a disinclination based in biology or culture, or both, to visit death upon the fairer sex, the mothers of the human race. The contemporary era has seen the execution of mothers, grandmothers, and pretty women of child-bearing age. Yet we cannot look at the superior survival rate of death row women without conceding that there may be some measure of beneficial inhibition in the complex machinery and among myriad personnel that comprise the American capital punishment system.

CONCLUSION

We will leave support and refutation of these speculations for future scholarship. In an era in which by year's end 2005, there were more than 300 inmates who had been on death row for at least twenty years,⁹⁵ the post-condemnation fates of death row populations has become an increasingly important aspect of the capital punishment system. Our conclusion about women sentenced to death in the contemporary era is that the gender patterning of homicide offenses, the fact that women rarely commit death penalty echelon crimes, is the most powerful explanation of the "under-representation" of women on death row in North Carolina and nationally; women's marked success, however, in surviving condemnation, in exiting death row, requires further study. It may reveal the bloom of chivalry in dark corners of American criminal justice.

⁹⁵ BUREAU OF JUSTICE STATISTICS, CAPITAL PUNISHMENT 2005, app. tbl.2.