

**The Transition of Methods of Execution in North Carolina:  
A Descriptive Social History of Two Time Periods, 1935 & 1983**

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(ABSTRACT)

The death penalty has been an area of focus in several academic disciplines, yet modest literature has been generated which examines the sanction from a sociological perspective. Most of the sociological interest in capital punishment is directed at examining and explaining racial disparities in sentencing, its effectiveness as a deterrent to violent crime, or its use as a mode of formal social control. Although execution methods have changed frequently over time in the United States, there is a paucity of research examining this phenomenon through a sociological lens. The extant literature identifies changing societal ideologies regarding the use of institutionalized violence as the impetus for legislative shifts in methods of execution. While these studies are useful in partially explaining method changes through time, there is a dearth of work which specifically addresses the dialectical process by which meanings attached to methods of punishment are socially constructed and negotiated, what social agents are engaged, and how this process occurs with respect to historical context.

This dissertation examines the legislative changes in execution methods at two points in time in North Carolina's history, 1935 and 1983. Grounded in a hybrid theoretical foundation of functionalist and interactionist perspectives, this study is a qualitative analysis of historical primary and secondary data. One goal of this project is to identify how social context informed ideologies of state-sanctioned death. Furthermore, this study attempts to reveal some of the various social agents who engaged in the process of negotiating meaning, how this process manifested itself, and how historical context may have influenced differences in legislative motive during the two transition years.

A comparative analysis of the data reveals that deference to the institutions of science, technology, and medicine was vital to the process of socially reconstructing and redefining methods of execution at both points in time. However, findings also indicate that public exposure to an existing method of execution as well as historically relative ideologies concerning state-sanctioned death greatly affect how the negotiation of meaning transpires.

## DEDICATION

I would like to dedicate the successful completion of this life-changing endeavor to the following individuals:

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Imaginary time is indistinguishable from directions in space. If one can go north, one can turn around and head south; equally, if one can go forward in imaginary time, one ought to be able to turn around and go backward. This means that there can be no important difference between the forward and backward directions of imaginary time. On the other hand, when one looks at “real” time, there’s a very big difference between the forward and backward directions, as we all know. Where does this difference between the past and the future come from? Why do we remember the past but not the future?

Stephen W. Hawking, *A Brief History of Time*

The sociologist may be interested in many other things. But his consuming interest remains in the world of men, their institutions, their history, their passions...He will naturally be interested in the events that engage men’s ultimate beliefs, their moments of tragedy and grandeur and ecstasy. But he will also be fascinated by the commonplace, the everyday. He will know reverence, but this reverence will not prevent him from wanting see and to understand. He may sometimes feel revulsion or contempt. But this also will not deter him from wanting to have his questions answered. The sociologist, in his quest for understanding, moves through the world of men without respect for the usual lines of demarcation. Nobility and degradation, power and obscurity, intelligence and folly – these are equally *interesting* to him, however unequal they may be in his personal values or tastes. Thus his questions may lead him to all possible levels of society, the best and the least known places, the most respected and the most despised. And, if he is a good sociologist, he will find himself in all these places because his own questions have so taken possession of him that he has little choice but to seek for answers.

Peter L. Berger, *Invitation to Sociology*

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## CHAPTER I

### INTRODUCTION

Throughout United States history, change in execution methods has been a dynamic evolutionary process. Over the past four hundred years, this country has employed numerous modes of administering the death penalty; these include more crude methods such as drawing and quartering, to more technologically informed methods such as electrocution, lethal gas, and lethal injection (Abbott, 1994; Bedau, 1997; Johnson, 1998; Masur, 1989). While there is a dearth of literature which addresses this phenomenon from a sociological perspective, the extant research indicates that these execution method changes are due to changing ideologies regarding the use of violence in meting out state-sanctioned death (Foucault, 1977; Giddens, 1985; Masur, 1989; Spierenburg, 1984).

The death penalty can be considered a form of institutionalized violence, and the administration of the sanction has been historically rife with social rituals (see Charmaz, 1980; Johnson, 1998). These components of executions have been consistently transformed over the years, deriving first from religion, then from technology, science, and medicine (Durkheim, 1965, orig. 1915; Giddens, 1985; Johnson, 1998; Masur, 1989; Moller, 1996; Spierenburg, 1984). One aspect of the ritual of execution is the method itself – in essence, it is the centerpiece of the event, and much of the meaning associated with state-sanctioned death derives from the apparatus used to take the life of a condemned prisoner.

Changing societal ideologies can be powerful social forces in the construction, definition, and negotiation of meaning. When considering the nature of the death penalty, this observation is especially crucial. The method by which the death penalty is administered brings with it a set of socially constructed definitions; in essence, a society's method of execution largely mirrors its philosophies and values regarding how the process of state-sanctioned death should be conducted. These meanings play a large role in how a society defines itself, and they also serve to legitimize that society's continued use of the punishment in controlling its criminal element. The more a method of execution is exposed to the society using it, the more probable that its inherent qualities will be scrutinized against the meanings used to initially justify its use. This public

scrutiny may lead to a process of labeling, whereby the questionable method is defined as deviating from acceptable social norms regarding death as punishment. Thus, legislative changes in execution methods usually occur for three primary reasons; a) to adopt a more humane method, b) to avoid an extant method from being constitutionally challenged, and/or c) because a state's death penalty statutes may be jeopardized if a questionable method is further employed (Denno, 1997)

Social disfavor with a particular method of execution, and the meanings associated with it, is not a phenomenon *sui generis*. In other words, there are many possible agents which may engage and contribute to the process by which the definition of a mode of punishment is deconstructed, negotiated, then redefined in order to better parallel a society's espoused ideologies. In addition, although a state's legislative body codifies the change in execution methods, the motives to shift methods of punishment are not necessarily formed out of an incipient political crisis (Smith, 1986). Furthermore, social norms and ideologies regarding how death should be administered largely depend on where a society is historically situated. In other words, social definitions of situations are relative to time and place, and must not be viewed as unalterable structural fixtures immune to change via human agency (see Berger, 1963).

### **1.1 STATEMENT OF THE PROBLEM**

While the extant sociological literature identifies changing societal ideologies as the impetus for legislative transitions in execution methods, there is a paucity of work which specifically attempts to identify the various social agents that engage in the process of negotiated meaning, or the very manner in which that negotiation takes place. Furthermore, although 'social disfavor' has been expressly targeted as the reason for shifts in norms regarding the administration of state-sanctioned death, there is little research which explains how this public dissent manifested itself, and what social forces impacted this change in sentiment.

This dissertation is a descriptive social history of North Carolina's legislative shifts in execution methods at two points in time, 1935 and 1983. Informed by a social-constructivist paradigm, this study will incorporate aspects of the functionalist and interactionist perspectives in examining and describing how social context informed societal ideologies regarding the use of two methods of execution in administering state-sanctioned death. Through an extensive analysis

of historical primary and secondary data, this project will attempt to identify the major social agents who engaged in the process of negotiating and reconstructing the meaning of death as punishment in that State. Secondly, this study will draw upon the work of Denno (1997) in determining whether legislative motives were identical in those two time periods, or whether they differed with respect to social context.

## CHAPTER II

### PARADIGMATIC PERSPECTIVE AND THEORETICAL FOUNDATION OF THE STUDY

#### **Introduction**

The following two chapters proffer the paradigmatic and theoretical foundation for this dissertation, as well as the research methods informed by those positions. The types of data sought, collected, and analyzed will also be discussed, as well as any limitations or problems which arose during the process. Given the nature of the study as a narrative, fluid project, *specific* description of historical data will be conducted throughout the dissertation as it becomes relevant to the topic at hand.

#### **2.1 Epistemology and Ontology of the Study**

Perhaps Foucault's 1977 work Discipline and Punish: The Birth of the Prison, is an adequate springboard by which to articulate the paradigmatic nature of this study, as well as the methods to be used in analysis. Although Foucault's work was largely based on interpretive analyses of *discourse and language*, his perspectives are useful here.

The specific paradigm underlying this dissertation is constructivist. Schwandt (1994) explains the nature of such a perspective:

Proponents of these persuasions [constructivist, interpretivist] share the goal of understanding the complex world of lived experience from the point of view of those who live it...The world of lived reality and situation-specific meanings that constitute the general object of investigation is thought to be constructed by social actors. That is, particular actors, in particular places, at particular times, fashion meaning out of events and phenomena through prolonged, complex processes of social interaction involving history, language, and action (in Denzin & Lincoln, 1994: 118-119).

Ontologically, then, social constructivists view knowledge as a relative, constructed reality that is contingent upon time and place. Schwandt (1994) adds, "Constructivists are deeply committed to the contrary view that what we take to be objective knowledge and truth is the result of

perspective” (ibid., p. 125). He concludes by stating, “The...approach is predicated on the assumption that the terms by which the world is understood are social artifacts, products of historically situated interchanges among people” (ibid., p. 127).

The constructivist paradigm, as we see, is very similar to the perspective Foucault took in his historical analysis of the transformation of the French prison system. Power, as he explained, was not a static, objective entity, but instead was transformed and reconstructed over time through the use of language and human discourse. Power and control, once exerted directly toward the physical body of the condemned, became transformed as something exerted on the soul or ‘being’ of the prisoner. In short, power became less physical and more compartmentalized through the use of any number of terms and official labels, a process Foucault referred to as ‘normalization’ (see Gutting, 1994: 143).

The epistemology of this dissertation is understandably constrained by the nature of its ontological position. That is, given that constructivist paradigms view knowledge (or what is ‘real’) as mental constructions which largely depend upon the persons or groups holding them, the relationship between the ‘knower’ and what can be known is largely subjective rather than objectively based. As Guba and Lincoln (1994) note, “Constructions are not more or less “true”, in any absolute sense...they are alterable, as are their associated realities” (in Denzin & Lincoln, 1994: 110-111). Interpretation and meaning, then, are derived from the transaction between the seeker of knowledge and that which is offered as reality from those who have collectively created it.

The following segment of this chapter will address the principles of the three major sociological theoretical positions traditionally used to evaluate deviance – social conflict, structural-functionalism, and symbolic interaction, which is chiefly derived from the constructivist paradigm. While all three will be discussed, this dissertation is a hybrid study which will rely mostly upon functionalist and interactionist perspectives.

## **2.2 Social Conflict and The Death Penalty**

In a broad view, the social conflict perspective views groups within society as perpetually engaged in a struggle to gain or control valued resources (Macionis, 1999; Traub & Little, 1985). While Marxist views of social conflict hinged largely on economic resources as the targets for

acquisition, this perspective has been expanded to include other social commodities, such as the power to make, define, and enforce criminal laws (see Phillips, 1986).

Within criminological conflict theory is the conflict model of lawmaking. This position posits that specific groups of individuals with power and resources define the laws according to their own self-interests and those who will directly benefit from them, not the interests of *all* citizens. Adler, *et al.* (2001) explain:

Conflict theory holds that the people who possess the power work to keep the powerless at a disadvantage. The laws thus have their origin in the interests of the few; these few shape the values, and the values, in turn, shape the laws (p. 220).

With regard to the death penalty, then, we can easily understand why such a theoretical position would be a valuable tool in attempting to explain the discriminatory nature of the sanction through history. As later chapters will indicate, capital punishment has been historically used as a mode of formal social control with respect to minorities in the United States, especially in the South (Bedau, 1997; Phillips, 1986, 1987). As Dollard (1957) aptly noted, “The crux of the matter is the white control of formal force – the police, sheriffs, justices of the peace, judges, and juries” (p. 333).

When speaking specifically to legislative shifts in execution methods, there is little or no evidence within the literature which indicates that modes of punishment were designed or adopted to be exclusively used against one particular group or race of individuals, particularly in the post-industrial United States. In addition, while blacks have been legally executed at disproportionately higher rates than whites, the literature does not indicate that any one method was used more than another to carry out those sentences (Bedau, 1997; Bohm, 1999; Death Penalty Information Center; Johnson, 1998).

Harries and Cheatwood (1997), who conducted a geographical analysis of the dispersion of capital punishment in the United States, do indicate that colonial methods of execution may have differed with respect to the race of the condemned. For instance, burning alive and hanging were both traditional methods of execution in the 1600s, however burning was all but reserved for black slaves. Furthermore, during the Growth Period of capital punishment (1608 – 1987), only one non-slave was found to have been burned for their alleged crime (*ibid.*). Finally, the authors

assert that burning was an execution method deemed appropriate for black women; while hanging was deemed a more noble, dignified mode of punishment, black women were considered more deserving of a painful, protracted death due to their inferior status in society.

The social conflict perspective has been useful in examining some aspects of the death penalty as a legal sanction (Phillips, 1986, 1987). While the approach is viable in explaining capital punishment as a means of discriminatory social control or as an arbitrary tool used for maintaining racial boundaries, it is not an adequate approach for the focus of this study. Therefore, structural-functionalist and interactionist perspectives will be offered as more befitting the theoretical position of this project.

### **2.3 A Functionalist Approach to State-Sanctioned Death**

At the institutional level, the sociological perspective of functionalism could explain state-sanctioned death in any number of ways. One view of executions could be that the punishment of death in a society affirms the power of the state, and functions to maintain a sense of social cohesion with regard to marginalizing the criminal element (Johnson, 1998). The punishment of death, however, is not uniform over time with respect to *how* it is dispensed, thus the importance of recognizing the function of death rituals.

Durkheim wrote in great detail about the importance of religious rituals as they inform a society's process of understanding and coping with death (Moller, 1996). Ritualistic practices and behaviors surrounding the death of a member of society served several functions. First, rituals provided the participants with a sense of "...common identification" (ibid., p. 87). Next, Durkheim argued that these rituals operated in creating a sense of well-being and comfort. In other words, the fear and mystique of death in more primitive societies was muted by collective involvement in ceremonial activities (ibid.; see also Charmaz, 1980). A final function of rituals that Durkheim addressed was that of social legitimacy. As Moller (1996) notes, "Rituals, by definition, are connected to the past, and to its traditions and authority" (pp. 87-88). He concludes by adding, "By drawing on the past, the present is given a sense of legitimacy and viability through its connection to authoritative symbols, practices, and meanings" (p. 88).

While *religious* rituals of death are not the specific focus of this dissertation, Durkheim's perspective is a useful foundation on which to build the remaining theoretical position of this study. Durkheim's model of religious death rituals was derived largely from his analyses of

primitive and non-industrialized societies and cultures (ibid.). In societies where social cohesion and collectivity are clearly evident, the fear of death is more easily quelled by a community's reliance on religious belief as an agent of affirming meaning. Randall Collins (1982) explains:

Small, isolated, homogeneous groups put a very strong pressure upon the individual, and that is what generates the feelings expressed in religious beliefs about the omnipresence of supernatural spirits. For those individuals in modern society whose experiences consist of a great variety of different encounters in the large-scale networks of acquaintanceship, the rituals of interaction take quite a different form. They remain rituals, nevertheless, and produce a distinctively modern type of "secular religion," the cult of individualism (p. 58).

This point clearly illustrates how religion informed the public's understanding of the meaning of death in pre-industrial American executions, events that will be described in some detail in the following sections of this chapter. For now, it is imperative to recognize that Durkheim's approach to the explanation and social function of rituals is more successfully applied to societies adhering to primitive, communal belief systems. As a community's reliance on a collective belief system disintegrates, rituals of death derive more heavily from other institutions to explain meaning and define the situation (Charmaz, 1980; Moller, 1996).

The rise of individuality, another key component of the functionalist perspective, greatly impacts how a society perceives, understands, and attaches meaning to death. According to Slater (1974), as individuality and self-sufficiency increase in a society, so too does the awareness of self and, in the end, a more established fear of death. Johnson (1998) adds to this perspective:

In the past, we were in the main less aware of our shared humanity and mortality, and so the enormity of executions escaped us. Violence against others, especially outcasts, was unremarkable. We could execute criminals spontaneously and without remorse... As we came to sense our shared humanity and mortality, and thus to recognize the violence of the death penalty, executions became morally and psychologically problematic events... We have replaced meaningful ritual with mechanical ritualism. The

result is a bureaucratic execution procedure that abrogates our humanity under the guise of justice (p. 55).

This change in ritual – from the meaningful to the mechanical – also serves a social function, although Durkheim’s original perspective did not address it (Moller, 1996). As the disjunction between the individual and the collectivity widens, functionalism posits that organic solidarity replaces the cohesive, self-reliant group. It follows, then, that meanings of social situations come to be defined by any number of institutions rather than one (Gusfield & Michalowicz, 1984). For instance, how death is defined and understood may fall under the auspices of medicine, technology, or science rather than religion or other collective belief systems. Edwin Lemert (1981) notes:

Many values once regarded as sacred have become secularized, or the processes of differentiation have made them so remote and artificial that many persons are willing to consider them merely as alternate means to their ends... These changes have been uneven and distributed in different ways so that what is deemed an inviolate truth, a God-given right, or sacred morality by one person or group may be held in low importance by others... (p. 287).

Charmaz (1980) adds:

...dying has been taken out of the *moral order* and placed in the *technological order*. That is, it has been moved from the realm of values, dominated by concepts of right and wrong, to the realm of usefulness, effectiveness, and expediency [her emphases] (p. 104).

When referring to changes in execution rituals, these ideas are extremely important. State-sanctioned death, where the responsibility of the outcome rests on the public at large, is more easily rendered if mechanization is viewed as producing the result. To illustrate this, we might consider the mass extermination of the Jews during the Nazi ‘Final Solution’ in World War II. Early in the extermination agenda, German execution squads, or “Einsatzgruppen”, were charged with the duty of conducting systematic, large-scale executions of Jewish citizens. These executions were mostly carried out by firing squads, in which Nazi personnel were in close

proximity to those they killed. Face-to-face extermination became increasingly more difficult for those conducting the executions, and firing squads were considered inefficient in carrying out the mission. Thus, technological advancements such as the use of gas served two functions. First, the intimacy of the execution was eliminated, resulting in a psychological barrier between executioner and victim (see Haney, 1997). Second, mass killing became more expedient and efficient, which served to complete the Nazi mission in a more orderly, orchestrated fashion (Moller, 1996).

The rise of extra-religious deference to social institutions for understanding and justifying state-sanctioned death can be viewed as a consequence of modernity (Giddens, 1990). With modernity comes an influx of new knowledge which sheds light on alternative ways of socially defining, reconstructing, and understanding phenomena. Anthony Giddens explains:

With the advent of modernity, reflexivity takes on a different character. It is introduced into the very basis of system reproduction, such that thought and action are constantly refracted back upon one another. The routinization of daily life has no intrinsic connections with the past at all, save in so far as what “was done before” happens to coincide with what can be defended in a principled way in the light of incoming knowledge. To sanction a practice because it is traditional will not do; tradition can be justified, but only in the light of knowledge which is not itself authenticated by tradition...Justified tradition is tradition in sham clothing and receives its identity only from the reflexivity of the modern (p. 38).

Giddens' perspective thus addresses a void in Durkheim's original perspective. Traditional functionalist perspectives typically view society as consistently operating toward equilibrium. To continue, society is generally characterized as an orderly, stable entity which is reliant on value consensus for its successful operation (Macionis, 1999). These premises of structural-functional thought, however, are more applicable to societies in which the effects of modernization have not taken hold. Therefore, this perspective has been widely criticized as

ahistorical and inattentive to change as something other than a disruption in equilibrium (Lemert, 1981; Tumin, 1985).

Another criticism of solely using functionalist perspectives to explain the sociological import of state-sanctioned death rituals is their inability to adequately explain the causes for change in these activities. It logically follows that functionalism is inadequate in explaining the consequences for extant rituals – hypothetically, a critic might ask, “Why aren’t religiously informed execution rituals still used in modern society?” Tumin (1985) provides a possible answer:

...we [functionalists] do not often go on to look at the longer and larger and delayed consequences of actions, and we do not so do for two reasons: (1) The rules of functional analysis are pretty rigorously insistent that we delimit and specify the system to whose support or destruction we are referring our analysis. (2) Typically, moreover, we have *not* designed studies to watch the changing impact over time of various occurrences, events, and practices. Our analysis is not geared to historical waiting and depth. And so we often speak too easily and too quickly (in Traub & Little, p. 33).

Edwin Lemert (1981) introduces another important shortcoming of the functionalist perspective – its inadequacy in explaining how a given societal structure generates deviant acts, and why their rates vary between cultures and over time. Although Durkheim did recognize that deviance occurs in all societies, and that it functions as a means by which the collectivity gauges its own behavior, there is little explanation as to the etiology of the act itself. To continue, Durkheim’s discussions of deviance hinged on criminal behavior, not institutional acts such as executions.

Drawing on Giddens (1980, 1985) once again, a modern culture’s deference to institutions other than religion in reconstructing the meaning of state-sanctioned death rituals would seem to arise from a *need* of some type. In other words, this propensity to redefine the meaning of state-sanctioned death seems to be more than a mere consequence of social progression, advancement, and modernity. As Philip Smith (1996) notes, “...Giddens’ argument overlooks wider issues concerning the relationship of punishments to the ideological control of the wider mass society”

(p. 237) – a theme that he asserts is “...crucial to understanding the purpose of punishment rituals” (ibid.). To address this issue, it is useful to integrate interactionist perspectives of labeling and norm violations, which bring a more micro view of state-sanctioned death rituals into focus. Sociological labeling perspectives, although not fully capable of attending to the etiology of certain deviant acts, do attend to social norm violations as the impetus for the attachment of such negative labels (Lemert, 1981). The following section speaks to the process by which state-sanctioned execution rituals evolve as socially constructed institutional acts, and thus become subject to labeling and redefinition due to misplaced or ambiguous social meaning.

#### **2.4 Social Construction of Deviant Institutionalized Violence and the Process of Labeling**

*The murder that is depicted as a horrible crime is repeated  
in cold blood, remorselessly – Cesare Beccaria, 1764*

Most sociological research which focuses on deviant labeling concerns itself with more *individualistic* forms of deviant behavior. Examples include studies examining alcoholism (Conrad & Schneider, 1980), transsexualism (Billings & Urban, 1982), cult and questionable religious affiliation (Robbins & Anthony, 1982), child abuse (Pfohl, 1977), spousal battering (Kurz, 1987), and compulsive gambling (Rosencrance, 1985).

Judicial execution, or the institutional act of state-sanctioned killing, may also be viewed as a behavior subject to deviant labels. Executions, at the most basic level, stand as collective reactions to a population of individuals deemed societal pariahs. Although the entire collectivity condoning such a behavior may not be explicitly involved in the act, capital punishment is indeed an institutionalized form of violence. As Charmaz (1980) notes, “Capital punishment is institutionalized ritual murder inflicted by the state upon the condemned” (p. 241). She continues by adding:

The use of capital punishment is, then, a sanctioned type of routinized death work, an extraordinary death transformed into a bureaucratic ritual. Hence, the routinization of death becomes part of the working apparatus of the judicial system of the state. Capital punishment reflects the larger society in which it exists. Since it is a form of violent death, it is apt

to be found in societies where forms of violence are institutionalized (ibid.).

In the past two decades, there has been an expressed need to encompass a greater number of institutional acts into the sociological study of deviance (Ermann & Lundman, 1978). Thus, we have seen an increase in research which has focused on deviant institutional behaviors such as organized crime, police corruption, political misconduct, white-collar crime, and military wrongdoing (see Bryant, 1979; Bryant, 1990; Lundman, 1977).

These types of institutional deviance, however, can differ greatly from the institution of state-sanctioned killing dependent upon the researcher's angle of perspective. To illustrate this point, we might consider the work of Ermann and Lundman (1978), who proffer a model for examining deviance at the organizational level. One part of this model suggests four elements which must be met before an organizational or institutional act can be considered deviant. The act must first be contrary to the norms maintained by social actors external to the subject organization. Second, the act "...must find support in the norms of a given level or division of the organization" (ibid., p. 57). Third, the act must be "...*known to and supported by* the dominant administrative coalition of the organization" [my emphases] (ibid.). Finally, because organizational deviance is specific to itself, "...new members must be socialized to participate in it" (ibid., p. 58).

From the Ermann and Lundman (1978) perspective, then, we can readily detect the element of *agency* in contributing to an organizational act becoming deviant. In other words, embedded within this perspective is the assumption that organizational deviance cannot occur unless there is *intentional malfeasance or impropriety* on the part of those within the institution. In examining state-sanctioned killing in terms of a deviant institutional act, this model could likely be used if the researcher were taking a social control perspective – that is, that state-sanctioned killing was intentionally being used as a tool for discrimination against blacks or other minorities (Phillips, 1986, 1987). On the other hand, this part of the model is not fully sufficient in explaining the labeling of deviant institutionalized acts when *no intent for misconduct is readily identifiable*. For example, it is highly unlikely that a state's institution of justice would intentionally use a questionable method of execution simply to impart suffering and torture on its prisoners. Thus, while the norms of using such a method of execution are being violated or breached, the agency of institutional intent or malfeasance is clearly absent.

### **2.4.1 The Normative Definition of Deviance**

Executions have been legally conducted in the United States for nearly four hundred years. Within that time span, approximately 18,000 condemned prisoners have been put to death, although that number is most likely a conservative estimate (Bedau, 1997). As of September, 1999, 3,565 inmates were under active death sentences in the United States (“1999 May See..”, September 28, 1999). At the close of 1999, over 75 inmates had been executed, with 68 prisoners having been put to death the year before (ibid.). Of the fifty states, only twelve are devoid of any capital punishment statutes, and mete out no death sentences whatsoever (Bedau, 1997; Harries & Cheatwood, 1997). Richard Dieter, of the Death Penalty Information Center in Washington, D.C., expounds on the trend toward even more executions in the near future by adding:

There has been this stairway upward since the death penalty was reinstated [in 1976]...It hasn't peaked yet:...150 is probably where things [executions] may max out over the next three to four years (in “1999 May See..”, September 28, 1999).

Given the longevity of the death penalty in this country, a high approval rate, and the increasing numbers of inmates executed each year, capital punishment as a social sanction is *not* consistent with the statistical definition of deviance. In other words, it is expected that executions will take place in an institution of justice which sanctions such acts, and consistent numbers of executions are viewed as the norm for that particular form of punishment. What is of more interest here are the methods by which executions are conducted, or the *vehicles* for institutionalized violence. Throughout the four hundred year history of capital punishment in this country, execution methods have been transformed numerous times, a phenomenon that Johnson (1998) refers to as “...uniquely American” (p. 27). As Weisberg (1991) adds, “As with so many other goods and services, America offers a greater variety of execution than any other country” (p. 23). It is this transformation and change that reflects a theme more consistent with the *normative* definition of deviance found in sociology, which considers deviance as, “...deviations from norms in a disapproved direction such that the deviation elicits, or is likely to elicit if detected, a negative sanction” (Bryant, 1990; Clinard & Meier, 1995: 8).

The social norms referred to here are those attached to the use of violence, torture, and pain in putting condemned inmates to death. The earliest executions were designed for maximum visual effect – that is, the state went to great lengths to assure that the condemned and the witnessing public were the main features of the event (Spierenburg, 1984). Johnson (1998) explains:

As a civil ceremony, the execution exhibited the authority of the state. It sought to bolster order and encourage conformity... At the gallows the crowd received a lesson on the consequences of crime and sin... (pp. 27-28).

Although speaking to western European executions prior to the nineteenth century, Foucault's (1977) perspective nicely parallels that of Johnson (1998). In fact, both Masur (1989) and Johnson (1998) stipulate that there was little difference between western European and American executions until the mid-1800s. As Foucault (1977) notes:

In the ceremonies of the public execution, the main character was the people, whose real and immediate presence was required for the performance. An execution that was known to be taking place, but which did so in secret, would scarcely have any meaning. The aim was to make an example, not only by making people aware that the slightest offence was likely to be punished, but by arousing feelings of terror by the spectacle of power letting its anger fall upon the guilty person (pp. 58-59)

In short, the object of the execution, and the method by which it was carried out, was geared toward terrorizing those in attendance. Furthermore, execution methods were designed to produce the most graphic consequences. The attending public viewed the condemned as socially marginal, and with that, little concern was expressed regarding how this "...societal scapegoat" was to be dispatched (Johnson, 1998: 28). If the condemned suffered, either by physical mutilation or any other means, it was considered a religious and social necessity. As Johnson (1998) asserts, "In earlier times, people shared the comforting belief that the death penalty, though surely violent, left the truly final matters in God's hands" (p. 54).

Social acceptance of violent methods of punishment is, then, fluid and relative. Earlier execution methods, including burning at the stake, drawing and quartering, dismemberment, and crude forms of hanging were not perceived as deviant. Instead, these methods of execution were designed with specific meaning and purpose in mind. Oftentimes, they produced horrific results, both on the body of the condemned and in the minds of those in view of the spectacle. The meaning of punishment itself became obviated by the manner in which it was dispensed – violent forms of execution were not viewed as repugnant nor unacceptable. Instead, they were embraced as instruments by which marginalized members of society were disposed of. Speaking to the nature of early hangings, Abbott (1994) notes:

Doubtless the authorities considered that four – and sometimes many more – minutes’ strangulation was quite acceptable. In an age when people died slowly of disease, poverty and deprivation, an age which no one had ever investigated whether any other way would bring death any quicker, four minutes wasn’t all that unmerciful – and, after all, they *were* criminals [his emphases] (p. 247).

It is difficult to enumerate the exact causes for dramatic shifts in social norms regarding violent forms of punishment. These shifts surely occur over time, and for various reasons. At times, from reviewing the extant literature, it is perplexing to even denote a specific point in time where these norms began to transform. The work of Foucault (1977), Masur (1989), Johnson (1998), and Bohm (1999) proffers suggestions and theories regarding the social construction of violence, and how the earlier methods of capital punishment began to assume deviant labels. Although no one cause can be attributed to these norms changing, one theme does appear which offers the best explanation.

The concept of *civility* is one that may play a large part in the progression of social norms regarding deviant institutionalized violence. Norbert Elias (1939) refers to the concept of civility as encompassing numerous elements, including “...the type of dwelling or the manner in which men and women live together, to the form of judicial punishment...there is almost nothing which cannot be done in a “civilized” or an “uncivilized” way (p. 3). The degree to which a society deems itself as civilized is relative to time and place, however one could assume that civility is a

level of perceived social advancement or superiority. Foucault (1977) notes that in the latter 1700's and early 1800's, most of Europe's methods of execution were becoming scrutinized for their often violent, uncivilized theatrics. He noted:

Punishment had gradually ceased to be a spectacle. And whatever theatrical elements still retained were now downgraded, as if the functions of the penal ceremony were gradually ceasing to be understood, as if this rite that 'concluded the crime' was suspected of being in some undesirable way linked with it. It was as if the punishment was thought to equal, if not to exceed, in savagery the crime itself, to accustom the spectators to a ferocity from which one wished to divert them, to show them the frequency of crime, to make the executioner resemble a criminal, judges murderers, to reverse roles as the last moment, to make the tortured criminal an object of pity or admiration (p. 9).

The sociological and criminological literature speaks to a similar situation during nineteenth century America. Bohm (1999) notes that between 1825 and 1850, the United States was experiencing a period of dramatic change and reform, especially where abolitionist sentiment was concerned. Focus specifically fell on society's humanistic and empathetic acknowledgment of, and identification with, the condemned criminal. The spectacle of violent executions was losing a great deal of its purpose and meaning. Johnson (1998) expounds:

It is reasonable to suppose that when a culture or civilization is at its height, its members' emotional bonds to one another and their awareness of their shared humanity are strong. One salient result is that criminal sanctions are both less harsh and less readily used. This is true relative to the standards of the times, in that people reject as cruel the punishments they have inherited from their ancestors... Violence per se becomes, to varying degrees, objectionable, and is reduced as much as possible given the available means of execution (p. 53).

By the end of the nineteenth century, most public executions were extinct, save a few in a smattering of jurisdictions (Bohm, 1999; Johnson, 1998; Masur, 1989). One contribution to this 'hiding' of executions was that of displaced ritualistic meaning. Although early colonial executions were indeed violent, they were structured to serve as religious and civic ceremonies whereby those in attendance could view the consequence of criminal wrongdoing. Through the early and mid-1800's, the ceremonial nature of the violent execution was muted by more atavistic desires. Spectators were no longer conducting themselves as solemn witnesses, but were instead intoxicated, raucous civilians whose only purpose for attending was to witness even the slightest suffering or disfigurement. In addition, the public execution was an event geared toward humiliating the prisoner, and any dignity the condemned had remaining was usually eradicated by the nature of the event. Johnson (1998) describes this ideological transformation:

These were disgusting spectacles to the social elite, in no small measure because the crowds drawn to them came for the crass carnival atmosphere rather than any serious moral or civic purpose. The elite also likely saw these crowds as a potential threat to social order and to state power, both of which were called into question by the rowdy behavior of spectators, though never really compromised...The deeper threat may have been to the image of civility so central to the elite vision of modern society (p. 30).

This elite middle class that Johnson (1998) and Masur (1989) speak of characterized themselves as an influential social group whose values paralleled elevated standards of civility, humanism and empathy. The condemned was no longer being viewed as socially marginal, but equally human. In turn, the violent execution methods utilized at that time were perceived as increasingly repugnant and offensive to evolving standards of decency. Institutionalized violence was no longer accepted as civic entertainment, but as a deviant form of punishment that threatened the very character of those who attended. As Foucault (1977) argued, the violent execution brought about a sense of public shame, because ideally, it was society itself that purportedly condoned such an act. If the executioner is the agent of the people, then the people

themselves are metaphorically attached to the condemned. He concluded, “As a result, justice no longer takes public responsibility for the violence that is bound up with its practice” (p. 9).

#### **2.4.2 Strategies in Legitimizing Deviant Institutionalized Violence**

*If it is still necessary for the law to reach and manipulate the body of the convict, it will be at a distance, in the proper way, according to strict rules, and with a much higher ‘aim’ – Foucault, 1977*

The shift in norms regarding violent forms of executions was in direct response to the change in the social construction of punishment. Execution was once socially perceived and accepted as a violent, necessary climax to the condemned prisoner’s life. As time passed, and as middle-class values became the yardstick by which punishment was measured, the meaning of the execution was transformed and reconstructed as to be more palatable and tolerable. The work of Cohen (1980) is useful here, because it refers to some social reactions to deviance as ‘moral panic’. He explains:

Societies appear to be subject, every now and then, to periods of moral panic. A condition, episode, person or group of persons emerges to be become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians, and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or (more often) resorted to; the condition then disappears, submerges, or deteriorates and becomes more visible...[at other times] it has more serious and long-lasting repercussions and might produce such changes as those in legal and social policy or even in the way the society conceives itself (p. 209).

Granted, not all forms of institutionalized violence equally offended the values and increasing standards of decency espoused by middle-class society in the nineteenth century, nor do they do so today. Indeed, warfare and sport are both forms of institutionalized violence (see Hinde & Watson, 1995). However, as Honderich (1980) stresses, An act of violence...is a use of

considerable or destroying force against people or things, a use of force *that offends against a norm*” (p. 153). Sociologist Robin Williams (1981) adds, “The clearest cases of violence are those which cause physical damage, are intentional, are active rather than passive, and are direct in their effects” (p. 26). In this case, where the public is ideally responsible for the infliction of punishment upon its condemned, there appears to be the need to use certain strategies to reconstruct the method of punishment as to coincide with the changing norms governing that particular behavior. This reconstruction serves to legitimize institutionalized violence, while at the same time decreasing the degree of shame in using it. The sociological concept of dramaturgics to illustrate these strategies is most fitting at this juncture of the study.

### **2.4.3 Dramaturgics and Privatization**

As early as 1834, states were beginning the process of ‘privatizing’ executions (Bohm, 1999; Bowers, 1984). This privatization varied by state, however most statutes required that the execution be brought behind prison walls, and a limited number of witnesses be allowed to view it. As Bohm (1999) adds, “Apparently, legislators were willing to sacrifice any general deterrent effect of witnessing executions to escape the public disorder, rioting, and even murder that sometimes accompanied the public spectacles” (pp. 4-5). In addition, numerous states enacted media gag laws which prohibited newspaper reporters from communicating any gruesome details of the execution to the general public (Bowers, 1984). Madow (1995) refers to this media/public detachment as ‘epistemological relocation’, whereby the violent execution is moved “...from the domain of firsthand, everyday experience and sense perception to the sphere of ‘abstract consciousness’” (p. 478). In the pages to follow, a more detailed discussion of the media and social constructions of reality will be offered, for the media plays a vital role in *how* society receives and perceives information.

Privatization of violent executions marked the beginning of an attempt by the state to negotiate through the deviant labels attached to its methods of punishment. It also earmarked the shift in theatrical ritual so vital in conveying the meaning of execution itself. At the most basic level, dramaturgy is a perspective which compares human life and interaction to that of a theatrical performance or play (Goffman, 1959). As Deegan (1989) explains, this sociological perspective “...views human life as an enactment of learned roles, settings, language, and patterns of interaction...everyday life, therefore, is like the theatre, because both rely on the

structure of social settings, rules, and expectations” (p. 6). Sociological research has relied on the principles of dramaturgy to explain how meaning is constructed and maintained in any number of social situations. Examples include Goffman’s analysis of mental patients and institutional inmates (1961), Haas and Shaffir’s (1982) analysis of the professionalization of doctors, Zurcher’s (1982) study of staged emotions at sporting events, Turner and Edgley’s (1976) analysis of the American funeral, and Sijuwade’s (1996) examination of erotic performances. Executions, both past and modern, all operated on some principle of dramaturgics as a strategy in constructing meanings attached to a social situation or event (Spierenburg, 1984). These dramaturgics also function to provide order and purpose to the event, in essence determining how individuals and groups define, or *construct*, situations.

According to Lofland (1975), there are two distinct types of dramaturgic strategies – open and concealed. He explains:

Social organizations vary in the degree to which their copings with basic aspects of life and death are dramaturgically open or concealed. A concealed dramaturgics of life and death events erects physical, social, and psychological barriers to perception, regulates the entrance and exit of participants and witnesses, controls publicity, and minimizes temporal duration, among other things. An open dramaturgics allows and even promotes the opposite (p. 272).

Dramaturgically, earlier executions were indeed open. The violent death of a condemned inmate was constructed to maximize visual and psychological perception of the event. As Alotta (1985) notes, “...to be truly effective, the public execution must be attended with suspense and drama, filling the minds and souls of all witnesses with fear and images of their own mortality” (p. 77). Attendance to these social events was not restricted, and more often than not, crowds of 30,000 or more would eventually be present for one hanging (Johnson, 1998). The executions were also well publicized – tickets were sometimes sold to those desiring “the best view”, and peddlers often sold their wares near the place of actual execution. Ephemera were made available to the public which contained the dying words or statements of the subject to be executed. Insofar as temporal duration was concerned, a well publicized execution could last a great deal of time

compared to modern standards. Speeches by clergy and other upstanding members of society were heard, as well as any statements the condemned desired to make. Early executions were also conducted at an hour consistent with assuring the highest attendance rate – most public executions prior to privatization were conducted in the late morning or early noon (see Bowers, 1984).

With the shift in increasing standards of decency came a transformation of the dramaturgics associated with institutionalized violence. The removal of executions from public view became one of many strategies in dramaturgically concealing state sanctioned death, thus the *meaning* and *construction* of the act were transformed. As previously discussed, the public execution provided no barrier between what was occurring and those viewing it. The process of dying was made more obvious by crude methods of execution which, more often than not, resulted in disfigurement, pain, and slow torture. Lofland (1975) notes:

A strategy of dramaturgic openness makes inescapably clear the existential fact that a human being is being killed...The technique should be highly unreliable and ineffective, take a long time to work, make a great deal of noise, mutilate the body and inflict terrible pain, causing the condemned to cry out in anguish and struggle strongly to resist – all of which actions are highly visible to witnesses and accompanied by noxious and abundant odors (p. 290).

How the execution performance is conducted speaks volumes as to how a society wishes itself to be defined. Violent execution methods became violations of social norms of civility, so the strategies Lofland speaks of serve to redefine and reconstruct how institutionalized punishment should be meted out. Indeed, a successful *civilized* execution takes on the characteristics of a more subdued, structured, organized process whereby the punishment does not exceed the horrendous crime that called for it.

#### **2.4.4 Dramaturgics and the Reduction of Risk**

To draw upon Lofland's ideas once more, dramaturgics also serve to minimize risk during the death performance. The less one sees of an event, the less chance there is that the meaning or purposes of the act will be compromised. In turn, the more participants adhere to their assigned roles (or scripts), the more genuine the social message becomes. For instance, we might consider Unruh's (1979) dramaturgical examination of the funeralizing process. In coping with sensitive matters such as managing a death performance, funeral directors employ strategies to minimize the chance that the event's meaning will be subverted. Sources of risk, or incidents that create a flawed performance, include "...incongruent organizational appearances, possible intrusions or interruptions, unpredictable responses, and worker error or miscalculation" (p. 249).

Herb Haines (1992) also speaks to the dramaturgics of death and how these strategies contribute to minimizing the risk of deviant labels becoming attached to the event. Congruent with Unruh's (1979) analysis, Haines lists technical malfunctions, unexpected prisoner behavior, death chamber compromise, and irregularities in sentencing as sources of risk. Bessler (1997) speaks at length regarding the use of time as a source of reducing risk in conducting more successful, organized executions. While executions past were carried out at a time of day conducive to maximizing public attendance, modern executions are all but hidden from society. The modern execution is a largely a secret performance, usually carried out at midnight or in the early morning hours (see also Johnson, 1998; Trombley, 1992). This management of time functions to reduce the degree of public exposure to the event, and provides a psychological barrier between society and its dispensation of punishment (Haney, 1997). As we see then, careful manipulation and management of the execution performance is vital in reconstructing how violent death should be handled. Aside from removing the deviant method from public view, steps were also taken to perfect the machinery utilized in executions.

#### **2.4.5 Dramaturgics and the Machinery of Death**

As Elias (1939) alluded to, a society's degree of civility may depend largely upon its reliance on, and use of, advanced technology (see also Giddens, 1980). As early as the mid-eighteenth century, Great Britain felt compelled to redesign its method of hanging by introducing the hanging drop (Abbott, 1994). Scores of bungled hangings, in which countless condemned criminals literally strangled to death for twenty minutes at a time, spurned the need for a more

efficient, expedient method of execution. Considering that England perfected the art of hanging, the total abolition of the method was unlikely (see Duff, 1974, orig. 1928). However, changes were made to the method that were considered, at the time, to be more humane and civilized. Rather than simply allowing the condemned to dangle in agony from the end of a short rope, England's hanging drop provided for a trapdoor on which the condemned stood. At the moment of execution, the door was sprung, allowing the condemned to fall some distance. The distance the condemned prisoner fell was contingent upon a formula designed to adjust for body weight versus length of drop. By falling a great length, breaking of the neck became more reliable, hence, removing the likelihood that witnesses would view unnecessary agony or violence.

Much like a theatrical performance, participants in executions utilize props and the surrounding environment to make the meaning of the event more salient. Execution methods are indeed props of sorts – in any execution, the method is usually the main feature of the execution environment. As an example, we might examine the early public hangings in the United States, where scaffolds were the central focal point of the event. Scaffolds were usually elevated, as to afford the crowds a clear view of the procedure. To continue, early scaffolds were noisy pieces of apparatus – the clanging of trapdoors, the creaking of wood, the hammering of last minute construction – were all features of an 'open' execution prop (see Lofland, 1975). Although most American hangings were conducted behind prison walls by the end of the nineteenth century, the nature of the method was still scrutinized for its efficiency, and technology was called upon to mute its violent characteristics.

Subsequent chapters will provide a through, detailed account of how modes of technology altered the process and understanding of institutionalized violence. For purposes of this chapter, it is sufficient to posit that change in execution methodology can be viewed as one possible way in which society manages the perception and meaning of state-sanctioned death. For example, the electrification of America was considered an enormous factor in characterizing Progressive Era society as civilized. The development of electricity was viewed as a vehicle for change, efficiency, and convenience, so its adoption and use as a method of punishment was preliminarily viewed as the most civilized and humane available (see Brandon, 1999; Metzgher, 1996). In other words, electrocution dramaturgically legitimized the continued use of institutionalized violence by muting the more repugnant perceptions of earlier methods.

## **2.5 The Contributions of Denno**

The work of Denno (1997, 1994) is a key cornerstone of this study. Although writing from a legal perspective, Denno proffers three primary reasons why a society would alter its existing method of execution. She posits that execution methods will change a) for reasons of humaneness, b) for fear that the death penalty will be overturned or compromised because of the nature of the extant method, or c) because it is anticipated that the extant method will be constitutionally or socially challenged as cruel or offensive to standards of decency. All three of these reasons suggest an effort to manage, negotiate, or supplant deviant labels attached to institutionalized violence, because in all three theories, there is evidence that some type of norm is being violated or questioned.

Denno (1997) also points out that states' reasons for transitioning their methods of execution differ. For instance, the State of Nevada transitioned from hanging to lethal gas in light of seeking a more humane method. Conversely, the State of New York transitioned from hanging to electrocution because its death penalty was in jeopardy of being abolished if another method were not instituted. Finally, the State of New Jersey found that juries were more likely to render a death sentence if the method were more palatable – hence that State's transition to lethal injection in 1983. Again, regardless of the specific reason, these examples show clear evidence of states' desires to legitimize and manage the use of institutionalized violence. It must also be noted that there is a temporal element at work regarding these strategies to reconstruct the meaning of execution. Not only do different states posit different reasoning behind their method changes, but these reasons may indeed differ relative to time and place. It is quite possible that social context has much to do with one state's change in execution methodology, and the influence of social context may very well produce different findings.

### **Summary**

This chapter focused on the theoretical and paradigmatic foundations of this dissertation. The study at hand is guided by a social-constructivist paradigm, which views reality and social meaning as subjective, dependent upon time and place. To continue, meaning is derived from the lived experience of others who have left behind their written and recorded ideologies for interpretation. Furthermore, definitions of social situations are contingent upon how those

situations are perceived, whether by first-hand experience, or by descriptive account subject to scrutiny and evaluation.

At the institutional level, the functionalist perspective is useful in examining the social functions of judicial executions, specifically as they are viewed in terms of a death ritual. This macro approach, however, has been criticized for being ahistorical and inattentive to social processes of interaction as they affect change and definitions of social situations. The interactionist perspective of labeling is useful in filling this void, because it attends to the notion of social norms as guides for societal conduct. Social norms, or expected rules of behavior, are fluid and subject to change. Violations of these social regulations are subject to negative public reaction, usually in the form of deviant labels. Once a social act has been deemed deviant, strategies are employed to reconstruct, supplant, or subvert these deviant connotations, usually in the form of dramaturgics. In this particular case, methods of execution, or the vehicles for institutionalized violence, acquired negative labels because of their offending increasing standards of decency and civility. Dramaturgic strategies, such as removal of the act, redesign of the act, or manipulating the environment in which the act occurs, all serve to legitimize the continued use of institutionalized violence. Ideally, the social construction of institutionalized violence is redefined, and its meaning transformed.

Denno (1997) offers three possible explanations for changes in execution methods. All three suggest an attempt at legitimizing or redefining the meaning of institutionalized violence. These reasons are also dramaturgic, for they contain elements of ritual transformation, a key component of the dramaturgical perspective (see Deegan, 1989). The reasoning behind a state changing its execution method is not always identical to any other state, as the examples above indicate. To continue, the impetus for changing an execution method in a particular state may differ, depending upon time and social context. In other words, a state may change its execution method twice within fifty years, albeit the reasoning may not be the same.

Drawing from Denno's (1997) work, this study explores and describes North Carolina's execution method transition in the years 1935 and 1983. That State transitioned from electrocution to lethal gas in 1935, then to lethal injection in 1983. North Carolina was selected as a case study for several reasons, one being that no concise recent work exists which traces that State's execution history. Second, in 1935, North Carolina was a southern region surrounded by

states employing the electric chair with a large degree of success. At the time lethal gas was adopted by the legislature, North Carolina became the only state east of the Mississippi River to use that method.

Finally, it is of interest to explore whether social context produced identical motive for the method changes, or whether reasoning differed, as Denno (1997) suggests. Social context may very well have a large impact on these transitions, given that modes of communication and social influences have changed. Critics of both functionalist and labeling perspectives argue that deviance should be studied as a dynamic phenomenon, not as a process minus cultural context. In addition, sociologists have also noted the importance of societal structure when using micro perspectives such as interactionism and labeling. Lemert (1981) explains:

The theoretical gap between process and social structure has been an unmistakable weakness of a number of the studies carried out by sociologists of deviance. This comes out in their narrow pre-occupation with the interaction between deviants and agents of social control, in a failure to locate them historically within particular structures and in reporting their results in the ethnographic present. Many of the studies do not give the provenience of their data and the time period for which their conclusions are applicable. In some instances provenience has been deliberately concealed and it must be learned informally or guessed at (p. 294).

This dissertation considers these issues by examining two time periods in a particular state rather than one incident or act at a single moment in time (see Gusfield & Michalowicz, 1984). This endeavor also expands the use of labeling by including an institutional act as subject to negative social sanctions. This expansion also attends to the notion that while institutional acts are subject to deviant labels, the element of organizational agency or intentional malfeasance is contingent upon the researcher's angle of perspective.

Chapter III will outline and describe the types of data sought and collected for analysis in this study. The first portion of the chapter will discuss data collected from the 1930s time period, and the latter section of the chapter will detail the data collection process for the 1980s time period .

## CHAPTER III

### METHODS AND SELECTION OF DATA

*History should point out the moral lessons of the past  
for the guidance of present or future generations – John Martin Vincent*

#### **Introduction**

This research project is a socio-historical descriptive analysis of two time periods in North Carolina's execution history. To continue, this study is largely reliant on historical primary data – data which sociologists and historians alike deem subject to interpretation, fascinating, and insightful insofar as exploring and explaining social phenomena. With that, careful consideration was given to the types of data chosen for collection and examination. Although not an exclusively historical study, aspects of the historical method are useful in designing this project.

In beginning any research project, especially those pertaining to socio-historical analysis, it is vital that a preliminary perusal of general works be conducted in order to discern what other primary and secondary sources are to be considered. According to Brooks (1969), this also prevents possible replication of prior research, and assures that the study proceeds in a logical fashion. Furthermore, an extensive review of general extant literature hints at what organizations, persons, collections, or other resources should be consulted. Following this guideline, a preliminary search of dissertation and theses databases was undertaken for similar or identical research projects. Given that this topic could easily be categorized under any number of disciplines, searches were conducted under sociological, historical, and psychological headings. In addition, numerous combinations of search terms were used to further guarantee that the risk of replication was minimal. Once a thorough search had been conducted, one (1) dissertation was located in which a similar method and paradigm were used (see Moten, 1997). Brooks (1969) also asserts that locating such a study serves as a template in generating ideas for what types of data the researcher seeks and where to locate it.

## **3.1 THE 1930s**

### **3.1.1 Newspapers**

Given the nature of this study's theoretical framework, and its position that meaning is relative to context, initial data collection began with the examination of historic newspapers dating to the time periods chosen. Newspapers were initially chosen for several reasons, one being their extraordinary capacity to communicate information to the public about controversial topics. Shipman (1996) explains:

As far back as colonial days and the early days of the nation, newspapers were heavily involved in the reporting of executions. Thus, the newspaper press has always had an interest in capital punishment, and perhaps a role to play in regard to public attitudes about the death penalty, or about the methods of execution (p. 179).

Leff (1994) notes that:

Most Americans rely principally on media reports to learn about the death penalty in general and any single execution in particular. As such, the media tend to create powerful legal symbols and help structure public perceptions of the crime and the sentence. These perceptions and they way they shape attitudes are increasingly important as death penalty decisions become more politicized (p. 214).

Finally, Cohen (1980) adds:

The mass media, in fact, devote a great deal of space to deviance: sensational crimes, bizarre happenings, and strange goings on. The more dramatic confrontations between deviance and control in manhunts, trials, and punishments are recurring objects of attention. A considerable portion of what we call "news" is devoted to reports about deviant behaviour and its consequences. Such news...

is a main source of information about the normative contours of a society. It informs us about right and wrong, about the boundaries beyond which one should not venture and about the shapes that the devil can assume (p. 214).

The justification for first selecting newspapers is congruent with Moten's (1997) examination of the 1912 execution of Virginia Christian. Given the early time period, society relied heavily upon the written word of the media for its window to the world (Shipman, 1996). Moten's general thesis was to examine how the execution of a young black woman was constructed in the media, then communicated to the public. Although other variables factored into how society defined the situation, Moten's work could not have been accomplished without the examination of several newspapers. In essence, early newspaper reporting was, for all intents and purposes, the only manner in which society could define and validate itself. Furthermore, the early newspaper accounts of social events, especially executions, were vivid, colorful, and descriptive. Given that telephones and televisions were not yet available or were scarce household commodities, the media prided itself in presenting the most graphic, descriptive accounts of executions. Attention to detail was paramount in defining the situation – hence, the consumers of such news most likely formed their opinions of executions via vivid, lengthy articles. Indeed, Cohen's (1980) concept of 'moral panic' is largely perpetuated by the media.

In selecting newspapers for examination, consideration was given to their political orientations. Justification for this lay in the possibility that differences in how execution methods were literally constructed may depend upon the liberal or conservative slant of the media organization. In the 1930s, North Carolina had several major newspapers with differing perspectives, and these newspapers originated out of news offices in Durham, Raleigh, Charlotte, Greensboro, and Winston-Salem. The first paper selected was the *News & Observer*, located out of Raleigh and with a historically liberal orientation. Another reason for selecting this paper was its close proximity to the State Capitol and other government complexes. In addition, all executions in North Carolina were carried out at Raleigh's Central Prison, just a short distance from the news office. Thus, media coverage of executions was suspected to be fairly regular. The years selected for exploration were 1932-1938. This allowed for three years prior to the method

transition, and three years post-transition. It was assumed that clues to possible legislative motive would likely arise far earlier than 1935. Furthermore, any public or political dissent regarding the method change would likely come after its adoption and use. A second newspaper selected was the *Durham Morning Herald*, historically more conservative, yet still located close enough to Raleigh to hold interest in matters of capital punishment. Both newspapers are reputable sources for information, and are well established. Speaking of the *News & Observer*, Lefler (1973) considered the paper "...a powerful force, especially in eastern North Carolina" (p. 596).

Prior to 1991, abstracts or entire news articles from the *News & Observer* are not electronically available. Thus, microfilm is the standard means by which to view selected articles. In addition, prior to 1969, no database or finding aid exists which catalogs topics with their corresponding issue and page. A primitive catalog system was located at the North Carolina State Archives which consisted of index cards that had been transferred to microfilm. These index cards were categorized by topic, such as 'Death Penalty', 'Electric Chair', 'Capital Punishment', 'Prisoners', 'Gas Chamber', 'Central Prison', etc. It was then possible to look under each category, and find references to newspaper articles, the pages they appeared on, and the dates they were written. The next procedure consisted of requesting the microfilm reels that corresponded with each article, and reviewing them.

A similar situation existed with the *Durham Morning Herald*. Although the North Carolina State Archives housed microfilm reels from this news source, the reels needed for exploration (1932-1938) were missing. A request was then made to the Greensboro Public Library, which also determined the reels were either misplaced or missing. A final effort was made to locate these reels through Virginia Tech Interlibrary Loan. Several days after a request had been made to obtain the reels, notification was sent indicating that all possible searches had been exhausted, and obtaining the reels would be impossible. Given this predicament, *The Greensboro Daily News*, a newspaper with similar orientation, was selected for comparative purposes.

Statistical sampling of data is required when large populations or volumes of data are available. Given the antiquated nature of the search aid, it cannot be guaranteed that *all* news articles, editorials, and commentary pieces were obtained. However, the search produced nearly fifty (50) articles from the *News & Observer* pertaining to the transition of North Carolina's execution method in 1935, as well as articles focusing on specific executions and articles from

previous years which alluded to the possibility of a method change. Given the rather manageable amount of articles found, it is suggested that all be used. Random sampling in this case would decrease the amount of data substantially, leaving no substantive amount remaining.

Another justification for first selecting newspapers is the likelihood of finding clues to other areas of exploration. As previously discussed, news articles, especially those written prior to the development of other forms of media, are descriptive and detailed. Thus, the mention of organizations, persons, offices, and institutions can serve as a logical plan of inquiry in collecting and perusing historical primary data. The detail contained in media accounts and articles also offers the researcher additional information in selecting archival finding aids.

### **3.1.2 Government Documents and Reports**

Given that this study focuses on legislative motive for changes in execution methods, political and government documents are vital. Within the earlier newspaper articles, the names of legislative members, senators, and representatives are mentioned. In addition, exact dates of special sessions and subcommittee meetings are documented. Prior to 1969, the North Carolina Legislature convened in odd-numbered years, so the transition to lethal gas was conducted during a 'regular session'. Most legislative documents are housed at the North Carolina Legislative Library although some identical materials are housed at the State Archives, such as House and Senate Journals.

A search was first conducted at the Legislative Library in both the House and Senate Journals for the 1935 Legislative Session. These journals trace and document the path of any bill or piece of legislation slated for consideration, and also document any subcommittees that the bill was referred to for preliminary approval or editing. House and Senate Journals also document members of subcommittees, their political affiliation, and the county they represented while serving their terms. Newspaper reports indicated that the lethal gas bill was first introduced to the House of Representatives on the 39<sup>th</sup> day of the Legislature, February 22, 1935. Following this lead, a search was initiated in the Journal of the House of Representatives of the General Assembly of the State of North Carolina, Session 1935 to follow the path of the bill and locate any subcommittees that the bill may have been reviewed by. It was discovered that House Bill 435 was referred to the Committee on Penal Institutions, chaired by Representative R. E.

Sentelle, a Democrat from Brunswick County. The House Journal also revealed the name of the bill's sponsor, Dr. Charles A. Peterson, a Democrat from Mitchell County.

In a logical progression, it was determined that a search of the Legislative Library may produce the Penal Institution Subcommittee Report or other manuscripts containing dialogue regarding the proposed transition to lethal gas. These reports might also contain dialogue indicating Dr. Peterson's motive or reasoning behind suggesting such a change. It was discovered that prior to 1977, General Assembly subcommittee reports and minutes were not filed with the Legislature or the State Archives. It is unknown whether the dialogue of this subcommittee was even officially documented in report form, or whether subcommittees relied on open discussion and debate only. Regardless, attempts to obtain this piece of primary data proved futile.

In exploring influences or legislative motive for execution method changes, it is vital that the time period be set into context. To continue, it is also useful to provide a basic, descriptive account of the characteristics of prisoners incarcerated during that time. With this in mind, an archival search proceeded to government documents that would satisfy this criterion. A general search of the government documents databases in the State Archives was conducted with obvious keywords, however this produced little in the way of prison reports. By reviewing the progression and history of the Department of Correction in North Carolina, it was determined that the State Highway and Public Works Commission had merged with the Prison Department in the early 1930s. This confluence of organizations stemmed from the proliferation of chain gangs on public roadways. Thus, prisoner activity was deemed the jurisdiction of the Highway Department. When another search was conducted, biennial reports were located which contained prisoner demographics, crimes for which they were incarcerated, and budgeting for the years covered. The Biennial Report: State Highway and Public Works Commission, Prison Department (Years 1934 – 1936) was obtained and copied. It is suggested that affording attention to prisoner characteristics, crimes, and budgeting will provide detail to the social context of the mid-1930's aside from more general secondary sources.

A search of using electronic archival finding aids also generated a 1929 report on capital punishment in North Carolina, albeit this report was not produced by the Highway and Public Works Commission nor the Prison Department. The report, a special bulletin, was referenced as being authored by the North Carolina State Board of Charities and Public Welfare, an agency no

longer in existence. Locating this report proved invaluable, as the first chapters provide a historical review of capital punishment in North Carolina from the colonial period through the Progressive Era. In addition, specific discussions pertaining to the use and proliferation of the electric chair are offered. The latter chapters of the report are dedicated to examining a sample of condemned prisoners and describing their individual demographics, specifically the mental health and aptitude of the prisoners. It is suspected that this report served to inform the public and the State about the racial disparities embedded within the practice of capital punishment. A copy of the report was obtained, and will be discussed in later chapters.

The Department of Correction underwent several changes between the 1930s and present day. However, the current department, which was formed in 1957, keeps official tallies of all executed inmates dating to 1910. Prior to 1910, executions were under local rather than state jurisdiction. To complement the information located in the biennial report, the Department of Correction Research File: Death Penalty Statistics was obtained from the Department of Corrections and copied in its entirety. This document also provides the numbers of condemned prisoners executed by each method, their race and sex, county of conviction, and race of the victim (s). The Department of Correction was also referred to in acquiring information regarding prison wardens and the length of their tenure at the prison. The names of wardens serving during the selected time periods were collected to be investigated further, given that they may have filed correspondence, personal letters, directives, and other information with the State Archives upon stepping down from their office. A more detailed discussion of these personal papers will be offered in a later section of this chapter.

A search was also conducted to locate any Prison Department newsletters or publications disseminated in the 1930's. From an electronic search of finding aids in the State Archives Library, a publication entitled The Prison News was discovered. A request was made through inter-library loan to obtain two volumes of this publication, the years 1934 and 1935. Perusal of these magazines are likely to reveal any prison preparation or staff development and training regarding the impending use of the lethal gas chamber.

In an earlier chapter of this dissertation, the concept of dramaturgics was discussed. Given that environmental manipulation is one aspect of managing and controlling an execution performance, it is argued that acquiring prison blueprints of the gas chamber will be useful in

describing the position of the chamber in reference to other structures within the prison. An electronic search of the internet produced a report written by Fred A. Leuchter regarding his evaluation of the gas chamber at Mississippi State Penitentiary at Parchman in 1988. Upon review of this report, it was discovered that Eaton Metal Products in Denver, Colorado was the sole manufacturer and installer of gas chamber equipment until the late 1950's. A phone call was made to Eaton Metal Products, and a request made to obtain any information regarding the gas chamber at North Carolina's Central Prison. A bound history of Eaton Metal Products was obtained and perused for information. From this information, it was discovered that Central Prison was the only facility to use Eaton's blueprints, but not their services in installing the chamber itself. This may have been due to geographics, considering most prisons utilizing the gas chamber were closer in proximity to Colorado.

Given this information, it was suspected that the borrowed blueprints for the Eaton gas chamber were filed either with the Prison Department, or with another agency responsible for installing the unit. The State Archives were once again consulted, revealing that any blueprints, plans for construction, or construction contracts are filed with the State Construction Office in Raleigh, North Carolina. This agency was contacted, and with the assistance of a State Construction Office employee, the blueprints were located and copies obtained. There was no information, however, revealing who was contracted to actually construct the chamber. It was suspected by archivists that prisoner labor was likely used, although Highway and Public Works chemical engineers were most likely consulted to inspect and oversee the installation.

Using bound finding aids within the archives, the Highway and Public Works Commission interoffice memorandum file was obtained and searched. Interoffice memoranda were categorized by years, so the years 1934-1935 were thoroughly searched for any correspondence between chemical engineers and the Prison Department. Most memoranda pertained to chain gangs, prison work crews, highway safety issues, inclement weather schedules, and other directives from supervisors. No correspondence was found which alluded to what engineers, if any, were assigned to inspect and oversee installation of the gas chamber.

### **3.1.3 Personal Collections and Papers**

Aside from providing hints at locating government documents and reports, early newspaper accounts reveal names of persons involved in important social issues. Once a thorough search had been conducted to collect more official types of primary data, the next logical step was to progress to personal collections and papers of those involved in advocating or opposing the lethal gas chamber in North Carolina. Copious notes were taken as to those persons most likely to have donated personal papers to the State Archives upon their death or cessation of office term. Private organizations may also donate their papers to a state archive, especially if the organization is expected to fold or merge with another organization in later years. According to Brooks (1969):

Primary sources...may have been preserved intentionally by an organization, be it governmental, business, religious, institutional, or even a private family, as evidence of its own activity, for its own future use, or to tell its story to posterity (p. 3).

Given that newspapers alluded to Dr. Charles Peterson as the proponent of the lethal gas chamber bill, archival finding aids were consulted in order to locate his private papers, diaries, correspondence, or memoranda. The bound 'private collections aid' was thoroughly searched, yielding no papers within the State Archives. Normally, private papers may be located by simply finding the subject's name in the index of the finding aid. A number is assigned each entry, and that number corresponds with a descriptive entry of the collection in the front of the finding aid.

Keywords may also be used, for instance 'Capital Punishment', 'Death Penalty', etc. All personal collections regarding the social issue of capital punishment, then, would be cross-referenced and identified. Again, searching the finding aid using this technique found no entries for the personal papers of Dr. Peterson. Given that Peterson was a physician, the finding aid was then searched under 'North Carolina Medical Society'. If the North Carolina Medical Society donated or housed any historic materials at the State Archives, information regarding Dr. Peterson as a member would be included.

No personal papers of the Medical Society were found, and through telephone correspondence with the organization, it was discovered that all historic information is housed on their premises.

A search of this information also yielded no information on Charles Peterson. Finally, archives will house manuals resembling “Who’s Who” in a particular state. With this in mind, the North Carolina Manual, published in 1945, was consulted. An entry was found for Charles Peterson, however it offered little in the way of his legislative service or involvement with the death penalty. Biographical information pertaining to Dr. Peterson, and his involvement with the lethal gas bill, will be largely reliant on descriptive newspaper reports.

The legislature is largely influenced by the Governor, and vice versa. Governor J.C. B. Ehringhaus served in office from 1933 to 1936, the years North Carolina transitioned to lethal gas as a method of execution. Referring to bound finding aids containing personal collections of Governors’ papers, an entry was found for Ehringhaus. The personal collections of Governors are usually categorized by subject, such as ‘Correspondence with the Highway Patrol’, ‘Education’, ‘Speeches to the Rotary Club’, etc. Within the Ehringhaus collection, an entry was found for ‘Capital Punishment’. The corresponding box of materials was then requested for perusal. Within Governor Ehringhaus’ personal papers were numerous, original hand and typewritten letters drafted by citizens from throughout the State of North Carolina. In addition, each letter was accompanied by a response from the Governor, albeit the Governor’s personal secretary actually generated the retort. At times, a letter to the Governor regarding the death penalty would be accompanied by a newspaper article containing information pertinent to the citizen’s concern. In total, thirty (30) letters were found in the Ehringhaus file. Given the fragile nature of the original materials, an official request was made to obtain reproductions. All thirty letters, and their corresponding responses, were copied and collected. Aside from the personal letters from citizens, one piece of memoranda was located which was probably intended to inform the Governor about the logistics of the electric chair and death cell at Central Prison. This document was located in Ehringhaus’ correspondence with the Highway and Public Works Commission, Prison Department.

Clyde Roarke Hoey succeeded Ehringhaus as North Carolina’s Governor, and served between 1937 and 1941. Although Hoey’s administration was not seated at the time North Carolina transitioned to lethal gas in 1935, it was suspected that he may have corresponded with North Carolinians regarding the new gas chamber, its efficiency, and its continued use during his term. An identical search of Governors’ papers revealed a file under the keyword ‘Capital

Punishment'. This box of material was requested and thoroughly searched within the archive. Twenty-four (24) original hand and typewritten letters were found, mostly from citizens expressing their opinions of the lethal gas chamber and the death penalty itself. Responses from the Governor's office also accompanied each letter. As with the Ehringhaus materials, a request was made to duplicate these items, and all were copied and collected. It is important to note that the personal papers of Governor O. Max Gardner (1929 to 1933) were also examined to reveal an underlying impetus for possible changes to lethal gas prior to Ehringhaus taking office. Gardner's personal papers were searched, yielding no file on capital punishment or personal letters from citizens regarding the issue. Archivists suggested that at the height of the Great Depression, public concerns were most likely directed at other issues, such as economics and labor.

Another source for locating personal papers of past Governors is a bound collection containing a more organized compilation of materials. This source is in book form rather than loose materials filed in storage boxes by category. The Addresses, Letters, and Papers of J.C.B. Ehringhaus: Governor of North Carolina, 1933-1936, and the Addresses, Letters, and Papers of Clyde Roarke Hoey: Governor of North Carolina, 1937-1941 were thoroughly searched for additional death penalty correspondence, materials, and speeches. Although the Ehringhaus source yielded no substantive data, the Hoey volume contained his biennial message to the General Assembly in 1939. The speech was divided by category, and a reference was made to the lethal gas chamber. A copy was made of this section of the biennial address, and collected.

In one early 1930s news article, a reference was made to the North Carolina Society to Abolish Capital Punishment. Using both electronic and non-electronic archival finding aids, this organization was traced with no success. Given that the organization was based out of Greensboro, North Carolina, the research section of the Greensboro Public Library was consulted for possible suggestions in locating materials generated by the group. A finding aid for the City of Greensboro was also perused. In both these instances, no information could be found regarding this society. Calls were also made to the University of Florida, the American Civil Liberties Union, the NAACP, The Death Penalty Information Center, The Southern Poverty Law Center, and the National Coalition to Abolish Capital Punishment. None of these prominent civil rights groups could find information on the organization, nor were they familiar with it.

In exploring manual finding aids for personal papers and collections, the name ‘Nell Battle Lewis’ appeared under the heading ‘Capital Punishment’. Her name also appeared on headers of early 1930s *News and Observer* articles that pertained to the death penalty. The private collections and papers of this individual were obtained through the State Archives and examined. The Nell Battle Lewis collection proved to be one of the more fruitful finds in this project. As associate editor of the local newspaper, she wrote heavily regarding views on civil rights, the death penalty, and the methods of execution at the time. Ms. Lewis was also the Director of Publicity for the State Board of Charities and Public Welfare, the organization which generated the special report on capital punishment in 1929. Her personal collection contained her own clippings file, original handwritten notes of each execution in the 1930s, her own reports and research papers on capital punishment, magazine clippings and articles, and a compilation of prisoners’ ‘last words’ at executions. Given that the Lewis papers were of such value, every item in the file, approximately 120 pages in total, was copied and obtained.

## **3.2 THE 1980s**

### **3.2.1 Newspapers**

Archival searches for media coverage of the lethal injection transition were very similar to those conducted for 1930s articles, however the method of obtaining the 1980s materials was considerably more efficient. Beginning in the late 1960s, newspapers in the region began compiling references in bound indexes. Although not electronically indexed until 1990, the *News and Observer* and the *Durham Morning Herald* indexes proved invaluable in locating a sufficient number of articles for perusal.

The *News and Observer* and *Durham Morning Herald* bound finding aids were searched under the keyword ‘lethal injection’. Under this heading, approximately forty (40) articles were found which pertained to the legislative activity regarding the execution method in early 1983. The articles found were not only general informative pieces, but editorials, commentaries, and cartoons or ‘spoofs’ of the lethal injection transition. It was also discovered that coverage of this transition was far more extensive in the *Durham Morning Herald* – this paper yielded almost twice the number of articles as did the comparative paper. All forty (40) news pieces from both sources were copied from microfilm and collected. As with the 1930s newspaper articles, a

random sampling frame was not deemed appropriate because it would exclude a large number of the articles, leaving little in the way of substantive information.

### **3.2.2 Government Documents and Reports**

As previously noted, newspapers contain a wealth of information which guides the data collection process. Names of General Assembly members with an interest in a particular bill or piece of legislation are identified in news coverage, as are dates that Senate or House Judiciary Committees meet to debate a bill's substance. News coverage of the execution method transition reported that the Senate Judiciary Committee III convened on April 19<sup>th</sup>, 1983 to discuss the initial proposal of the bill. With this information, a search was conducted at the North Carolina Legislative Library for any subcommittee reports or minutes of meetings convening on that day. Beginning in 1977, the General Assembly began physically filing written minutes from all legislative hearings. Unlike the Committee on Penal Institutions subcommittee report of 1935, the lethal injection materials were readily available.

A request was made to peruse the Senate Judiciary Committee III report, and to copy and collect its contents. Within this report, materials such as transcripts of the proceedings were found. Also included were affidavits of medical professionals from around the State, newspaper articles from states using lethal gas, eyewitness accounts of lethal gas executions, copies of amended and/or corrected bills, personal letters from the families of victims of violent crimes, "fact sheets" regarding the processes of executing inmates by lethal gas versus lethal injection, and fiscal research on the cost-effectiveness of lethal injection. Also included were the protocols from several states which had already adopted lethal injection, as well as lists of those present and/or testifying at the hearings. With permission of the legislative librarian, this file (approximately 135 pages) was copied in its entirety and collected.

The Senate Judiciary Committee III report also contained information alluding to the positions of national medical societies and associations regarding the use of lethal injection as an execution method. Given that no substantive medical positions from North Carolina associations were found in the Senate report, the North Carolina Medical Society was contacted in order to locate a formal, written position regarding lethal injection as a means to execute condemned prisoners. With the assistance of an authority at the agency, an official NCMS position statement was located, copied, and collected.

Given the changing manner in which execution protocol was transformed with the advent of lethal injection, it was assumed that evidence existed which detailed the modernized execution procedure. With the assistance of the North Carolina Department of Correction in Raleigh, North Carolina, a public information report entitled North Carolina Department of Correction and the Death Penalty, 1998 was obtained, copied, and collected. This report, issued by the Public Information Office, details such information as execution protocol for lethal injection procedures, itemizations of equipment costs, detailed descriptions of death row and death watch areas, and criteria for witness selection.

### **3.2.3 Witness Affidavits and Declarations**

Examination of the Senate Judiciary Committee III file revealed statements from physicians who had read eyewitness accounts of execution by lethal gas. These affidavits, some by witnesses in North Carolina and others in various states, had been previously collected by the attorney who represented David Lawson, a condemned murderer in North Carolina who chose to die by lethal gas in 1994. Lawson's attorney had vigorously attempted to convince his client to choose lethal injection instead, and allowed Lawson to read dozens of eyewitness accounts of lethal gas executions. By contacting this attorney, it was discovered that these eyewitness declarations could be obtained from the Center for Death Penalty Litigation, Inc., in Durham, North Carolina. Within Lawson's death sentence appeal file, approximately forty (40) witness testimonials, affidavits, and declarations were obtained. These affidavits dated from executions in the late 1950s to the mid-1990s. Although not all affidavits were from North Carolina, they paint a consistent image of death in the gas chamber. These materials were also used in the Senate Judiciary Committee III hearings to persuade passage of the lethal injection bill in 1983. Affidavits include those from physicians present, private citizens, prison chaplains, and wardens. Also included was Lawson's attorney's affidavit from his client's 1994 North Carolina execution.

### **3.2.4 Personal Interviews**

An unfortunate drawback of historical research is that it is mostly reliant upon the written record to trace, document, and explain past social events. Those principals involved in the lethal gas legislation of 1935 are no longer present to offer first-hand accounts of the events transpiring in the political and social arenas of the era. However, key figures involved in North Carolina's

lethal injection legislation remain to offer their recollection of the events transpiring during the early 1980s. With this in mind, a request was made to interview former Senator Robert M. Davis (Rowan County), the leading proponent of the lethal injection legislation in 1983. An interview was granted and conducted with former Senator Davis regarding his involvement with the bill's passage. A request was also made to interview the sitting Governor in 1983, James Hunt. This request has not yet been granted.

### **3.2.5 Personal Collections and Papers**

As with the lethal gas transition in 1935, it was assumed that the seated Governor in 1983, James B. Hunt, would have received correspondence from citizens, officials, or other social figures regarding North Carolina's death penalty. Using bound finding aids in the North Carolina State Archives, Governor Hunt's entry was examined for any references to the death penalty. A heading for 'capital punishment' was found, and a request made to examine the materials in that respective file. Hunt served numerous terms as North Carolina's Governor, first from 1977-1985, then from 1993 to the present. The materials contained within his first term were considered the most pertinent to this project.

Within the Governor's collection, approximately (25) original hand and typewritten letters were found expressing sentiment regarding all aspects of capital punishment, including the methods used. Given the fragile nature of these items, a request was made to copy each, along with its corresponding retort from the Governor's personal secretary. Also included in the Governor's collection were magazine articles, news clippings, and telegrams sent by citizens from North Carolina and around the country. In addition, several religious and anti-death penalty organizations nationwide sent their official positions to the Governor's Office, and these materials were also copied and collected.

The Governor's personal correspondence file also contained a research report simply entitled Capital Punishment in North Carolina. Authored by the Human Relations Council, this document was not dated, and it is unknown when the report was originally generated. The bibliography attached to the report was examined, and it was determined that the most recent reference used was from the year 1981. Therefore, it is a safe assumption to presume that the report was generated between 1982 and 1985. A copy of the report was requested and obtained.

With the advent of a new method of execution in 1983, it was likely that the seated Governor made some type of reference to capital punishment in his speeches or addresses to the North Carolina General Assembly, or to other agencies during his term. A search was conducted in the Addresses, Letters, and Papers of James B Hunt, Jr.: Governor of North Carolina, 1977 – 1985 for evidence of such communication, however no reference to North Carolina's death penalty could be located aside from the execution of Velma Barfield in November, 1985. This resource contained no pertinent information regarding North Carolina's transition to lethal injection, nor were any references made to suggest reverting back to previous methods of execution.

### **3.2.6 Location Analyses**

Given the dramaturgical nature of medicalized executions, it is suggested that researcher observation of the execution area can provide a more intimate description of the process aside from secondary sources. While participating in the filming of a documentary series at Raleigh's Central Prison, I was granted permission to view the death watch cells, the execution chamber, and the equipment contained within it. The execution area for lethal injections also served as the lethal gas chamber from 1936-1998. Although the gas chamber chair is no longer located within the execution area at the facility, permission was granted to view it in storage at North Carolina's Museum of History in Raleigh. Finally, descriptive analyses of two lethal injection executions will accompany this study in the form of appendixes. Although the executions were witnessed in Virginia, the protocol and procedure is strikingly similar to that in North Carolina and other states which employ the method.

## CHAPTER IV

### UNITED STATES EXECUTION METHODS IN HISTORICAL CONTEXT

*It certainly seems strange that a nation so advanced in science and engineering...should not be able to invent something better than the crude electric chair. Perhaps it is that every country chooses the method of execution most suitable to the temperament of its people – Charles Duff, A Handbook On Hanging*

#### **Introduction**

Prior to discussing North Carolina's distinct execution history, it is pertinent that a brief history of execution method shifts in the United States be provided. This historical background will serve to inform the reader of trends and social motives behind changes in execution methodology, and will also serve as a foundation for logically shifting to a discussion specific to North Carolina in Chapters V and VI.

#### **4.1 Execution Methods in the Pre-Industrial United States**

Given that the United States was once a British colony, it is not surprising that 17<sup>th</sup> and 18<sup>th</sup> century executions and methods closely paralleled those found in England and western Europe (Bedau, 1997; Johnson, 1998; Masur, 1989). Execution by hanging was by far the preferred method in early United States history, and execution day itself was a public event rife with religious speeches. These sermons were a blend of civil and religious authority, geared toward demanding repentance from the condemned and righteousness from those in attendance (Masur, 1989).

Hanging was, and still is, a rather simple procedure. In early America, the condemned prisoner was merely transported to a selected execution site and hanged from a noose suspended from a tree or other fixture. More often than not, wooden scaffolds were constructed in the town square, providing easy access for those wishing to attend and witness the event. To continue, these scaffolds exhibit great religious undertones. Biblical passages, such as those found in the Book of Deuteronomy, speak to a "hanging tree" from which condemned persons were exposed to the public after execution (The Holy Bible, Deuteronomy 21:22, 23). Early American scaffolds, as well as a scarce few still in operation today, were built in such a manner as to emulate this tree referred to in scripture (Johnson, 1998).

The structure is made of wood, and is usually designed with a platform on which the condemned stands. Above the prisoner's head is a horizontal beam to which the rope is affixed. Borrowing from English execution technology, a 'hanging drop' was introduced in the mid-18<sup>th</sup> century, which was nothing more than a trap door beneath the prisoner's feet. On cue, the executioner pulled a lever, and the condemned fell through this trap door until the rope was taught. This sudden deceleration would ideally break the neck of the condemned quickly and cleanly, a process developed with pride by the British (Abbott, 1991, 1994; Duff, 1974, orig. 1928).

On the surface, the adoption and use of the hanging drop in early United States history may seem unremarkable. Upon closer study of this execution method, we find that the hanging drop was most likely the first early American attempt at refining death by hanging. Conventional hanging, which consisted of merely securing a noose around the neck of the prisoner and allowing him or her to dangle from a short rope, was a slow and agonizing process. At times, the condemned would literally strangle to death for upwards of half an hour, understandably creating quite a spectacle for those in attendance. To continue, the political intent of public hangings was becoming overshadowed by rowdy, intoxicated spectators whose numbers could easily grow into the thousands on execution day. By the mid-1800's, and following English practice, the United States began conducting hangings within the confines of prison walls. This practice served two purposes – first, it provided a controlled environment in which to put a prisoner to death. The numbers of official witnesses were reduced to a few dozen, minimizing the likelihood of riots, drunken brawls, and cheering as the condemned strangled to death. Second, increasing standards of decency regarding the use of overt violence undermined the repulsive public hanging. As middle-class sensibilities espoused more humanistic views toward punishment, the public spectacle of hanging was no longer considered socially acceptable. Thus, removing the practice from public view paralleled the more reticent social ideology (Johnson, 1998; Masur, 1989). The hanging drop, then, was an effort to decrease the suffering of the prisoner, which ultimately offended changing social norms regarding punishment as spectacle. A more detailed discussion of this transition in social values, which ultimately served as a catalyst for execution method change, will be discussed in the following chapters.

Executions by firing squad were used intermittently along with hanging in the pre-industrial United States. The first documented use of this method was the 1608 execution of George Kendall, a councillor of Virginia (Grossman, 1998). The traditional protocol for death by firing squad was rather simple – the condemned prisoner was tethered to a post or other fixture, blindfolded, then shot to death by an assemblage of marksmen (Bohm, 1999; Grossman, 1998). The firing squad is an all but obsolete mode of execution in modern America, however two states still offer the method as an option – Utah and Idaho (Bohm, 1999).

The contemporary protocol for execution by firing squad in Utah consists of a five-man rifle team, of which all its members are volunteers. The condemned is seated in a chair, secured, and fitted with a black hood over the head and face. A small white target is then pinned to the prisoner's chest indicating the position of the heart. The rifle squad is positioned behind a curtain approximately twenty-three feet from the prisoner (*The Times-Picayune*, January 28<sup>th</sup>, 1996). The curtain is fixed with small portals allowing the rifle team to aim their weapons – deer rifles of their choosing – which all contain live rounds except for one (ibid.; Bohm, 1999). In theory, this technique is employed as a psychological buffer – as Bohm (1999) notes, “The rifle with blanks maintains the fiction that none of the shooters will know who fired the fatal shot” (p. 73). This strategy is questionable, however, because blank or ‘dummy’ rounds result in little or no recoil of the weapon (ibid.). While the 1977 firing squad execution of Utah prisoner Gary Gilmore stands as the most memorable in American history, that State also executed another prisoner, John Taylor, by the same method in 1996 (Rick Halperin, personal communication, March 15, 2001; Harries & Cheatwood, 1997).

#### **4.2 Riding the Lightning: The Electrical Age of Execution**

By the turn of the 20<sup>th</sup> century, nearly all executions were conducted by hanging within prison walls. Aside from a smattering of small-town public hangings (the last two being in 1936 and 1937), execution as a form of punishment was largely a private practice (Bessler, 1997; Masur, 1989). The advent of electricity at the end of the 19<sup>th</sup> century, however, would dramatically change execution methodology.

Dissatisfied with an unusual amount of bungled hangings, New York Governor David Hill appointed a three-member panel of upstanding community citizens in 1886 to consider a more humane and expeditious execution method (Bernstein, 1973; Denno, 1994). This commission,

later referred to as “The New York Commission”, was convened one year after Hill’s 1885 message to the legislature in which he stressed:

[t]he present mode of executing criminals by hanging has come down to us from the dark ages, and it may well be questioned whether the science of the present day cannot provide a means for taking the life of such as are condemned to die in a less barbarous manner (Denno, 1994: 566; In re Kemmler, 136 U.S. 436, 444, 1890).

At the same time, a fierce rivalry was in progress between George Westinghouse and Thomas A. Edison, two major figures who had much to gain by being responsible for “...electrifying American cities” (Bohm, 1999: 74; Denno, 1994). One member of Hill’s commission, Dr. Alfred P. Southwick, had recently witnessed an elderly drunkard accidentally touch the terminals of a live electrical generator, which instantly killed him (Penrose, 1994). Southwick solicited the assistance of Thomas Edison, already considered an American icon, to advise the commission on whether electricity could be a viable, humane execution method. Although Edison was a staunch opponent to capital punishment, he agreed to assist in determining whether electrocution could feasibly be used to execute condemned criminals in a more humane and practical manner.

On June 4, 1888, following a favorable recommendation by the New York Commission, the Electrical Execution Act was passed. Any criminal condemned to die after January 1, 1889 would subsequently be put to death “...by causing to pass through the body of the convict a current of electricity of sufficient intensity to cause death...” (The New York Electrical Execution Act of 1888, cited in Denno, 1994: 573). By mid-1889, the term ‘electrocution’ had not yet been deemed the official term for the procedure. In fact, New York attorney Eugene Lewis suggested several alternative names, including ‘electricide’ (Penrose, 1994: 55). Thomas A. Edison also suggested names for the electric chair itself, which included ‘dynamort’, ‘electromort’, and ‘ampermort’ (ibid.).

On August 6, 1890, William Kemmler, a convicted murderer who bludgeoned his female acquaintance to death, was the first condemned United States prisoner to die by electrocution. Prior to his execution, the New York State Court of Appeals had concluded that death by electrocution did not constitute cruel and unusual punishment as argued by Kemmler’s counsel

(Denno, 1994; Driggs, 1993). Furthermore, the United States Supreme Court affirmed that, “Punishments are cruel when they involve torture or a lingering death; but the punishment of death is not cruel...It implies there is something inhumane and barbarous, something more than the mere extinguishment of life” (In re Kemmler, 136 U.S. at 447, cited in Driggs, 1993: 1177). In short, execution by electrocution did not violate the United States’ judicial position on cruel and unusual punishment, and Kemmler was summarily executed in New York’s electric chair at Auburn Prison.

Reaction to the country’s first electrocution was divided. One witness, George Westinghouse, reported the following day that “...the job [the execution] could have been done better with an axe” (cited in Driggs, 1993: 1178; see also Bohm, 1999; Metzger, 1996). Headlines of newspapers following the execution read “Far Worse Than Hanging”, and “It Was Cruel” (ibid., p. 1178), and some editorials called for an immediate abolition of capital punishment. Not all response was negative, however. One article appearing in *Illustrated America* urged, “Let us give the system a fair trial. In spite of what the correspondents have told us, the first experiment in electrocution was not so horrible as many hangings have been” (August 30<sup>th</sup>, 1890, p. 324, cited in Driggs, 1993, 1178-79). Dr. Alfred P. Southwick, who later acquired the nickname “Old Electricity” for his role in championing the electric chair, was quoted as follows:

There is nothing against the system at all and the fact is there has been a great deal of senseless, sensational talk about the execution...In fact, a party of ladies could sit in a room where an execution of this kind was going on and not see anything repulsive whatsoever. No sir, I do not consider that this will be the last execution by electricity...There will be lots more of them. It has been proven that the idea was correct and I think the law is the best one. The execution was a success (cited in Neustadter, 1989: 84).

On a national level, the electric chair enjoyed a large degree of popularity as a method of efficient execution. Driggs (1993) adds, “Within a generation the electric chair had ceased to be controversial” (p. 1179). By 1949 it was employed in twenty-six states, and between 1930 and 1972 the electric chair had become the most prolific method of putting criminals to death in the

United States (Bohm, 1999; Denno, 1994, 1997; Price, 1998). To date, over 4,000 condemned men and women have been put to death in the electric chair since 1900 (Bedau, 1997). As Penrose (1994) concludes, “In its heyday, [the electric chair] was by far the most popular means of execution” (p. 35).

By design, the electric chair is an intriguing piece of technology aimed at quickly and efficiently putting a condemned inmate to death. As one warden remarked in an interview just prior to a 1990’s execution, “It’s the biggest chair you’ll ever see” (cited in Johnson, 1998: 169). Johnson adds, “The electric chair is larger than life, a paradox that no doubt derives from its sole purpose as an instrument of death” (ibid., p. 169). Usually made of oak or other hard durable wood, the chair itself is merely a thick piece of furniture. The condemned inmate is placed in the chair, and his or her arms are secured with thick leather straps which buckle much like a belt. The ankles are also secured with straps, as is the inmate’s head. The head of the inmate is shaved to provide for smooth conductivity of electrical current, as is the calf of one leg. An electrode is then placed on the smooth surface of the skin of the leg, and a leather ‘skullcap’ is placed on the top of the head. A sponge soaked in saline or brine is placed between the scalp and skullcap to serve as a conductor and to prevent excessive burning of the scalp during the process (Notley, 1993). Johnson (1998) describes such a procedure, which is fairly uniform from state to state:

The execution team worked with machine precision. Like a disciplined swarm, they enveloped Jones [the condemned], strapping and then buckling down his forearms, elbows, ankles, waist, and chest in a manner of seconds. Once his body was secured, with the electrode connected to Jones’s exposed right leg, the two officers stationed behind the chair went to work. One of them attached the cap to the man’s head, then connected the cap to an electrode located above the chair. The other secured the face mask. This was buckled behind the chair, so that Jones’s head, like the rest of his body, was rendered immobile...

The cap and mask dominated his face. The cap was nothing more than a sponge encased in a leather shell, topped with a metal receptacle for an electrode...it resembled a cheap, ill-fitting toupee (pp. 176-177).

Theoretically, the electric chair is presumed to cause immediate unconsciousness and death. In most cases, execution protocol calls for two bursts of electricity, the first at 1700 - 2500 volts at 5-7 amperes for a period of 60 seconds (Abbott, 1994; Bennett, 1897; Johnson, 1998). If the inmate has not expired from this first burst of current, the executioner is instructed to repeat the process at a lower voltage for a short period of time. After allowing the body to cool for three minutes, the attending physician will then check for cardiac activity or other obvious signs of life (ibid.; see also Trombley, 1992). Almost from the inception of electrocution as an execution method, reports of botched or otherwise unsuccessful executions were noted. The Kemmler execution in 1890 was reported to have sent witnesses "...running out of the room in horror", and others "...losing control of their stomachs and fainting" as Kemmler roasted to death in the chair (Neustadter, 1989: 85). Penrose (1994) noted that the electrocution was complete with "...heaving chest, gurgles, foaming mouth, bloody sweat, burning hair and skin, and the smell of feces" (p. 42).

In 1893, the New York execution of William Taylor was similar, as reported by staff and witnesses. Taylor stiffened so violently against the straps of the electric chair that "...the front legs of the chair collapsed" (Abbott, 1994: 114-115). In an interesting note, Taylor was removed from the chair until a failed generator could be repaired. The unconscious prisoner was administered drugs to alleviate any suffering until the execution could be completed, however he died before repairmen could complete their work. Eventually that same day, the generator was fixed, and the dead inmate was strapped into the electric chair and administered a thirty-second jolt of electricity to "...comply with the death sentence" administered by the courts (ibid., p. 115).

In a 1992 lawsuit filed on behalf of condemned inmates in the State of Virginia, several possibilities were raised as to the cause for such disfigurement to the body during electrocution. Notley (1993) summarized key points addressed in the lawsuit, one being that "The human skull is a very poor conductor of electricity. Human skin is also a poor conductor, but sweat on the

outside of the skin is an excellent conductor” (p. 66). Given that most prisoners are nervous prior to execution, there is a high probability that they perspire excessively. Thus, as Notley (1993) continued, “Electrical current seeks the path of least resistance. Therefore, a greater portion of electrical current passes along the prisoner’s skin than through his skull, body, and brain as it travels to the electrode on his leg” (ibid.). The author noted that the end effect is the severe burning of the prisoner’s skin “...at extreme temperatures while he is awake and conscious for an indeterminate period” (ibid.). Because perspiration appears to amplify the burning effects of electrocution, several accounts of the execution protocol have included references to prison staff preventing the condemned from excessive exercise prior to the procedure.

Execution by electrocution received both favorable and unfavorable response throughout the twentieth century. Some argued it was a hideous display of torture, while other forums regarded it as the most civilized means by which to dispatch the condemned. Relying on inexperienced personnel, and resorting to defective or inadequate apparatus, states muddled through decades of trial and error executions by electricity (Madow, 1995; Penrose, 1994). Viewed as barbaric by some early twentieth century pundits, electrical executions were said to have been purposefully sabotaged in order to create disfavor with the general public. Homer Bennett, a 19<sup>th</sup> century physician, muses:

But the law stood as it was, and after a time the feeling died out, and there was the usual revulsion, and with more complete understanding of the subject and with the perfected machinery and appliances at their command, there was nothing more heard of the frightful tortures and the burning of flesh, and time, science, and common sense finally triumphed in the Empire State...Such, in substance, is the history of the introduction and establishment of electrocution up to the present time, and its practical demonstration so far as shown by actual use, where this method has been once used, has doomed any older method into oblivion (The American X-Ray Journal, December, 1897).

The electric chair used to execute William Kemmler in 1890 was later destroyed by inmates during a 1929 Auburn Prison riot (Penrose, 1994).

### **4.3 Disfigurement and the Advent of Lethal Gas**

In United States execution history, there are rarely clear-cut boundaries separating one method of execution from another. At times, several methods are used within an era, as was the case with the firing squad and hanging, then hanging and the electric chair. This overlap is also the case with electrocution and the use of lethal cyanide gas. Although electrocution was invented during the late 19<sup>th</sup> century, only 20 years would pass before yet another method of execution was introduced.

The electric chair was essentially an eastern and southern U.S. execution method until the 1930's (Harries & Cheatwood, 1997). Most western states held fast to the traditional methods of execution – death by hanging or firing squad. In 1921, the Nevada legislature passed that State's "Humane Death Bill", championed by Dr. Allen McLean Hamilton, a toxicologist (Farrell, 1994; Kruckman, 1921). The suggested change was twofold – first, condemned prisoners were being allowed to choose the manner in which they died, which at times appeared to cause confusion and last minute changes of heart (Kruckman, 1921). Second, although witnesses claimed that death by firing squad and hanging appeared instantaneous, the idea of gas during anesthesia and medical procedures had a humane appeal (ibid.).

In addition to these two factors, the use of mustard and chlorine gas during the recently ended World War I had forced the use of lethal cyanide into the spotlight, and its consequences remained fresh in the minds of war-weary Americans (Bohm, 1999). In the years immediately following the end of the first World War, Major D. A. Turner of the United States Army Medical Corps studied the reported effects of lethal gas on army personnel. His findings concluded that their deaths were agonizing, including the onset of panic as the heart and lungs seized, as well as the protrusion and swelling of the tongue (Abbott, 1994). As one Nevada newspaper reported, "As is well known in connection with the lethal gases used during the war, the slightest diffusion of these elements caused widespread havoc" (*The Pioche Record*, August 19<sup>th</sup>, 1921, p. 2). Although Nevada Governor Emmet Boyle opposed capital punishment, he signed the "Humane Death Bill" out of confidence it would be later struck down by the courts as cruel and unusual

(Bohm, 1999). This, of course, proved to be an unfortunate miscalculation, and lethal gas was first employed at the execution of Gee Jon on February 8, 1924.

The initial theory behind the use of lethal gas as an execution method predates the twentieth century. In fact, several 19<sup>th</sup> century anti-gallows activists debated on the use of chloroform or other gas to anesthetize a condemned inmate prior to hanging him (see G. W. Peck, American Whig Review, September, 1848). This was suggested as a ‘courteous’ solution to the suffering often experienced by those condemned to die by the noose. As Peck (1848) asserted, “Manners, then, are necessary to man because of his possessing a conscious soul” (p. 283). Gas represented a method by which the condemned would be put to sleep humanely, without disfigurement to the body by burns from electrocution or decapitation by a bungled hanging.

During the initial discussions of lethal gas in Nevada, several suggestions were made as to how the element would be introduced to the condemned inmate. Some advocates proposed administering “...a sleeping potion...” in the food of the inmate prior to his execution. During the subsequent slumber, the gas could be administered unbeknownst to the inmate (*The Pioche Record*, August 19<sup>th</sup>, 1921, p. 2). The newspaper article continues with an interesting juxtaposition of medicine and justice:

It is anticipated the gas will be administered much as gas is administered to a patient in a dental chair or to a person preparing for a surgical operation. In other words, it will be a form of anesthesia, and the administrator will probably be an expert anesthetician chosen from among physicians or male nurses. Those who favor this method of dealing death declare it is absolutely painless (ibid.).

Perhaps the most perplexing obstacle to overcome in successfully employing this new method of execution was containing it. As Major Turner and the press had noted, lethal gas dispersed throughout an uncontrolled environment such as a battlefield had horrific consequences. Because the gas was not highly concentrated in one specific area, Army personnel who were subjected to it usually died a protracted, agonizing death. The State of Nevada, however, posited that if the gas were contained in highly concentrated doses, the inmate would succumb quickly, and without suffering (Abbott, 1994). Prior to the first execution in 1924, the State conducted tests on vermin,

cats and pigs, which were placed in crates and locked in an airtight compartment. Agreeing that these conditions were favorable to a successful execution by lethal gas, Gee Jon was summarily executed in the modified butcher shop of the Carson City State Prison (Farrell, 1994; Noel & Rucker, 1997). Doctors witnessing his execution claimed he "...died apparently painlessly, death being confirmed six or so minutes after the gas had been pumped into the chamber" (ibid., p. 161; Farrell, 1994).

The geographic dispersion of the lethal gas chamber is interesting. After Nevada's seemingly successful execution in 1924, several western states that had not adopted the electric chair selected lethal gas as the preferred execution method. The reasoning appears fairly clear – several prison officials, especially in Colorado and Arizona, found the reported disfigurement from electrocution distasteful. Thus, if an inmate was to be executed in those respective states, prison authorities would prefer a method which left the body intact for the family to view. As Noel and Rucker (1997) note, "Neither the state or prison officials wanted to turn over to the relatives of the deceased a mutilated corpse" (p. 26). After a few western states adopted lethal gas, the dispersion curiously jumped to the east coast, where North Carolina selected the method in 1935 (Harries & Cheatwood, 1997). Between 1937 and 1939, Wyoming, Missouri, Oregon, and California adopted the method, and later contracted with Denver, Colorado's Eaton Metal Products to design their gas chambers (Harries & Cheatwood, 1997; Noel & Rucker, 1997). These gas chambers could be ordered by the state with either one, two, or three seats, and usually cost around \$3,500 to build and install (Noel & Rucker, 1997). Eaton Metal Products designed and constructed all of the lethal gas chambers used in the United States except North Carolina's. In that case, North Carolina borrowed the blueprints from Eaton, which eventually received a patent for its gas chamber design in 1957 (ibid.).

In states that use lethal gas, the design of the equipment is fairly uniform. The chair is contained in an airtight compartment with windows for accommodating witnesses viewing the procedure. A metal container is located beneath the seat of the chair, which contains one pound of cyanide pellets. At the warden's directive, staff turn keys on a control panel – this releases the pellets into a solution of sulfuric acid and water. The resulting mixture forms hydrocyanic gas, also known as prussic acid. The fumes from the prussic acid, which resemble wisps of smoke, rise upward to the face of the condemned. The inmate breathes these fumes, and ultimately dies

from hypoxia, or the inability of the body's cells to process oxygen (The Leuchter Report, 1988; North Carolina Department of Correction, 1999). Once death has been pronounced, ammonia is introduced to the chamber to neutralize the hydrocyanic gas. Staff don protective clothing, then enter the chamber to remove the body of the deceased. Prior to removal, the body is washed down with water, a process to further assure that no cyanide residue remains (North Carolina Department of Correction, 1999).

Safety of prison staff during gas executions posed a serious concern during the years the chambers were heavily used. Because the gas is dispersed in such a concentrated manner, precautions had to be taken to assure staff and witnesses were not exposed to the fumes or elements used. Most lethal gas chambers are equipped with gas detectors, emergency breathing apparatus, warning alarms, exhaust fans, and resuscitators for personnel working near the area. Fred A. Leuchter, designer of execution equipment, remarked:

Execution gas chamber design requires the consideration of many complicated problems. A mistake in any area may, and probably will, cause death or injury to witnesses or technicians (1988: 9).

On January 30, 1998, North Carolina executed Ricky Lee Sanderson in its gas chamber. Sanderson had chosen to die by lethal gas even though lethal injection had since been adopted. During the removal of Sanderson's body from the gas chamber, one staff member tripped and dislodged the air tank of his assistant. As Price (1998) notes, "The worker wasn't injured, but the incident gave prison officials a scare" (p. 2). By 1973, thirteen states were using lethal gas, however it never quite gained the popularity of electrocution (Price, 1998). Although lethal gas was expected to be a more humane method of execution, reports abounded across the country concerning the unnecessary suffering of condemned prisoners. Death did not occur immediately as originally proposed – in fact, several executions by lethal gas have taken fifteen to twenty minutes (Radelet, 1998).

#### **4.4 The Age of Lethal Injection**

The electric chair, hanging, the firing squad, and the lethal gas chamber continued to be used in the United States through the latter decades of the twentieth century. During the early 1960s, the United States experienced a sharp decline in the number of executions, primarily due to a

change in focus toward the Vietnam War and civil rights. In addition, the country was in turmoil over racial tensions, and the disproportionate number of black executions called into question the integrity of capital punishment. By 1967, the Legal Defense Fund had called for an unofficial national moratorium on executions until racial disparities could be corrected (Johnson, 1998; Welsh, 1998). In 1972, the United States Supreme Court found the death penalty, in its current form, unconstitutional because of its arbitrary nature (Furman v. Georgia, 408 U.S. 238, 1972). Several states revised their death penalty procedures, and capital punishment was once again reinstated in 1976 (Gregg v. Georgia, 428 U.S. 123, 1976). Shortly after capital punishment was reinstated, a new method of execution appeared on the horizon.

Lethal injection is not an idea unique to the United States. In fact, Great Britain's Royal Commission on Capital Punishment (1949-1953) considered the idea in their search for an alternative to hanging. In the final Commission Report, the members wrote:

We have pursued our inquiry into the question whether there is any other method, as yet untried, that could be relied on to inflict death as painlessly and certainly as hanging but with greater decency, and without the degrading and barbarous associations with which hanging is tainted. Only two suggestions were made to us deserving serious consideration. One is the use of lethal gas in a way that does not need a gas-chamber. The other is execution by means of a hypodermic injection of a lethal drug (Royal Commission on Capital Punishment, 1949-1953 Report, p. 256, Section 735).

In the end, the Commission was dissuaded from the idea of lethal injections, in large part because of stern objections voiced by the British Medical Association. The Association's steadfast position on lethal injections reads in part:

No medical practitioner should be asked to take part in bringing about the death of a convicted murderer. The Association would be most strongly opposed to any proposal to introduce, in place of hanging, a method of execution which would require the services of a medical practitioner, either in carrying out the actual

process of killing or in instructing others in the technique of the process (ibid., p. 258, Section 743).

Hanging remained the primary method of execution in Great Britain until 1965, when capital punishment in that country was abolished for all crimes except “extraordinary civil offenses” such as treason (Grossman, 1998: 1).

The topic of lethal injections would surface from time to time in the United States prior to its actual inception. In 1973, Ronald Reagan, then Governor of California, posed an interesting analogy between lethal injection executions and the euthanasia of farm animals:

Being a former horse farmer and horse raiser, I know what it’s like to try and eliminate an injured horse by shooting him. Now you call the veterinarian and the vet gives it a shot [injection] and the horse goes to sleep – that’s it. I myself have wondered if maybe this isn’t part of our problem [with capital punishment], if maybe we should review and see if there aren’t even more humane methods now – the simple shot or tranquilizer (cited in Welsh, 1998: 76).

In 1977, shortly after the reinstatement of capital punishment in the United States, Utah death row inmate Gary Gilmore waived all appeals and was voluntarily executed by firing squad. Shortly afterward, Florida condemned murderer John Spinkelink was electrocuted for the rape and killing of a three-year-old girl. The pace of executions accelerated, thus calling into question the constitutionality of existing methods. Debate focused on which chemicals would be ideal for designing and implementing a lethal injection execution method, and several suggestions were proffered. Nearly 100 years earlier, the New York Commission of 1886, in debating alternative methods to hanging, briefly considered injections of cyanide. This idea was quickly rejected due to medical ethics, and the possibility of cyanide injections was never seriously considered again (Welsh, 1996).

Shortly after the Gilmore execution in Utah, Oklahoma Senator Bill Dawson initiated a bill geared toward implementing executions by lethal injection. In consultation with Dr. Stanly Deutsch, head of Oklahoma University School of Medicine’s Department of Anesthesiology, a protocol was developed for the new procedure. The process entailed the use of a quick-acting

barbiturate, then the introduction of a paralytic agent to cease cardiac function. Oklahoma adopted the new method into law on May 11, 1977. In an unrelated move the following day, Texas also passed lethal injection legislation (Welsh, 1996). Texas made clear its reasoning for the change – as one representative noted, “Electrocution is a very scary thing to see...I voted for a more humane treatment because death is pretty final. That’s enough of a penalty” (cited in Welsh, 1996: 78). Another proponent asserted that the death penalty should be “...swift and sure punishment, not something that takes away the dignity of the state” (ibid., p. 78).

Although two states had adopted lethal injection as a method of execution, no execution by the new process had taken place in the 1970s. By 1981, five states had legislation permitting the use of lethal injection, and medical ethicists voiced strong aversion to the use of medical technology in exacting the ultimate punishment. Oklahoma inmate Thomas ‘Sonny’ Hayes was to be the first to die by the new method on September 9, 1981, however the World Medical Association and Amnesty International intervened with scathing statements admonishing the imminent participation of medical professionals in executions. Hayes’ execution was eventually delayed, and his sentence later commuted to life in prison (ibid., p. 79). In December, 1982, Charles Brooks Jr. became the first condemned inmate to die by lethal intravenous injection at the Huntsville Prison in Texas. Since that time, over 500 inmates have been put to death by lethal injection, and nearly all 38 states with death penalty statutes have adopted the method (Amnesty International, 1998; Death Penalty Information Center).

The increase in the number of states adopting lethal injection during the 1980s and 1990s arose in part from several botched gassings and electrocutions. Perhaps the most widely publicized botched execution was the lethal gassing of Jimmy Lee Gray on September 3, 1983, at Parchman, Mississippi. Eight minutes into the process, prison officials had to clear the viewing room because “...Gray’s desperate gasps for air repulsed witnesses” (Radelet, 1998: 1). Gray’s attorney later remarked, “Jimmy Lee Gray died banging his head against a steel pole in the gas chamber while reporters counted his moans” (cited in Radelet, 1998: 1). On April 22, 1983, Alabama executed John Evans in the electric chair. Sparks and flames erupted from the electrode on his leg, and smoke was seen pouring from underneath the face hood. On May 4, 1990, Jesse Tafero was executed in Florida’s notorious electric chair, dubbed “Old Sparky”. A synthetic sponge was used under the skullcap rather than the standard natural sponge, and this

miscalculation resulted in six-inch flames erupting from Tafero's head during the first moments of the execution. Witnesses were said to have been repulsed after three jolts of electricity were needed to stop the inmate's heart and breathing (ibid.). Finally, Virginia's 1990 electrocution of Wilbert Lee Evens caused concern for that state's electric chair. During the first moments of the procedure, "...blood spewed from the right side of the mask on Evens' face, drenching his shirt with blood" (ibid., p. 2). The autopsy concluded that the loss of blood was due to an extremely high blood pressure during the execution.

Lethal injection resembles in no way the traditional methods of execution in this country. Most execution chambers are equipped with a gurney, complete with sheets and padded head rest. Although some correctional facilities use the lethal injection machine, which is programmed to administer the substances automatically, some still retain the intravenous pole and manual injection system. The process is, by design, quick and efficient. The inmate is usually administered a sedative an hour prior to his or her execution. At the time of the execution, the inmate is escorted into the death chamber by correctional officers and execution team staff. The condemned is laid supine on a gurney, and is secured with leather straps to prevent movement. Trained staff or medical personnel then secure intravenous lines in both arms, which is standard procedure in case one line becomes obstructed or unusable (Amnesty International Report 50/01/98).

At the signal of the warden, medical staff, usually partitioned from the view of witnesses, begin the introduction of sodium thiopental, a barbiturate which induces sleep almost immediately. Following this first injection, an injection of pavulon or similar paralytic agent is introduced. This agent ceases respiratory function and collapses the lungs. A final injection of potassium chloride is introduced, which ceases cardiac activity and ultimately causes cardiac arrest. The 'ideal' lethal injection execution takes no more than seven minutes, however some executions have been delayed upwards of 45 minutes due to problems locating a suitable vein (Finks, 1983; Radelet, 1998). In some respects, lethal injection is the quintessential execution method. The process is no longer overtly violent, and there is no disfigurement of the inmate's body during the procedure. Johnson (1998) remarks on the process:

Lethal injection, then, offers a paradoxical execution scene. A supine inmate, seemingly at rest, appears to drift off into a sleep that merges imperceptibly with death. This is, in its essentials, the ideal modern death – a death that occurs in one’s sleep, painlessly. The reality may well be completely different. The interval on the gurney, reminiscent of rest but actually a case of forced restraint, can certainly be considered a kind of torture of its own; and once the drugs are introduced, what follows may well be a death by slow suffocation – likewise, a kind of torture. All of this unfolds before us as we congratulate ourselves on our humaneness and, more macabre still, as the immobilized offender comes to realize the deception of execution by lethal injection and, unable to struggle, recognizes his inability to communicate his distress to the world (pp. 46-47).

Johnson’s perspective here sheds light on the sociological import of death rituals within the institution of punishment. While the result of any execution is always death, the medicalized dramaturgics employed during lethal injection procedures provide a psychological barrier between those dispensing the punishment and the act itself (Haney, 1997). They also function to maintain an impression of order and control over the event (Lofland, 1975; Haines, 1992).

### **Summary**

The United States still employs five methods of execution – hanging, the firing squad, lethal gas, electrocution, and lethal injection. Although most of the thirty-eight states with death penalty statutes have adopted lethal injection as either an alternate method or a solitary method, some states hold fast to their traditional electric chairs, gallows, and gas chambers.

This chapter is intended as a historical account of national patterns and transitions in execution methodology from the colonial era to the present. In Chapter V, North Carolina’s social context will be offered as the backdrop for its philosophies and ideologies regarding death as punishment. The following section of the chapter will then chronologically detail the advent of the electric chair in the State. Evidence will then be presented to demonstrate the manner in which the labeling of a extant method of execution occurred. This deviant definition set into

motion the legislative reconstruction of a new method of execution, largely reliant on the institutions of science, technology, and medicine.

## CHAPTER V

### THE 1935 LETHAL GAS BILL

*“From the barbarous instrument in the death chamber at the State Prison, with its “odor of roasted flesh”, from which, when the fatal current stops, are taken corpses of “scared, seared animals”, there echo some last words which, though they do not reach the inattentive ears of the gentlemen in the Capitol, reach, we trust, a higher Law-giver” -- Nell Battle Lewis, February 3<sup>rd</sup>, 1935.*

#### **Introduction**

This chapter explores North Carolina’s change from electrocution to lethal gas in 1935 as mandated in the State’s legislature. The historical context of North Carolina, as well as a more general discussion of the South, will be offered as the foundation on which social norms of ‘death as punishment’ were constructed, then reconstructed, to legitimize a form of deviant institutionalized violence. A detailed discussion of the adoption and use of electrocution in the State will follow. The chapter will then proceed with an analysis of social forces responsible for driving the legislative shift to lethal gas, and the subsequent General Assembly debates of 1935. North Carolina’s first use of the lethal gas chamber in 1936 will then be presented.

Although this dissertation does not statistically evaluate race, crime rates, or economics as possible factors in changing execution methods, it is nevertheless important to describe the social context of post-Progressive North Carolina and the South in painting a somewhat accurate picture of the era in which these important transitions occurred (see Galliher, Ray, & Cook, 1992). This affords the reader an opportunity to be somewhat familiarized with the social ideologies permeating the region at that time, especially those regarding formal and informal methods of social control.

#### **5.1 The South as the Execution Belt**

It is generally agreed upon that the death penalty has historically been an acceptable element within the institution of justice insofar as the South is concerned (Bedau, 1997; Bowers, 1984; Harries & Cheatwood, 1997; Johnson, 1998; Lane, 1997). Hugo Bedau (1997) notes:

Describe the South however one wishes – the erstwhile slavocracy, the Old Confederacy, the Bible Belt – in this region the death penalty is as firmly entrenched as grits for breakfast (p. 21).

While Bedau and others can only empirically speculate as to the durable nature of capital punishment in the South, sociologists and criminologists seem to agree that conventional explanations hinge on the general characteristics of the region as rural, largely conservative, inherently more violent, and historically racist (Bedau, 1997; Harries & Cheatwood, 1997). Bohm (1999) echoes this assumption:

Historically, capital punishment has been employed mostly in the South. Sixty percent of the approximately 4,000 persons legally executed under state authority in the United States between 1930 and 1980 were in the South (p. 145).

The distribution of legal executions in Bohm's timeframe are as follows: South (2,307), Northeast (602), West (511), and North Central (403) (ibid.). Bedau (1997) also notes that between 1930 and 1995, 4,172 prisoners were legally put to death in the United States, with 1,058 of those executions occurring in *three southern states alone* (Texas, Georgia, and North Carolina). According to Bedau's (1997) calculations, North Carolina ranked fifth in the nation in the number of prisoners executed between 1930 and 1995, having put to death 271 inmates. Behr (1973) noted that North Carolina ranked fourth in executions between 1930 and 1970, surpassed only by Georgia, Texas, and California. Although most prisoners were executed for capital murder in the 1930s, the death penalty in North Carolina was also reserved for arson, burglary, and rape (Coates, 1937; North Carolina State Board of Charities and Public Welfare, 1929; Phillips, 1986).

Given that scientific polling was not yet an *established* means by which to officially gauge public sentiment regarding the death penalty, it is unknown what percentage of North Carolinians, or Americans in general, approved of capital punishment in the early 1930s (Ellsworth & Gross, 1994; Walker, 1998). As Ellsworth and Grossman (1994) point out, "In the 1930s and 1940s, pollsters rarely asked about the death penalty, probably because it was an accepted and uncontroversial fact of life" (p. 40). This would seem to hold true at least for the

South, given that no southern state abolished the death penalty during the Progressive Era, and that the South tallied the most executions of any other region of the country.

The earliest Gallup Poll inquiring about the death penalty appears to have been one conducted in 1936; 1,500 respondents were asked, “Do you believe in the death penalty for murder?”. Sixty-one percent indicated they favored the sanction, and the remaining thirty-nine percent opposed it (ibid., pp. 40, 48). In addition, a December, 1936 follow-up Gallup Poll revealed that only 28% of Americans favored the death penalty for persons under twenty-one years of age (ibid.). In an extensive analysis of the Gallup polls conducted between 1936 and 1986, Bohm (1991a, 1991b) found that whites, Westerners, Republicans, males, and wealthier individuals tended to express higher approval rates for capital punishment than other groups, including Southerners. Regardless, as Ellsworth and Grossman (1994) conclude, “...no trend can be inferred from the sketchy data that are available *before* the 1950s” [my emphases] (p. 40).

North Carolina’s national position in regard to capital punishment in the early twentieth century was quite unique. It was one of eight states having the largest number of crimes punishable by death. In addition, it was one of six states in which the judge and jury had no discretion between a penalty of death and life imprisonment, and one of eight states that allowed the death penalty for arson. Finally, North Carolina was one of five states with a death penalty statute for first degree burglary (Lewis, *The News & Observer*, August 28<sup>th</sup>, 1932).

## **5.2 Violence and the Southern Region**

According to Schneider and Smykla (1991), the decade 1930-1939 falls into one of four execution periods they refer to as the “Peak Period”. In the years 1935-1936, executions in the United States reached an all-time high, with 197 and 196 respectively (Harries & Cheatwood, 1997). In all decades after 1800, the South tallied the most executions of any region in the country, which they note, “...is a pattern broadly coincidental with the geography of murder” (ibid., p. 20). Harries and Cheatwood (1997) comment:

The Peak era (1930-1939) suggests a heavily [sic] southern emphasis...the Decline era (1940-1985) is similar, but suggests an even stronger southern bias, with extensive blocks of contiguous execution counties in the Carolinas, Florida, Georgia, Alabama, Louisiana, Mississippi, and Texas. Thus, some evidence suggests

that the South has emerged in the twentieth century as an execution region, mirroring its demonstrated prominence as a high homicide area...Nine of the 17 counties with at least 75 executions overall were in the South (pp. 22-23).

For example, in 1934 the East South Central<sup>1</sup>, West South Central<sup>2</sup>, and South Atlantic<sup>3</sup> regions of the United States reported the highest homicide rates of any regions in the country.

Furthermore, North Carolina reported the fourth highest homicide rate (29.0) in the United States for that year, surpassed only by Tennessee (29.8), Alabama (37.2), and Arkansas (32.9) (*Uniform Crime Reports, Fourth Quarterly Bulletin*, 1935). Between the years 1920 and 1929, the North Carolina Prison Department reported a 193% increase in the prison system population, from 753 in 1920, to nearly 2,200 in 1929 (*The Prison News*, November 1, 1929). Harries and Cheatwood (1997) conclude, "...the wave of executions in the decade [1930 – 1939] could be seen as the 'control' response of the establishment" in attempting to curtail the spiraling murder and violent crime rates (p. 24)

Although time does not permit a full analysis of homicide rates versus rates in which prisoners were executed in the South during the 1930s, it is sufficient to note that economic turmoil, fear of fascism, and Prohibition all played an integral part in the increased number of violent crimes and subsequent executions (Harries and Cheatwood, 1997). Limited educational opportunities for young males during the era was also suspected as a likely cause for increased criminal behavior. In 1929, the North Carolina State Board of Charities and Public Welfare reported that, "Many of the prisoners in the North Carolina penal system are practically or quite illiterate. Few have gone beyond the elementary or lower grammar grades" (Capital Punishment in North Carolina, Special Bulletin No. 10, p. 33). A Prison Commission study of 2,334 North Carolina prisoners in early 1930 also revealed alarming findings<sup>4</sup>. An article appearing in the June, 1930 issue of The Prison News expressed these concerns:

Among the many factors responsible for crime and its recent alarming increase, none can take the lead over ignorance

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<sup>1</sup> Kentucky, Tennessee, Alabama, and Mississippi

<sup>2</sup> Arkansas, Louisiana, Oklahoma, and Texas

<sup>3</sup> Delaware, Maryland, Virginia, West Virginia, North Carolina, Georgia, and Florida

<sup>4</sup> White males (1,116), black males (1,136), white females (22), black females (55), Indian males (5).

resulting from lack of education. A survey made here within the past two months shows that out of a total of 2334 subjects, 544 never attended school for a single day, although of the latter number, 125 now claim that they are able to read and write after a fashion...Among the older prisoners, this unlettered condition may be somewhat understood for many of them grew to manhood at a time when it was difficult to acquire even the rudiments of an education. But since the present population of the prison is made up principally of mere boys and young men, this state of affairs is little short of a national calamity... (p. 5).

The magnitude of illiteracy among the inmates became apparent not only in light of their reported educational level, but in their written responses in determining their occupation prior to incarceration. Among jobs listed by the prisoners are that of chauffeur, which some inmates attempted to spell as best they could. Variations of the word included 'shuffer', 'choofer', and 'shofer' (ibid., p. 1). Other occupations were listed as 'seamint finisher', 'gambling', 'miner if I ever get out', 'making liquor', and 'handling steam' (ibid.).

The Prison News, written by and for North Carolina prisoners, consistently expressed the need for prisoner education well into the mid-1930s. As the unknown inmate author of the June, 1930 article pled, "There is not only a crying need of education among prisoners but with many there is an earnest desire for it" (ibid., p. 5). With nearly five million dollars allotted to public schools in North Carolina that year, prisoners within the system reasoned that a few thousand additional dollars apportioned specifically for inmate educational programs might "...pay tremendous dividends...among those in 'durance vile'" (ibid., p. 6).

### **5.3 A Subcultural View of Southern Violence**

Lane (1997) posited an interesting perspective which largely parallels sociological theories of subcultural violence – that the South was more prone to what he refers to as "...the southern code of honor" (p. 351; see also Miller, 1958; Shoemaker, 1990). Young males, especially in the South, engaged in violent criminal acts, including homicide, for the preservation of their image

as brave or masculine. Without the institutions of marriage or employment to quell the need for the use of violence in resolving disputes, young men were likely to engage in these otherwise irrational crimes. Miller (1958) posited a similar perspective when he introduced his theory of “Lower Class Focal Concerns”, or the view that lower-class males adhere to a specific code of values unique to their environment. According to Miller’s perspective, “This lower-class culture exists apart from the middle-class culture, and it has done so for generations” (Adler, Mueller, & Laufer, 2001: 168). Among Miller’s six focal concerns of lower-class males is that of toughness, which they are almost “...obsessively concerned with” (ibid.). This code, according to Miller’s theory, “...requires a show of masculinity, a denial of sentimentality, and a display of physical strength” (ibid.). Although this “code of honor” occurred in all regions of the country, “...in the South, the daily need to assert personal dominance, first of all over slaves, demanded that even the most successful live by the code and handle their own affairs without calling on the law” (Lane, 1997: 351).

#### **5.4 Racism, Legal Social Control, and the South**

Indeed, executions in the South during the 1930’s functioned as a means of formal social control. Not only was social control vital in maintaining a sense of order with regard to violent crime, but it also served to maintain racial boundaries in the southern region. As Terrill and Hirsch (1978) assert, “In the 1930’s, as before, *the* Southern white question was how to keep blacks in their place” [their emphases] (p. 237). *The Prison News* reported that, “At the present time [1931] the Negro population in the South, representing a little more than a fourth of the total population, furnishes more than half of the penitentiary convicts” (November 1<sup>st</sup>, 1931, p. 1).

A core element of social conflict criminology is the position that the level of minority presence in a society dictates variation in the frequency and style of social control (Phillips, 1986). In a study which posited a model for examining the discriminatory execution of blacks in Georgia and North Carolina between 1925 and 1935, Phillips (1986) noted several possible theories and findings from past research which attempt to explain levels of intensity in imposing death sentences among southern blacks. One such perspective argued that as the level of minority presence in a region decreases, so too will the methods of legal social control – in this case, executions.

For instance, we might consider death penalty abolitionist states during the Progressive Era, which most agree encompasses the first two decades of the twentieth century (Link, 1992; Zimmerman, 1951). Galliher, Ray, and Cook (1992) examined ten death penalty abolitionist states between the years 1897 and 1917 (Minnesota, North Dakota, Colorado, Oregon, Washington, Kansas, South Dakota, Missouri, Arizona, and Tennessee). The authors found that only two of the abolitionist states contained more than five percent minorities, the anomaly being Tennessee, a southern state with 21% minorities. In this case, although the abolition bill barely passed in the legislature, Tennessee feared an increase in white mob violence. Interestingly, the bill abolished the death penalty for murder, but retained it for rape. According to one Senator, the need to retain executions for rape hinged on mankind's continued "...devotion to womanhood" and the perceived unbridled sexual appetite of young black men (cited in Galliher, Ray, & Cook, 1992: 556). Tennessee's experiment with abolition lasted only four years – in 1919, that State reinstated capital punishment for murder due to an increase in homicides and the economic recession following World War I (Bedau, 1997; Galliher, Ray, & Cook, 1992; Walker, 1998).

Conversely, Phillips (1992) also discovered studies which found that as minority presence increased, the frequency of executions decreased. This phenomenon, termed "benign neglect", implies that the race of the victim (rather than the perpetrator) has more impact on whether a defendant receives a death sentence (ibid., p. 461; see also Bohm, 1999). As minority presence increases, so will levels of intraracial violent crime. Given that black-on-white homicides are those most prone to death sentences, an increase in black-on-black homicide would seem to lower the rate of executions (see Liska & Chamlin, 1984). Lane (1997) concludes:

Violence directed at whites was punished savagely – violence directed at blacks, by either race, was not...with little else to protect, the need to maintain personal respect, even personal safety...became for many the kind of cultural trait it was among the white elite (p. 351).

It is unknown whether the aforementioned theoretical perspectives would be helpful in shedding light on North Carolina's execution patterns in the first three decades of the twentieth century. It does appear, however, that North Carolina used the death penalty at much higher rates for crimes committed by blacks during the era. In a summary of legal executions found in the

David Lawson case file at the Center for Death Penalty Litigation, murder was indicated as the primary crime for which prisoners were put to death, followed by rape. What is more striking is that out of 342 total executions between 1910 and 1949, North Carolina executed 270 blacks, 67 whites, and 5 Native Americans (listed as 'Indian'). Two hundred sixty-five of these executions were for murder, 65 were for rape, and 10 were for burglary. The remaining two offenses constituted combinations of offenses such as 'burglary/rape' and 'murder/arson'.

### **5.5 Social Control and Extralegal Southern Justice**

Although legal executions were a pervasive element in the Southern justice system in the 1930's, extralegal forms of social control were also rampant with regard to minorities. The terms 'lynching' and 'South' have long been deemed synonymous, and North Carolina was not immune to cases of vigilante lynch mobs seeking to symbolize racial boundaries in the form of illegal hangings. Beck, Massey, and Tolnay (1989) note that, "The threat of lethal violence (both legal and extra-legal) served as an important mechanism for the social control of southern blacks following emancipation and well into the twentieth century" (p. 317). Phillips (1986) adds, "Between 1920 and 1940, approximately 3,300 Americans were either officially or unofficially executed. The bulk of those Americans were black: they constituted the vast majority of those executed unofficially (i.e. lynched)..." (p. 458). Walker (1998) notes that nationally, between 1930 and 1967, 89% of all prisoners executed for rape were black, and African Americans comprised 54% of total executions during the same timeframe. Not surprisingly, many southern blacks were clearly aware of this threat, and many northbound migrants mentioned harsh penalties and white mob violence "...as an important reason for leaving the South" (ibid., p. 318). George Henry White, a black Congressman in North Carolina from 1897-1901, left for Philadelphia upon learning of the eminent disenfranchisement of blacks. He was quoted as saying, "I cannot live in North Carolina and be a man" (cited in Jones, 1983: 328).

Lynching occurred in all regions of the United States, but until the 1880s, whites were lynched almost as regularly as blacks (Jones, 1983; Walker, 1998). By the turn of the century, however, the South had become embroiled in racial tensions. While time does not permit a full evaluation of the increase in lynchings in the post-Progressive South, it is sufficient here to mention economic competition among whites and blacks, disenfranchisement, white fear of black criminal propensities, and ideologies of white superiority as likely factors (Galliher, Ray, &

Cook, 1992; Jones, 1983; Link, 1992; Phillips, 1986; Walker, 1998). Walker (1998) stresses, “Lynching was a brutal social drama, designed to strike fear in the hearts of anyone who challenged the racial caste system” (p. 76).

Although North Carolina’s history was tarnished by extralegal lynchings, there is evidence to suggest a less frequent occurrence of the practice than in other southern states. In addition, although organizations such as the Ku Klux Klan were revived after World War I, their activities in North Carolina were not as prevalent as in other southern states or the mid-West (Jones, 1983; Lefler, 1973). During the period 1888-1933, there were sixty-six recorded accounts of extralegal executions in the State. These numbers reflect a figure one-seventh of those in Georgia or Mississippi during the same time period, and nationally, North Carolina ranked twentieth in the numbers of recorded lynchings (Jones, 1983). Clarence Poe, North Carolina editor of *The Progressive Farmer* for nearly fifty years, once remarked of lynching as, “...a belated outcropping of primitive anarchy”, albeit not always at the hands of racists (cited in Jones, 1983: 344). Indeed, lynching has been viewed by many as more symbolically instrumental than judicially effective – the practice did little to curb crime, but instead served as a socially tolerable means by which to maintain racial hierarchies and boundaries during the era.

### **5.6 Criminal Women and North Carolina**

Since 1910, North Carolina has all but reserved the death penalty for its male offenders (The North Carolina Department of Correction, 1999). A review of female executions since 1908 shows this to be a national tendency as well. Between 1908 and mid-March, 2001, forty-two women had been executed in the United States, with no clear pattern of regional differences (Gillespie, 1997). Thirty of the total number were white women, and the remaining eleven were black. In addition, although no one region of the country appeared to claim more executions than another, the State of New York executed seven of the forty-one women, all by electrocution (ibid.). Between 1908 and 1998, the State of Texas did not conduct an execution involving a woman, but has claimed two of the four since 1998. This is quite significant, given that Texas has surpassed all other states in the total number of male executions for quite some time (The Death Penalty Information Center, 2000; Gillespie, 1997). Since 1608, when documentation of executions began, approximately 550 of the 18,000 to 20,000 legal executions in the United States have been women (Bedau, 1997; Bohm, 1999; Grossman, 1998; Johnson, 1998).

In 1916, North Carolina Governor Locke Craig commuted the death sentence of Ida Ball Warren, and later admitted his sole reason for doing so was because she was a woman (Gillespie, 1997). A *Greensboro News* article noted that, “His excellency [Craig] admitted the irrationality of his course” (January 3<sup>rd</sup>, 1943; in Gillespie, 1997: xxi). Not until January 2, 1943 did the State execute a female offender in its gas chamber. Rosanna Lighter Phillips, a black woman from Durham County, had been convicted along with her husband of murdering their employer, a farm owner. The victim had been savagely bludgeoned with an axe, and his head nearly severed by the viciousness of the blows. Another heinous circumstance surrounding the Phillips crime was the fact that as the murder was taking place, the victim’s invalid wife lay sleeping just inside the house. After dumping the victim’s body in a well, the pair stole a wallet and watch, then fled to town where Rosanna apparently went on a shopping spree, purchasing a new hat and dress (ibid., xx). Just minutes before Rosanna Phillips was executed, her accomplice/husband had been put to death in the same execution chamber. Each claimed the other was guilty of casting voodoo spells which contributed to the commission of the crime – just before their executions, the couple was allowed a short visitation, and “...each told the chaplain they had forgiven the other” (ibid.).

North Carolina’s next execution of a woman occurred on December 29, 1944, just two years shy of the Phillips execution (North Carolina Department of Correction, 1998). Bessie Mae Williams, a black female, was sentenced to die for the stabbing death of a Charlotte, North Carolina taxi cab driver. Two of her three accomplices were spared the gas chamber – one because of his testimony for the State, and the other due to her age. From prison intake records, Gillespie (1997) was able to determine that Williams’ economic condition was “poor”, and that she was of “...low average mentality” with a “...grouchy nature and evasive in her conversation” (p. xvii). The intake records go on to indicate that Williams had “...a mean, sly eye”, and was the type “...who would allow other people’s property to stick to her fingers” (ibid.). Finally, Williams’ personal attributes were listed as “nuisance”, “illiterate”, and “moronic” (ibid., xviii). Just twenty-three days before her scheduled execution, Williams wrote this note on Central Prison stationery to then seated Governor J. M. Broughton:

Dear Sir:

Just a few line I am ask you will you  
will you please try and save my life,  
if you all can I promises you all and

my God that I will be a better girl  
and live for the Lord if you all will  
please have mercy on poor me. If you  
all would do that for me I promises you  
all that I won't has any more troubles  
out of me I will get mysafe a job and go  
to work because I don't has a mother  
or Father or any body to help me or care  
any thing for me. I have to work for mysafe  
and I am still ask you all to please have  
mercy on me and save my life for me.

Thank you (ibid., xvi – xvii).

Williams' role in the crime was of some dispute. While one accomplice testified at her trial that she was one of two individuals actually participating in the stabbing, Williams maintained that she was sitting on the curb, begging and pleading with a male accomplice not to harm the driver. Her only part in the crime, according to her testimony, was removing two fifty-cent pieces from the deceased's person at the directive of an accomplice. Her age at the time of the crime was also a point of concern for her attorney. Given that Williams was an illegitimate child, and that her mother was stabbed to death when the girl was only three years old, even Williams herself was unsure of how old she actually was. A fruitless search was conducted for her birth certificate, and juvenile court records showed her age in 1933 to be three years old. This finding would place Williams' age at fifteen when the homicide was committed. Other court records indicated differences in her age, leading her defense attorney to question whether Williams was an adult or a youth at the time of the murder. The juvenile court records noted in their findings that, "...when a well developed Negro girl gets around 12 or 13 years of age, it is hard to tell exactly what her age is" (in Gillespie, 1997: xviii). After the Williams execution in 1944, North Carolina would not execute another woman until 1984 (North Carolina Department of Correction, 1998).

Although North Carolina's prison system was home to female offenders in the early decades of the twentieth century, very few were incarcerated for violent offenses. In 1927, the North Carolina State Board of Charities and Public Welfare reported a prison population of 1,592, with women comprising only 53 of the total number of incarcerated inmates. In all bienniums under

study (1908 – 1926), the Board found that “...fewer white women have been received at the State Prison than any other group” (p. 32). Of the 1,592 prisoners reported by the Board, nine were white women, and the remaining 53 were Negro. Female crimes ranged from receiving stolen goods, false entry in bank books, larceny, auto theft, and highway robbery (ibid.). Female involvement in murder peaked nationally in the 1920s, and continued at a stable, but low, rate in the 1930s (Janeksela, 1997). The tendency of women to refrain from violence, specifically murder, was typically erased in cases of domestic situations involving an intimate, or while participating in a crime with a male accomplice (see Simpson, 1991).

Although punishment was the primary goal of male imprisonment until mid-century, women were assumed to be more prone to rehabilitation (Craven, 1987; Walker, 1998). Thus, while required to work during their incarceration, women prisoners most often found themselves performing light farm labor, or being assigned to more feminine tasks such as sewing and mending male prisoners’ uniforms, cooking, and cleaning. These duties were assigned to women in hopes of bolstering morality, and preventing a further fall from womanhood and femininity (Craven, 1987). The low female incarceration rate during the era could be due to several factors, one of which being the courts’ hesitancy to imprison females during a time of economic crisis. Given that males were resorting to criminal behavior during the Depression years, courts may have been compelled to leave poor households somewhat intact. Another possibility is that women were not as prone to violent behavior – while their crimes consisted of mostly property offenses and crimes against morality, leniency was oftentimes granted except in cases of women deemed incorrigible (see Janeksela, 1997; Walker, 1997).

### **5.7 Political Transformation, Education, and Reform**

Though North Carolina’s history has been scarred by violence and racism, its reputation as a more liberal southern state cannot be ignored. In fact, as most reform policies in the South were grinding to a halt in light of racial and economic concerns, North Carolina continued its efforts in bettering race relations, educating the poor, and increasing its economic growth well into the 1940’s (see Key, 1949; Zimmerman, 1951). As Key (1949) noted some fifty years ago:

It has been the vogue to be progressive. Willingness to accept new ideas, sense of community responsibility toward the Negro, feeling of common purpose, and relative prosperity

have given North Carolina a more sophisticated politics than exists in most southern states (p. 210).

Most North Carolina historians identify the beginning of North Carolina's progressive and reformative spirit as the years just prior to 1900 (Jones, 1983; Key, 1949; Lefler, 1973). Since 1867, blacks had comprised the majority of registered Republicans in the southern states (Jones, 1983). In addition, blacks had been afforded the opportunity to serve in public office, and generally considered the Republican Party an ally in their struggles for advancement and recognition (Key, 1949). By 1898, the Democratic Party had become increasingly incensed over the appointment of blacks to public office. An intense white supremacy campaign ensued, and the Democratic Party regained control of both the legislature and the governorship by 1900. As Key (1949) noted, "...Democrats maintained that Negroes were moved by every base incentive and that, in fact, their presence in the electorate was responsible for the shameless corruption that prevailed" (p. 208).

North Carolina's early reform ideologies were paradoxical at best. A 1900 suffrage amendment passed by the legislature mandated that voters be required to successfully pass a reading and writing test. Illiterate whites were provided a temporary grandfather clause, however blacks were all but eliminated from the political process due to illiteracy (Jones, 1983; Key, 1949). Governor Charles Brantley Aycock, who had assumed office in 1900, had been deemed "...the educational governor", and his efforts both in and out of office were consumed with the advancement of public education for all children (Key, 1949: 208). Although espousing the "God-given and hereditary superiority of the white man", Aycock maintained that the suffrage amendment was to remove ignorance, not people, from the ballot boxes (Jones, 1983: 329). Before the Democratic State Convention on June 23, 1904, he asserted:

When the (suffrage) fight had been won, I felt that the time had come when the Negro should be taught to realize that while he would not be permitted to govern the State, his rights should be held more sacred by reason of his weakness (cited in Key, 1949: 209).

Although a strong proponent of education for all races of children, Aycock's sentiment unfortunately mirrored that of other southern regions. According to one Texas prohibitionist in 1903, blacks should "be permitted the largest liberty and the greatest incentives to progress that can be given in safety to the white race" (cited in Link, 1992: 75). Reformer and regional spokesman Edgar Gardner Murphy argued that "...white responsibility should accompany white supremacy", and that white southerners typically had to deal with two types of black classes – the "backward, thriftless, and profitless", and the "quiet, sensible, and industrious men and women" (ibid., pp. 77-78). In 1902, Wallace Buttrick, a northern reformist, remarked that white aid to black education be "carefully conditioned" and "watched to the last penny" -- in his mind, even "unusually good Negroes could be spoiled by permitting them too much autonomy" (ibid., 77). It was therefore the paternalistic responsibility of sympathetic southern whites to assist blacks in achieving their salvation as productive, albeit inferior, members of society.

By the early 1900s, the Republican Party had all but alienated blacks in North Carolina, and had closed the door to the once prevalent black vote. The State Republican Convention publicly stated that Negroes had "...passed out of the realm of politics" (Jones, 1983: 329), thus transforming itself into "a white man's party" (Lefler, 1973: 565). This abandonment of blacks also occurred in light of the stigma attached to "...the party's historic connection with the Negro" (ibid.). In the fifty years following the instatement of the 1900 suffrage amendment, "...no Republican was elected to a high state office, none to the United States Senate, and only six to the Congress...during the same fifty-year period the state voted Republican in a presidential election only once..." (Jones, 1983: 329). The once traditionally 'liberal' North Carolina Republican Party had ultimately reversed itself, and the Democratic Party, although historically conservative, appeared to offer *some* hope for disenfranchised blacks and the poor.

The educational opportunities promoted in the Aycock administration began to materialize – although Negro schools were typically poorer than white schools in all respects, funding from organizations such as The General Education Board, the Slater Fund, and the Jeanes Fund all contributed to the betterment of black schools. Between 1906 and 1928, these organizations, along with the State, set aside over 1.8 million dollars to Negro education, facilities, and supplies (Lefler, 1973). North Carolina also saw enormous growth in its overall educational system during the 1920s and 1930s, especially with regard to universities, schools for the arts, and women's

colleges (Jones, 1983). Compulsory school attendance policies were implemented, as well as a State Board of Examiners to certify and monitor teachers within the system. The teaching of agriculture and domestic sciences in high schools became a recommended provision, given that North Carolina's economy was largely reliant on the cash crops of tobacco, cotton, corn, hay, and peanuts (Key, 1949; Lefler, 1973).

These educational reforms and opportunities under the Democratic administrations had an overwhelming effect on North Carolina's economy. Key (1949) explains:

From this educational revival springs in large measure the spirit of self-examination that still sets North Carolina apart in the South. As the state struggled to educate its people it made great strides, too, in the fundamental base of a healthy society, productivity. Perhaps fortuitous economic circumstances impelled tobacco and textile production. Perhaps it was something as simple as the conflux of energies of able men of good will. Whatever the causes, as North Carolina began to educate it also began to produce, and there were set in motion the progressive, productive forces that today distinguish the state (p. 210).

The economic growth Key speaks of is quite remarkable. In 1900, North Carolina's value of manufactured products was \$94, 919, 663. By 1939, that figure had climbed to almost 1.5 billion dollars, a fifteen-fold increase (ibid.). Furthermore, this was the largest percentage increase of all southern states during the same time period. Between 1899 and 1939, North Carolina boasted a 193% increase in the value of farm products, surpassed only by Florida (ibid.). This increase in the value of farm products and manufactured goods is even more striking when one considers the advent of the Great Depression in 1929. In 1933, cotton prices had dropped to five cents per pound, and tobacco to eight cents per pound. Farmers could no longer pay their taxes or their mortgages, and subsequently, many lost their farms (Jones, 1983; Key, 1949; Lefler, 1973). Unemployment rose to unprecedented levels, and ultimately contributed to the increase in violent crime referred to earlier in this chapter. At the height of the Great Depression, the national unemployment rate stood at 16%, a staggering figure (Harries & Cheatwood, 1997).

## **5.8 Punishment and Penal Reform**

North Carolina's journey through the early 1930s paralleled that of other southern states. Institutionalized racism, economic crisis, political upheaval, and soaring violent crime rates were all social issues which characterized the South during the era. However, North Carolina distinguished itself as somewhat unique by espousing the importance of education and maintaining a clear lead in manufacturing and farming. In addition, although firm racial boundaries were embedded in its political platform, the State took great strides in realizing the importance of educating its black citizens and maintaining some degree of racial tolerance and harmony during a time when such advocacy was generally unpopular (Jones, 1983; Key, 1949; Walker, 1998). Although North Carolina shared some of the less appealing characteristics of the South during the first part of the era, its progressive stance toward social policy clearly defined it as a state desiring to advance beyond the stereotypes (Key, 1949; Phillips, 1986).

Along with most other southern penitentiaries during the first three decades of the twentieth century, North Carolina's prison system practiced several forms of corporal punishment designed to instill discipline in unruly or uncooperative inmates<sup>5</sup>. Aside from solitary confinement, methods of punishment within prison confines included whipping or "lashing". The instrument used, better known as "Black Aggie" by prisoners, consisted of two pieces of harness leather affixed to an eighteen-inch hickory handle. The lashes, measuring nearly three feet, "...often brought blood and raised blisters upon the backs of its victims, in some cases requiring hospitalization of the inmate" (Craven, 1987: 101). Prisoners could expect to be "lashed" or whipped for any number of offenses, including gambling, talking, refusing to work, cursing, or fighting (ibid.). In 1923, Prison Superintendent George R. Pou sent written recommendations to then Governor Morrison, requesting that 'indeterminate sentencing' be used in place of the corporal punishment tactics employed by prison system staff. Since his appointment to Superintendent in 1921, Pou had opposed the use of lashings and whippings, however he was forced to oppose abolition of the practice during earlier sessions of the General Assembly because "...no viable alternative means of control was presented" (ibid., p. 115). In his 1923 report to the Governor, Pou adamantly stressed his philosophies:

It is my observation that the first principle for disciplining

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<sup>5</sup> For an excellent summary of southern prison punishment, see "*The Farm*" [A&E Documentary, 1998].

prisoners is to get it into the minds of those employees in charge of prisoners that insofar as possible prisoners should be accorded the same treatment as any free worker. Prisoners are merely ordinary human beings, just as you and I, they have temperaments, inclinations, and aspirations, just as other human beings....It is necessary to have the prisoners realize they have trust and dependence within themselves (cited in Coates, 1937: 226).

By 1925, unfavorable reports regarding the treatment of inmates, as well as the deplorable conditions within the prisons, led the General Assembly to pass the “Act to Reorganize the State Prison” (Craven, 1987; North Carolina Public Laws of 1925, c. 163). Prior incidents involving mistreatment of inmates included housing youthful offenders with violent adult criminals at the Caledonia Prison Farm. This indiscriminant housing practice resulted in several cases of sodomy and homosexual rape (Craven, 1987). In one incident, a black inmate was shot in the leg by a correctional officer – a subsequent investigation revealed no justification for the shooting, and the guard was permanently relieved of his duties (ibid.). Five years prior to the “Act..”, a black inmate housed in the Wake County Prison Camp was released from his cell for special yard privileges, and subsequently had his toes amputated after suffering from frostbite (ibid.).

Following the passage of the 1925 “Act..”, Central Prison became a state-controlled institution, and the affairs of inmates were placed under more stringent scrutiny. In addition, Pou’s recommendation for indeterminate sentencing as a replacement for corporal punishment became a reality. His rationale behind this recommendation was to offer North Carolina’s prisoners incentives for good behavior, and the North Carolina Legislature agreed. By 1926, prisoner morale around the State appeared to be shifting in a more positive direction. An October 15, 1926 article in *The Prison News* reflected a growing sense of prisoner cooperation in correcting unfavorable behavior:

Misbehavior while we are serving our sentences in the States Prison does not help any of us – instead it puts us in bad with the Prison Officials and the General Public at large...As Mr. Pou has said elsewhere in this paper, if we want the lash

we can have it but, I do not believe that there are 10 men in the States Prison at the present time who would like the lash to be brought back as a mode of punishment. It is entirely up to us prisoners to talk to the ones who are continually getting in bad, try and show them where they are not only hurting themselves but everyone else in the Camp where they are and try and get these men to endeavor too do their level best not to do wrong (p. 3).

Pou's early efforts in accelerating reform in the prison system did not go unnoticed, even among those incarcerated in his facilities across the State. As one inmate editorial in *The Prison News* noted, "His record of achievements as a prison superintendent speaks for him and establishes his efficiency in the "job" in which he is giving the State and humanity his best efforts" (December 15<sup>th</sup>, 1926, p. 2). Inmate classification systems were also implemented, and prisoners assigned to one of three 'grades' (either A, B, or C) could receive reduced sentences for exhibiting favorable behavior (Craven, 1987). Finally, Pou's administration allowed for the formation of the Central Prison softball team in 1926, and permitted the players to join the Raleigh City League. As Craven (1987) notes, "Thus, North Carolina became the first state in the nation to allow recreational interaction between inmates and the public" (p. 125).

While objectionable or brutal modes of corporal punishment had been all but eradicated from the North Carolina prison system by 1926, a few punishments still remained. A Prison Director's Report in 1932 indicated that the lash had not been used since 1920, however inmate grievances and complaints regarding the practice indicated otherwise. These grievances were rarely substantiated, but North Carolina citizens remained confident that lashing was still a prevalent practice within the system (Craven, 1987). Solitary confinement was retained as a means of disciplinary action, and prisoners sent to "The Hole" were fed meals of bread and water. Given that the law allowed seventy-two hours to pass before prisoners could be fed, this punishment was highly undesirable among the inmate population (ibid.).

Southern prison systems can rarely be spoken of without the mention of the chain gang. Most southern states, North Carolina included, relied heavily upon prisoner chain gangs to repair roads, ditches, and bridges for a fraction of the cost of using state highway personnel (Craven

1987; Walker, 1998). Given that prison industry was a focal point of prison reformists in the first two decades of the twentieth century, chain gangs fell under harsh scrutiny as being notorious for deplorable conditions and prisoner mistreatment (Walker, 1998). By the late 1920s, North Carolina's housing accommodations for road crews were still less than humane, mirroring conditions found in other parts of the country. Craven (1987) explains:

Wooden cages on wheels were still used often. One or two small windows provided light and ventilation for up to eighteen men. Bunks and blankets were usually available, but no sheets or good mattresses. A night bucket and a pail of drinking water completed the equipment. When the cage was filled to capacity, the only space available to the men was on the bunk itself, and these were stacked so tightly that sitting on them was impossible (p. 127).

Accommodations such as these created several problems. Fights and arguments were not uncommon as tempers flared in the hot, cramped conditions. In addition, the prisoners on the road crews were literally chained inside the wooden cages at night to prevent escapes. Although this practice seemed logical, the cages were "...veritable fire traps" (ibid.). Walker (1998) notes that most southern chain gangs represented "...the new symbol of barbaric southern penology" (p. 128). Prisoners in other southern states were required to wear shackles around their ankles that were welded shut, requiring the services of a blacksmith to remove them. These iron shackles caused deep lesions and wounds on the legs of prisoners, sometimes resulting in infections and amputations ("*The Farm*", A&E Documentary, 1998). Prisoners who complained about the shackles were whipped or lashed (Walker, 1998). Although North Carolina's housing accommodations for chain gangs were less than appealing to reformists, prisoners were rarely chained or shackled while on road duty, and were lightly supervised as compared to other states in the region (ibid.).

### **5.9 ELECTROCUTION AND THE TARHEEL STATE**

The Progressive Era brought about several changes in national prison reform. Espousing humanitarian concerns, reformists were able to have a somewhat productive impact on the treatment of prisoners and the conditions within penitentiaries and correctional facilities across

the country (Bohm, 1999; Link, 1992; Walker, 1998). In addition, the anti-death penalty movements of the mid-1850s resurrected themselves during the first decade of the twentieth century, however they found themselves waning by 1917 in light of public fear of rising crime rates, class conflict, and economic recession (Bohm, 1999). Furthermore, reinstatement of death penalty laws in pre-1920 abolitionist states, such as Missouri, Tennessee, Washington, and Oregon was suspected to be a by-product of "...a media-inspired panic about the threat of revolution" (ibid., 6). In other words, some states' legislatures most likely felt that the death penalty would be a sufficient threat to dissidents. Shipman (1996) concurs by adding, "The United States was on the threshold of becoming a world power. Immigration brought xenophobia in some instances, and capital punishment was generally more accepted, and in some instances, the two went hand-in-hand" (p. 201)

### **5.9.1 The Diffusion of Electrocutation**

In the twentieth century, the electric chair was relied on to execute over four thousand condemned men and women (Grossman, 1998; Johnson, 1998). Since its adoption by the State of New York in 1888, the diffusion and geography of the method is clearly oriented in the northeast, the mid-Atlantic, and the Deep South. Upon examination of the diffusion of the electric chair since 1888, Harries and Cheatwood (1997) indicate a path of adoption of the method beginning in New York, then travelling down the eastern seaboard and throughout the South (fig. 2.7). By 1931, every southern state as far west as Texas had legislated the use of the electric chair. The states of the far West were either still employing hanging, the firing squad, or had adopted the gas chamber (ibid., see also Denno, 1997). Other states had merely abolished their death penalty statutes, thus employed no method of execution at all. By 1950, all southern states were still using the electric chair except for North Carolina (Harries & Cheatwood, 1997).

During the first decade of the Progressive Era, most states shifted to the use of electrocution out of humane concerns. Coupled with botched hangings and the distasteful atmosphere of public executions, the electric chair was viewed as technologically advanced, efficient, and more conducive to growing standards of decency espoused by anti-gallows organizations and the middle-class (Johnson, 1998). New York's position on the adoption of the electric chair was quite clear:

No right-minded person can fail to approve the enactment of the law which puts an end in this State to the brutal and barbarous practice of executing condemned prisoners by hanging. It is creditable to the Empire State that it has taken the lead in a reform that probably in no long time must be adopted by all civilized communities...Punishments involving mutilation or the infliction of personal violence have disappeared with the advance of civilization, and now, the gallows is to share the fate of the stocks and the whipping post (*The New York Tribune*, June 5<sup>th</sup>, 1888).

Finally, although abolitionist groups called for an end to the death penalty, the adoption of a more privatized, advanced method was considered an acceptable consolation to most organizations (see Bowers, 1984).

The first electrocutions in the country, mainly in New York, were questionable at best. Faulty equipment and improper voltage calculations were largely to blame, as was the case during the 1890 execution of William Kemmler, the first in the country:

Kemmler did not die instantaneously – a second jolt of electricity had to be administered four and a half minutes after the first one. During the second jolt, witnesses observed Kemmler's hair and flesh burning and blood on his face. His body emitted a horrible stench...Among the problems were the failure to provide enough power, an uninterrupted current, and adequate contact between the electrodes and Kemmler's body (Bohm, 1999: 76).

Malfunctions such as this, as well as others, were a focal point of states using the electric chair, and precautions were taken to avoid repeating such a spectacle (Metzger, 1996). Having just solved the inhumane execution method debate, states that had adopted the electric chair could ill afford to have their death penalty statutes jeopardized again after such a short time. Incidents such as the Kemmler execution were the likely impetus for equipment guarantees offered by

electric chair manufacturers to states deliberating on whether to adopt the method. When the Adams Electric Company of Trenton, New Jersey heard of North Carolina's deliberation on whether to change to the electric chair, correspondence was soon to follow, as evidenced by this letter addressed to J.S. Mann, Superintendent of the State Prison in Raleigh:

Dear Sir:

We notice that your Legislature has passed the law substituting electrocution for hanging of criminals, and we would be pleased if we can be of any service to you in the matter of providing the equipment. We merely suggest this but it is not necessary if you do not desire it as the outfit is absolutely guaranteed to perform the work, and we trust that we may have the opportunity of securing the order from you. Awaiting your favorable reply, we beg to remain, yours respectfully,  
Adams Electric Company (Letter dated March 24<sup>th</sup>, 1909).

Not only was North Carolina's prison receiving solicitations for installation contracts, but electrical companies within the State were feverishly writing to Adams Electric for catalogues and brochures of the new method, presumably to profit from contracts of their own. Carolina Electrical Company in Raleigh inquired by writing, "Kindly send us your catalogues of electric chairs, data in regard to them, and quote dealer's prices, and oblige" (Letter dated March 22<sup>nd</sup>, 1909). Adams Electric Company responded in part:

Your favor of the 22<sup>nd</sup> duly received and in reply would say that we cannot sell our apparatus to another party for installation inasmuch as we have to assume all responsibility. We have found in the past that when it comes to assuming responsibility for such work as this we have been unable to find any electrical contractor that will do it. The apparatus is fully protected under the patent laws and this stands by itself as an independent piece of mechanism eliminating all moving machinery

such as engines. If you desire any further information we would be pleased to furnish it to you, but as stated above we do not sell the apparatus to any contractor unless he will assume all responsibility of the first execution himself, but we do not believe that you would care to do this as it is not a very pleasant job for anyone to undertake. Yours Truly, Adams Electric Company (Letter dated March 24<sup>th</sup>, 1909).

From this correspondence, liability was clearly an issue with Adams Electric Company. A repeat performance of the botched Kemmler execution was not a risk the company wished to take, especially in allowing other companies to use their equipment for the very first time. In this case, a mishap would likely result in a lawsuit, putting the company's new product in a negative light. By assuming all responsibility for the use of their 'apparatus', Adams also held fast to a very unique commodity that was in obvious demand.

It is unknown whether Adams Electric Company was ever contracted to install the electric chair in North Carolina's State Prison. A review of correspondence between Adams Electric Company and Carolina Electric Company, through examination of original letters, appeared to have declined in cordiality around June, 1909. Apparently, Adams Electric had sent Carolina Electric various photographs and drawings of the apparatus as a courtesy, and was unsure what Carolina Electric had done with them. A piece of correspondence dated February 12, 1910, indicated that Carolina Electric had turned the photos and materials over to the Prison Board for examination. As the following paragraphs will indicate, however, an electric chair had already been installed in the prison by that time and was undergoing final testing for the first execution. It is fair to summarize, then, that the State prison Board had selected another company altogether. In addition, letters from Adams Electric to the State Prison seemed to reflect a sense of frustration in not knowing the status of the prison's intent for execution equipment. This letter in part, dated June 1<sup>st</sup>, 1909, is the last piece of correspondence that could be located regarding North Carolina's installation of the electric chair. It is written to G. A. Norwood, Chairman of the State Prison Board:

Dear Sir:

On May 7 [1909] we mailed you a quotation

on an installation of an electrocuting plant and not having heard from you in reference to this matter we take the liberty of inquiring what disposition has been made of this matter. Trusting to receive a favorable reply, we beg to remain, Yours very truly, Adams Electric Company.

### **5.9.2 The Electrocutation of Walter Morrison**

In late Spring, 1909, North Carolina's Legislature did indeed substitute death by electrocution for death by hanging, and plans were made to install the equipment shortly after the General Assembly session (Public Laws and Resolutions of North Carolina, 1909, c. 443 § 1). The first prisoner to meet his death in the new electric chair was Walter Morrison, one of North Carolina's most dangerous criminals (*News & Observer*, March 19<sup>th</sup>, 1910). Morrison was tried and convicted of rape in July, 1909, and was originally sentenced to die on September 10, 1909. Delays in the installation of the electric chair offered Morrison four stays of execution within four months. On March 3, 1909, an appeal was made to commute his sentence, but it was refused a week later and Morrison's execution date was set for March 18, 1910 (North Carolina State Board of Charities and Public Welfare, 1929).

Details of Morrison's execution appeared the following day in the *News & Observer*, complete with a list of witnesses present. Interestingly, North Carolina did not have an 'official' executioner until 1917. Prior to that year, the State required that the Warden be charged with administering the punishment himself (Craven, 1987). Performing the duty on an alternating basis, J. E. Thomas and Joseph Stone became the State's first professional executioners (*ibid.*). Morrison's execution, however, was still the responsibility of the prison's Warden, T. P. Sale. Among those present at the execution was Edwin F. Davis, New York's official executioner who later retired from his duties in 1918 (Brandon, 1999; *News & Observer*, March 19<sup>th</sup>, 1910). Davis, who held several patents for improvements on the electric chair, had traveled to North Carolina to supervise the electrocution process and stood at Sale's side during the procedure (*ibid.*). Brandon (1999) notes that Edwin F. Davis traveled extensively from state to state between 1890 and 1918, charging prisons \$150 for his services. During this time, he executed

over 300 condemned prisoners, carrying his own personal set of electrodes with him in a suitcase. The *News & Observer* described Morrison's execution in this manner:

Six and one-half minutes after the trembling Negro collapsed in the face of this unknown fate, he is dead. He raises a cross aloft in his hand, calls piteously for mercy as E. F. Davis of New York, inventor of the electric chair, supervises the execution. He is assisted by Warden T. P. Sale at the switch, and by guards H. H. Honeycutt, N. S. Smith, R. B. Ewing, and W. R. Campbell (March 19<sup>th</sup>, 1910, p. 1).

Apparently, there were mixed reactions from those in attendance, as the article concluded, "Witnesses are not in accord as to the merits of this form of execution" (ibid.). The electrocution of Walter Morrison was the only one conducted in North Carolina for the year 1910. Just one week prior to Morrison being put to death, Henry Spivey marked the end of an era by being the last man legally hanged in that State (Munger, 1984; North Carolina State Board of Charities and Public Welfare, 1929).

### **5.9.3 Inconsistent Execution Patterns in the 1920s**

Executions by electrocution had no clear pattern throughout the 1920s. The year following Morrison's execution, the State conducted 11 executions, two the following year, and none in 1913. Between 1914 and 1919, North Carolina sent 31 prisoners to the electric chair. In 1916, the State executed nine inmates, however electrocuted only four in 1917 (North Carolina Department of Correction, 1998). One could assume the country's entry into World War I as a possible reason for the decline, or the somewhat erratic fluctuation in the prison population (Craven, 1987). In 1918, and in a period of recession after the War, executions in the State rose once again, to eight (ibid.). The total number of executions between 1910 and 1919 was forty-three. In an interesting note, Warden T. P. Sale, who supervised the first electrocution in North Carolina, assumed the office of Warden in 1909. His term was cut short in 1916 – while signing the death certificate of an inmate who had just been executed, Sale suffered a massive heart attack and died almost instantly (Craven, 1987; North Carolina Department of Correction, *The Wardens of Central Prison, 1884 – 1984*).

#### **5.9.4 Violent Crime and the Trend Toward Consistency**

From 1920 to 1929, North Carolina's prison population rose to alarming levels. During the decade, the largest single-year increase occurred between 1927 and 1928, when 316 new prisoners entered the system. Between 1928 and 1929, 273 new inmates were processed into North Carolina's prisons (*The Prison News*, November 1<sup>st</sup>, 1929). Executions in the State increased from forty-three the previous decade, to a total of fifty-five. Forty of these electrocutions were for the crime of murder, and the remaining fifteen were for rape. Of those prisoners executed for the crime of rape, thirteen were black, and two were white (North Carolina Department of Correction, 1998). In 1929, the North Carolina State Board of Charities and Public Welfare reported that between 1908 and 1927, "...no Negro has been electrocuted for committing rape on a Negro woman" (p. 21). The report continued by adding, "Since 1909 no white man has been *convicted* of rape of a Negro woman, and in only one of the four capital cases of rape by white men on white women has the convicted prisoner been electrocuted" [my emphases] (*ibid.*). During the time period the Board refers to, nearly 90% of prisoners processed for rape (of 39 total) were black, and nearly 70% of the prisoners processed for murder (of 152 total) were black. These findings show clear parallels to the racial disparities discussed earlier in the chapter – although North Carolina's political stance on racial tolerance was considered by many to be years ahead of itself, there were obvious messages conveyed to black males concerning the boundaries surrounding white women, the superior value of white lives, and the apparent non-value of black women (Link, 1992).

#### **5.9.5 The Exposure of Electrocution**

Media coverage of electrocutions increased during the 1920s, bringing with it increased public awareness of the events transpiring around the new method of execution. This increase in media coverage could be explained by several possibilities – first, there was a marked increase in violent crime, and newspapers most likely felt obligated to keep the public aware of the crisis. Second, there was an explosive increase in newspaper circulation due to rural free delivery and the improvement of roads and courier vehicles. According to Lefler (1973), newspaper circulation in North Carolina increased from 612,000 in 1901 to over 2,000,000 by 1926. The *News & Observer* increased its page count from eight to sixteen, and covered a wider range of

topics (ibid.). One Virginia newspaper editor referred to the *News & Observer* as, "...probably the most fearless paper in the South..." (cited in Lefler, 1973: 596).

Another possibility for the increase in execution coverage was that the general public had literally been 'in the dark' about execution procedures since 1910. Upon the privatization of executions in North Carolina, special permits were needed to witness an execution at the State Prison. These permits could be requested through the Warden's office, however most witness 'slots' were reserved for law enforcement personnel, victims' families, and clergy.<sup>6</sup> Given that the media was also allowed to attend, this became the only manner in which the general public could be informed about the ultimate form of social control. Shipman (1996) explains:

Reports of the executions were vivid and emotional – these were characteristics of the period, especially with stories such as executions, where the public could not witness and the press provided “ ‘news as surrogate for primary contacts,’ a substitute for the village corner, and it (the press) gave emotional color to urban life...” (p. 190-191; citing Marzolf, 1991, p. 35).

Guy Munger (1984) noted that, "Reporters pulled out all the stops in writing of the executions..." (*News & Observer*, March 4<sup>th</sup>, 1984, pp. 1D, 8D). These vivid, colorful accounts and descriptions of electrocutions in the 1920s served to once again bring to light the true nature of state-sanctioned violence. While the inherent violence of public hangings had been stifled by privatization and the adoption of a seemingly more efficient method, the reality of what actually occurred was being bolstered and revitalized by an eager media.

Newspaper accounts of electrocutions were rife with terminology bordering on hyper-sensational. Given that the general public was for all intents and purposes excluded from the execution procedure, the media guaranteed a virtual front-row seat for the reader. While language and terminology served to better inform readers, it also served to reconstruct how the electric chair had been initially advocated at the turn of the century. Informing readers was a primary goal

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<sup>6</sup> Requests for permits through the Governor's Office were referred to the Warden's Office at Central Prison during the 1920s and 1930s. Examples can be found in the personal correspondence of Governor J. C. B. Ehringhaus (1933-1936).

of the newspapers, and was most likely the manifest function of the increasing space dedicated to the death penalty. However, a latent effect of this hyper-reporting, complete with vivid adjectives concerning the nature of the executions, was in all likelihood the main catalyst for an increase in negative public sentiment which was soon to follow. The following are excerpts from the January 5<sup>th</sup>, 1925 double execution of John Leak and Kenneth Hale as they appeared in the *News and Observer* the following morning:

Shouting “amens” and “hallelujahs”, Kenneth Hale, seventeen-year old Negro, Leak’s partner, had preceded him to the chair and had been declared dead after the splendid vitality of his young body had waged a bitter fight with the four shocks of highly ampered electricity that was shot through his frame... As the stench of the burning flesh pervaded the little room the sheriff lit a cigar that would permit the rivalry of no other odor. “Well, that’s the end of the Garwood case”, said the sheriff as the current caught the Negro. “Somebody lend me a match, my cigar’s out” (*News & Observer*, January 6<sup>th</sup>, 1925).

In speaking to the Leak execution, the article noted, “...two thousand volts of electricity drew the body of the Negro, John Leak, taut and rigid against the chair...” (ibid.). Although the electric chair had been hailed as efficient, humane, and technologically advanced, the use of terms such as “shocks”, “stench”, “odor”, and “burning flesh” would appear to refute the claim that it was an appealing method of putting someone to death. Furthermore, not only was the method vividly described, but the appearance of the condemned as well. It is interesting to note that while the prisoner was “Negro” and viewed during the era as somewhat inferior to whites, the use of the phrase “...splendid vitality of his young body” would seem to attach a sense of personhood and youthfulness to the otherwise distasteful characteristics of a murderer. In short, the reader becomes aware that violence is applied to something other than an object – rather, it is used to extinguish the young life of an otherwise healthy teenager. Finally, the news account noted the almost complacent demeanor of the presiding sheriff. After just putting to death two human beings, the flippant request for a match most likely seemed superficial at best. Perhaps

this was an effort in conveying to the general public the need for capital punishment, and the State's willingness to take care of the rising violent crime rate with a hardened, southern attitude.

Coverage of executions in the late 1920s continued at an accelerated pace. Take this account as it appeared in both *The Greensboro Daily News* and the *News & Observer* one day after the January 21, 1925 execution of Arthur Montague:

Making frantic appeals to Jesus to "save my soul", Arthur Montague, a twenty-two-year old Negro, paid with his life the full penalty of the law yesterday morning at the State's prison for attacking a small white girl, an inmate of the State School for the Deaf at Morganton. The Negro's body was badly burned by the 2,200 volts of electricity shot through him. His body convulsed and the muscles tautened as the current was turned on at the signal from Dr. J. H. Norman, and although a second charge was necessary after the first, which lasted two minutes and twenty seconds, the Negro did not regain consciousness before the current was turned on for an additional minute and fifteen seconds before the body was carted away in a basket (January, 22<sup>nd</sup>, 1925).

Again, reference is made to convulsing muscles and the burning of flesh, synonymous with 18<sup>th</sup> century executions banned because of cruel and inhumane characteristics. Those punishments included burning alive, disemboweling, and half-hanging (Coates, 1937). The February 19, 1925 account of David Jones's execution included the phrase, "The electrocution contained few spectacular scenes", possibly meaning that aside from the frightened, dazed appearance of the condemned, the process itself was unfortunately unremarkable with regard to being graphic (*News and Observer*, February 19<sup>th</sup>, 1925).

The April 17, 1925 double execution of C. W. and Elmer Stewart, a father and son, once again provided the newspapers with more noteworthy events. First, the duo became the first two white men executed on the same day. Second, as the previous paragraphs mentioned, North Carolina did not retain the services of professional executioners until 1917. The Stewart electrocutions were the first to utilize such services, and Joseph Stone was paid \$25 to perform the task of

pulling the switch on both prisoners (Craven, 1987; The North Carolina State Board of Charities and Public Welfare, 1929). The elder Stewart was described as looking like "...a sick old man rather than a cold-blooded desperado" (*News and Observer* and *The Greensboro Daily News*, April 18<sup>th</sup>, 1925). As the executioner pulled the switch, the newspapers reported that, "There came a sound of from the chair as of bacon frying and the stench of scorching flesh pervaded the room" (ibid.). The articles go on to say, "The chin tilted upwards in a gesture of the ultimate of agony" (ibid.). Three shocks were required to kill the elder Stewart, his body "...completely purple except for leprous white streaks which showed where it had strained against the straps caught in the whirl of 1,800 volts of high ampered electricity" (ibid.).

The younger Stewart was reported to have been "...more nervous than his father" as he was heard "...exhorting words of spiritual guidance" above the hum of the dynamo in the adjacent room (ibid.). The Warden paused before giving the sign to the executioner, apparently because the young man wouldn't stop talking. When the younger Stewart continued his nervous chatter, the Warden decided to proceed with the process anyway. The paper reported that the leather strap covering the "boy's" mouth made his final words almost unintelligible, however the words "God", "Jesus", and "Father and Heaven" could be faintly heard (ibid.). The media's description of the younger Stewart's execution was again colorful and graphic:

Again, the chin tilted up at an angle of agony and again came the crackling, cooking sound and the stench of scorching flesh. The water that had been poured over the helmet steamed and a great blister rose and burst on the boy's leg (ibid.).

As with the January, 1925 execution of Leak and Hale, the media's use of terminology served to humanize the condemned father and son. The younger Stewart was almost made to appear pitiful and childlike, and was consistently referred to as a "boy". He was said to have "shrunk away" from the chair as he approached it, much like how a child would cower when confronted with something frightening. The graphic descriptions of the electricity's effect on the bodies is also pertinent to mention. The "crackling" and "cooking" sounds are presented as being synonymous with the preparation of food, namely bacon. The bodies were described as "scorched", and emitting a horrible "stench". The word "stench", in and of itself, denotes something distasteful or repulsive, and another word such as "smell" could have been substituted but was not. The

description of the “blister bursting” on the boy’s leg is also important – very few readers would likely find an injury of this sort on a “boy” acceptable in any sense. Furthermore, a child in “agony” usually disturbs most adults, and few would likely agree that submitting a child to this type of pain was necessary, acceptable, or productive. In short, the media’s portrayal of the execution was paradoxical – it humanized the condemned, then dehumanized them by overshadowing their humanity with themes of violence.

The October 12, 1922 execution of sixteen year-old McIver Burnett was a curious event. Burnett, a black teenager, was convicted and sentenced to death for the rape of a white Wake County woman. By 10 o’clock in the morning, over eighty citizens who had obtained tickets for the execution managed to pack themselves into the small execution chamber within the confines of the prison. Guards were nearly bull-rushed by the stampede of eager onlookers seeking to witness the execution of a black boy accused of violating a white woman, a crime that almost guaranteed the speedy execution of a Negro during the era. Light giggling was said to be audible among the crowd, and the boy’s twenty year-old victim was allowed a space on the front row as to be the first to face the condemned. The *News and Observer* reported the execution in this manner:

Nature had made the boy black but fear had turned him an ashen gray. Lacking the hideous distortion of fear it might have been a harmless, good-natured face, like that of any sixteen-year old Negro boy. He was little under average height, and weighed perhaps 120 pounds...So dense was the crowd, and so long did it take them to unpack themselves, that fifty or so of them saw an angle of the tragedy that not many such crowds see. As soon as he was dead, the body was unstrapped. It lay there, limp and with the hideous distortion of death frozen across its face. The hands dropped drunkenly toward the floor. The mouth being open, dripping a froth of saliva that had boiled almost from the powerful heat of the current. The burns of the head and face and on the legs stood out vividly (October 13<sup>th</sup>, 1922, p. 1).

Burnett's execution, according to the newspapers, attracted a crowd similar to those that once attended public hangings. Interestingly, the papers also noted that the largest number of those seeking to view the electrocution was a group of State College (later to become North Carolina State University) freshmen, most of whom did not have permits to enter the prison. These individuals were readily recognized as college students by the distinct red caps they were required to don during their first year. Although many of the freshmen did not successfully breach the barricades, one student did manage to sneak by guards and witness the execution (ibid.). The raucous crowd present at Burnett's execution cannot be readily explained, however it is safe to assume that given the victim was a white Raleigh woman, the case most likely attracted a great deal of publicity. In addition, Burnett was the first Wake County condemned prisoner to die in the electric chair since March 15, 1918 (North Carolina Department of Correction, 1998). In other words, executions of Wake County natives, whose victims were also natives of the area, were novelties which most likely attracted hordes of hopeful witnesses.

#### **5.9.6 Growing Doubt and the Penalty of Death**

By the end of the 1920s, national focus on the death penalty had been shifted to other social issues, namely the Great Depression and the national violent crime scare perpetuated by the Hoover administration (Walker, 1998). Prison overcrowding was becoming a crisis, forcing the 1931 North Carolina General Assembly to pass the Conner Bill, a piece of legislation mandating that the State assume control of *all* prisoners in facilities regardless of their designation as a county road camp or other state-supervised institution. The State Highway and Public Works Commission assumed full responsibility for the county road camps, allowing the Prison Department "...to build new units and prepare for the future takeover of prisoners. These measures were dictated exclusively by financial necessities of the time" (Craven, 1987: 136). By July 1, 1931, the prison population stood at 5,967 (Battle Lewis, 1936).

Reformist ideologies so prevalent in the first two decades of the twentieth century still managed to survive in North Carolina in the 1930s, especially where prison reform and humanitarian efforts were concerned. Although the national death penalty abolitionist movements of the early 1910s had been all but silenced by 1930, there is evidence to suggest that North Carolinians, at least in part, were doubting the effectiveness of the sanction and the method used to enforce it. In addition, the demographics of those being put to death were falling

under increased scrutiny from private citizens, humanitarians, and State institutions alike. The following editorial, appearing in the *News & Observer* under the heading “People’s Forum”, reflected the growing negative sentiment:

...there were, in 1931, nine inflictions of the death penalty in North Carolina, and all nine of those victims were Negro male imbeciles. Seven of them were for murder, one for rape, and one for burglary...The State apparently had carefully nurtured them for the final offering. How much effect as a “deterrent” do you suppose applies to the 250 white killers, by putting to death nine Negroes of inferior mentality? We do not have capital punishment for women of any color, nor for white men, nor for anyone with normal intelligence (Bruce Craven, March 5<sup>th</sup>, 1932, p. 4).

Just four days prior to the *News & Observer* editorial, an article appearing in *The Prison News* reflected the outrageousness of a prison in South Carolina in executing six Negro offenders within two hours time. The multiple execution was not the issue – South Carolina’s efforts in curing one of the condemned of meningitis, thus keeping the other prisoners healthy before the execution, was:

The death house was immediately quarantined and the necessary precautions taken to prevent the spread of the malady to the other inmates – the same inmates who were under sentence of death... And for what purpose? Why, in order that he might later be physically able to be conducted to a seat in the electric chair so that the demands of this same law might be satisfied in the manner of taking his life!...The meningitis victim was so weak from the effects of his disease that it was necessary to assist him in his walk to the electric chair. What a spectacle! And this is called civilization! (March 1<sup>st</sup>, 1931, p. 2).

An August 28, 1932 *News & Observer* article expressed concern over North Carolina’s narrowly-focused death penalty statutes. The article was written by Nell Battle Lewis, a North

Carolina philanthropist and humanitarian who dedicated much of her life to causes such as the abolition of capital punishment and social reform. Her thoughts in part:

...It appears from a review of the foregoing facts that in order to raise its low position among the states in the infliction of capital punishment, North Carolina should at least provide by law that the death penalty be inflicted conditionally, as it is in thirty-four states...Also, burglary and arson should no longer be punishable by death in this State. I am, of course, in favor of the abolition of capital punishment for all crimes, but I realize that reforms usually come gradually. The two suggestions just above seem to me reasonable compromises in view of what has been done to mitigate the infliction of the death penalty in other states.

The Lewis article was of great importance, in that it referred to North Carolina as being in a “low position” with regard to other states. As prior paragraphs have discussed, North Carolina took great pride in its progressive stance toward prison reform, its somewhat liberal views on race relations, and its commitment to advancing its citizens through education and technology (Key, 1949; Lefler, 1973). In comparison to other states, at least those in the South, North Carolina was indeed unique in its character, and most likely wished to remain that way.

### **5.9.7 The Voice of the People**

Citizens’ correspondence to the Governor’s Office regarding capital punishment began to accelerate in 1933 and 1934. The following excerpts are taken from a letter written to Governor J. C. B. Ehringhaus on January 28, 1933:

My dear Governor Ehringhaus:  
Please pardon me if I write you upon a subject that I am deeply interested in, that is the abolition of capital punishment in the State of North Carolina. I think that it would be a really forward step to take. To me capital punishment is a relic of barbarism, and I really feel that no good can come to the country that will be

lasting until such a terrible thing is done away with, and I would like to see North Carolina be one of the first few States to take this progressive step. The accounts in the papers of these terrible executions are sickening. They can do no real good and they most surely have never lessened crime and no one could believe they are Christian. Many of the persons executed are not normal. Sincerely yours,  
Mary M. Jones, Biltmore, North Carolina.

Just two days after receipt of the Jones letter, Ehringhaus' office responded to her, indicating they were pleased to have her letter. Within the Governor's retort, he noted:

I quite agree with you that the accounts of executions are sickening and that there is much which may be said against it. It is the law of the land, however, and as long as it is the law we must observe it. My experience also indicates that there are certain cases in which the retention of the law as to capital punishment is absolutely necessary to prevent the breaking down of the orderly administration of justice (Letter dated January 30<sup>th</sup>, 1933).

In December, 1933, the North Carolina Society to Abolish Capital Punishment announced its intentions to sponsor a State-wide straw vote aimed at the "abolition of capital punishment in North Carolina, enforced by the electric chair..." (*News & Observer*, December 5<sup>th</sup>, 1933, p. 2). Included in the Society's mission was an intensive instructional and publicity campaign, arranging for meetings and speakers, approaching members of the State Legislature, and persuading local newspapers to cover the topic of capital punishment as frequently as possible (*ibid.*). At the helm of the Society was Dr. A. P. Kephart, the president of the North Carolina College for Women. As Walker (1998), Jones (1983), and Lefler (1973) all indicate, many prison reform movements were spearheaded by women's organizations, as they seemed to interject a

more earnest display of compassion and humanitarianism during the era. Three years prior, in October, 1930, noted penologist Colonel Joseph D. Sears of New Jersey visited North Carolina to inspect and evaluate the reforms within the prison system. Sears was hosted by the Council of the North Carolina Federation of Women's Clubs, based out of Greenville, North Carolina (*The Prison News*, November 1<sup>st</sup>, 1930). In presenting Colonel Sears at the Federation's meeting, Mrs. W. T. Bost, State Commissioner of Public Welfare, stressed, "The visit of Colonel Sears should be of wide interest in the State and of actual assistance in the penal reorganization movement now underway" (ibid., p. 1). Mrs. Bost concluded by adding, "The Federation of Women's Clubs, in placing emphasis on penal reorganization, is falling in line with the movement of club women over the whole country in turning their attention to the prison situation" (ibid.)

Correspondence to the Governor's Office in 1934 was not all abolitionist sentiment. During that year, North Carolina tallied the fourth highest homicide rate in the entire country. The South in general was the most violent region in the nation, and executions in North Carolina reflected the crisis. By year's end, the State had electrocuted twenty condemned prisoners, one shy of the total executions for 1931 through 1933 combined (North Carolina Department of Correction, 1998). Given the high murder rate, some citizens conveyed a desire to witness justice in action, and wrote the Governor's Office personally to request permits. Take the following letter as an example:

Dear Sir:

I have been told an have seen a great deal of the state prison. But there is one more thing I would see if you would grant me the privilage that is an execution. I am asking for a permit. Sincerely Yours,  
C. S. Pond (Letter dated January 12<sup>th</sup>, 1934).

Another letter just two months later read:

Dear Sir:

In regards to the prisoners to be electrocuted there I am writing you to see if you will send me a pass to see them or one of them electrocuted. I have never seen anything like that and I would appreciate it very much

if you will grant me a pass so I can see it one time. Hoping that you can send me one, very sincerely & respectfully, Mr. Judge Smith (Letter dated March 19<sup>th</sup>, 1934).

Next, this letter was sent out of interest in filling a job opening at the State Prison:

Dear Sir:

Police Taylor at Rocky Mount told me that you wanted a man to turn the electricy on some men in July. I wish to apply for the job. Write me at once and let me know if I can get the job. Write me what they pay. Please tell how many there are to be killed and when I will be [needed]. Yours truly,  
L. A. Branch (Letter dated June 23<sup>rd</sup>, 1934).

Although these letters reflect a curiosity about capital punishment, and a desire to actually participate in it, negative sentiment was still being voiced from citizens and organizations alike.

The following letter, dated June 28<sup>th</sup>, 1934, read in part:

To the Governor

Many citizens of North Carolina feel that capital punishment is a most terrible thing and that it has always done harm, not good. The State would gain respect and honor -- and also in prosperity if this dreadful thing were done away with. Sincerely yours,  
Mary  
M. M. Masters.

The response from the Governor's Office was extremely short, only indicating "...This is a matter which is controlled by legislative action" (Letter dated July 2<sup>nd</sup>, 1934).

Not only did North Carolina exceed its total number of executions in one year since 1925 (12), but it also conducted two triple executions within three weeks, something the State had never done before. On November 16, 1934, three Negro men were sent to the electric chair for the murder of a "filling station clerk" (Battle Lewis, *Electrocutions 1934*, from her personal papers, no page number given). This execution also marked the first triple execution in North

Carolina death penalty history, according to Lewis. The second triple execution took place on December 7, in which two white men and a Negro were put to death for "...the murder of a Taylorsville bank cashier" (ibid.). Written in the margins of her personal notes on the executions, Lewis noted, "The hardest fight in fifteen years made for executive clemency in the case of Black [one of the condemned] described as "not a man of criminal type, the victim of circumstance"" (ibid.). Lewis also noted, in a hand-drawn chart, that two of the executed Negroes in 1934 were seventeen years old – the remaining prisoners executed were all over the age of twenty. The State also conducted four double electrocutions, one of which stood as the first double execution of two white men since the father/son duo in 1925 (ibid.). In all, North Carolina electrocuted twelve Negroes and eight whites, a tally Lewis noted as "eight more than ever before" (ibid.).

In October, 1934, the Universalist Church declared itself not only opposed to capital punishment in North Carolina, but all forms of punishment involving physical pain. The following is an excerpt from their official position which arose out of The State Universalist Convention held at Red Hill, a small community near Raleigh:

Be it resolved: That we declare ourselves as opposed to the death penalty. And be it further resolved that we favor the abandonment of all methods of prison discipline that inflict physical pain and distress; and that we urge a scientific and humane approach to the study of the entire problem of crime, recognizing that the law-breaker is a human being, oftentimes as much sinned against (by society), as sinning, and, being capable of improvement, should be accorded every possible opportunity to readjust himself to life in all its normal aspects (*News & Observer*, October 11<sup>th</sup>, 1934, p. 11).

The Universalist Church's position also referred to North Carolina's method of execution as "archaic and often cruel", and the death penalty itself as a futile attempt to control the criminal element (ibid.). It is also important to note that the Church's position declared an opposition to war, as well as other forms of institutionalized violence involving the trade of "death-dealing devices" (ibid.).

While some religious groups protested North Carolina's continued use of the death penalty, others indicated approval based upon Scripture. For example, in late December, 1934, the General Assembly was finally considering a bill allowing for a conditional death penalty sentencing process. The Jonas Bill, named for its sponsor Charles Jonas of Lincoln County, would have allowed life imprisonment to be substituted for a death sentence in capital crimes if all members of the jury *and* the presiding judge agreed. The bill was also a piece of legislation that Nell Battle Lewis had so adamantly campaigned for some two years before. The following letter was quickly sent to the Governor's Office, authored by the Pastor of the Associate Reformed Presbyterian Church in Salisbury, North Carolina:

Dear Sir,

Because of press reports to the effect that efforts have been made to prevent the death penalty in first degree murder cases in recent weeks, I wish to express appreciation of the fact that you have not attempted to interdict the divine decree. As I see it, in such cases governments have the clear duty of carrying out the divine command, Whose sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man. Any man who robs by means of deadly weapons is a potential murderer and whether or not any one is slain, it would not be far amiss, if at all, to exact the death penalty in such cases. Very sincerely, Gilbreth L. Kerr (Letter dated December 18<sup>th</sup>, 1934).

The Governor's response was short, yet he stated that, "I shall continue my efforts to measure up to these responsibilities in keeping with what I conceive to be the proper course" (Letter in part dated December 20<sup>th</sup>, 1934). The Bill was tabled by a vote of 55-45, and Nell Battle Lewis retorted in a scathing article in the *News & Observer* written on February 3, 1935:

...Yet, in spite of the fact that all official slaughter records in North Carolina were broken in 1934, the House of Representatives last week refused to give even cursory consideration to a bill

allowing life imprisonment to be substituted for capital punishment when all members of the jury and the presiding judge so agree... By which the House said in effect: what with trying to get money for this and that, we have weightier matters to consider than the question as to whether our killing of certain ignorant, poor, and friendless persons who have run afoul of the law is done with all the wisdom it should be...North Carolina goes the Mosaic law two better. We exact three eyes for an eye, and three teeth for a tooth. In each of the triple electrocutions last year three men were killed for the murder of one. We do believe in vengeance!

Lewis' column in which the article appeared was entitled "*Incidentally*", in all likelihood her most well-known news reporting effort while serving the Raleigh news organizations for thirty-five years. She was even interviewed on the 25<sup>th</sup> anniversary of the column's inception, and was purported to still be "sprite and vigorous" in her reformist views (North Carolina Department of Cultural Resources, Division of Archives and History).

### **5.9.8 The Continuation of a Southern Tradition**

By the end of 1934, North Carolina appeared to be not unlike many other southern states. In keeping with other southern states of the era, North Carolina inflicted the death penalty quite regularly. The death penalty in the South, as Bedau (1997) and others have alluded to, had been more or less a permanent, understood, and acceptable fixture in the region's history. As previous paragraphs have explained, the South had regularly retained capital punishment – rather than opting for abolition, the region held fast to its institution of lethal punishment, and consistently applied it as a retort to those found guilty of any number of violent crimes. In other words, death as punishment in the post-Progressive South reflected a hardened intolerance to the criminal element. As did many states at the turn of the twentieth century, North Carolina privatized its executions, removing them, at least in part, from public view and scrutiny. The State also adopted the electric chair, claiming it to be more technologically advanced, humane, and efficient. This practice was repeated in every southern state in the country, as well as those states in the northeast.

For the most part, then, North Carolina shared the capital punishment practices in place in the South during the era. However, growing negative sentiment regarding the death penalty, as well as the use of the electric chair, was challenging the very core of the State's progressive philosophy. The political institution was quickly becoming aware that although it espoused education and opportunity, those most likely to be put to death were uneducated, mentally handicapped, poor, and disenfranchised (The North Carolina State Board of Charities and Public Welfare, 1929). In addition, although prison reform eradicated many of the questionable or physically brutal corporal punishments, prisoners were consistently being described as 'roasting to death' in the State's electric chair. Furthermore, although the State took great pride in its compassionate efforts toward social welfare, young men barely over the age of sixteen were being executed. In addition to this, North Carolina laws at the time indicated that a "...a child of the age of seven can be convicted of a capital felony" (Edwin Gill, Commissioner of Paroles, *Executive Clemency in Relation to Capital Punishment*, 1936). Finally, although North Carolina held a firm position with regard to crime control, its increasing use of the death penalty was not decreasing criminal activity, nor was it decreasing the numbers of violent offenders entering the prison system with each passing year (North Carolina State Highway and Public Works Commission, Prison Department, 1935; *The Prison News*, 1930 - 1934). Coates (1937) best summarized North Carolina's dilemma:

In their efforts to reform the criminals committed to their care, penal and correctional officials are not yet satisfied with the results they have achieved. Counties, cities, and towns have so completely lost their reforming enthusiasms that they have largely passed their prisoners to the state. After half a century of much trial and errors the state system of penal and correctional institutions contained last year a total of from fifteen to twenty thousand people from practically every county, city, and town, for practically every type of crime. We can no more guess the extent to which these institutions are reforming their charges, deterring them from continuing in crime, deterring others,

protecting society, wreaking vengeance, or satisfying public justice (p. 228).

### **5.10 THE LEGISLATIVE SHIFT TO LETHAL GAS**

An article appearing in the *News & Observer* on December 30, 1934, first revealed that North Carolina was considering a change in its death penalty procedure. Nell Battle Lewis' unmistakable style began the article by asserting, "...this year the old electric chair celebrated its 25<sup>th</sup> year of service by snuffing out a record number of lives" (page number illegible). The article displays a year-in-review type format, offering official tallies of the prisoners executed and describing the electric chair as a record-setter, of sorts. Under the subheading "Another Method", the article reads:

For, from the west [Mitchell County] will come a representation who will present to the General Assembly a proposal to abolish the chair and replace it with lethal gas, now used in three western states. In view of the fact that the electric chair is rapidly deteriorating, his proposal will come in for serious consideration and might possibly be adopted (ibid.).

The representation Lewis' article spoke of was Dr. Charles A. Peterson (R), a Mitchell County physician who had begun the 1935 General Assembly session with the "...announced intention of attempting to substitute lethal gas for the electric chair...", and the measure had largely been his "...pet project" for some time (*News and Observer*, May 2<sup>nd</sup>, 1935, p. 12). Although Dr. Peterson's motive for advocating lethal gas is largely speculative, his medical background may have greatly influenced his dedication to the issue. For example, when the State of Nevada transitioned to lethal gas in 1921, its Legislature relied heavily upon the consultation of reputable physicians, including anesthetists and dentists (Hartmann, 1923; Kruckmann, *The Pioche Record*, August 19<sup>th</sup>, 1921). In addition, Peterson was said to have been held in a position of high esteem among his fellow legislators, and was quite popular in his community and in State politics (*News & Observer*, May 2<sup>nd</sup>, 1935). An article appearing in the March 27, 1935 *News & Observer* also indicated that Peterson had apparently been engaged in correspondence with the

wardens of two Western penitentiaries, inquiring as to their success in using lethal gas, and whether the wardens felt the method was “effective” (p. 1).

### **5.10.1 Human Empathy and Mechanical Efficiency**

An important feature of North Carolina’s legislative transition to lethal gas is how the media and others constructed the nature of the new method in light of literal portrayals of executed prisoners. Upon review of the adverse sentiment which arose in the early 1930s, a very apparent theme emerges. Although crime was generally viewed as a social problem, those committing the crimes – and receiving death sentences for them – were progressively being characterized as more humanlike. They were reported as appearing distraught during their executions, and some in some instances, even childlike. In addition, condemned prisoners, in keeping with the reformist spirit, were consistently being viewed more as those in need of rehabilitation rather than those deserving a violent death at the hands of the State. It was not uncommon for reform organizations and other agencies to publish information on the questionable mental aptitude of some of the prisoners, as well as their impoverished family backgrounds (see North Carolina State Board of Charities and Public Welfare, 1929). In essence, the State’s condemned prisoners were being characterized more as victims rather than offenders. For example, Nell Battle Lewis referred to North Carolina’s 1934 execution total as “the State’s death crop” (*Victims of the State*, from her personal papers, p. 5, dated 1936) and “the official slaughter record” (*News & Observer*, February 3<sup>rd</sup>, 1935, page illegible).

An equally important theme that emerged was that of the nature of the electric chair itself. News service descriptions increasingly referred to the method of execution as something less than efficient, especially with respect to the disfigurement of the condemned prisoners. Rather than a symbol of humane execution technology, the electric chair was quite frequently compared to a piece of apparatus designed to prepare food. The 1925 execution of the Stewart duo is but one example in which the condemned were literally likened to pieces of frying bacon. In speaking to the executions conducted in North Carolina in 1934, Dr. James K. Hall wrote, “...the citizens of North Carolina have become tired of electrocuting and barbecuing their criminals...The chair was busiest last year. In that twelve month period, twenty men were barbecued to death” (*Southern Medicine and Surgery*, July, 1935, p. 399). It was not uncommon for newspapers to describe the “stench” in the execution chamber or the “scorched flesh” on the

prisoners' bodies. This manner of reporting is consistent with the post-Kemmler dialogue found in New York papers in 1890, in that Kemmler was described as having been "cooked to death" by the new electric chair (Shipman, 1996: 184). As Hall (1935) reiterated, "And now, the people of the State have tired of that method" (p. 399).

These two important themes – humanism and barbarism – operated dialectically within the strategy of the media and others in providing information to North Carolinians regarding the new gas chamber. According to Shipman (1996), the media's strategy in reporting on execution methods is mainly contingent upon the public's acceptance or rejection of capital punishment. Thus, a new method such as lethal gas would likely be presented to news patrons in an optimistic light. Nelkin (1987) concurs by adding, "...press reports are mainly promotional – the dominant message conveyed is that the new development will give society the magic to cure economic or social ills" (p. 9). The social ills in the case of North Carolina were threefold – first, the public was becoming increasingly aware that the condemned prisoners dying in the electric chair were not merely objects, but fellow human beings belonging to the ranks of the poor, the disenfranchised, the uneducated, and the mentally ill. Second, North Carolina was becoming overwhelmed by a steady influx of violent offenders and a steady increase in violent crime, with no solution in immediate sight. Third, and most importantly, the mode of execution was becoming increasingly characterized as a brutal piece of apparatus which called into question the very civility of the State in controlling the prior two.

In March, 1935, Nell Battle Lewis continued her relentless assault on North Carolina's institution of social control. An article appearing in the *News and Observer* on March 25, entitled "Another Sign of Spring", read in part:

This year we're beginning more modestly [than in 1934]. With three more men scheduled to die this March, as easily as not we could have put on one of those double-headers for which we are becoming justly famous. If we run according to current schedule, we'll kill four this month of jonquils and peach blossoms (page unknown, from the personal papers of Nell Battle Lewis).

Just ten days prior to Lewis' "Spring" article, reporter Charles Parker described the electrocution of Sidney Etheridge on March 15, 1935:

Determined that there would be no more prolonging of the lethal operation, Warden Honeycutt ordered 2,000 volts with nine amperes sent into the victim. The man buckled against the straps on the impact of the current...The high amperage was continued for a minute and 40 seconds, converting the prison pallor of the exposed throat and chest first to a glowing pink, then to livid purple...The purple hue became more vivid. Large white blisters rose on the neck and the right leg...there was a crackling of blue flame at the leg electrode, a hissing of steam, and then a bright flash as the electrode thong burned through. Warden Honeycutt hurriedly signaled for the contact to be broken. Stethoscope examination showed Etheridge to be dead. It was unnecessary to restore the electrode to its place on the hot, blistered leg (*News & Observer*, March 16<sup>th</sup>, 1935, p. 1).

The Etheridge execution was much like others, except for one important difference. Among the witnesses present was Dr. Charles Peterson, the proponent of the lethal gas bill which had been recently introduced to the floor of the House of Representatives just three weeks earlier. Peterson, who had never witnessed an execution by electrocution before his lethal gas bill, was also said to have assisted the prison physician during Etheridge's execution. Two other legislators also accompanied Peterson at the electrocution (*News & Observer*, March 15<sup>th</sup>, 1935, p. 1). After the execution, Peterson indicated that the process was "...not as gruesome as he had expected", however he "...still thought lethal gas the better method" (*News & Observer*, March 16<sup>th</sup>, 1935, p. 1). In an editorial appearing in *The Raleigh Times* the day after the Etheridge execution, the unknown author reflected on a piece of irony:

And on the same day that Etheridge went down the corridor...a legislative committee planned to begin a search for the hidden graves of convicts reported to have been tortured to death by their guards and buried in the night at the foot of the North Carolina mountains. This is modern North Carolina. But as the hide comes off our complacency and we realize how close we

are to old times of devil worship and torture and the dark images of superstition and cruelty, we have a right to wonder what “modern” means. We can go faster but sometimes our minds seem not to have gone very far...(page unknown, from the personal papers of Nell Battle Lewis).

### **5.10.2 The Legislative Construction of Gas**

In late March, 1935, the Joint Committee on Penal Institutions voted favorably to send the Peterson Bill to the House of Representatives calendar. On the same day the subcommittee reviewed the bill, an amendment was suggested to substitute lethal gas with public hanging, a method abolished in 1909. The Page amendment, as it was later referred as, was said to have been held “out of order” during the committee’s meeting, and was never seriously considered again (*News & Observer*, March 27<sup>th</sup>, 1935, p. 1). During the subcommittee meeting on that day, Dr. Peterson was accompanied by six spokespersons who testified to the appealing nature of lethal gas, noted in the newspaper as “...the deadliest gas known to man” (ibid.). Among those testifying were physicians and two dentists, who were said to have had “...considerable experience with anesthetics” (ibid.). Raleigh newspaper reporter Thomas W. Bost, who in his career had witnessed 142 electrocutions, four public hangings and six lynchings, also testified that “...he had come to the conclusion that a public hanging is a thing of complete and consummate diabolism” and that he was convinced that electrocution was “...the worst possible way to do the worst possible thing the State finds it necessary to do” (ibid.).

Representative U. S. Page again attempted an amendment to the Peterson Bill in late March and early April, 1935 (*Journal of the House of Representatives of the General Assembly of the State of North Carolina*, 1935). His most recent amendment would call for ‘mobile executions’ – rather than conducting lethal gassings within the confines of the State Prison, the gas chamber would be trundled around the State on a truck. Thus, the counties of conviction would be the site of these somewhat interesting executions (*News & Observer*, April 4<sup>th</sup>, 1935). The House of Representatives again quickly quashed Page’s amendment, citing that executions in the State would now be “dignified” (ibid., p. 1). Representative W. E. Fenner remarked that, “they [executions] will not be a big show, like a circus” (ibid.). Representative Rupert Pickens of Guilford County stressed that, “No such peripatetic, permabulatory death house would serve to

deter crime...I don't think they have public executions in any civilized country in the world" (ibid.). Although Page's amendment said nothing about the "death car" executions being "public", his legislative cadre were in obvious opposition to any digression from the already questionable spectacle of the electric chair. The negative sentiment regarding the lethal gas "death car" continued – Representative James Garrett of Richmond County quipped, "Let the newspapers take care of the publicity" (ibid.). Finally, Representative Ernest Gardner of Cleveland County objected by noting, "There is not a State in the Union that has such a law" (ibid.). The House of Representatives, although defeating the Page amendment, whole-heartedly approved the lethal gas bill proposed by Peterson, and sent the bill to the Senate for its approval (Journal of the House of Representatives of the General Assembly of the State of North Carolina, 1935; *News & Observer*, April 4<sup>th</sup>, 1935).

### **5.10.3 The Media and the Redefinition of Death**

Between the March 15, 1935 execution and the House of Representatives approving lethal gas on April 4, there were no electrocutions conducted in North Carolina. It is unknown whether the absence of executions was intended during the General Assembly session, however it is a curious fact. Although only speculation, it is quite possible that the executions were delayed simply to allow the gas chamber to be favorably presented in the media. On May 1, 1935, the North Carolina Senate voted unanimously to substitute lethal gas in place of the electric chair. The newspapers reported that "not a dissenting vote was cast in the measure" (*Greensboro Daily News* and the *News & Observer*, May 2<sup>nd</sup>, 1935, pp. 1, 12). In keeping with Shipman (1996), the newspapers constructed the new method as a piece of modern technology which would ultimately cast the State in an advanced, civilized light. As Nelkin (1987) also points out:

In article after article, extravagant claims are made about technological change; each new development promises a transformation of everyday life, whether for good or for ill. Conveyed in these reports is a sense of awe about the power of technology, resembling in some ways the presentation of science in the press. But there is a difference: whereas science appears in the press as an ultimate

authority, technology appears as the cutting edge of history,  
the new frontier (pp. 33-34).

The newspaper reports speaking to the newly adopted method made reference to lethal gas as virtually painless, efficient, and non-disfiguring. In short, the method was touted as the antithesis of the electric chair, which had acquired labels of “inhumane”, “cruel”, and “painful” – all of which represented a deviation from the State’s image of itself as espoused in its advanced ideological norms of the era. On May 2<sup>nd</sup>, 1935, the *News & Observer* featured a front-page story with the bold headline “State Adopts Lethal Gas; To Junk Electric Chair” (p. 1). Just underneath the headline appeared a stately photograph of Dr. Charles Peterson.

The electric chair was said to have met “its doom” in the Senate’s vote, almost insinuating that that it was now being overtaken with something better (ibid.). The news article continued by referring to the electric chair’s use as “25 years of gruesome service”, also giving the impression that the incoming method would be something *less* gruesome (ibid.). Of importance is the reference made to the fact that North Carolina would be the first state east of the Mississippi River to adopt lethal gas – given that only three western states employed lethal gas by 1935, this fact alone set North Carolina apart from nearly the entire country, especially the South.

As Shipman (1996) noted, the reporting of new execution methods is usually optimistic and promotional. This was indeed the case with North Carolina’s adoption of the lethal gas chamber. Technology was a main theme in the May 2<sup>nd</sup>, 1935 reports, as well as the use of medical inferences which served to couch the new method in terms of scientific treatment. Take the following excerpt as an example:

Cyanide gas, believed by scientists to be the world’s most deadly gas, is used in administering the death penalty. The prisoner is strapped in a chair in the death cell, cyanide eggs are dropped in a sulfuric acid solution in a jar suspended above him, the heavy gas falls and one deep inhalation is sufficient to cause death. The gas is odorless and so swift in its action that there can be no suffering (*News & Observer*, p. 12).

This newspaper article was in all respects identical to those which appeared in the State of Nevada just as lethal gas was being adopted in 1921. The following excerpt appeared in *The Pioche Record* (Carson City, Nevada) on August 19<sup>th</sup>, 1921 – the heading of the excerpt read “Absolutely Painless”:

It is anticipated that the gas will be administered much as gas is administered to a patient in a dental chair or to a person preparing for a surgical operation. In other words, it will be a form of anesthesia, and the administrator will probably be an expert anesthetician chosen among physicians or male nurses. Those who favor this method of dealing death declare it is absolutely painless...Its application will be watched with exceptional interest by scientific organizations and colleges (p. 1).

In both cases, the lethal gas was proposed to be “administered”. The use of this term is quite notable, in that institutionalized violence is now something no longer “done” to the condemned, but the condemned instead “receives” it. It is also important to mention the *News & Observer*’s reference to the gas being “odorless” – the literal construction of the electric chair, as evidenced in earlier paragraphs, largely hinged on the smell, or “stench”, emitted from the body. Lethal gas, on the other hand, is likened to anesthesia, in that it has no “stench”, nor causes one to be emitted from the prisoner. In essence, all physical disfigurement associated with electrocution is supplanted by the non-disfiguring gas. When the State of California transitioned to lethal gas in 1938, similar press reports were generated. The article in part indicated that the State would “...begin killing its killers with the scientific complexities of a death machine” (*The San Francisco Examiner*, December 2<sup>nd</sup>, 1938, p. 1). The article continued:

At a cost of some \$5,000, [the State] has acquired a shiny, new apparatus of staggering ingenuity, a device which cleverly combines the discoveries of a physicist with the findings of the chemist so that the most poisonous of poison gases may enter the human system in deadly quantities (ibid.).

Finally, the lethal gas method was purported to be swift and efficient, much as a new piece of technology should be. The *News & Observer* indicated that the lethal gas chamber would

“expedite executions” (May 2<sup>nd</sup>, 1935, p. 12). Senator J. T. Burrus of Guilford County expected that double and triple gassings would take no longer than a single electrocution, because ideally, two or three chairs could be installed in the chamber at once. Given that the same lethal dose would be administered at once to all three condemned prisoners, the executions would be more timely (ibid.).

The electrocutions in North Carolina resumed on July 12, 1935. Given that the lethal gas chamber would only be used to execute prisoners sentenced to die *after* July 1, 1935, it was quite possible to have executions by different methods on the same day (*News & Observer*, May 2<sup>nd</sup>, 1935). Some newspapers predicted that the electric chair may be well into its 27<sup>th</sup> year of service before being totally retired from use, because some prisoners waited “as much as a year” on death row before being executed – a stark difference from the nine-year average experienced by today’s death row prisoner (Bedau, 1997; *The Greensboro Daily News*, May 2<sup>nd</sup>, 1935; *News & Observer*, May 2<sup>nd</sup>, 1935). On August 2<sup>nd</sup>, 1935, North Carolina electrocuted condemned murderers Dortch Waller and Taft Williams, the second double electrocution of 1935 (North Carolina Department of Correction, 1998). In attendance was a black female news reporter from the *Carolina Tribune*, a “...Negro newspaper” (*News and Observer*, August 3<sup>rd</sup>, 1935). By tradition, the article noted, women had been barred from viewing executions in the State, however an exception was made for the female witness because of her affiliation with the newspaper. Under the subheading “Woman is Calm”, the article concluded, “The Negress took the electrocutions calmly, watching both with interest and no apparent alarm” (ibid., p. 1). She was said to have commented, “They were not nearly as bad as I had expected. I still don’t think it is right or does any good to take a man’s life as punishment, however” (ibid., p. 1).

#### **5.10.4 Lethal Gas as a Wolf in Sheep’s Clothing**

North Carolina’s transition to lethal gas was the new target for negative sentiment among death penalty spokespersons. In her paper entitled “*Victims of the State*”, Nell Battle Lewis asked, “Can a form of punishment fundamentally barbarous ever be made really humane?” (p. 1). She continued by adding, “Putting aside the moral issue involved, many people have come to wonder whether punishment of this kind is consistent with a civilization which prides itself upon its scientific achievements” (ibid.). In the May 11<sup>th</sup>, 1935 issue of *The State* (a weekly magazine),

an article appeared in the public interest section entitled “State Becomes More Civilized”.

Commentary author P. D. McLean wrote:

North Carolina has decided to become just a little more civilized...of course, the change will mean little to the victims of either device. But, installation of a gas chamber means the state is becoming more humane...now North Carolina is the first state in the East to substitute gas for the more brutal electric chair. I hope I live to see the day when our society will realize the futility of all capital punishment and abandon it entirely (p. 2).

Dr. James K. Hall, Editor of *Southern Medicine and Surgery*, wrote these words in July, 1935:

We are constantly trying, of course, to walk the tight rope, to avoid falling from it on either side, and to continue to obtain the sadistic satisfactions and to preserve our standing in the community and our good opinion of ourselves. Such efforts can be summarized, I suppose, under such a term as rationalization. That means the attempt to make an unreasonable state seem reasonable (p. 399).

Hall also wrote in some detail about the apparent legitimization process that North Carolina’s General Assembly had effected in adopting lethal gas. The following is another excerpt from his article entitled “*Another Doctor Guillotin?*”

At any rate I hope Dr. Peterson’s name will not become immortalized by association with the new way of killing folks. The name of Dr. Guillotin lives in association with the falling knife...Will Dr. Peterson’s name become transformed into a verb – both active and passive? Will the sentencing judge order the condemned prisoner to be Peterson-ed or –ized on a certain date? Will the daily papers of Raleigh speak of the Petersonization of three prisoners on the day before at the State

Prison?...What it all means, I suppose, is that North Carolina is trying to give up capital punishment – but cannot. The State is trying to be both civilized and barbaric – but cannot be wholly either (ibid., p. 400).

Nell Battle Lewis further argued:

There is evidence that the conscience of North Carolina is uneasy about the death penalty...the humaneness of lethal gas, however, is questionable, and the general feeling in North Carolina is that nothing has been gained by the change. The gas measure was introduced in the Legislature by a doctor...who felt that death by gas was a progressive step. The change has raised the question of whether an essentially inhuman form of punishment can by any method be rendered humane (*Victims of the State*, p. 7).

#### **5.10.5 The Continuation of Electrocution**

In 1935, North Carolina executed eleven condemned prisoners. According to the North Carolina Department of Correction, six of the inmates were black, and five were white. Ten of the executions were for the crime of murder, and one for the offense of rape. There was one triple electrocution, and three double electrocutions. According to Nell Battle Lewis, four of the prisoners executed were minors, including two eighteen year-old boys (*Electrocutions, 1935*, p. 5). Considering that North Carolina did not execute a prisoner between March 15 and July 12, the State still managed to average over one prisoner per month until the end of the year, albeit some of these were absorbed by double and triple executions.

Nell Battle Lewis summarized North Carolina's 1935 execution total in a curious, yet typical fashion. On January 12, 1936, she wrote a lengthy article in the *News & Observer* entitled "Death Chair Was Less Busy In 1935 Than Year Before". On the second page of the article, Lewis wrote:

Listen to those voices from the death chair, defiant or pleading or forgiving. Hear those accusing voices, their accusations the more bitter for being unconscious and indirect: They accuse us, for we are the State that killed them (p. 2).

The above phrase is followed by the last words of 11 condemned prisoners just before they were electrocuted. The curious nature of this article arises from Lewis' strategy at the end of each condemned man's last words – she interjects a retort as if it were the voice of the State itself. The following are a few examples:

*Prisoner:* “Goodbye, boys. See what sin will do for a man.”

*Lewis:* Right you are, Gunter. Sin – that's what it is, black sin. What if you are feeble-minded and could never get beyond the first grade? What if you have three generations of insanity behind you? What if you have no opportunities worth mentioning? What if you were just 20 years old? What difference does that make? It was sin that brought you where you are – and your insane heredity and your own feeble-mindedness, and your poor environment didn't have a thing to do with it. It was just Original Sin.

*Prisoner:* “I hope them that's doing this will be prepared to meet the Lord.”

*Lewis:* Oh, don't worry about us, Gosnell. We'll be alright. We are the people, Gosnell, and wisdom will die with us.

*Prisoner:* “I don't have any hard feelings or malice toward anybody, but I'm an innocent man today.”

*Lewis:* No malice, Waller, no hard feelings? Very kind of you, indeed. However, the State has hard feelings toward you, Waller, the hardest feelings possible. Your State doesn't want you, wouldn't help you in time, doesn't care what made you what you are -- it wants only to get rid of you.

*Prisoner:* “My God, my God, help me this morning. Take me, have mercy, my God.”

*Lewis:* It's just as well you didn't ask mercy of us, Whitfield, for we deal in justice – so-called – another matter altogether. We haven't much time for the preachers who tell us what the Lord says, “I will have mercy and not sacrifice; go ye and learn what that meaneth.” We still believe in sacrifice, Whitfield, and it's just too bad that you're one of the goats.

Lewis' attempts in further illuminating the human side of the State's condemned prisoners appeared to have accelerated in 1935, with far more articles and private papers written during that year than in prior years. It is a safe assumption to assume that as North Carolina continued to execute the socially marginal, and had adopted a new manner by which to dispose of them, Lewis' strategy was to remain openly and consistently indignant toward the practice.

On January 17, 1936, the State of North Carolina executed convicted murderer Robert Dunlop in the newly constructed lethal gas chamber at Central Prison. Dunlop's execution, however, was conducted by electrocution – a new electric chair had been placed inside the newly painted gas chamber, which would not be used for an asphyxiation execution until January 24. The new gas chamber was merely a triangular steel room with sealed glass panels for viewing (*News & Observer*, January 18<sup>th</sup>, 1936). In prior electrocutions, witnesses had been in the room along with the condemned, separated only by a red rope. The old electric chair sat in a metal cage, allowing witnesses to hear and smell the effects of the electricity (North Carolina Department of Correction). The day after the Dunlop execution, the newspapers reported that the odor normally accompanying an electrocution was absent. The article read in part:

Witnesses, separated under the new order from the enclosure in which electrocutions take place, could not hear the words of the doomed man, but could see through double windows his rapidly moving lips... For about 10 seconds, flames and sparks shot up from the straps before the thong parted and the current was turned off (*News & Observer*, January 18<sup>th</sup>, 1936, pp. 1-2).

Dunlop was the 161<sup>st</sup> prisoner to be executed in North Carolina's electric chair since its adoption in 1909 (*ibid.*). Dunlop had indicated to prison officials that he was unsure of the exact day of his birth, however was confident that he was born in March, 1910 – ironically, the same month and year of the State's first electric chair execution.

#### **5.10.6 The Dawn of a New Method of Death**

During the first two weeks of 1936, Governor J. C. B. Ehringhaus was considering a clemency appeal from condemned rapist Allen Foster, a black 20-year-old from Birmingham, Alabama. If

no intervention was granted by the Governor, Foster was slated to be the first prisoner in the history of North Carolina to die by lethal gas. According to the January 16, 1936 *News & Observer*, Governor Ehringhaus had "...declined to intervene" on Foster's behalf, and preparations and testing began for the January 24 execution (p. 14). News coverage of the first lethal gassing accelerated the week of the execution. Interestingly, the prison reported far fewer applications for witness permits than those received for electrocutions, something the newspaper referred to as a lack of interest in the new method (*News & Observer*, January 24<sup>th</sup>, 1936). On the day of Foster's execution, which was to be conducted at 10:30 a.m., the *News & Observer's* bold headline read, "Terrified Negro Faces First Gas Death Here". The lethal gas chamber's "career" was said to be "inaugurated", replacing the "26-year-old electric chair" (p. 1).

In the hours before his execution, Foster was said to be "terrified", and he was described as saying, "I feel mighty tough. The soul can be ready, but the flesh ain't, and I'm worried" (*ibid.*, p. 1). The front page of the newspaper was filled with side stories regarding the impending execution. One headline on the first page read, "Death Row Upset On Execution Eve", introducing an article written by John Parris, a reporter who had spent the night on Death Row with Foster and other "doomed men" (p. 1). Parris had described Foster as a "husky dusky Negro" who had apparently fought Joe Louis in Alabama. The reporter described every movement on Death Row, including the singing of southern hymns and prayers for Foster on the eve of his execution. Parris wrote:

Foster had a last word too, before he "catches the train to heb'n"...  
"You all shore bin good to me", he began. His voice was clear.  
"I certainly does appreciate everything you all's done for me.  
You've been tellin' me to find God. I've found God, and I'll  
always keep him dere in my heart" (p. 1).

The news service also provided, in great detail, how the lethal gas execution would begin. The paper indicated that the inmate's head would be shaved, much like in preparation for electrocution. The reasoning, however was different. In Foster's case, his head was shaved "...to eliminate the possibility that some of the deadly hydrocyanic gas might linger in his thick, kinky hair" (*ibid.*). Foster would also be "stripped" except for his under-shorts, a process "...to avoid the possibility of gas clinging in the folds of his clothing" (*ibid.*). Unlike electrocutions, Foster

would have "...a stethoscope strapped across his chest above the heart" (ibid.). The tubing of the stethoscope would be threaded through a copper lead and then fed into the control room, where prison physician Dr. George S. Coleman would monitor the cardiac activity. Also present at the first gas execution would be the Dean of Duke University's School of Medicine, Dr. Wilburt U. Davidson. The State of Nevada, some fifteen years prior, had indicated that medical colleges and organizations would be monitoring that State's use of lethal gas with great anticipation – this also appeared to be the case with North Carolina.

The technicalities of the lethal gas chamber were also described in great detail. The paper indicated that underneath the chair, a mechanism would release pellets of cyanide into a bath of sulfuric acid. The subsequent fumes, created when the solution reaches a temperature of seventy-five degrees, would supposedly cause unconsciousness upon the "...first deep inhalation. Death is expected to follow in a few minutes" (ibid.). Another article appearing on the front page, however, caused some concern – it described the death chamber as being "freezing cold" on the morning of the execution, certainly not conducive to the temperature necessary to create hydrocyanic gas. The logistics of the gas chamber chair were also different – in prior articles, the gas was proposed to be released from above the condemned man's head, thus the fumes falling toward his face. In this case, the design of the lethal gas equipment had apparently been changed, with the fumes rising upward to the condemned from underneath the chair. Regardless of the inconsistencies, the vivid media descriptions of the lethal gas chamber served to bolster the idea of a new, technological innovation. The gas chamber was portrayed as efficient, humane, advanced, and painless. It was presented as having the support of medical professionals and scientists, making the method seem almost incapable of causing harm.

The *News & Observer* has historically contained a small informational column entitled "Under The Dome", which attends to business of the State's Legislature which is housed in a domed building downtown. On the morning of Foster's execution, the "Dome" column ran a small headline containing only the word "Gas". The article, however, was written with an air of great anticipation and anxiety regarding the new method of execution in the State. This excerpt is from that article:

The uncertainty of the form of death that was awaiting scared little Allen Foster, the Alabama Negro who strayed from a

CCC camp to attack a Hoke County white woman, surcharged the atmosphere as the knowledge of the approach of a certain form of death never had done... Today, prison officials hope, the first human victim will be killed without howling, without squirming before the 30 or so witnesses outside the sealed chamber... The witnesses, mostly newspapermen and medical observers, will press their noses to the plate glass windows of the chamber. A few minutes thereafter they will know how effective lethal gas is (ibid., p. 2).

The article concluded by raising a degree of doubt in the mind of the reader. The unknown author stressed, "The electric chair, when it superceded the noose 26 years ago, had more experience behind it in neighboring states when the first victim sat down in it" (ibid.). In other words, North Carolina's institution of state-sanctioned punishment was in a state of eager and nervous anticipation. At the execution of Allen Foster, the State of North Carolina would find out whether its newest form of institutionalized violence would parallel the normative social ideologies that were breached by the electric chair.

### **5.11 Allen Foster, Lethal Gas, and the Dispersion of Doubt**

In January, 1936, North Carolina prepared to execute its first condemned prisoner in history by lethal hydrocyanic gas. The lethal gas chamber had been initially hailed as a technologically efficient and painless method of execution, both by the media and the North Carolina General Assembly of 1935. The manner in which the gas chamber had been advocated supplanted the deviant connotations attached to the State's electric chair, and served as an assurance to the general public that executions would henceforth be civilized, humane, and parallel with the State's advanced social ideologies.

Allen Foster was escorted into the State Prison's execution chamber on the morning of January 24, 1936. Clad only in under-shorts, he was permitted to wear a blanket draped around him just before he was seated in the chair. The temperature in the death cell hovered at 32 degrees (*News & Observer*, January 25<sup>th</sup> and February 1<sup>st</sup>, 1935, p. 1). Foster was secured in the high-backed oak chair, curiously watching as the guards affixed the stethoscope to his chest, then secured his arms and legs with thick leather restraints (*News & Observer*, January 25<sup>th</sup>, 1935). A

newspaperman was allowed to walk with Foster into the death chamber itself, however Foster made no comment about his alleged crime. His only remark as the reporter exited the death chamber was, "I fought Joe Louis...tell my mother good-bye. I'm innocent" (ibid., p. 1). Both *The Greensboro Daily News* and the *News & Observer* made mention of the witnesses in attendance. As the prior chapter indicated, physicians and medical specialists had a keen interest in North Carolina's newest method of execution, given that it was said to operate much like anesthesia. Among those present were Dr. Charles Peterson, who sponsored the lethal gas bill, Dr. Kemp P. Neal, a Raleigh surgeon, Dr. Ramson Carr, a Duplin County representative in the General Assembly, and Dr. George S. Coleman, the prison physician. Also present was W. T. Bost, infamous Raleigh newspaperman who had witnessed numerous electrocutions, hangings, and extra-legal lynchings during his career.

As executioner R. L. Bridges pulled the lever releasing the cyanide pellets into the bath of sulfuric acid, fumes began rising toward the face of the condemned prisoner. The *News & Observer* detailed the execution on the front page of the paper the following day, the bold headline reading, "First Lethal Gas Victim Dies in Torture as Witnesses Quail":

The State of North Carolina yesterday inaugurated the career of its new lethal gas chamber before more than 30 sickened witnesses. For more than three minutes and possibly more, Allen Foster, 20-year-old victim of the new chamber suffered obviously and consciously before he was overcome by the fumes of the hydrocyanic gas which rose from beneath his chair to flood the tiny white cell (January 25<sup>th</sup>, 1935, p. 1).

The first paragraph of the article, which consumed the entire front page of the newspaper that morning, had already identified Foster as a "victim" of the new method of execution, and made obvious mention of the witnesses' displeasure with the procedure. The article then began a systematic account of the prisoner's every movement during the execution:

"Good-bye". The Negro's lips framed the words so clearly that no man in the witness room could doubt what he had said. As he said it, he winked and then forced a smile at the faces peering in at him. Then he began to suffer. No man could look squarely

into his eyes and fail to perceive that they were registering pain.

The Negro fought for breath, knowing he was going to die and fighting to get it over with as quickly as possible (ibid.).

This account of Foster's first few moments in the gas chamber is quite significant, because it denotes the obvious manner in which he was suffering. In addition, the suffering was clearly apparent to the witnesses, something that the adoption of the method was supposed to have eliminated. The article continued:

When the fumes began to rise around him, the Negro watched them carefully until they were nostril-high. Then he took a deep breath, and exhaled the greyish vapor as if it had been cigarette smoke. After that breath, he sucked the gas desperately until his head rolled back three minutes later, indicating to physicians that the man finally had lost consciousness. But after a period of quiescence, his small, but powerfully built torso began to retch and jerk, throwing his head forward on his chest, where witnesses could see his eyes slowly glaze... The torturous, convulsive retching continued spasmodically for a full four minutes (ibid.).

The article continued by adding that even after seven minutes had passed, Foster's heartbeat remained at a normal seventy-two beats per minute. Halfway through the execution process, in a room full of startled and obviously shaken witnesses, Dr. Ransom L. Carr interrupted the silence by saying, "We've got to shorten it or get rid of it entirely" (ibid.). According to all of the physicians present, Foster remained conscious for at least three minutes after the lethal gas was released.

#### **5.11.1 "The Prolongation of Agony..."**

Allen Foster was pronounced dead some eleven minutes after his first inhalation of lethal gas. Upon pronouncement of death by the prison's physician, the witnesses waited another twenty-four minutes before the lethal gas could be cleared from the chamber and the prisoner's body removed by undertakers. Reaction from witnesses was nothing short of dismay. As the execution ended, Dr. Kemp P. Neal remarked that, "The knowledge that one is dying is agonizing, and the

prolongation of that knowledge is the prolongation of agony” (ibid.). Warden H. H. Honeycutt, who presided over Foster’s execution, admitted that the procedure sickened him, and that “...there was no question in his mind that electrocution and even hanging was far to be preferred” (ibid.). Dr. George S. Coleman, the prison’s attending physician, stated that although he could not verify Foster was tortured, the prisoner appeared to be in acute distress. Coleman also stressed that, “There is no question in my mind that electrocution is the more humane method” (ibid.). Newspaperman W. T. Bost, who in his career had witnessed 156 electrocutions, commented, “I think it was awful butchery...I am opposed to capital punishment, but if we’ve got to have it, there are ways and ways of killing a man, and almost any way is better than this” (ibid., pp. 1-2).

The article continued for three more pages, describing the reactions of the witnesses, most of whom had medical backgrounds and were reputable citizens in the surrounding North Carolina communities. The newspapers even made mention that Coroner Lawrence M. Waring, who had seen countless “mangled” bodies in his career, was openly disturbed by what he had seen. “One was too much”, Waring stated after the execution. He concluded by adding, “This was one of the most terrible and horrible things I ever looked at...I’ll never go to another” (ibid., p. 2). A “pale-faced” guard standing in the Warden’s office, who had been assigned execution duty, remarked, “That got me...my father died with asthma. I’ll never forget how bad it was. And I won’t ever forget how bad this was, either” (ibid.). Hoke County Sheriff D. H. Hodgkin said the execution was “...mighty bad” and that he preferred electrocution to lethal gas (ibid.). Warden H. H. Honeycutt concluded his interview with the media by adding he had “...never witnessed such a complete revulsion of feeling as that displayed by those who witnessed Foster’s death” (ibid.). Witnesses were said to have been so repulsed and shocked by what they were witnessing that “...they forgot that the Negro in the chair was paying the penalty for raping a white woman” (ibid.). Interestingly, the only witness who voiced satisfaction with the new method of execution was its proponent, Dr. Charles Peterson. He was noted as saying, “I am satisfied that Foster’s death was painless. I am positive that the new method is more humane than electrocution” (ibid., p. 1).

### **5.11.2 The Public Speaks**

Just one day after the Foster execution, predictions were made that lethal gas would soon be abandoned and once again replaced with the electric chair or some other form of execution. Shipman (1996) notes that a similar occurrence took place in the State of New York upon initial use of the electric chair. While the press and reputable authorities praised the new technology prior to its use, their opinions quickly shifted once the first electrocution took place. In short, initial enthusiasm for the new technology was quickly subverted by indignant post-execution dialogue. The manner in which the media presented the first lethal gassing in North Carolina most likely spurred a deluge of unfavorable responses from the public in general. Just one day after the Foster execution was so vividly described in the papers, this Western Union telegram was sent to the office of Governor J. C. B. Ehringhaus:

I protest the use of lethal gas as a means of executing those condemned to die by the State. Eva Burton Blalock (Telegram dated January 25<sup>th</sup>, 1936, 8:00 a.m.).

Ehringhaus' office replied the same day with this retort:

Dear Miss Blalock,  
On behalf of Governor Ehringhaus I wish to acknowledge receipt of your wire of the 25<sup>th</sup> protesting against lethal gas as a means of executing those condemned to die by the State. The Governor appreciates your wire. However, you of course understand that he did not make the law. May I suggest you file your protest with the General Assembly of North Carolina, as they are the ones who passed the law and the only ones who can repeal. Sincerely yours, C. G. Powell, Private Secretary (Letter dated January 25<sup>th</sup>, 1936).

On the same day, the following letter was also sent to the Governor's office. Interestingly, the letter was authored by a resident of South Carolina, who had apparently read of the Foster execution in her local newspaper:

Dear Sir,

Being an outspoken American citizen, I am writing to express my opinion, and what I feel must be the feelings of thousands of others also, on the recent disgusting execution of a Negro man, which lasted thirty-three minutes. If this revolting affair is an example of the mercy and decent human feeling of a civilized nation, then I, and I believe many others, would infinitely prefer to remain uncivilized. It is but justice that men are sometimes condemned to death, and this sentence be carried out, but it is outrageous and unspeakable that they be subjected also to thirty-three minutes of numberless agonies and tortures. I was moved to write this letter as much to urge the reprieve of others condemned to death in this same way until a more humane manner of execution be established as to condemn the despicable manner of the execution a few days ago. Respectfully yours, (Miss) Mary E. Barnwell (Letter dated January 25<sup>th</sup>, 1936).

The response from the Governor's office was similar to that for other letters that week. The Governor's private secretary stated that Governor Ehringhaus had no control over the new lethal gas adoption, and also urged the author of the letter to take her concerns to the North Carolina General Assembly. The following letter was received by the Governor on January 27<sup>th</sup>, 1936:

Dear Governor Ehringhaus:

I was horrified to read an account of the execution last Friday of a young Negro by

the name of Foster in the new Death Chamber of the State Prison. Please permit me to join the hoards of other people in protesting against a repetition of any such horrible spectacle. Although I have never been a believer in capital punishment, I do feel that if the State must kill, that it should be by some other means other than that prescribed by the General Assembly of 1935. I sincerely urge Your Excellency to call a special meeting of the Legislature immediately, in order that this horrible condition may be corrected, and until that time I join with a host of others in urging Your Excellency to either commute the sentence of those condemned to die to life imprisonment, or to give them reprieves until such a time as this law can be changed. With kindest personal regards, Very truly yours,  
W. Louis Ellis, Jr., Attorney at Law.

### **5.11.3 The Consideration of Replacement**

In the week following the Foster gas execution, some North Carolina newspapers hinted at the possibility that the Governor would indeed entertain the idea of calling a special session of the General Assembly. On January 25, 1936, *The Charlotte Observer* stated that Basil M. Boyd, an attorney and former member of the Legislature, "...thought reaction to the gas execution of a Negro [Foster] in the State Prison at Raleigh might force [the Governor's intervention]" (p. 1). Boyd was also quoted as saying that the Governor "...should grant reprieves until the law can be repealed", and that "They [the prison] should learn how [to conduct the execution] before they put another man in there, or should never put one in again" (ibid.). The *News & Observer* indicated that Foster's botched execution was the talk of Capitol Hill, and that the Capitol was "...unanimous in its condemnation of the new method of killing criminals. From all sides came protest after protest and the demand that something be done" (January 26<sup>th</sup>, 1936, p. 1). The

letters to Governor Ehringhaus' office continued the week after Foster's execution. The following is an excerpt from a letter dated January 27, 1936:

TO GOVERNOR EHRINGHAUS:

I wish to add my protest to the many that I am sure you have received on account of the recent execution of the Negro in the lethal chamber. To me it has been sickening to read the accounts, and I feel sure that you do not wish any such happenings in North Carolina. I cannot understand how it can be allowed at all, and I do beg of you to see that it does not happen again. Capital punishment is a dreadful thing and I sincerely hope that North Carolina will soon be progressive enough and humane enough to discontinue it. Please give this some serious consideration. Very truly yours, R. R. Creasman.

The Governor's response to the Creasman letter was much like the responses to previous letters from citizens, indicating that he "did not make the law or have anything to do with its making" (Letter from Governor Ehringhaus, February 3<sup>rd</sup>, 1936). The Governor also indicated in his retort that he would "...consider each case presented on its own particular merits", meaning that a review of each condemned prisoner's case would continue as it had in the past, but with no guarantee of clemency due to the *method* of execution (ibid.).

On January 30, 1936, a University of North Carolina at Chapel Hill professor wrote Governor Ehringhaus to express his concerns regarding the recent gassing, and the infliction of the death penalty in general. In his letter, Roy M. Brown referred to the General Assembly's lethal gas bill as "...a pitifully brutal failure in the search for a more humane way of killing those condemned to death". Brown continued his eloquent letter by referring to Governor Ehringhaus as "...one of the kindest and most humane of men", who must be greatly pained in having to exercise the power of commutation in deciding which of his "...fellow-men" would live or die. The author continued by noting that he himself could "...no longer remain a silent unwilling accomplice in the deliberate, cold-blooded, and brutal killing of [his] fellow-men", and that he felt "...defiled and brutalized by being forced to participate in such killing". In concluding his letter, Brown

urged Governor Ehringhaus to examine closely the nature of North Carolina as a "...backward State" due to its retention of the death penalty for crimes such as burglary and arson, and its consistently high homicide rate. Governor Ehringhaus' retort to Brown was lengthy, but in part it read:

I am sure that upon reflection you will see the impossibility of a general commutation or reprieve, and indeed such would amount to a complete subversion of the law and an invitation to impeachment. I appreciate your suggestions of the kindness and humanity of my motives and again assure you that I feel and suffer in connection with the performance of a duty which the law imposes upon me, but I shall not shirk it and I am sure you would not have me shirk it. Very truly yours, J. C. B. Ehringhaus (Letter dated February 3<sup>rd</sup>, 1936).

The day after Foster's execution, Nell Battle Lewis authored an article in the *News & Observer's* "Under The Dome" section, proffering several solutions for "...escaping a repetition of yesterday's infliction of...a slow, agonizing death" (p. 1). Her suggestions included a Governor's reprieve for each man sentenced to death by gas until the General Assembly could convene and repeal the law. Lewis also called into question the possibility of a special session of the General Assembly without reprieves, which some citizens had already urged the Governor to do. In typical Lewis fashion, she argued that a special session would, at the least, "...limit the number of State stranglings in so far as possible" (ibid.). Her final suggestion was directed at the lawyers of condemned prisoners, urging them to challenge the constitutionality of lethal gas insofar as cruel and unusual punishment was concerned. This final suggestion raised concerns with Lewis and other death penalty opponents, in that the State of Nevada had already ruled that lethal gas was not cruel, nor was it unusual (Chan, 1975; Hartmann, 1923). Lewis did, however, note that the lethal gassing of Allen Foster had greatly impacted the Governor, and the questions surrounding the method were an "...agonizing burden" to both Ehringhaus and Edwin Gill,

Commissioner of Paroles (ibid.). As Lewis concluded, “It raises the question of whether the Governor isn’t the major victim of the lethal gas act of 1935” (ibid.).

Just two days after the Foster execution, it was abundantly clear that North Carolina’s transition to the lethal gas chamber was questionable at best. With indignant press reports, and scores of letters and telegrams opposing the method of execution, the State was placed in a defensive position insofar as preserving its justification for adopting lethal gas. The North Carolina General Assembly of 1935 had relied heavily upon a scientific and medical veneer to supplant the distasteful and offensive characteristics of the electric chair. Lethal gas had been advocated due to its likeness to anesthesia, in effect putting the condemned prisoner to sleep. In addition, hydrocyanic gas was purported to be painless and humane once administered, killing the prisoner quickly without the disfigurement associated with electrocution. According to medical specialists, there would be no offensive odors associated with the new method, and the process of dying would be far more palatable to those in attendance. Instead, as the Foster execution bore out, all of the characteristics associated with a painless death were absent. The first accounts of Foster’s execution described the process as “torture”, wherein the condemned man strangled, choked, retched, and writhed for several minutes after the gas initially reached him. The physicians present indicated that Foster was in obvious distress, and appeared to be suffering through the procedure. Twelve minutes into the execution, physicians also reported that they were tentative in pronouncing the inmate dead, and waited another two minutes to assure there was no further cardiac activity (*News & Observer*, January 25<sup>th</sup>, 1936).

#### **5.11.4 Social Definitions of an Improper Death**

Letters received at the Governor’s office regarding the Foster execution were rife with terms such as “horrified”, “sickening”, and “brutal”. Several letters from citizens questioned the civility, progressiveness, and integrity of the State, and referred to the execution itself as a “spectacle” and an “experiment”. These terms represented the antithesis of a humane and painless death, and often mirrored those found in accounts of prior electrocutions, not to mention more archaic forms of execution used throughout North Carolina’s history. More importantly, however, is the manner in which these descriptions differed from the scientific and medical terms initially used to advocate the lethal gas chamber in the General Assembly session of 1935. Great care had been taken to bolster the new method with scientific support, a strategy which

legitimized its adoption and reconstructed the electric chair as deviant. Given that scientific terminology and medical opinions were key variables in the process of legitimizing lethal gas, the State of North Carolina would once again need to resort to science as a means by which to mend the damaged first impressions left by Foster's execution.

In a similar vein as North Carolina, the State of New York was placed in a position of urgency in correcting malfunctions with that State's electric chair after its first use in 1890. The electrification of America had been the impetus for the new method, and death by electrocution was deemed the most scientifically sound method of state-sanctioned killing ever devised (see Metzger, 1996; Shipman, 1996). Much as scientific veneer had served to legitimize North Carolina's gas chamber, the technology industry had informed and bolstered New York's electric chair. In both cases, the new methods were looked upon with a large degree of awe and anticipation by the proponents of the bills, the media, and the general public. Shipman (1996) notes that although skepticism arises after a questionable debut of an execution method, the doubt it creates soon subsides as states persist with the new technology and improve the techniques associated with its use. North Carolina's ordeal with the lethal gas chamber parallels Shipman's assumptions, in that painstaking efforts were taken almost immediately as not to repeat the Foster tragedy.

North Carolinians had been somewhat informed about how the lethal gas apparatus would operate, however there was little information offered in the way of how death in the gas chamber actually occurred. This also seemed to be the case with the State of New York, in that *death* by electrocution was never really described – instead, the use of electricity itself as a technological marvel was. Several years after New York had executed its first prisoner in the electric chair, several medical articles were published describing the process of death by electrocution. For example, Dr. Homer Bennett published “*Electrocution and What Causes Electrical Death*” in an 1897 issue of The American X-Ray Journal. In 1898, an article entitled “*A Ghastly View of Electrical Execution*” appeared in The New York Medical Journal. Finally, Drs. Anthony Spitzka and Henry Radasch published an article entitled “*The Brain Lesions Produced by Electricity as Observed After Legal Execution*” in a 1912 issue of The American Journal of the Medical Sciences. All three articles were intended to publicly explain what actually *happens to the prisoner* during such an execution, rather than advocating the technology of electricity itself. On

January 27, 1936, an article appeared in the *News & Observer* which was quite similar. The bold headline on page one read, “Slow Death Quite Usual in Lethal Gas Killings” – a subheading underneath noted, “Scientific Studies Indicate State Abandoned Most Humane Method of Execution”.

Just after the botched Foster execution, the *News & Observer* requested that an organization known as Science Services conduct interviews and surveys of leading scientific authorities to determine the effects of death by lethal gas. Once Science Services had gathered the scientific materials, they compiled them in a report for the *News & Observer*, and the results were published in the newspaper. This provided the general public an opportunity to read first-hand the effects of death by lethal gas, and what the prisoner might experience in the death chamber during the process. Readers had first been given the impression that succumbing to hydrocyanic gas was much like the experience a surgical patient undertakes. For all intents and purposes, the condemned prisoner would simply drift imperceptibly from life into death, without the repugnant burning of flesh or the sounds of crackling electricity to amplify the effects. The Science Service painted a quite different picture of execution by lethal gas. The findings included the following technicalities:

Internal asphyxia, or suffocation of the tissues, is what occurs in death by hydrocyanic acid gas, the method of execution of criminals recently adopted by North Carolina and also used in some western states. The body, however, is not deprived of air as in ordinary suffocation, say by strangling. There is plenty of oxygen in the blood of a person poisoned by hydrocyanic acid. But the protoplasm – the essential of living cells – cannot absorb the oxygen that is available (*News & Observer*, January 27<sup>th</sup>, 1936, p. 1).

The article continued by describing the effects of experiencing asphyxia:

Cyanide poisons the central nervous system, first stimulating it and producing convulsions and then causing paralysis.

Paralysis of the breathing center in the nervous system is the immediate cause of death. So persons poisoned by hydrocyanic

acid stop breathing several minutes before their hearts stop beating (ibid.).

This explanation parallels what witnesses reported seeing during the Allen Foster execution. Foster appeared to have stopped breathing, however was very much alive for at least seven more minutes. The article went on to stress that, "...the gas victim, whether or not he suffers any actual physical torture, such as would be produced by a burn [during electrocution], feels himself slowly being killed" (ibid.). According to scientific experts consulted by Science Services, electrocution was by far the most humane method of execution, in that unconsciousness was immediate, and death almost certain shortly after the current passed through the body.

The logistics of administering the gas itself were also not clearly detailed prior to the adoption of the new method. The temperature in the death chamber during Foster's execution hovered just above freezing, when in fact, better vaporization is achieved if the temperature inside the execution chamber is warm (see The Leuchter Report, 1988). This also created concern during Nevada's first lethal gas execution in 1924 – the temperature in the death chamber was fifty-four degrees due to a malfunctioning space heater (Chan, 1975). In cooler temperatures, hydrocyanic acid tends to liquefy, slowing the process of asphyxiation and protracting the suffering of the prisoner (*News & Observer*, February 1<sup>st</sup>, 1936). North Carolina prison officials, in preparing for another gas execution on January 31, 1936, quickly consulted with chemists in the State of Colorado in hopes of eliminating a repeat of the Foster spectacle. Colorado had recently adopted lethal gas, and advised North Carolina prison authorities to alter the formula for the hydrocyanic solution. Colorado's prison staff also recommended that the execution chamber be heated to avoid prolonging the death of the inmate, and assuring a more vigorous vaporization process. It is fairly clear, then, that Foster's agonizing experience in the lethal gas chamber was due to several factors – two of which being a death chamber that was far too cold, and a miscalculated gas formula.

#### **5.11.5 Technical Dramaturgics and the Repair of an Image**

Officials at the State Prison in Raleigh took no chances in preparing for the execution of Ed Jenkins on January 31, 1936. As Shipman (1996) noted, in lieu of public condemnation of a new method of execution, states will oftentimes attempt to perfect the techniques associated with its use. North Carolina adopted the "Colorado Formula", which consisted of fifteen one-ounce

pellets of cyanide, three pints of sulfuric acid, and three quarts of water. In essence, less sulfuric acid would be used, and more water added. In addition, the death chamber was “...moderately warm” compared to the freezing cold execution chamber at Foster’s execution (*News & Observer*, February 1<sup>st</sup>, 1936, p. 1). The bold headlines of the *News & Observer* on February 1, 1936 read, “Death Comes Quickly To Second Gas Victim”. The media reports indicated that Ed Jenkins, a convicted murderer, was dead in less than one minute, however “...during the next five minutes, there were an even dozen involuntary contractions of the diaphragm, occurring spasmodically, but not violently...” (p. 1). Physicians present at Jenkins’ execution attributed these spasms to “...reflex actions...” (ibid.).

The front page article made obvious mention of the fact that North Carolina prison officials altered the gas formula, and took steps to assure the death chamber was warmed before the execution commenced. These steps, the paper asserted, greatly improved the results of the process. Much space in the article was dedicated to comparing the two gas executions – physicians were said to be in agreement that Jenkins did not suffer in the least, and that there was no comparison between the two executions. Prison physician Dr. George S. Coleman revised his initial sentiment of the gas chamber by asserting that the execution was painless and humane. Two other physicians, both from Duke University School of Medicine, concurred with Coleman’s assessment. Warden H. H. Honeycutt, who was deeply disturbed by the Foster execution, was unable to attend the Jenkins gassing due to illness. He was phoned immediately after the execution and informed of its success, however he had no comment. In the words of Oscar Pitts, acting Director of the State Penal Division, “...lethal gas has come to stay in North Carolina” (ibid., p. 2).

North Carolina’s efforts in quickly repairing the tainted image of lethal gas appeared to have hinged on the reliance of dramaturgical techniques, as well as the input from medical personnel, scientists, and other authorities. The Jenkins execution more closely resembled what the public had been initially prepared to expect. The process was, according to news reports, efficient, painless, and humane. In addition, physicians present at the second execution were said to be in full agreement that lethal gas was indeed more desirable. Such a rapid change in professional opinion most likely gave the impression to the general public that the first execution was merely a mistake, admittedly due to technical malfunctions and logistics. As fate would have it, North

Carolina's next execution on February 7, 1936 would offer prison officials, and the State's citizens, an interesting comparative experience – a triple execution conducted by both lethal gas and electrocution. The headlines in the morning issue of the *News & Observer* read, "Executions Afford Direct Contrast Between Electrocution and Asphyxiation" (p. 1).

#### **5.11.6 The Opportunity to Compare Deaths**

Three black condemned prisoners would comprise the State's first triple execution of 1936, who were described in the papers as, "Three young Central North Carolina Negroes who had killed members of their own race and robbed their dead bodies" (ibid.). The first inmate, William Long, was to be electrocuted, given that he was sentenced to die prior to July 1, 1935. The remaining two, J. T. Sanford and Thomas Watson, would both be executed by lethal gas. The entire process took the prison staff two hours and nine minutes to complete, although the newspapers reported that, "...only 23 minutes was devoted to the actual business of killing the Negroes. The remainder of the long performance was devoted to the multiplicity of mechanical details attending asphyxiations" (ibid.). The electrocution of Long took exactly four minutes, according to reporters. Unlike prior electrocutions, there were no graphic accounts of searing flesh or putrid odors. The newspaper reported only that, "Long became rigid against the heavy leather straps as Executioner R. L. Bridges threw the big switch that sent 2,300 volts of electricity coursing through the brown body..." (ibid.).

Shortly after Long's body had been removed from the death chamber, preparations were made to conduct the next execution by lethal gas. The electrical equipment was removed, and the sulfuric acid and pellets were readied. Sanford was seated in the death chamber wearing only boxer shorts – he was secured with leather straps, and the stethoscopes were affixed to his chest. As the executioner pulled the lever to activate the cyanide pellets, a mechanical malfunction caused the delay of the solution to vaporize. Four minutes after being strapped in the death chamber, the condemned man began curiously looking for the vapor, which finally materialized. In twenty seconds, he appeared unconscious, however his breathing "...was rapid and violent, accompanied by groans and grunts so loud that they could be heard through the concrete-covered steel walls of the chamber" (ibid.). The breathing ceased in under two minutes, however witnesses could clearly see the spasms of the prisoner's diaphragm. The news article reported that, "The Negro's lips drew back over his teeth in a ghastly grin of death...the horrible grin

gradually faded from the Negro's face and the body slowly relaxed..." (ibid.). The 'grin' referred to in this account is known in the modern medical community as "sardonic smile", an involuntary reflex of the muscles around the mouth (M. H. Patel, Unpublished opinion No. C-92-1482, Fierro v Gomez, 77 F.3d 301 [9<sup>th</sup> Cir. 1996]).

Following Sanford into the death chamber was Thomas Watson, described by news reporters as, "...one of the most intelligent looking Negroes ever executed at the prison here" (ibid., p. 2). Watson appeared unconscious thirty seconds after first inhaling the deadly gas, however "...the violent breathing occurred for over a minute, accompanied by straining at the straps as the body grew rigid and rose from the chair" (ibid.). The *News & Observer* also reported that, "...the same ghastly grin came over Watson's face three minutes after he had breathed the gas" (ibid.). In bold type which divided the front page story in half, readers saw "Electrocution Favored". The newspaper reported that witnesses unanimously preferred electrocution over lethal gas – they cited the gas chamber's mechanical "clumsiness" as the primary reason, albeit the executions were far less disturbing than the Foster ordeal (ibid.). As Lofland (1975) noted, the dramaturgical manipulation of execution props, such as removing noises from an execution machine, greatly increases their legitimacy, and serves to bifurcate the *actual* from the *expected*. Witnesses stated later that Long's electrocution seemed more efficient – the newspaper indicated that, "Because of the dispatch with which it was accomplished and all its traces removed, electrocution spoke silently for itself..." (ibid.).

#### **5.11.7 A Physician Stands His Ground**

The manner in which the first lethal gas executions were presented in the newspapers created an immediate rift between Dr. Charles Peterson and the media. In addition, Peterson began taking issue with the prison's Warden, its physician, and other penitentiary officials regarding their adamant positions that electrocution seemed more humane, even after more successful gassings had occurred. Peterson's position appeared in a February 13, 1936 *News & Observer* article:

Unfortunately, some of the leading newspapers of the State commented adversely on the result obtained with the lethal gas chamber, apparently basing their conclusion on the opinions of their reporters and others who had never made such a study of the conditions involved as is required to know

what happens in so complicated a physical and psychological condition (p. 11).

Peterson continued his official statement in the newspaper by questioning the intelligence and professionalism of news reporters:

Newspapers in this State and elsewhere recently carried stories about the results obtained with the lethal gas chamber at the State penitentiary when it was employed for the first time in executing a criminal that left impressions which merely reflect the inability of even the most expert news reporters to understand a highly technical situation. Such errors of judgment are not uncommon when laymen undertake to report a professional or technical matter in regard to which they have no background nor training (ibid.).

Peterson portrayed the newspaper reports of the first lethal gassings as erroneous, dismissing their content as that produced by inexperienced members of the media who apparently had no working knowledge of the technicalities involved in such a method of execution. He further maintained that lethal gas was used exclusively in several western states, and that prison officials there were in agreement regarding the humaneness of hydrocyanic gas asphyxiation. In addition, Peterson recounted the adverse visual effects of witnessing an execution by electrocution – among his chief concerns was the horrible disfigurement caused by burns. He added that in addition to burning, the body of the condemned is often so rigid after electrocution that “...bones must be broken before the corpse may be straightened for burial” (ibid.).

An interesting feature of the Peterson statement to the media was his consistent use of terms such as “modern”, “advanced”, and “technical”. Furthermore, Peterson’s official statement clearly delineated the respectability and trustworthiness of medical professionals versus “inexperienced laymen” such as news reporters. Unfortunately for Peterson, the newspapers were the primary source of information for most North Carolinians in the 1930s – given that the State had not fully explained the physical effects of lethal gas until *after* the Foster execution, the general public had no other means by which to define the process. Furthermore, executions in the State of North Carolina accelerated in 1936 – media accounts of these events were not consistent

in determining whether lethal gas was a humane method of execution. For instance, the triple execution on February 7 yielded little in the way of negative news reporting regarding the use of gas save the mechanical malfunction. However, on March 27, the execution of Bright Buffkin provided news reporters with a new visual effect to describe to the public.

During Buffkin's execution, both legs began to spasm involuntarily, his feet "tapping a tattoo" on the floor during the process (*News & Observer*, March 28<sup>th</sup>, 1936, p. 1). The bold headline on the front page read, "New Involuntary Reaction Shown By 5<sup>th</sup> Gas Victim". Buffkin was also described as groaning loudly – so loud, in fact, that nervous witnesses could clearly hear him through the thick paned glass of the steel execution chamber. The paper also reported that Buffkin's last request on the night before his execution was to have complete "quiet" on Death Row (*ibid.*). This request was out of respect for his fellow Death Row companions – apparently, lethal gas was so unpredictable in its consequences that condemned prisoners feared it much more than the electric chair.

The placement of the Peterson statement in the newspaper itself is also noteworthy. While adverse effects of gas executions made front page headlines, his advocacy of the procedure appeared on page eleven, which also contained crossword puzzles and advertisements for skin and cough medications. This fact creates some speculation that the newspaper, historically liberal in orientation, was possibly maintaining societal doubt about the gas chamber by not illuminating its positive characteristics to the general public. In addition, Peterson's remarks about the abilities and professionalism of the *News & Observer* staff most likely created a less than amicable relationship between the two. Therefore, the positioning of the article *could* have been retaliatory. Regardless of these speculations, North Carolina continued to execute prisoners in the gas chamber at an unparalleled pace during 1936. In fact, by year's end, the State had executed twenty-three men, three more than its previous record set in 1934. Furthermore, the prison conducted one triple execution, and four double executions (Nell Battle Lewis personal papers, 1932-1936; North Carolina Department of Correction, 1998).

It is unknown whether the pace of executions in 1936 was due to increased violent crime, or if the excessive executions were evidence of the State's persistence in legitimizing the use of the gas chamber. The possibility that increased executions could have been a tool for desensitizing

the general public to a new form of institutionalized violence is purely speculative, however quite plausible given the evidence presented (see Shipman, 1996).

In Chapter VI, the social context of the 1970s and early 1980s will be presented. The chapter will continue with North Carolina's 1983 legislative transition to lethal injection. That chapter will conclude with the State's first use of lethal injection in 1984.

## CHAPTER VI

### THE 1983 LETHAL INJECTION BILL

*The administration of drugs in our times represents the state of the art to administer death – Dr. John R. Gamble, April 19, 1983.*

#### **Introduction**

This chapter of the dissertation describes and analyzes North Carolina's transition from lethal gas to lethal injection in 1983. As with Chapter V, evidence will be presented which illustrates how the legislature, the media, and other social forces redefined and reconstructed lethal gas as a deviant form of institutionalized violence. Equally important is the manner in which lethal injection was constructed and presented, which served to bolster its legitimacy through the use of medical terminology. Chapter VI will first commence by illustrating North Carolina as it was historically situated in the late 1970s and early 1980s. The chapter will proceed with the 1983 legislative shift to lethal injection. Chapter VI will conclude with North Carolina's first use of lethal injection in early 1984.

#### **6.1 PUBLIC OPINION, THE COURTS, AND THE PRELUDE TO INJECTION**

*Society is expert at cold-blooded, unemotional, business-like, professional killing. The death penalty is routine, ritualistic, even-tempered, assembly-line annihilation. The state becomes a legal "Murder, Inc.," serving respectable citizens who pay taxes to get the job done – Byron Eschelman, former San Quentin Chaplain.*

##### **6.1.1 The Fluctuation of National Opinion**

Throughout the 1930s and 1940s, there was a slight but steady increase in national approval of capital punishment (Ellsworth & Gross, 1994). Until 1954, approximately 65% of Americans agreed with the use of the death penalty, however this approval rate sharply declined to an all-time low of 47% by 1966 (ibid., Fig. 1; Haines, 1996). These national figures are illustrated in North Carolina's decreased use of executions during the same timeframes. Between 1941 and 1950, one hundred eight prisoners were put to death in the gas chamber, while between 1951 and

1960, only fourteen were executed. In 1961, only one prisoner was put to death, and between 1962 and 1983, there were no executions in North Carolina. Doris Betts, North Carolina novelist and short-story writer, prophetically wrote these words in 1961:

So far, North Carolinians do not seem to be thinking much of future alternatives to the death penalty. We are a rural state and a fundamentalist one, still suspicious of doctors with long names who can't get anybody off by saying 'he's crazy', and offenders who are 'mollycoddled'. Still, by our growing reluctance to impose the death penalty, we betray our readiness for modern penology, even though our reaction at present is vague, un-informed, inarticulate. Perhaps no more than a feeling of 'wrongness' (cited in Munger, 1984, p. 8D).

### **6.1.2 The Death and Resurrection of Capital Punishment**

The abolitionist revival of the 1960s was the primary impetus behind the decreased numbers of executions in the United States (Bedau, 1997; Haines, 1996; Lynch, 2000; Walker, 1998). Prior to the 1960s, Haines (1996) notes that capital punishment was usually challenged in two specific areas – the violation of the defendant's constitutional rights before or during trial, and the "...mechanical aspects of executions", or the methods themselves (p. 24; see also Walker, 1998). Most notable in these mechanical challenges were the cases of Wilkerson v Utah (99 U.S. 130, 1878), and In re Kemmler (136 U.S. 436, 1890). In both instances, the Supreme Court denied claims that the firing squad and death by electrocution were cruel and unusual forms of punishment. The Court's reasoning hinged on the fact that neither method was intended to inflict unnecessary pain or torture, and neither was inherently cruel (Haines, 1996). Beginning in the mid-1960s, however, attorney-based organizations such as the NAACP Legal Defense and Educational Fund (LDF) and the American Civil Liberties Union spearheaded the movement to have the death penalty challenged as a basic violation of fundamental human rights, *regardless* of the method used or legal procedures prior or during the trial (ibid.; Lynch, 2000). In essence, this strategy forced a logjam of capital cases within the state systems and the United States Supreme Court. Furthermore, as the courts became inundated with prisoner appeals, executions would obviously fall behind schedule. As Haines (1996) asserts, "Eventually, the states would be forced

either to abolish capital punishment or to initiate a massive wave of executions. It was hoped that state legislatures and governors would not have the stomach for the latter” (p. 30). By 1971, “...nine states had abolished capital punishment, [and] four more had no one on death row” (ibid., p. 37).

In January, 1972, a package of four appeals was sent before the United States Supreme Court for a definitive ruling on the constitutionality of capital punishment. The centerpiece of the appeals was the contention that the death penalty was “...inconsistent with evolving standards of decency”, especially in the latter portion of the twentieth century (ibid.). Protracted appeals, arbitrary sentencing, and other factors had resulted in what the LDF referred to as “...extended psychological torture” for those awaiting execution (ibid.). On June 29, 1972, the Supreme Court ruled that the death penalty, as it was currently applied, did violate the Eighth and Fourteenth Amendments of the United States Constitution (see Furman v Georgia, 408 U.S. 238, 1972). The death sentences of all prisoners in the United States were immediately overturned, however the LDF and other organizations were cautious in predicting that the death penalty would be permanently eradicated. There was not a *consensus* among the justices that capital punishment was, by its very nature, a violation of fundamental human rights. This alone provided an open door for states to revise their death penalty statutes to include clear sentencing guidelines, thus reinstating their capital punishment laws.

By March, 1973, Haines (1996) indicated that 63% of Americans polled favored a return to state executions. This approval rate likely emerged as a response to the soaring violent crime rates between 1960 and 1975. During that fifteen-year period, homicide rates doubled in the United States, and armed robbery rates tripled (Walker, 1998). By spring, 1975, thirty-one states had rewritten their death penalty laws in an attempt to reinstate the sanction – by 1976, that number had increased to thirty-five (Haines, 1996; Marquart, *et al.*, 1994). Sixteen of these states, including North Carolina, rewrote their death penalty statutes to include *mandatory* death sentences for certain crimes. This strategy was, for all intents and purposes, to completely remove the problem of arbitrariness in capital cases, a focal point of the 1972 *Furman* decision (ibid.). In early 1976, a package of cases was once again sent to the United States Supreme Court – the most monumental of these being Gregg v. Georgia (428 U.S. 123, 1976) and Woodson v. North Carolina (428 U.S. 280, 1976). In the Gregg decision, handed down on July 2, 1976, the

Supreme Court ruled 7-2 that revised death-sentencing schemes in Georgia, Florida, and Texas were sufficient “...in safeguarding against arbitrary sentencing” (Haines, 1996: 53). On the same day, the justices ruled that mandatory death sentences were unconstitutional per Woodson, and that they undermined the 1972 Furman ruling. In short, the Court ruled, mandatory death sentences fail to take into account “...the particular circumstances of crimes and the criminals responsible for them...” (ibid., p. 53).

Death penalty statutes in North Carolina and Louisiana were thus struck down, and in need of further revision before once again being applied. Shortly after the Woodson decision, 120 condemned prisoners were either granted new trials, had their sentences vacated, or were re-sentenced to life in prison (North Carolina Department of Correction). Interestingly, in May, 1976, the *Durham Morning Herald* reported that a new organization, identifying itself as the “Coalition to Abolish Capital Punishment”, was forming in light of predictions that the Supreme Court would *uphold* North Carolina’s mandatory death sentence (May 23<sup>rd</sup>, 1976, p. A4). As optimistic and promising as the Court’s July, 1976 decision must have seemed to opponents, North Carolina quickly followed suit with other states and once again redrafted its death penalty statutes to include a two-part trial system and a system of mitigating and aggravating circumstances. During the sentencing phase of the trial system, the jury considers mitigating and/or aggravating circumstances surrounding the offense. If the aggravating factors outweigh the mitigating factors, then the jury may recommend death. If the opposite holds true, the jury may recommend life imprisonment (*Capital Punishment in North Carolina*: N.C. Human Relations Council, 1982). The State of North Carolina adopted these standards in 1977, which are still in use today (North Carolina General Statutes §15A-2000).

### **6.1.3 The Resumption of Executions**

In 1977, executions in the United States resumed, albeit at a slow pace (Haines, 1996; Walker, 1998). In 1980, the homicide rate in the United States reached an all-time high for the twentieth century – Harries and Cheatwood (1997) indicate that the murder rate was “...10 incidents per 100,000 persons” (p. 29). Death sentence cases were still mired in state court systems, and according to Haines (1996), executions through 1983 “...remained rare events in the United States” (p. 58). Walker (1998) notes that due to streamlined death penalty statutes and more rigorous appeals processes, prisoners were regularly enduring twelve to fifteen-year terms on

death row. Only two of the six prisoners executed between 1977 and 1982 fought their death sentences through appeals processes. The remaining four chose to voluntarily waive the appeals they were entitled to and proceeded with their executions, a process that Supreme Court Justices William Brennan and Thurgood Marshall called “state-administered suicides” (cited in Haines, 1996, p. 59). The North Carolina State Bureau of Investigation reported 538 homicides in 1982, translating into a murder rate of 9.2 (per 100,000). A small decrease was experienced the following year, when 478 murders were reported. Furthermore, there were 26,267 reported violent crimes in 1982, and again, this number decreased to 24,269 in 1983. By June, 1983, over 1,100 inmates were under sentences of death across the United States, thirty-four of those being in North Carolina (*News & Observer*, June 2<sup>nd</sup>, 1983, p. A4).

#### **6.1.4 Cruelty, Economics, and a Better Way of Killing**

The expedience by which states revised and reinstated their death penalty statutes was a direct reflection of the country’s growing frustration with the rising violent crime rates. Walker (1998) also notes that states’ legislatures and other governmental bodies had grown weary of lenient sentencing policies during the 1970s, thus many states adopted a “tough on crime” philosophy by the end of the decade which included retaining and enforcing the death penalty. The year 1977 marked an important turning point in United States execution history. Two states, Oklahoma and Texas, became the first in the nation to adopt lethal injection as their primary method of administering death. According to Marquart, *et al.*, (1994), the legislative rationale in Texas hinged on the belief that death by injection was far more humane than the visually offensive and disfiguring electrocution process. The authors note, “Clearly, legislators in Texas were responding to Justice Brennan’s assertion in *Furman* that ‘it appears that there is no method available that guarantees an immediate and painless death’” (p. 132). Furthermore, a news reporter from Dallas had recently filed a civil suit seeking to film executions; the Texas legislature thus agreed that if the reporter’s suit was successful, lethal injection would be much more palatable for the general public to view. Finally, as the authors conclude, “...the injection procedure would be less unsightly and thus less susceptible to graphic journalistic descriptions that could elicit new charges of cruelty and inhumane punishment” (*ibid.*).

The State of Oklahoma, on the other hand, adopted lethal injection primarily out of economic concerns (Bohm, 1999). Oklahoma had traditionally used the electric chair, however it had not

been employed since 1961, and was in a state of disrepair. Estimates to return the chair to good working order hovered at \$62,000 – adoption of lethal gas was considered, however the cost of installing a death chamber approached \$300,000. With the cost of a single lethal injection procedure being approximately \$15, Oklahoma’s legislature adopted the most cost-efficient method (*ibid.*). By 1981, Idaho and New Mexico had followed Texas and Oklahoma by adopting lethal injection, however Florida’s state legislature defeated a bill aimed at replacing electrocution with lethal injection in 1979 (Marquart, *et al.*, 1994). Physicians testifying at the legislative hearings indicated that, “...no assurances could be given that the barbiturates would not wear off before death occurred, causing the condemned inmate to wake up and slowly suffocate to death” (cited in Bohm, 1999: 78). Florida retained its electric chair – dubbed “Old Sparky” by condemned prisoners – until 1999, when lethal injection was finally adopted after a botched electrocution involving condemned inmate Allen “Tiny” Davis (Byrd, 1999).

## **6.2 GHOSTS FROM THE PAST, LETHAL INJECTION, AND THE TARHEEL STATE**

North Carolina’s lethal gas chamber sat silently idle from 1961 to 1983 as executions in the State had begun to rapidly decline beginning in 1950. In 1957, there was only one execution by lethal gas, and in 1958, only two (North Carolina Department of Correction). The October 27, 1961 gassing of convicted rapist and murderer Theodore Boykin marked the last execution at Central Prison prior to the national moratorium referred to earlier in the chapter. In addition, lethal gas itself appeared to have fallen into national disfavor by the end of World War II – the use of gas chambers in Nazi Germany, coupled with the expense of maintaining the complicated machinery, were but two factors some have speculated as being the cause of its decreased use (see Johnson, 1998). In addition, operating lethal gas chambers required a great deal of expertise in assuring that witnesses and prison staff were safe from accidental leaks during the procedures (*ibid.*; see also The Leuchter Report, 1988).

### **6.2.1 Familiar Voices**

Given the enormous publicity of the turbulent death penalty debates in the mid-1970s, citizens’ correspondence to Governor James B. Hunt’s office accelerated toward the end of the decade. Unlike the 1930s, content of the letters from private citizens and death penalty organizations revolved primarily around the morality of capital punishment, not the methods used to enforce it. The underlying issues of the *Furman* and *Gregg* Supreme Court decisions

were still apparently fresh in the minds of those opposed to capital punishment, not to mention the expedience by which North Carolina operated in reinstating its death penalty statutes in 1977. The following letter, in part, was received by Governor Hunt's office in the spring of 1978:

Dear Governor Hunt ,  
Our entire criminal justice system deeply disturbs me, but nowhere is that anger and frustration so apparent as when I think about the death penalty. I am opposed to the death penalty first of all because it is a barbaric throwback to a part of our history that we should attempt to change... The administration of the death penalty is arbitrary. People who kill blacks are less likely to be sentenced to death than those who kill whites. Add that to the fact that 189 of the 421 persons on death row at the dawn of the year were black and you have a problem...our system is not ever capable of carrying out the death penalty justly, so why continue? No more killing, please. You have the power to speak out and accomplish the repealing of this vestige of the Dark Ages. Deterrent or not, it is unfair and cruel. Yours truly, Gary A. Furr (Letter dated May 10<sup>th</sup>, 1978).

The following excerpts are from another piece of correspondence received during the same week:

Dear Sir,  
I am writing to you in regard to a matter of intolerable injustice in North Carolina: the existence of the death penalty for certain capital crimes...The utility of capital punishment has yet to be proven; massive empirical evidence fails to show the validity of the deterrence theory, and advocates can not offer any conclusive moral arguments in

support of capital punishment. We kill people to effectively deal with a problem, but we don't show it to be right. With the possibility of a second term as Governor, there is much you could do toward affecting the abolition of capital punishment in North Carolina. I respectfully urge you to begin action toward that end, and I will certainly support you in it. Thank you for your consideration. Sincerely,  
James E. Drake (Letter dated May, 1978).

A response from the Governor's office, generated on May 18<sup>th</sup>, simply indicated that the sender's views were appreciated, and that the letter would be forwarded to the Governor's "...appropriate administrative representative". Letters received during the summer of 1978 were not authored solely by North Carolina citizens. The following excerpts were taken from a letter drafted by a resident of Canada:

Sir,  
We Canadians share this continent with you. We live in your shadow, and what you do does affect us. This is why I am writing this note as a private citizen of a free nation, to you, as Governor of a free State. My appeal to you is this: could you use your considerable influence to recommend legislation that would abolish capital punishment within your jurisdiction? And: would you commute all death sentences passed in your State until such time as the abolition bill will have come into law? Last year's much publicized execution of Gary Gilmore has not substantially reduced the number of murders in the United States. We

abhor such actions because we believe that no

one society as a whole or individual has the right to take a life (Anonymous, letter dated May 31<sup>st</sup>, 1978).

Ironically, on June 2, 1978, the Governor's office generated a news release outlining a death penalty plan reviewed and approved by the North Carolina Supreme Court. The death penalty agenda consisted of "...making sure that poor people charged with capital crimes get experienced and capable lawyers", and was initially drafted by the State Bar Committee on Legal Aid to Indigents (Governor's Office News Release, 6/2/78, p. 1). According to Governor Hunt, "These new rules are a step forward...When a poor person is charged with a crime that could result in the death penalty, we must do all that we can to make sure that person gets excellent representation" (ibid.). It is quite apparent, then, that Governor James Hunt had no intentions of participating in repealing the recently reinstated death penalty statutes in North Carolina. The Governor was known for his staunch advocacy of capital punishment, as well as his fervent belief in the resurrected "tough on crime" philosophy permeating the nation at the time. In fact, during his two terms as North Carolina's Governor (1977-1985, 1993-2000), Hunt intervened on the behalf on a condemned prisoner only twice (North Carolina Department of Correction; Office of the Governor, State of North Carolina).

Correspondence to the Governor's office during 1978 and 1979 was not all in opposition to North Carolina's death penalty, which had still not been applied since the 1976 Gregg v Georgia decision and the 1977 North Carolina statute revision. As one citizen wrote, "Regardless of what the "bleeding hearts" say, I'm for capital punishment, and now that we have the law for it, let's use it" (Letter dated June 22<sup>nd</sup>, 1978). Another citizen wrote:

Dear Governor ,  
If our capital punishment system was really put into effect and plea bargaining was eliminated, and our parole system was eliminated, we would not have any or little repetative vicious crime and repeated murders. A platform by you stating your intentions to reduce crime in N.C., no matter what, will bring you more votes and certain re-election then anything else

you could do. Respectfully, Abe Blumenthal  
(Letter dated December 1<sup>st</sup>, 1979).

In late 1979, North Carolina's retention of capital punishment was put to its first true test as James Hutchins was tried, convicted, and sentenced to death for two counts of capital murder involving the shooting deaths of three Rutherford County deputy sheriffs (*News & Observer*, March 4<sup>th</sup>, 1984). On October 17, 1979, this letter, in part, was sent to the Office of the Governor:

Governor Hunt:

In our county a few months ago three police officers were shot down and their murderer was arrested, given a fair trial in a neighboring county and was convicted of two counts of first degree murder, which should have been three. What concerns me most is that local newspapers ran stories stating his execution would be put off indefinitely and would leave any reader with the opinion that justice would not be done and this case would merely flounder around in the courts for years...I hope this letter doesn't make me sound blood-thirsty, but I think a certain element in our state will be less likely to kill if our death penalty for first degree murder is considered a sure thing, not something to play about in the newspaper. Thank you very much for your time and best wishes in the coming election.

Thomas D Gilliam.

The pro-death penalty sentiment continued through the end of the year, and North Carolinians appeared to have been growing tired of remorseless, violent offenders whose ultimate punishment seemed to be only a distant possibility. As one citizen wrote to the Governor, "First of all, I would like to say that the victims of these criminals had families, friends, loved ones, and a God-given right to live also. How much compassion and mercy did the criminal have for his victim?" (Letter dated September, 1979). An Asheville, North Carolina citizen wrote, "Most of

us are in support of capital punishment. We encourage the State Attorney General to proceed. They get what they deserve” (Western Union telegram dated March 31<sup>st</sup>, 1979). A common theme in the pro-death penalty sentiment appeared to be the lack of expedience by which the sentences were carried out, as well as the rights of the victims of violent offenders. This letter in part, addressed to numerous State officials and accompanied with a signed petition, was received by Governor Hunt’s office in March:

...These killers know that we don’t have any punishment for them, so why should they care. We’re going to better the jails with our tax money so they will have a nice place to stay. Give them TV’s to watch, cards and games to play, boy are they going to have it made. Whatever happened to the electric chair or hanging? Don’t you think you would think twice before you decided to murder somebody? Our society or judicial system seems concerned over the rights of the accused, BUT WHAT ABOUT THE RIGHTS OF THE VICTIMS???

Again we just don’t have any protection because there is no JUSTICE in this country. Sincerely, angry, concerned, and disgusted, Betty Dawson.

Interestingly, the anti-death penalty correspondence received at the Governor’s office through 1979 was sent largely by international organizations, such as Amnesty International, and Swedish and Canadian abolitionist groups. Most of these pieces of correspondence were organizational positions on the world-wide use of the death penalty, and addressed human rights issues – some offered an invitation to join the ranks of “civilized” nations in abolishing the sanction. These solicitations were acknowledged by the standardized form letter used by the Governor’s office at the time, which simply read, “Thank you very much for your letter. Your views are most welcome, and I appreciate your taking the time to share them with me. My warmest personal regards...”.

### **6.2.2 A Clear Path to the Death Chamber**

The increase in violent crime in the early 1980s, coupled with states' swift reinstatement and revision of death penalty laws, bore testament to the country's growing impatience with the criminal population. In North Carolina, a crime-intolerant Governor and legislature had seemingly made it clear that the State had no intentions of abolishing its capital statutes. Furthermore, the 1979 capital trial rules, authored by the State Bar Committee on Legal Aid to Indigents, sent a clear message to North Carolinians that executions would imminently resume.

In December, 1982, the State of Texas became the first in the nation to execute a condemned prisoner by lethal injection (Death Penalty Information Center; Marquart, *et al.*, 1994; *Newsweek*, Dec. 20<sup>th</sup>, 1982; *Time*, Dec. 20<sup>th</sup>, 1982). By early 1983, six states had adopted lethal injection, and several more were considering the new method (Finks, 1983). As with the transition to lethal gas in the 1920s and 1930s, the adoption of lethal injection appeared to be a geographical phenomenon. Kurt Anderson of Time Magazine noted, "...since 1977, the new technique has become something of a legislative fad in the West. In addition to Texas, neighboring Oklahoma and New Mexico have nearly identical laws, as do Idaho and Washington" (Dec. 20<sup>th</sup>, 1982, p. 28). In response to the adoption of the method in the West, the *News & Observer* featured an article which was hauntingly reminiscent of Nell Battle Lewis' musings some fifty years before. The piece read, "State legislators in this country have devised about every way to carry out legal executions except to put a giant, lighted cigar in the condemned person's mouth and fire a heat-seeking missile in his direction" (June 17<sup>th</sup>, 1981, page illegible).

News coverage of the first lethal injection in Texas was rampant, a phenomenon that Lynch (2000) notes as typical prior to the use of a new execution method. Articles appeared in nearly every national newspaper and most news magazines. Curiously, along with lengthy articles explaining the new procedure, there were photographs and diagrams to instruct the reader as to the logistics of the procedure. In both Newsweek and Time magazines, photographs of the condemned inmate appeared – in the post-execution Newsweek issue, the dead body of Charles Brooks, still lying on the gurney, was splashed across the "National Affairs" section of the periodical. A photograph of an intravenous catheter was also presented. The post-execution issue of Time contained a photograph of a gurney, as well as a diagram of an arm with intravenous tubing inserted into it. The diagram is labeled "1, 2, 3", indicating the steps in successfully putting the inmate to death (see diagram, p. 29). A *New York Times* article, appearing one day

after the Texas execution, questioned the ethics of the physician who participated in locating suitable veins on the condemned prisoner. The December 9, 1982 issue of the *News & Observer* contained a scathing article regarding the Brooks execution in Texas. The article, entitled “Execution Without Pain” and placed in the daily “This Newspaper’s Opinion” section, read in part:

Americans who advocate the death penalty have a special reason for smugness this week. Texas has showcased a new method of putting a criminal to death so peacefully that it doesn’t even risk spoiling dinner for the witnesses...Capital punishment – killing by the state – need no longer be accompanied by a smell of burning flesh, by any unsightly convulsions or spilling of blood... For now, American society is the worse for having learned to execute with virtually no pain or strain on its sensibilities (p. A:4).

Just three months after this article was written, North Carolina itself would be the next state to debate the lethal injection method.

### **6.2.3 An Exercise in Individual Tenacity**

Former Senator Robert M. Davis, a Democrat from Rowan County, North Carolina, had begun practicing law in 1950. From information obtained through a personal interview conducted with former Senator Davis on February 15, 2000, it was learned that he had participated in the trials of several defendants who were ultimately sentenced to death, however none was executed prior to or after the *de facto* moratorium in the 1960s. Having been involved in capital trials, Davis had become curious as to the methods of execution employed in North Carolina, specifically the lethal gas chamber. This curiosity led him to Raleigh’s Central Prison, where, in his words, he “...examined the gas chamber, the old electric chair, and the death area in general” (R. M. Davis, personal communication, February 15, 2001). Davis had also indicated that while practicing law, he had read extensively on the topic of gas chamber executions, specifically noting how the condemned prisoners “...struggled for life, with their arms and bodies pressing against the straps” (ibid.).

Witness affidavits of gas chamber executions had also spurred Davis' concern for North Carolina's current method. The following is an excerpt from a lethal gassing in 1960, which took place in California:

I learned that there was nothing I could have done to prepare myself for this violent and merciless extermination of human life. I will never forget the wide-eyed expression of horror on Lawrence Wade's face as they escorted him to the death chamber. After the execution had begun, I observed Mr. Wade as he was first struck by the deadly fumes. His body struggled against the straps as he battled the gas with hopeless and desperate coughing...it was impossible to determine how long Mr. Wade suffered before becoming unconscious (Declaration of Wes Willoughby, April 22, 1960).

Another affidavit from a 1957 lethal gassing read:

[Foster Seth] Dement was brought in and strapped into the chair. Shortly thereafter I saw what appeared to be white heat waves rising from the empty seat next to him. His face was as white as a sheet. He looked directly at me and tried to wave with his right hand, despite the wrist restraints. I began to sweat as I have never before or since. It started to drench my entire body. Two guards rushed to my side and held each of my arms...Dement began violently straining and gasping for breath. His head was thrown back, his mouth was open and the veins and muscles in his neck were tense and bulging...After ten minutes that seemed to take forever he was pronounced dead...his tongue hung out of his mouth (Declaration of W. Franklyn Moshier, October 2, 1957).

Finally, the former Deputy Director of the California Department of Corrections in Sacramento described the 1953 gas execution of Leandress Riley:

The terror of being asphyxiated in the gas chamber led him to slash his wrists shortly before his scheduled execution. His arms were so slippery from his own blood that we couldn't keep the handcuffs on him. We practically carried him in and strapped him into the chair while he screamed in panic...It took three attempts to get him prepared for execution (Declaration of Lawrence Wilson, February 20, 1953).

In 1983, Davis began his tenure in the North Carolina General Assembly, and brought with him a personal agenda to replace North Carolina's aging and questionable lethal gas chamber.

#### **6.2.4 Punishment Versus Compassion**

On April 7, 1983, Senate Bill 323, sponsored by Senator Robert M. Davis (D), was introduced to the North Carolina General Assembly. The purpose of the bill was "An act to change the method of execution in this State from administration of lethal gas to administration of lethal drugs" (S.B. 323, General Assembly of North Carolina, Session 1983, p. 1). When asked how he arrived at the decision to propose lethal injection as a method of execution in North Carolina, former Senator Davis remarked, "Well, a few years before [the 1983 General Assembly], I had heard about lethal injection out West. So, I took it upon myself to call some folks out there and ask about it [lethal injection]" (R. M. Davis, personal communication, February 15, 2001). Davis indicated he had spoken with not only prison officials, but with state legislators and other government officials, however could not recall if he had spoken with authorities in Texas or Oklahoma. In his words, "It was one of the western states, probably Texas...at any rate, I called to get the specifics, and to see if they liked using it" (ibid.). Texas was most likely the state that Davis had communicated with, given that the Texas Department of Correction execution protocol was included in the subcommittee materials used to advocate the lethal injection bill in North Carolina. Senate Bill 323 was referred to the Senate Judiciary Committee III for debate, which convened on April 19, 1983.

Former Senator Davis admitted that his sponsorship of the lethal injection bill met with a great deal of disfavor from the outset of the General Assembly session. When asked why this seemed to be the case, especially with a Democratic legislature, Davis replied, "They [the

General Assembly] were tough on crime. They could've cared less about what method we [North Carolina] used. The general feeling [among the legislators] was 'why should we make it easier to kill 'em' [the prisoners]?'". Nine days prior to the Senate Judiciary Committee III meeting, the *News & Observer* reflected an opposing position:

The harshest advocates of the death penalty would welcome that easing of the public conscience. After all, North Carolina has had no execution for a capital crime in 22 years. The state now has 29 death row inmates whose appeals have kept them from the gas chamber – the people's killing ground...The state and its people will be no less violent or vengeful in doing the deed simply because it's done with a forcible drug overdose...the reduced trauma for criminals who pay the ultimate penalty could make the public's taking of human life routine again (April 10<sup>th</sup>, 1983, page illegible).

Given the General Assembly's disfavor with the bill, and the media's scathing articles which consistently opposed capital punishment in general, Davis' primary strategy was to rely heavily on authorities whom he felt would advocate the legislation on his behalf. As with the legislatures in Texas and Oklahoma, Senator Davis called upon several respected members of the medical community to testify at the judiciary meetings. In his words, "I had to get the best [advocates] in order to get this thing [the lethal injection bill] passed. Without them [the medical professionals], the bill never had a chance" (R. M. Davis, personal communication, February 15, 2001). This strategy of Davis' was crucial in how the lethal injection method would be constructed and legitimized as a continued form of state-sanctioned punishment. Furthermore, the use of medical personnel was also ultimately used to deconstruct lethal gas as an acceptable method of execution, a method which North Carolinians had heard little about in over twenty years.

### **6.2.5 Reviving Memories of a Forgotten Method**

The Senate Judiciary Committee III convened at 10:00 a.m., April 19, 1983. Davis' first order of business was to pass around color photographs of North Carolina's lethal gas chamber. Present

at the meeting that day were several advocates of the bill who were all slated to speak, including Willis Umstead, a registered nurse, Mrs. C. Gordon Maddrey, a concerned citizen, Edwin Koontz, Director of the Rowan County Department of Social Services, Dr. John Gamble, a former member of the legislature, and Dr. Bill Grimsley, a member of the House of Representatives (Minutes of the Judiciary Committee III Meeting, April 19<sup>th</sup>, 1983). Three individuals opposed to the bill were also present – Dr. Arthur Finn (University of North Carolina at Chapel Hill), Besty Glennon (Duke University Medical Center), and William Crumpler, a local attorney (ibid.). Although not speaking at the meeting, several visitors were present, including a member of Amnesty International, a member of the North Carolina Medical Society, and a representative of the National Organization for Women (NOW) (ibid.).

Upon introducing the speakers, Davis began the meeting by reading a letter submitted *in absentia* by Dr. Elizabeth Mayrand, Chief Pathologist at Rowan Memorial Hospital. Davis had indicated that, “Dr. Mayrand was the best...she really helped in the process” (R. M. Davis, personal communication, February 15, 2001). Mayrand’s letter indicated that she favored the lethal injection bill on both “...medical and humanistic grounds” (dated April 18<sup>th</sup>, 1983). She continued by adding, “From the medical viewpoint, there are better drugs available to produce death in that it can be done with less agony than occurs with cyanide” (ibid.). Mayrand continued by writing:

Cyanide causes death by depriving vital tissues of their capacity to utilize oxygen. The subject turns blue not because he cannot use his lungs but because the tissues of his body cannot absorb oxygen from the blood. The effect is the same, however, as smothering or being unable to get air. The symptoms consist of giddiness,

shortness of breath, headache, palpitation, turning blue, change in the heart rhythm; finally, convulsions, unconsciousness, and death.

Mayrand's letter concluded by stating, "It is my understanding that the purpose of execution is to terminate the person's existence rather than to torture the subject...There is no physical limitation to sodium pentothal – a vein can always be found" (ibid.).

Upon reading the Mayrand letter, Senator Davis then continued the meeting by asserting, "Now let me say at the outset that we are not discussing whether we should or should not have the death penalty or whether the death penalty is morally right...we do not seek to resolve these problems today" (Minutes of the Senate Judiciary Committee III meeting, April 19<sup>th</sup>, 1983). Davis then proceeded to inform the members present that capital punishment has often been brutal, barbaric, and violent throughout history. He then drew attention to lethal gas chambers, and referred to them as "...symbols of the worst in our world" (ibid., p. 2). References were then made to Nazi Germany, the Holocaust, and the extermination of the Jews, events that Davis noted "...none of us can forget" (ibid.). Attention then turned to the safety issues surrounding the lethal gas chamber, as well as the expense of maintenance – the sealed door alone was estimated to cost some \$10,000, an issue that the State of Oklahoma had wrangled with just six years prior. As Davis continued to speak about the detriments of the gas chamber, he meticulously referred to the color photographs which had been distributed earlier in the meeting. As he concluded his review of the gas chamber, he noted, "That is the gas chamber that is now used – an archaic method used to kill many, many thousands and perhaps millions of people, Jewish people, in World War II." (ibid., p. 3).

### **6.2.6 Putting Crime to Sleep**

The Judiciary Committee III meeting then transitioned to Davis' explanation of lethal injection, the particulars of the procedure, and the overall appearance of what such an execution might look like:

An execution was carried out in Texas. It was carried out in a way in which the prisoner was placed on a stretcher. He was taken not to a gas chamber but to a room, it could be any medical room in the facility...I realize that many of us perhaps have not had to go to the hospital and haven't experienced the kind of thing that would require being put to sleep, but I talked to one of the Senators the other day who mentioned to me that he had had an operation

not long ago and that there was no problem because he was put to sleep in a very reasonable manner by the use of the same substance that is used in the lethal injection case (ibid., p. 4).

Davis concluded his introduction of the lethal injection execution procedure by stressing that the bill's intent was to provide for the most dignified and painless method possible, and that removing the stigma attached to the lethal gas chamber should be a primary reason for passing such a piece of legislation (ibid.). Following Davis' introduction of the lethal injection procedure was Willis Umstead, a registered nurse who was asked to speak on behalf of the bill. In an interesting segue to her testimony, Umstead noted that, "My purposes [here] are strictly humanitarian...As a nurse and as a patient, I have been put to sleep with sodium pentothal, and it is a very pleasant experience" (ibid., p. 6). She continued by adding, "...though we are not looking for a pleasant experience, we are looking for a another method, a better method, than some that have been used in the past..." (ibid.). In a similar vein as the dialogue surrounding the transition to lethal gas in 1935, Umstead remarked, "My feelings are that we've [North Carolinians] progressed in other areas. We improve medical methods. We should do the same thing with death, execution...I do support adopting Senator Davis' bill. Thank you" (ibid.).

Following Willis Umstead was Mabel Claire Maddrey, who identified herself as "...just a layman and an ordinary citizen" (ibid., p. 7). In a style reminiscent of the 1935 transition, Maddrey urged, "North Carolina has a tradition of progressiveness, of looking forward, of maintaining as high ideals as possible..." (ibid.). She concluded her short statement to the meeting by adding, "If the injection of lethal doses of drugs is more humane, if it is more painless, if it seems feasible, then certainly I believe the people of North Carolina will join some of us in supporting this bill" (ibid.). Edwin Koontz, Director of the Rowan County Department of Social Services, also urged the committee to recognize the humane qualities of lethal injection. His testimony was couched in terms of alleviating suffering, providing a degree of dignity to the condemned, and conveying a sense of compassion in meting out sentences of death. The death penalty, in his opinion, "...does not justify any type of bizarre method" (ibid., p. 8), and Koontz expressed his support for the Davis bill.

Dr. John Gamble was next to speak regarding the lethal injection bill, and again, the distasteful images of the lethal gas chamber were offered. Gamble informed the committee that,

“Dying by cyanide gas is...very unsightly, very painful, very agonizing to the patient. It takes them a number of minutes to die” (ibid., p. 9). He continued by adding, “...they become short of breath, they fight for their breath, they have pain...they sweat, they vomit, they defecate, they convulse, they die. It is a long, drawn out process of agony” (ibid.). Gamble then turned to a comparison with lethal injection, which he referred to as, “...the process of being administered a drug in your vein that is going to have you asleep very easily, very comfortably, within fifteen seconds...” (ibid.). In line with the Koontz testimony, Gamble called for a more humane, dignified, and comfortable process by which to execute condemned prisoners, and asserted that lethal injections were “...the state of the art, best methods of producing death” (ibid.). Another advocate, Dr. Bill Grimsley, referred to the process of injecting sodium pentothal as “...putting you to sleep gently”, with no irritation of the airway as sometimes experienced with the administration of ether (ibid.).

#### **6.2.7 Punishment Without Conscience**

Following the speakers advocating the bill were several opponents of the lethal injection method, one being a professor of medicine from the University of North Carolina at Chapel Hill. Dr. Arthur Finn’s major objection to the adoption of lethal injection was its possible effect on the ease by which death sentences would be meted out. In his words, “The problem with...this kind of law...is that it makes the death penalty more easy to swallow” (ibid., p. 13). He continued by adding:

If death is made easy, if we no longer talk about death itself as a means of punishment but rather the method of inducing death, then it makes it impossible for a person to take a firm opinion on other kinds of moral issues relating to the issue of death...So I would conclude simply by saying to you that there is no way that administering death can be humane. Period...Thank you (ibid.).

Next to testify was a representative of Amnesty International, who brought with her an intravenous catheter to refute the claim that execution by lethal injection was not an invasive procedure. The representative’s lengthy presentation focused primarily on physiological changes

in the condemned prisoner's body which would likely cause difficulties in inserting an intravenous line. Her testimony included the assertion that, "It is our God-given fight or flight mechanism which can act as a basal constrictor" (ibid., p. 15). She continued by explaining, "If a patient is scared, nervous, or if they are in a cold room, vessels, even the best vessels, can collapse and get smaller" (ibid.). The invasiveness of the procedure was stressed in this manner:

A tourniquet would be applied, engorgement of the vessel would waited for, and then the needle that you saw has got a teflon sheath over it – the bevel is at the end of the needle, the sharpness to break the skin to gain entry into the vessel. At that point, the teflon catheter is advanced over the needle and then pushed up into the vessel. The needle is then removed, the I.V. is attached, and the tourniquet is removed and induction of this mode of anesthesia or poison can resume. Now, if for some reason this catheter, this very flexible teflon catheter, rides up against one of the valves in the vein or just abuts the vein wall, many people may try...to reintroduce the needle. At this point, it can puncture the teflon, it can go through the vessel wall, and all the fluid that is being injected would be extravagating into the tissues around the vessel...And so again we invade the person by introducing this into the skin (ibid., pp. 15-16).

The final opponent to speak was former criminal prosecutor William Crumpler, who indicated that his opposition to the lethal injection bill stemmed largely on its portrayal as a form of anesthesia rather than a method of execution. In Crumpler's opinion, juries would likely take the imposition of a death sentence lightly due to the execution method's medical veneer. Crumpler also made a vital observation in noting how the legislative proponents bifurcated the qualities of the gas chamber and lethal injection. In speaking to lethal gas, proponents referred to prisoners "dying" in the death chamber, however with lethal injection, condemned prisoners were characterized as being "put to sleep" (ibid., p. 17). The lethal injection method, according to Crumpler, would only make the death penalty more palatable to the public and the juries, not the prisoners themselves. He stressed, "The person who dies by execution, he doesn't care what he

looks like after his death – whether his eyes are bulging or whether he looks like he has gone to sleep or whatever” (ibid.). He further maintained to the committee that, “There is no dignity in the death of a person who is executed except for those who are watching what is going on, whether directly or vicariously” (ibid.). After Crumpler’s presentation, the meeting was adjourned.

### **6.2.8 The Power of Language in Reconstruction**

An important aspect of the Senate Judiciary Committee III meeting was the terminology used in advocating the bill. Within the span of a one-hour meeting, the advocates of the bill used the terms “anesthetic” or “anesthesia” six times. In addition, the terms “asleep” or “putting to sleep” were documented eight times, and the phrase “lying down” was referred to three times. The method as a “humane procedure” was documented eight times, and the procedure as “painless” was noted four times. Finally, the advocates of the bill referred to the “dignity” of the prisoner five times, and the method as “state of the art” three times. This evidence would seem to parallel the concerns of Dr. William Crumpler. In couching a method of execution in this manner, it is quite difficult to perceive it as anything but easy to administer. When contrasted to the vivid accounts of death in the gas chamber, which included vomiting, convulsing, defecating, and choking, lethal injection was almost characterized as a procedure which was impossible of causing harm.

The *News & Observer* featured a front-page article the day after the Judiciary Committee III meeting which briefly outlined the debate. The article, entitled “Tranquil Killer Sparks Turbulent Reaction”, mirrored Crumpler’s concerns that the method was *too* benign, and would likely minimize the seriousness of execution by reducing it to a simple, painless, easy-to-administer sanction (April 20<sup>th</sup>, 1983, p. 1). A similar article appeared in the *Durham Morning Herald* on the same day, however the opinions of advocates and proponents of the bill were more equally attended to. The title of the *Herald* article simply read, “Bill to Allow Executions by Injections Challenged” (April 20<sup>th</sup>, 1983, p. 1). A few days later, an editorial piece entitled “A Bizarre Debate Over Killing People” appeared in the *Durham Morning Herald*. The article presented both sides of the lethal injection debate, and although stressing the paper’s opposition to capital punishment, the unknown author concluded, “But if the State is going to execute someone, it should do it in the most painless way” (April 22<sup>nd</sup>, 1983).

Ironically, on April 25, 1983, both the *News & Observer* and the *Durham Morning Herald* featured stories concerning a leak in the door of the gas chamber at Raleigh’s Central Prison. Since the reinstatement of North Carolina’s death penalty statutes, the prison had apparently begun tests in light of impending executions. The new gas chamber door, which had just recently replaced the 46-year-old food locker door, was said to have leaked when a smoke-bomb was detonated during tests. Officials were also concerned because no gas chamber had been built in the United States in over thirty years. Thus, there was no “new technology” to rely on, and instead, Central Prison settled on an industrial refrigerator door manufactured by J. N. Pease and Associates of Charlotte. The cost of re-installing *another* new door, according to both articles, would approach \$10,000 – a fact that would likely help in Davis’ argument for a new execution method.

### **6.2.9 An Uphill Battle**

For the next three weeks following the Senate Judiciary Committee III meeting, the lethal injection bill remained mired in subcommittees due to technicalities and other issues. According to former Senator Davis, “We had to fight like hell to get that thing [the bill] passed through” (R. M. Davis, personal communication, February 15, 2001). The most apparent issue in the Senate’s passage of the bill involved the absolute replacement of lethal gas with lethal injection. According to Davis, the legislature was apprehensive about replacing lethal gas altogether, which they felt may give the impression that the State was becoming “soft on crime”. On May 13, 1983, the *Durham Morning Herald* reported that a five-person Senate subcommittee had debated on a measure to allow condemned prisoners to *choose* the method of their execution – either death by asphyxiation, or death by lethal injection. Another interesting issue within the subcommittees was the original bill’s reference to the use of physicians during the execution. The article explained:

In a move designed to make the bill more palatable to the medical community, the committee voted to remove all references to doctors. The original version would have required that a physician administer the drug, which critics say would violate doctors’ professional ethics (p. A9).

When asked the official position of the North Carolina Medical Society, a representative stated, “As long as the legislature doesn’t require that doctors actually participate, we have no problems” (ibid.). In short, the only acceptable role that a physician could assume during an execution would be the pronouncement or certification of death (see also North Carolina Medical Society, [*Resolution 27-1983: 5/7/83*]).

On May 19, 1983, the substitute bill was again debated in Senate Judiciary Committee III. This time, along with further discussion about the merits of allowing prisoners to choose their method of execution, the bill’s language content was also debated. A motion was made to substitute the word ‘asphyxiation’ with ‘execution’ should the bill pass to the Senate for final vote. Senator Davis also read a letter authored by the mother of a homicide victim – in reading the letter, Davis hoped to quell some of the apprehension within the committees. The letter read:

Dear Sir,

I want to say I am the mother of Carl Frank Lyda. He was brutally murdered November 11, 1980 in Henderson County. His murderer has not been caught. But if and when he is, if he is given the death penalty, I think he should be allowed to choose. Because his life would be over, but his mother and loved ones would be left to grieve over him, just as I am grieving. I don’t think there is no easy way out. But at least for the sake of his loved ones, he should be allowed to choose. Thank you very much.

Respectfully, Mrs. Isabelle Nix (Letter dated May 16<sup>th</sup>, 1983, Exhibit B, Senate Judiciary Committee III, May 19<sup>th</sup>, 1983).

Davis also shared with the committee a comparative cost sheet outlining the expenses for conducting one lethal gassing versus one lethal injection execution. The cost sheet, prepared by Fiscal Research, indicated that materials for one lethal gassing would cost the State of North Carolina \$95.98. The most expensive item on the list was “pure ammonia gas (312 liters)”,

estimated at nearly \$80. Ammonia, a necessary element in conducting lethal gas executions, is used to neutralize the hydrocyanic gas in the death chamber once the prisoner is pronounced dead (North Carolina Department of Correction). In contrast, Davis indicated that materials for one lethal injection procedure would cost approximately \$30, the most expensive item being the sodium thiopental, at a cost of \$22.

Finally, Davis presented the committee with a “fact sheet” detailing all aspects of the lethal injection procedure, including rationales for discontinuing lethal gas. The fact sheet indicated that “Death by gas is viewed as inhumane” – underneath this sentence, in bold letters, read “VICTIMS OF THE HOLOCAUST” and “INTERNATIONAL WARFARE...GENEVA PROTOCOL PROHIBITS FIRST USE OF POISONOUS, ASPHYXIATING, OR OTHER GASES”. Lethal injection, on the other hand, was said to “Cause sleep in only a matter of a minute or two”. The gas chamber was characterized as “Posing some dangers”, and that it “Must be checked regularly”. In addition, the fact sheet noted that “Present door leaks...must be replaced”. Regarding the condemned prisoner specifically, the fact sheet noted that in death by gas, the prisoner “Struggles for life for 6 to 8 minutes”. During a lethal injection, the prisoner “Goes to sleep within 15 seconds”, is “already laying down”, and succumbs to “a peaceful sleep”.

On May 24, 1983, an interesting editorial appeared in the *Durham Morning Herald*. The author of the editorial, Amnesty International spokesperson Betsy Glennon, had just recently testified at the April 19 Senate Judiciary Committee III meeting, discussing at length the intrusive nature of intravenous injections. Her editorial, in part below, was written in response to Davis’ focus on the cost of execution materials, and his suggestion that the new method be a choice for prisoners condemned to die:

Proponents of the bill have shifted their strategy from focusing on the medical community, to the taxpayer, and now to the prisoners. By releasing old information about the \$216,000 it cost to convert a refrigerator into a gas chamber at Central Prison, and estimating that it will now cost taxpayers an additional \$10,000 to fix its leaky door, proponents seem to hope that we would opt for the \$30.12 estimated cost of lethal

injections. [It is to be hoped that] taxpayers are smarter shoppers, and won't fall for the sales pitch which involves merchandising life and death. The compromise bill would grant prisoners the freedom of choice, that of how to die; after what may amount to years of sitting on death row with virtually no choice about much of anything, the bill would present prisoners with a wonderful set of options (p. A4).

Opposition to the bill continued throughout the last week in May, 1983. During the interview with former Senator Davis, he indicated that, "It got to the point where I had a hard time getting anyone to listen to me. That thing [the bill] was sent back and forth to subcommittee so many times I can't recall". Not only were death penalty opponents within the legislature against the adoption of lethal injection, but death penalty *proponents* as well.

#### **6.2.10 Blurring the Meaning of Punishment**

Opponents stated that the method would likely make executions much easier to conduct, effectively desensitizing the public as to the severity of the sanction. On the other hand, proponents cited that the method was not harsh enough, effectively demeaning the victims of violent crime. During the bill's final appearance in the Senate prior to final vote, one Senator snapped, "What's wrong with the way we've got it?" (*News & Observer*, May 31<sup>st</sup>, 1983, p. 1, 2A). Davis simply remarked, "This is a more humane method" (*ibid.*). Another Senator inquired as to whether Davis had considered re-adopting hanging, and cited the opinion of a physician who maintained that the breaking of the neck was far more humane than an overdose of lethal chemicals.

Along with thwarting off countless criticisms voiced by fellow legislators, Davis also had to maintain that the lethal injection bill was not an effort to eventually do away with capital punishment, an idea that was extremely unpopular with regard to North Carolina's stance on crime control (*ibid.*). On May 30, 1983, the Senate tentatively approved the lethal injection option proposal by a vote of 39-6, and would cast its final vote two days later. Although no legislator directly spoke out *against* the bill, apprehension for any number of reasons was evident (*Durham Morning Herald*, May 31<sup>st</sup>, 1983; *News & Observer*, May 31<sup>st</sup>, 1983).

On June 1, 1983, an editorial cartoon appeared in the *News & Observer* which was directed at the “humane execution method” argument. The cartoon depicted two deceased prisoners on metal tables, their bodies covered with sheets. The feet of the prisoners are the only visible body parts, and on each prisoner’s big toe is a tag. One tag reads “Gas Chamber”, and the other “Lethal Injection”. The caption underneath the first prisoner, in bold letters, reads “INHUMANE” – the caption under the second reads “HUMANE”. The point of the cartoon was quite clear – no matter how an execution method was characterized or presented, the end result was the same – death. The cartoon appeared on the same day that Davis’ lethal injection bill was sent to the floor of the Senate for final vote.

On June 2, the *News & Observer* indicated that Davis’ bill had suffered another possible delay. Senator William Staton (D) had questioned why the lethal injection method, as an option for future condemned prisoners, was not extended to inmates already sentenced to death. Davis explained that the current bill would allow inmates sentenced to death after July 5 to submit in writing their preferred method of execution. However, the condemned prisoner must submit the request to the court no more than five days *after* sentencing, thus excluding prisoners already sitting on North Carolina’s death row. Staton then offered an amendment which would extend the choice of lethal injection to all condemned prisoners, regardless of time of sentencing. The amendment would also allow a condemned inmate to choose his or her method of execution up to five days *before* the execution. In Staton’s words, “If we’re to afford the opportunity, grisly as it may seem, they should have the same right under this bill” (p. 15A). Staton’s amendment was approved by a vote of 45-3 (*ibid.*), however one more point of contention was voiced on the same day by Senate opponents.

The insistence that lethal gas was indeed a far more humane method of execution was once again resurrected – this time in the form of a letter circulated throughout the floor of the Senate. Dr. Page Hudson, North Carolina’s Chief Medical Examiner, had been asked by an opponent of the lethal gas bill to offer an official written position with regard to death by lethal cyanide gas (*Durham Morning Herald*, June 2<sup>nd</sup>, 1983). In a manner reminiscent of Dr. Charles Peterson’s defense of the gas chamber forty-seven years earlier, Hudson wrote:

Those who oppose the use of cyanide gas as ‘inhumane’  
apparently do so in the mistaken belief that the twitching

of the subject means that he/she is suffering from some agonizing pain. In fact, the movement is largely if not entirely involuntary and is occurring in a subject who is very rapidly losing conscious sensation. Cyanide often has an effect on nerve and muscle that causes spasms... there is hardly any gas which produces a more rapid unconsciousness and death than cyanide (ibid., p. 13A).

Hudson continued by adding, "...the procedure [lethal injection] is just too personal, too much one-on-one, too much a matter of invading the integrity of the living body for me" (ibid.). He concluded by asserting, "I frankly deplore the concept of intravenous drugs for executions" (ibid.). In evaluating Hudson's position, it becomes clear that his opposition to lethal injection hinged on the distancing between the State and the condemned. In his opinion, executions should be conducted from a distance, without the idea of personalization so inherent and necessary within the practice of medicine. It could be construed that the longer a technician spends inserting catheters and intravenous equipment into the body of the prisoner, the more difficult the process becomes. By separating the condemned prisoner from the rest of the execution staff, such as with gas chamber executions, the more detached and blameless the process appears.

On June 4, 1983, the Davis bill passed muster in the Senate by a vote of 34-9, and was thus slated to be sent to the House of Representatives for approval. Between the May 30 and June 4 Senate approval process, five votes had swung to the opposing side. The Staton amendment was also rescinded, which would have allowed all condemned prisoners, regardless of time of sentencing, the option to choose lethal injection. Several concerned legislators, in an effort to expedite executions, convinced Staton that by allowing all condemned prisoners to choose, endless appeals would soon follow. The decision was twofold, in that prisoners already sentenced to die by lethal gas would possibly appeal on the grounds that the new law should equally apply to them (*Durham Morning Herald*, June 4<sup>th</sup>, 1983). As Staton remarked, "I don't want to deny any inmate appeals, but they can be endless" (ibid., p. A1). Regardless, this turn of events spoke volumes to North Carolina's intent on guaranteeing that executions would once again resume, and in a timely fashion. Several other Senate members in opposition to the lethal injection method cited the possible difficulties with insertion of intravenous lines. One opponent,

Democrat Wanda Hunt, indicated that questions surrounding medical complications had not been fully answered to her satisfaction (*ibid.*).

The Davis bill met with a great deal more adversity once it was sent to the House of Representatives. According to Davis, “Three Judiciary committees refused to even hear the bill – only one would accept it for debate. In the end, it [the bill] barely got out of committee by a vote of 9-7 I think” (R. M. Davis, personal communication, February 15, 2001). During the House Judiciary Committee IV hearings on June 16, efforts to undermine Davis’ legislation came by way of proposals for public hanging laws, with no choice of any other execution method. The lethal injection bill’s staunchest opponent, Frank Ballance (D), was against the death penalty altogether. However, in his mind, the mention of a return to public hanging would serve to derail any attempts to adopt a new method. As he noted, “If we’re going to kill a man, let’s kill him” (*Durham Morning Herald*, June 17<sup>th</sup>, 1983, p. 10A). Representative Hugh Lee (D) concurred, stating, “Why wouldn’t death by hanging be the best if you were going to go on the idea that we want to deter others from committing crimes where the death penalty would be used?” (*ibid.*). Neither the lethal injection bill nor the public hanging amendment were decisively voted on that day – further House committee hearings would follow during the next week.

On June 21, 1983, Davis’ bill tentatively passed the House Judiciary IV Committee, but not without last-minute chiding by Committee Chairman W. Paul Pulley (D). Given that several House members had proposed public hangings, Pulley found himself convincing the committee that the Davis bill was, “...a very serious bill and should be treated seriously” (*News & Observer*, June 22<sup>nd</sup>, 1983, p. 5C). Proponents of the hanging amendment maintained that if North Carolina was to take its death penalty seriously, then condemned prisoners should pay the ultimate penalty in a public setting in order to deter others from committing similar crimes. Representative Ballance, advocate of the public hanging amendment, stated, “I think it’s wrong to have executions in a private setting. I further think it’s wrong to make it easier to execute people [with lethal injections]” (*ibid.*). Ballance continued by arguing, “Jurors ought to have the benefit of seeing that sentence carried out...My purpose is, so long as we’re killing people, we do it in a public place” (*ibid.*). Representative Hugh Lee (D) concurred, indicating that his grandfather had witnessed a public hanging, and described the process as “...the roughest, most gruesome thing he ever saw in his life” (*ibid.*). House members opposed to public hangings voiced concerns

similar to those heard in the 1930s – as one House member stated, “I don’t know that this might take us in the wrong direction, instead of the right direction” (ibid.). Concerns were also voiced regarding possible mob violence if executions were made public events. Representative Pulley quickly noted that “The proposal for public hangings was an effort to mingle Davis’ bill with the issue of whether the death penalty should be retained” (ibid.), an issue that Davis himself had repeatedly urged was never intended by introducing lethal injection.

A second reading and review of the lethal injection bill in the House of Representatives occurred on June 28. A further amendment to Davis’ legislation included removing the requirement that licensed pharmacists be responsible for dispensing the lethal chemicals (*Durham Morning Herald*, June 29<sup>th</sup>, 1983). In earlier committee meetings, the requirement that physicians be responsible for participating in the procedure was also extracted from the bill, leaving some opponents curious as to who would actually be in charge of the execution (*Durham Morning Herald*, June 30<sup>th</sup>, 1983). Representative Frank Ballance also renewed his efforts in sabotaging the Davis legislation by once again proposing public executions, and again, his amendment was defeated by a vote of 76-36. Death penalty opponent Representative Herman C. Gist agreed with the public executions, and argued for even more choices than just lethal gas and lethal injection. Gist argued, “We certainly ought to broaden the choices of a person about to leave us...to [include] hanging and the guillotine. Then they’d really have a choice” (*News & Observer*, June 29<sup>th</sup>, 1983, p. 6A). Representative Robert L. Slaughter, House floor leader, urged, “It’s inconceivable to me that anyone who is against capital punishment would vote against this [the lethal injection] bill” (ibid.). He described Ballance’s public hanging amendment “...an attempt to gut the [lethal injection] bill” (ibid.). The House ultimately voted 90-20 in favor of allowing inmates a choice of execution method, and quashed proposals for public hangings by a vote of 76-36, a closer margin than Davis ever expected. In his words, “I was worried, very worried” (*News & Observer*, June 22<sup>nd</sup>, 1983, p. 5C).

The House of Representatives voted final approval for S. B. 323 on June 29, 1983. The final vote was 75-31, which the *News & Observer* noted as, “...a softening of support following the 90-20 preliminary test” (June 30<sup>th</sup>, 1983, p. 15A). In the most vigorous opposition yet, opponents of the bill made their positions clear as the bill passed muster. More attempts were made to enact more brutal forms of execution – Representative George Miller argued, “Why should we make it

more peaceful?” (ibid.). Representative Ballance stressed, “By supporting this bill, you may be supporting greater imposition of the death penalty by making it easier” (ibid.). Representative H. Park Helms noted, “...[lethal injection] will have an impact on how our courts perceive [capital punishment], how our citizens perceive it, and how a person who would commit a capital crime would perceive it” (ibid.). Helms concluded by asserting, “We’re making a mistake” (ibid.). Other opponents worried that juries might find it easier to render a sentence of death due to the qualities of the method as humane and painless, an argument which also emerged in New Jersey’s transition to lethal injection (see Denno, 1997; *Durham Morning Herald*, June 30<sup>th</sup>, 1983). Three representatives were so opposed to the Davis bill that they voted ‘no’ on an amendment to correct the spelling of “barbiturate” on the final draft (ibid.).

### **6.2.11 A New Law for Combating Crime**

Senate Bill 323 was enacted into law on July 1, 1983, and was ratified on July 5, 1983 (North Carolina General Statute § 15-187; North Carolina Session Laws, 1983 c. 678, s. 1). The bill provided condemned prisoners sentenced to death after July 1 the option of death by injection, however if no specific choice was made, the inmate would be executed by the default method, lethal gas. Inmates already condemned to death could also choose lethal injection, however they had to submit their choice in writing five days prior to the date of execution. Media coverage following the adoption of lethal gas indicated that the bill would *not* affect those already condemned to death, and that prisoners sentenced to die before the bill’s passage would be executed only by lethal gas. In essence, the newspapers alleged that the bill was *not* retroactive (see *Durham Morning Herald* and *News & Observer*, July 2<sup>nd</sup>, 1983). These reports, however, are in direct conflict with the actual language within the bill, which simply implies that prisoners condemned to death shall have the privilege to choose their method of execution (Center for Death Penalty Litigation [Durham, North Carolina]; North Carolina Attorney General’s Office, Criminal Division).

In September, 1983, John Sterling Gardner, Jr., became the first defendant sentenced under the newly enacted law, however he would not be the first to die by lethal injection. James Hutchins, sentenced to die for the 1979 shooting deaths of three Rutherford County deputy sheriffs, was afforded the opportunity to select the option of death by lethal injection. His execution date was initially set for January 13, 1984, however legal maneuvering delayed the

landmark execution for nearly eight weeks (*News & Observer*, March 15<sup>th</sup>, 1984). Hutchins' case had sparked a renewed demand for application of the death penalty in North Carolina – the State's "tough on crime" philosophy was in all likelihood bolstered by the heinous nature of the murders, which were committed in ambush fashion as the law enforcement officers approached Hutchins' home. Coupled with the fact that North Carolina had not executed a condemned prisoner since the 1977 reinstatement of capital punishment, and that other states were once again moving forward with executions, Hutchins' case stood testament to the notion that more regular executions in North Carolina were imminent.

### **6.3 James Hutchins, Lethal Injection, and the Continuation of a Tradition**

By the time the North Carolina legislature passed the lethal injection bill in July, 1983, corrections officials were still not anticipating the immediate resumption of executions, simply because of protracted inmate appeals (*News & Observer*, July 2<sup>nd</sup>, 1983). The tentative January 13, 1984 execution date of James Hutchins, however, fortified the likelihood that an execution would indeed occur within the year. The media responded to the Hutchins execution date by turning its focus on North Carolina's condemned population, a group that until January, 1983, had little to be concerned about. This media attention also served to bring the inevitability of executions to the forefront of citizens' minds.

In March, 1984, the *News & Observer* featured a three-page story detailing the lives of three of North Carolina's 34 death row prisoners – Michael McDougall, Kermit Smith, and Willie Gladden. The feature story, entitled "Reality of Death Looms Over the Condemned", contained interviews with the condemned men, and described in detail how they coped with the growing reality of their imminent executions (March 11<sup>th</sup>, 1984, pp. 1A, 30A, 34A). As the story noted, "...[the inmates] said they'd never thought much about the death penalty until they found themselves facing it. And they never thought it would actually happen in North Carolina until Hutchins' case raced through the courts in January" (ibid., p. 1A). The lack of executions since 1961 had apparently affected one of the condemned in the same manner as it had the general public by the early 1980s. Death row prisoner Kermit Smith told the paper:

I was aware that there were a lot of people on death row, and they'd been on death row a long time. But I knew that no execution had taken place in North Carolina for about 20 years. I didn't really

consider it to be that ominous a sentence (ibid., p. 30A).

Smith was sent to North Carolina's death row in 1981 after being sentenced to die for the beating death of a North Carolina Wesleyan College cheerleader. Smith's lack of faith in an expedient execution was hauntingly accurate during his 1984 interview – he spent another eleven years on death row before being executed on January 24, 1995 (North Carolina Department of Correction, Death Penalty Statistics 1998).

On the same day as the lengthy death row feature story, the *News & Observer* also ran a small article indicating that Governor James Hunt was planning a meeting with three death penalty groups in the area to discuss Hutchins' impending execution. Pressure on the Governor's office by death penalty opponents had hastened the meeting, which the groups hoped would culminate in a formal clemency review. The newspapers reported that although Hunt would gladly meet with anti-death penalty organizations, he had no intentions of intervening on Hutchins' behalf (*News & Observer*, March 11<sup>th</sup>, 1984). In the two weeks prior to the March 16 execution, the media also stepped up its descriptions of the newly adopted lethal injection procedure. On March 4, 1984, an article entitled "Stark Death Chamber Awaits Its Mission" appeared in the *News & Observer*. The following excerpt described to the public what Hutchins would experience just prior to his execution:

When the time for the execution nears, the inmate is escorted by four prison officials to a "prep room" adjoining the gas chamber. He is placed on top of a gurney covered in crisp blue linens as officials strap his chest, waist, wrists, ankles, and legs. A needle is inserted in the inmate's vein, and solution to open the veins begins flowing. The gurney with the intravenous solution dangling above is moved into the gas chamber and wedged between the bulky wooden [gas chamber] chair and the wall leading to the witness room. The gurney is eye level with the double-paned glass to the witness room, where as many as 16 people can stand or sit cramped in yellow plastic chairs. The chairs provide the only color in the beige complex of concrete walls (p. 36A).

The article then proceeded to describe, in detail, the process of lethal injection itself:

A plastic shower curtain separating the gurney from the chair is pulled shut. Through a hole in the curtain, three tubes are connected to the intravenous needle, and three prison employees begin dripping solutions into the inmate's vein. One is the lethal liquid but no one knows which one (ibid.).

Of interest in North Carolina's lethal injection protocol is the prison's use of a "prep room" to prepare the condemned prisoner *prior* to presentation to the witnesses. In essence, the witnesses do not view the prisoner being strapped to the gurney, nor do they view the insertion of intravenous lines. After the "prepping" process, as the article indicated, the prisoner is wheeled into the death chamber already in a secured, supine position. The condemned inmate is also covered to the neck with a blue-green hospital sheet, concealing the intravenous lines in the arms. This process differs from that of the State of Virginia, for instance, where the prisoner is escorted into the death chamber by prison officials and secured to the gurney in full view of the witnesses. At no time is the condemned prisoner covered by a sheet or other piece of material. Once the prisoner is secured to the gurney, a curtain is drawn and intravenous lines are started. After the intravenous lines have been successfully inserted, the curtain is then redrawn and the execution commences (Virginia Department of Corrections, personal correspondence, March, 1998).

On March 14, just two days prior to the Hutchins execution, another *News & Observer* article appeared which again detailed the lethal injection procedure. This article was quite similar to the March 4 story, except there was mention of a procedure to guarantee anonymity of the actual executioners. The article explained:

A third – or dummy – needle would be placed in a plastic bag so that no one will know which two of three executioners actually administered the deadly injections of sodium thiopental and pavulon. When Warden Nathan Rice gives the word to go forward with the execution, the executioners, separated from Hutchins by a curtain, will push plungers, releasing the lethal solution into Hutchins' vein and the plastic bag (p. 9A).

The March 15 edition of the *News & Observer* was heavily laden with articles pertaining to the last minute preparations underway for the first lethal injection execution. Hutchins had requested

to have his last remaining appeals halted, and had also requested that his right for a Governor's clemency review be forfeited. The newspaper's official opinion, expressed in an editorial, drew attention to the "randomness" of Hutchins' execution:

The 33 men and one woman now awaiting execution in North Carolina were convicted under a death penalty law adopted in 1977. But more than 3,400 lives have been taken by criminal acts in the State since then. Those criminals who await execution have not, like the vast majority, benefited from plea-bargain arrangements, from errors committed during their arrests and trials, or from the unpredictable mercy of juries (p. A4).

Editorials from readers filled one entire page of the newspaper that day, however none contained any references to the new execution method. The editorial submissions regarding Hutchins' execution focused solely on moral considerations, and on whether the death penalty was ever a deterrent to violent crime (see p. A4, "The People's Forum").

Also in the pre-execution issue of the *News & Observer* was an article concerning the Texas execution of James David Autry, who died by lethal injection in the early morning hours of March 14. Autry's execution had been highlighted in the newspapers throughout the week leading up to the Hutchins event, and his execution was described as appearing "...painless and without discomfort" (p. 18A). An article a few pages later informed readers that Hutchins had skipped both breakfast and lunch on the day before his execution. The article also spoke to the hoards of visitors who met with Hutchins in his final hours, including the prison psychologist, attorneys, physicians, and the chaplain. Articles such as these were most likely intended to re-familiarize the general public with the protocol surrounding an execution – again, North Carolina had not conducted an execution in nearly twenty-two years, and the media seized the opportunity to report on the simplest of activities surrounding the upcoming event.

Shortly after 2:00 a.m. on the morning of March 16, 1984, James Hutchins became the fifteenth condemned prisoner to be executed in the United States since the reinstatement of the death penalty in 1976. Hutchins was also the third inmate in the country to die by lethal injection. Both the *Durham Morning Herald* and the *News & Observer* carried front page stories of the landmark execution – the headline on the front page of the *News & Observer* simply read

“Hutchins Executed” in bold, one-inch letters that spanned the entire width of the page. Included in the front page article was a detailed account of Hutchins’ activities on his last day, which included an all-day visit from his wife. His breakfast, consisting of coffee, milk, and applesauce was also mentioned, as was his lunch – a steak and egg sandwich and a Coke. The article also noted that Hutchins twice refused a last meal.

The remainder of the news coverage consisted of interviews with Hutchins’ spiritual adviser, who told reporters that “He’ll [Hutchins] take his shot and go to heaven” (*News & Observer*, March 16<sup>th</sup>, 1984, p. 7A). Coverage also focused on the anti-death penalty protesters who held a vigil outside the prison on the eve of the execution. One member of the Greenville Citizens Against the Death Penalty called the event a “...legal lynching” by the State – other protesters stood quietly in prayer, or sang hymns such as “Amazing Grace” and “Gentle, Angry People” (*ibid.*, p. A1). The paper reported that approximately eighty death penalty opponents were present, as well as a few supporters located in another area across the street from the prison. Although the March 16 issue of the papers covered the execution ritual, little was mentioned about the new method used to put Hutchins to death. The only reference to the newly adopted execution procedure was the naming of the lethal chemicals involved – sodium thiopental and pavulon.

Interestingly, the March 17 issue of the *News & Observer* contained detailed accounts of the lethal injection procedure, however there were far fewer than would be expected. The large, bold headlines in the Sunday edition read, “Hutchins Swallowed Hard, Closed Eyes, and Died.” The following account of the execution appeared in the first paragraph:

The death chamber at Central Prison glowed under bright lights early Friday as James W. Hutchins was wheeled in on a hospital gurney, his body covered to his neck with a blue-green sheet. Hutchins’ eyes remained fixed in space, his breathing barely perceptible. His only movements were to swallow hard several times. Just after 2 a.m., executioners released a flow of lethal drugs through tubes into Hutchins’ arms. About 10 seconds later came the only signs of a struggle – Hutchins’ nostrils flared and his facial muscles tightened. His jaw slackened, slowly his mouth

opened and his eyes closed. At 2:18 a.m., Hutchins was pronounced dead, the first person executed in North Carolina in more than 22 years (p. A1).

Kays Gary, a prominent columnist with the *Charlotte Observer*, offered the most descriptive account of the Hutchins execution. Consuming nearly one full page of the newspaper, Gary's article noted the most minute of details surrounding the execution, which he characterized as "...eerily quiet":

Within seconds, a guard opened a steel door on the death chamber's left wall. The open door framed Hutchins motionless on a gurney, his upper body elevated about 30 degrees. He was covered to the neck with a hospital green sheet and his head was pillowed on another sheet that had been folded several times...Covered by the sheet, tubes from the bottles were already connected to the needles in his arms...For eight minutes, Hutchins was motionless while silhouettes of the technicians moved busily back and forth behind the curtain...At 2:02 plus seconds, Hutchins lifted his eyes to the bottles. He then closed his eyes and for the first time his lips began to move as if in prayer or recitation (in *News & Observer*, March 17<sup>th</sup>, 1984, p. 7A; see also *Charlotte Observer*, March 17<sup>th</sup>, 1984 ).

Gary then proceeded to describe the actual onset of death with regard to the execution:

Suddenly, his eyes opened and his eyebrows moved up and down three to four times as if he were trying to stay awake. At 2:03 a.m., his eyes closed and his upper body began slight, rhythmic spasms, six in as many seconds, after which his mouth dropped open at 2:04 a.m. The next nine minutes was a frozen time frame. Nothing moved. There was no sound...At 2:12 a.m., the color on his forehead began to pale, ever so slightly, and at 2:15 the pallor began to show on his ear. In 11 minutes there had been not even a twitch (ibid.).

Aside from the Kays Gary *Charlotte Observer* article, and the first paragraph of the March 17 *News & Observer* report, very little was mentioned in the way of support or disfavor with the new method. In the days following the execution, nearly all media coverage of the Hutchins execution revolved around either the moral issues embedded within the death penalty, or in questioning whether Hutchins' execution would expedite the sentences of those sitting on North Carolina's death row.

### **6.3.1 An Unremarkable Death Ritual**

The paucity of lethal injection references by the media and other forums after the Hutchins execution is important to mention here, because it denotes a shift in topic focus that is likely a by-product of social context and ideological change. Shipman's (1996) analysis of newspaper coverage before and after execution method changes indicates that the lack of drama or perceived predictability with lethal injection quite possibly mutes the media's tendencies to sensationalize the method after its use. *Post-execution* dialogue which characterizes a method as "humane", "efficient", and "painless" "...draws attention away from the technical aspect and draws attention more toward the moral issues" (ibid., p. 199). This is precisely what appears to have taken place in North Carolina – while pre-execution coverage of the method contained several detailed articles which explained the logistics of the new method, coverage after the execution focused almost exclusively on other aspects of capital punishment. Shipman (1996) further expounds on this idea:

The press of the 1980s and 1990s was more skeptical about the introduction of the capital punishment technology than the press of the 1890s and 1930s, and, importantly, the coverage shifted from an almost exclusive focus on the method of execution when a new technology was introduced to a more balanced coverage that included the morality of the execution (pp. 200-201).

Several plausible reasons for this shift in focus are offered in Shipman's analysis. First, at the turn of the century, the press was operating in the "Yellow Journalism" era, in which reporting was sensationalized, literary, event-centered, and dramatic. Second, Shipman (1996) notes that "science writing" during the early 20<sup>th</sup> century was underdeveloped or non-existent, so

“...technological innovations must have seemed marvelous” (p. 201). A third reason for the shift in media focus with regard to execution methods is that early newspapers had undefined editorial policies opposing the death penalty. Shipman (1996) notes that, “Not as much was known about the deterrent effects – or lack thereof – of capital punishment” (ibid.). Thus, it is not surprising that in the case of North Carolina, the gas chamber was sensationalized more so than lethal injection after their respective debuts. In addition, newspapers after the Hutchins execution were saturated with editorials and articles focusing on the deterrent value of the death penalty, or the morality surrounding the practice – little was mentioned in the way of the success of the new method because Hutchins’ execution yielded nothing graphic to report on.

### **6.3.2 Death as a Matter of Right and Wrong**

While the method of execution itself may not have attracted a great deal of post-execution attention, the death penalty itself became a renewed point of debate among North Carolina’s school-aged population. In the March 18 issue of the *News & Observer*, a lengthy article noted that the Hutchins execution had spurred classroom debates about the possible deterrent effects of capital punishment, and whether other viable means of social control should be considered. One youth group, the Raleigh-based Youth Legislative Assembly, held a mock session in which a bill was proposed to abolish capital punishment and replace it with life in prison with no possibility of parole. In the end, the 300-member organization of local high school students voted two to one in favor of retaining capital punishment in North Carolina, their reasoning stemming largely from the inability to find a more effective sanction. A formal report containing the Youth Assembly’s decision was presented to Governor James B. Hunt in hopes of possibly affecting future State policy.

The James Hutchins execution had apparently generated a great deal of public protest directed specifically at the Office of the Governor. The *News & Observer* reported that Hunt’s office received twenty-two telephone calls between 10:00 p.m. March 15 and 5:00 a.m. March 16, the hours just before and after Hutchins’ execution. Of the twenty-two calls received, only four were in favor of the event. In addition, the Governor’s office received 120 letters the day before the execution, only six of which were in favor of the sentence being carried out. That same day, 198 telephone calls were received, and of that number, 177 were death penalty opponents (March 17<sup>th</sup>, 1984, p. 6A).

While the Governor's office received an overwhelming amount of anti-death penalty communication in the hours just before and after Hutchins' execution, public opinion polls in North Carolina painted a different picture. In early Spring, 1984, the Carolina Poll, conducted each year by the University of North Carolina School of Journalism, surveyed 1,207 North Carolinians regarding their opinions of the death penalty. Approximately 65% of those polled indicated they supported the death penalty, while 24% opposed it. Twelve percent indicated they didn't know how they felt, or voiced no opinion. Five hundred seventy-nine of the total number of respondents were in the Piedmont area of North Carolina, which encompasses the central and south-central region of the State – this is also the region in which Raleigh is located. Of the 579 Piedmont respondents, 376 reported that they favored the death penalty, while 143 indicated that they opposed it (The Carolina Poll, Spring, 1984). National approval for the death penalty during the same time frame hovered around 69%, on par with the North Carolina results (Ellsworth & Gross, 1994). In 1985, the year following the Hutchins execution, national approval for capital punishment rose to 74%, and has remained at or slightly above that number ever since (ibid.; see also Bedau, 1997; Johnson, 1998).

In the following chapter, the findings of the study will be presented. Specific discussions will focus around any differences in legislative motive for changing execution methods, and whether socially constructed definitions of deviant institutionalized violence differed with respect to the time periods under consideration. The chapter will conclude with a discussion of the consequences of post-adoption reconstruction.

## CHAPTER VII

### FINDINGS AND POST-ADOPTION CONSEQUENCES

*Some methods of execution are worse than others, but none is better – Schwarzschild's Paradox*

#### **Introduction**

This chapter of the dissertation will summarize the findings yielded through an examination of two specific points in time in North Carolina's execution history. Included within the analysis will be the illumination of any differences in legislative motive which drove the method transitions, as well as a discussion of how social and historical context informed those reconstructive processes. Chapter VII will specifically address the findings in relation to social and historical context. The conclusion of the chapter will discuss and describe the consequences of the constructive strategies and method changes during both time periods.

#### **7.1 FINDINGS:**

##### **HISTORICAL CONTEXT, LEGISLATIVE MOTIVE, AND CONSTRUCTION**

*And who will plunge the needle, stage-prop of our mercy? – Jon Thompson*

This dissertation has argued that methods of execution serve as vehicles for the administration of state-sanctioned institutionalized violence. In North Carolina, as with most other states, the method of execution to be used is determined by the General Assembly, the law-making body within the state government. Denno (1997) offers three primary justifications for legislative transitions to alternative execution methods – a) to make executions more humane, b) to legitimize the continued use of the death penalty, and/or c) to prevent an existing method from becoming scrutinized or constitutionally challenged as cruel or offensive to societal standards of decency.

#### **7.1.1 Historical Summary of the 1930s**

The State of North Carolina shared many similarities with its regional counterparts during the era. The State endured explosive violent crime rates during the latter part of the 1920s and into the 1930s, mostly as a result of economic upheaval and racial unrest. In 1934, North Carolina

recorded the fourth highest homicide rate in the nation, and its prison population swelled to staggering proportions into the mid and late 1930s.

Organizations such as the State Board of Charities and Public Welfare reported that North Carolina's prison system was filled with the illiterate, mentally handicapped, and uneducated, and that minorities were disproportionately represented throughout the general prison population. With regard to executions, North Carolina put to death 132 condemned men between the years 1930 and 1939. Between the years 1934 and 1936 alone, the State executed fifty-four prisoners, standing out as one of the cornerstones of the southern territory that Von Drehle (1995) coined "the death region" (in Harries & Cheatwood, 1998, p. 30).

Aside from the characteristics associated with the South during the 1920s and 1930s, North Carolina was defined by several historians as somewhat more progressive than its regional counterparts (see Jones, 1983; Key, 1949; Lefler, 1973; Link, 1992). While economic turmoil and rising crime rates stalled most progressive and humanitarian efforts during the 1930s, North Carolina's tradition of reform continued throughout the era. Although the State was not immune to pervasive institutionalized racism, efforts were made to bolster North Carolina's educational standards for all individuals, regardless of color.

The practice of lynching and other methods of informal social control did indeed occur in North Carolina, however they did not seem to be as rampant as in other southern states. To continue, the State boasted one of the most prolific and successful prison reform movements in the South. Several forms of barbaric corporal punishment were eradicated by the legislature, and the prison system was improved to provide at least civilized conditions for its residents. The prison population, although a marginalized social group, was characterized as needing, at the bare minimum, the same basic rights as any other social group. This 'humanizing' effort also manifested itself in the form of prison educational programs, training for trades, and opportunities for early release which were contingent upon good behavior during incarceration. Prisoner classification systems were also developed, whereby inmates were no longer aggregated into one stereotype – in essence, North Carolina's prison population was given an opportunity to help itself through incentives provided by the State.

Like all southern states in the 1930s, North Carolina used the electric chair as its sole method of carrying out the death penalty. Adopted by the State in 1909, it appeared to have been used

with a large degree of success. Through 1935, the electric chair had been employed to execute 162 prisoners, on par with several other states in the region, namely Georgia and Texas. As Bedau (1997) noted, executions, especially in the South during the 1930s, were not uncommon. In fact, he argued that the death penalty in general was somewhat of a permanent fixture in the region (see also Ellsworth & Gross, 1994). This observation is parallel with the Harries and Cheatwood (1997) assertion that executions were, for all intents and purposes, the southern ‘answer’ to violent criminals, especially those who committed more heinous offenses such as murder and rape. While North Carolina espoused a more progressive approach to incarceration during the 1930s, its position on punishing violent offenders was clearly evident in its high number of death-qualified crimes – murder, burglary, rape, and in some cases, arson.

In the latter part of the 1920s, North Carolinians were becoming increasingly exposed to the realities of death in the electric chair, as well as the characteristics of those executed. As Lefler (1973) noted, North Carolina’s newspaper production increased impressively during that time, as did rural free delivery. Per Shipman’s (1996) observations, the intent of the media during the early twentieth century was to provide colorful, descriptive, and event-centered reporting. Attention to detail was paramount in conveying important events, so the use of sensational writing, rife with adjectives, was not uncommon in *defining situations* for the reading public. Given that executions were somewhat private events by the turn of the century, North Carolinians relied heavily upon characterizations and descriptions offered through written mediums. Aside from the media, humanitarian organizations began to take notice of North Carolina’s condemned population. Reports were generated to inform the general public about the disturbing family backgrounds of those on death row, and surveys yielded alarming findings regarding the mental aptitude and educational level of the prisoners sentenced to die.

The death penalty as a sanction in North Carolina was in no way compromised in the mid-1930s. Given the elevated violent crime rates in the South, and the expressed need to maintain a high level of social control, the State had no intentions of abolishing or repealing its capital punishment statutes. In fact, as Galliher, Ray, and Cook (1992) indicated, the State of Tennessee was the only southern state that experimented with abolition, and that experimentation only survived for a few years. Thus, as executions became more publicized through the 1920s and into the 1930s, and as the deterrent effect of capital punishment remained largely unknown, concerns

surrounding executions in North Carolina were directed mostly at the method used rather than the moral implications of the sanction (see Shipman, 1996).

For instance, North Carolina adopted the electric chair out of a necessity to provide for a more technologically advanced method of execution. After New York's adoption of electrocution in the late 1880s, followed by Ohio, adoption and use of the electric chair became somewhat of a trend in the East and South regions of the United States (see Harries & Cheatwood, 1997). In the West, the firing squad or hanging remained the preferred methods of execution until Nevada's legislature adopted lethal gas in 1921. While the electric chair was purported to be a technological marvel, its true effects on the body were largely underreported in rural states such as North Carolina – this continued to be the case until the media and other forums became more advanced and informed in the mid-1920s. Death as punishment, then, was merely an acceptable abstraction until North Carolinians became increasingly aware of the realities surrounding a prisoner's last moments in the electric chair.

### **7.1.2 The Media and Public Agency**

An analysis of primary and secondary data from the 1930s yielded several interesting findings regarding the legislative intent driving North Carolina's transition to lethal gas. As demonstrated in an earlier chapter, newspaper coverage, as well as editorials and papers written by death penalty opponents, painted vivid images of electrocution. The lack of technological efficiency of the method was creating a large degree of concern in the general public, as evidenced by an acceleration of correspondence to the Governor during the early 1930s. It appears, through an analysis of the data, that North Carolina's advanced progressive ideology was no longer parallel with its method of execution – while the State espoused the importance of racial tolerance, humanitarianism, and reform, its institution of justice was regularly subjecting its condemned prisoners to a protracted, violent, and apparently cruel death. In their correspondence to Governor Ehringhaus, some citizens referred to the electric chair as “barbaric”, while others called it “uncivilized” and “sickening”, hardly adjectives that define a progressive, reform-oriented State. News coverage of the executions consistently likened the sounds of electrocution to the cooking of food, which served to objectify the prisoner. Nell Battle Lewis and Dr. James K. Hall, staunch death penalty opponents in the 1930s, regularly used terms such as “roasting” or “barbecuing” to describe electrocution – again, terms that would typically not be used to construct and define an

execution method as efficient or advanced. When these descriptive terms were coupled with the characteristics of condemned prisoners – “boy”, “mollycoddled”, “scared”, “childlike”, and “terrified” – the reality of the method as increasingly deviant became starkly apparent.

Dr. Charles Peterson, the sponsor of the lethal gas bill of 1935, came to the North Carolina General Assembly with a personal agenda to replace electrocution with a more humane, advanced execution method more befitting the State’s philosophy on punishment. A highly revered and respected member of the legislature, Peterson’s idea for the proposal most likely arose from his medical background, which included the knowledge of techniques for the alleviation of pain and suffering. While firm evidence could not be obtained to verify Peterson’s *exact* reasons for proposing the change, the available data support the assumption that Peterson was familiar with anesthesia, and was generally concerned about the welfare of human beings who were subjected to discomfort. Peterson, as indicated in the newspapers of the day, had been in contact with two western penitentiaries which had adopted and used lethal gas asphyxiation as a means of execution. Overall, he had received favorable reports concerning the success of the method, which had been described in Nevada newspapers as painless, non-disfiguring, and similar to a medical procedure.

### **7.1.3 Medical and Scientific Veneer**

The manner in which the lethal gas method was constructed during the legislative session of 1935 was intended to supplant the deviant labels attached to death by electrocution. The problem of disfigurement appeared to be the main issue with prisoners being put to death in the electric chair, not to mention the offensive odors and sounds which oftentimes accompanied the process. As evidenced by newspaper accounts, and by the observations proffered by Shipman (1996), the new method was constructed as the antithesis of the extant method. The sociological perspective of dramaturgics is relevant here, in that dramaturgics are strategies for legitimizing a social behavior or event through the use of ritual and impression management (see Goffman, 1959; Lofland, 1975). Environmental manipulation of the execution chamber was one such strategy in the adoption of lethal gas. Double-paned glass was installed, replacing the open environment of the electric chair room.

This glass served three primary functions – first, it provided safety for the staff and witnesses, in that hydrocyanic gas was at the time the deadliest gas known to science. Second, the glass

prevented witnesses from experiencing the sounds and smells associated with electrical executions, which were still being sporadically conducted. No longer would witnesses hear the sizzling of burning flesh or the hum of electrical dynamos, processes which Lofland (1975) noted amplified the execution rather than concealing it. Third, the glass provided an increased degree of social distance between the condemned and the witnesses – dramaturgically, the execution was further separated from those conducting or advocating it.

Lethal gas was also defined in terms of scientific process, much as the electric chair was defined in the late 1880s. The difference with lethal gas, however, was its invisible quality – the gas was purported to be odorless, undetectable, and silent. No equipment was to be attached to the prisoner, such as electrodes, wires, or skullcaps. This removal of equipment also further distanced the execution from the executioner – the only apparatus attached to the body of the condemned was a stethoscope, and this was wired through a steel wall whereby the physician never had to come in contact with the inmate during the process. Furthermore, lethal gas was non-disfiguring – no longer would the prisoner be subjected to burns or blisters from exploding electrodes, nor would the body stiffen into grotesque positions after death. Lethal gas was described as leaving the inmate's body flexible and natural looking, thus making preparation for burial more palatable. The image of the prison, and the State as a whole, was also at stake in this regard – families of the deceased inmate would obviously be less traumatized if the corpse of their loved one was intact rather than scarred or mutilated from electrocution.

Dr. Peterson relied heavily upon the input of fellow medical professionals, as well as his own knowledge of medicine, to advocate lethal gas as a more acceptable form of punishment. Medical and scientific terminology was used as a veneer to couch the new method in terms of a 'procedure' rather than an 'execution'. Given that technical and scientific writing had not been perfected in 1930s news reporting, the term 'procedure' most likely had an appealing and impressive ring to those reading about the transition (Shipman, 1996). Not only was the execution considered a procedure, but the death penalty would henceforth be 'administered', as reported in the May 2, 1935 issues of the *News & Observer* and *Greensboro Daily News*. Lethal gas was defined as a substance which would instantaneously render the condemned prisoner unconscious, with absolutely no indication of suffering or struggle. Again, the less movement associated with the execution, the less it appears to be adversely affecting a fellow human being

– prisoners who struggle, writhe, or exhibit signs of suffering become identified as *non-objects*, thus allowing for the introduction of doubt in retaining and operating the execution machine (see Lofland, 1975). Until the mid-1800s, pain was considered a necessary component of exacting justice – the more visually graphic the execution, the more obvious that justice was being served (Foucault, 1977; see also Spierenburg, 1984). To continue, Nietzsche (1956) posited an interesting argument when he asserted that “Pain did not hurt as much as it does today” (pp. 199-200). This observation speaks directly to the paradigm underlying this dissertation – that methods used to carry out sentences of death are relative to time and place, and are also constrained by normative boundaries dictated by social context and ideology. Reiman (1985) further explains:

...progress in civilization is characterized by a lower tolerance for one’s own pain and that suffered by others. And this is appropriate, since via growth in knowledge, civilization brings increased power to prevent or reduce pain and, via growth in the ability to communicate and interact with more and more people, civilization extends the circle of people with whom we empathize. If civilization is characterized by lower tolerance for our own pain and that of others, then publicly refusing to do horrible things to our fellows both signals the level of our civilization *and, by our example, continues the work of civilizing* [his emphases] (pp. 135-136).

Reiman’s (1985) position is crucial in understanding North Carolina’s transition to lethal gas in 1935. His perspective directly speaks to how social norms regarding pain and death, informed by progressive ideologies and humanitarian philosophies, can serve as catalysts for redefining how institutionalized violence should be conducted. A key component of North Carolina’s reformative philosophy in the 1930s was the recognition of a marginalized population as equally human. As Key (1949) and others noted, the State took great strides in shedding some of the negative stereotypes which consistently characterized the South during the era (see also Link, 1992). While North Carolina had no intentions of repealing or abolishing its death penalty, the adoption of a scientifically advanced execution method appeared to have initially bolstered the State’s desired image as progressive and revisionist. It is important to recall that North Carolina was the only state east of the Mississippi River to consider lethal gas in the 1930s – the only

other states which had adopted or considered the new method were those in the far West, such as Colorado and Nevada (Denno, 1997). This fact alone isolated North Carolina from the southern tradition of electrocution, and propelled it into a category not occupied by any other surrounding state.

It is of interest to speculate whether lethal gas would have been proposed in the legislature during the 1930s, or at any other time, if Charles Peterson had not personally sponsored the idea. An examination of pre-1934 newspaper articles yielded no indications that lethal gas was ever a consideration before the 1935 General Assembly session. Regardless, Peterson's reputation among his legislative cadre clearly influenced the method's acceptance in the legislature. In both the House of Representatives and the Senate, not one dissenting vote was cast against the adoption of lethal gas, quite the opposite of what occurred in the 1983 legislature. The increased exposure of the effects of electrocution in the late 1920s and early 1930s undoubtedly served to perpetuate Peterson's motive to find a more humane method of execution for a state which espoused advanced humanitarian ideologies. His motive, once introduced in the 1935 session, evolved into a collective effort, grounded in the principles of science and technology. The motive behind the adoption of lethal gas corresponded with Foucault's assertion that, "If it is still necessary for the law to reach and manipulate the body of the convict, it will be at a distance, in the proper way, according to strict rules, and with a much higher aim" (1977, p. 11).

#### **7.1.4 Constructive Strategies in the 1980s**

Before continuing with a discussion regarding the post-adoption dialogue surrounding lethal gas, it is important to examine North Carolina's 1983 execution method change. Although forty-eight years separated the two legislative sessions, they both exhibited similarities worth noting. First, the initial idea of a method transition was introduced by one individual with a personal agenda. As with Dr. Charles Peterson, Robert M. Davis' professional background in associating with condemned prisoners motivated him to closely examine the method of execution in North Carolina. Although few executions had been conducted between Davis' entrance into the practice of law and his election to the State Senate, the use of cyanide gas during the Holocaust was a firm reference point from which to establish his case. In his words, "...the gas chamber is a symbol of some of the worst atrocities of this century" (Declaration, April 14, 1992). To continue, Davis reviewed witness affidavits from gas chamber executions in other regions of the

United States, further solidifying his position that the lethal gas statute was worthy of serious scrutiny.

A second similarity between the 1935 and 1983 legislative sessions was the sponsors' communication with states already using the proposed method. Not unlike Charles Peterson's inquiries regarding lethal gas in the West, Davis questioned prison authorities and government officials in Texas to determine their degree of satisfaction with lethal injection. He also obtained execution protocols which detailed the process of execution by lethal injection, and procured color photographs of North Carolina's gas chamber to further illustrate his position once the legislative session began. To continue, Davis requested that respectable medical professionals testify as to the viability of lethal injection, as well as to the detriments of using cyanide gas in conducting executions.

#### **7.1.5 The Absence of an Image**

An execution had not been conducted in North Carolina since 1961, thus the lethal gas chamber, in all likelihood, had been a moot issue insofar as public debate was concerned. As Shipman (1996) noted, after the 1950s, national focus was mainly geared toward the moral implications of the death penalty, not the manner in which it was dispensed. During the 1970s, the credibility of capital punishment was being harshly scrutinized by the United States Supreme Court – in essence, states were in jeopardy of losing their death penalty statutes if acceptable revisions were not quickly submitted. North Carolina was no exception to this rule – with violent crime rates increasing exponentially, the State expeditiously revised its mandatory death sentence, and regained the use of capital punishment in 1977. Thus, as in 1935, there was evidence to suggest that North Carolina had no intentions of abolishing its death penalty, which was viewed as the answer to the “soft on crime” politics that characterized the early 1970s (see Walker, 1998).

At this juncture of the analysis, it is important to note the absence of public exposure to the nature of lethal gas during the years leading up to the 1983 legislative session. In the 1930s, executions were regular events, and as Shipman (1996) noted, the media's concentration centered around graphic, detailed accounts of death in the electric chair. As this exposure mounted, so did public awareness of the effects of electrocution on the body. Increased media attention and anti-death penalty commentary directed at the method largely contributed to the labeling of the

electric chair as questionable. Citizens' correspondence to the Governor's office during the 1930s, then, coincided with the subject being reported on, which further perpetuated the labeling process. In the years leading up to the adoption of lethal injection, however, a different phenomenon occurred. Media responsible for the dissemination of information were saturating the reading public with the moral issues surrounding capital punishment, largely ignoring the method of execution itself. As evidenced in the previous chapter, nearly all correspondence to the Governor's office between 1979 and 1982 focused either on citizens' opposition to capital punishment, or the need for expediting executions in order to exact justice. Anti-death penalty organizations focused their attention on the apparent non-deterrent value of the sanction, and rarely mentioned methods of execution (Haines, 1996). In essence, the construction of the lethal gas chamber as deviant in the 1983 General Assembly rested solely on the bill's sponsor, Robert M. Davis.

#### **7.1.6 The Problematic Narratives of Medicine**

While social context worked in favor of the 1935 lethal gas transition, it had a nearly opposite effect on the 1983 lethal injection bill. While both time periods experienced rising violent crime rates, the 1930s seemed more receptive to innovation and technology in redefining the manner in which state-sanctioned death was to be administered. The 1935 General Assembly warmly welcomed the juxtaposition of science and punishment – this integration, from the available data examined, appeared to have served as a catalyst for perpetuating North Carolina's image as tough on crime, progressive, *and* humane. Conversely, the 1983 legislature used the lethal injection proposal as a forum for debating the meaning of punishment itself, namely that its primary function was to deter crime. In the interview conducted with former Senator Davis, he remarked that, "Some of them [the legislators] could have cared less what method was used. They were tough on crime, and felt like the punishment should be just as bad as the offense" (R. M. Davis, personal correspondence, February 15, 2001). When asked whether the Governor supported lethal injection, Davis stated, "It really didn't matter to him – the method really didn't make a difference" (ibid.).

The juxtaposition of medicine and punishment in the 1983 lethal injection debate fell into a large degree of disfavor with opponents of the bill. Capital punishment foes in the legislature argued that redefining execution methods as a medicalized procedure would allow for easier

dispensation of death sentences in the future. The manner in which physicians had constructed the method – painless, pleasant, and dignified – would likely overshadow the seriousness of the sanction, in essence opening the floodgates for more and more executions in the years to come. In addition, death penalty opponents in the legislature seized the opportunity to denounce capital punishment altogether by attempting to sabotage the bill with amendments for public hangings and other crude methods. These strategies were, in all likelihood, employed to detract attention away from a new method of killing and toward the detriments of the death penalty as a whole.

Some death penalty advocates in the House and Senate, however, also questioned the newly proposed method. In their opinion, a sentence of death should serve to deter crime, and convey a message to society that those committing capital offenses should be punished harshly, not gently put to sleep. In an attempt to maintain North Carolina’s image as “tough on crime”, Davis’ opponents in the House and Senate refused the idea of altogether replacing the lethal gas chamber with lethal injection – instead, a compromise was reached where lethal injection would be an optional method of execution for condemned prisoners. As Davis stated in his interview, “That thing [the bill] never would have passed if it wasn’t amended as an option” (ibid.).

### **7.1.7 The Deviance of Medicalization**

The reality of a medically informed execution method had more of an effect on the legislature than the construction of lethal gas as inhumane and barbaric. Since the adoption of lethal injection in Oklahoma in 1977, there is evidence to suggest an expansion of medical ethics to prohibit or limit the participation of physicians in execution procedures (see The American College of Physicians, *et al.*, 1994). Davis’ original bill would have mandated the participation of a physician in the lethal injection process, and would have also required that a licensed pharmacist be charged with the duty of dispensing the lethal chemicals. As the bill progressed through the General Assembly, the North Carolina Medical Society and other organizations retreated from the idea, and eventually submitted a refusal to be directly involved in lethal injection executions. Resolution 27-1983 of the North Carolina Medical Society, adopted on May 7, 1983, states in part:

Physician participation in an execution includes but is not limited to the following actions: prescribing or administering tranquilizers and other psychotropic agents and medications which are part of

the execution procedure; monitoring vital signs on site or remotely (including monitoring electrocardiograms); attending or observing an execution as a physician; and rendering of technical advice regarding execution (p. 57).

The resolution continued by noting that explicit involvement of a physician in a lethal injection execution would also include the selection of injection sites, starting intravenous lines, and consulting or supervising lethal injection personnel (ibid.). The North Carolina Medical Society also adopted the American Medical Association's 1980 resolution which approved a physician's involvement in an execution when it simply required the "...determination or certification of death" (ibid., p. 69). The medical association's retreat from involvement in the lethal injection procedure, then, left the North Carolina legislature doubtful as to whom would be qualified enough to perform the execution. Given that allied health professionals were also encouraged to refrain from participating in lethal injections, the legislature faced the dilemma that prison personnel would be left to carry out the task (American Medical Association, 1980).

The apprehension of the medical community regarding lethal injection was an important development in the 1983 legislative session. As previously noted, the 1935 General Assembly embraced the medical and scientific community, and in turn, the medical community was eager to provide expertise in the development of a new method of execution. As the newspapers reported, medical and scientific professionals enthusiastically anticipated the gas chamber's debut, and contributed great amounts of knowledge in the process of reconstructing a method of state-sanctioned death. At North Carolina's first lethal gas execution, several medical doctors and scientists were in attendance to observe the process. In 1983, however, the institution of medicine clearly resisted a co-optation into the institution of punishment. This resistance resulted in a reversed labeling phenomenon, whereby the new method was constructed in a manner as to call into question the boundaries of medicine and science. A physician testifying at the 1983 Senate Judiciary Committee III hearings stressed that the lethal injection procedure was an intimate event between the condemned and the medical agent inserting the apparatus. In other words, the insertion of needles into the body is invasive, and requires protracted physical contact between practitioner and prisoner. Normally, the practice of medicine *to heal or treat* requires such intimacy, and the institution of medicine thrives on such a philosophy (Curran, *et al.*, 1980;

Gorman, *et al.*, 1988). However, when the social distance between medicine and punishment is closed, as in the case of lethal injection, the *meaning* of medicine becomes ambiguous. Truog and Brennan (1993) explain:

...the context of the act is the critical feature...From the communitarian viewpoint, medicine defines a moral sphere within which medical activities have special meaning. The execution of a condemned criminal lies far outside the medical sphere. A physician's participation in that execution does nothing to promote the moral community of medicine. Indeed, such participation offends the sense of community by prostituting medical knowledge and skills to serve the purposes of the state and its criminal justice system...Medicine is at heart a profession of care, compassion, and healing. Physician-assisted capital punishment does not encompass these virtues (p. 1348).

Gorman, *et al.* (1988) further note:

The use of a well-known medical tool, general anesthesia, for execution blurs the distinctions between healing and killing, between illness and guilt. That is why it would be effective in easing the distress of those involved...Lethal injection, because it blurs these distinctions, is as much a perversion of medicine as is using doctors to perform executions. The integrity of society is much better protected with traditional means of execution, such as the electric chair, the gas chamber, or the firing squad. They leave no doubt that the act was one of punishment, not of healing, and that the subject was a convict, not a patient (pp. 576-577).

While the debate over medical ethics and executions could be discussed in far greater detail here, it is important to focus on the sociological implications of the medical resistance during the lethal injection debate in 1983. Throughout much of United States history, physicians and medical professionals have been, to some degree, involved in the execution process (Curran, *et al.*, 1980; Ragon, 1995). Physicians supported the use of electrocution during the 1880s, and as evidenced in Chapter Six, were integral in redefining lethal gas as a scientifically advanced form

of punishment. Throughout the 19<sup>th</sup> century and into the 20<sup>th</sup> century, the profession of medicine developed into a highly revered social institution. Medicine became the defining body for understanding social phenomena, so naturally, great deference was afforded the profession (Starr, 1982). This is still true of modern medicine, and the medicalization of countless social ills, such as alcoholism and the like, bears this out (see Conrad & Schneider, 1980; Zola, 1975).

### **7.1.8 Explicit Versus Implicit Medical Dramaturgics**

What separated the shift to lethal gas and the shift to lethal injection was the degree to which medicine was required to be *involved*. The lethal gas process required no contact between physician and condemned – the stethoscope was attached to the prisoner’s body, then inserted through a portal in the wall into an adjoining observation room where the physician monitored the prisoner’s heartbeat. To continue, the physician never participated in the attachment of restraints such as straps, buckles, or hoods. Furthermore, the gas was administered through the manipulation of a lever outside the execution chamber. In other words, the physician played no role in mixing, dispensing, or administering the lethal substance. Finally, medical intervention ceased at providing scientific or technological advice – the offering of medical knowledge alone was the extent of participation other than certifying the death of the inmate.

The lethal injection execution process requires a much different set of criteria. First, the physician and prisoner are required to endure protracted contact – the insertion of intravenous lines is indeed invasive, and cannot be performed from afar. If an intravenous line cannot be established, the medical professional must perform a “venous cutdown”, whereby the vein of the inmate is exposed through an incision, then cannulated once outside the body (Curran, *et al.*, 1980: 229). The physician is also required, in some instances, to conduct a pre-execution physical examination of the prisoner. This involves the administration of a sedative if the inmate so chooses. Finally, and most importantly, is the direct use of medical equipment and technology. The electric chair, lethal gas chamber, and other forms of execution do not, in any way, resemble medical props. If anything, the lethal gas chamber and the electric chair more closely parallel bulky pieces of industrial machinery. The lethal injection chamber, however, is strikingly clinical in appearance. Prisons typically procure their equipment from medical supply companies, so the apparatus used is the same equipment used in hospitals and other medical settings. The chemicals used to put the inmate to death are the same used in surgical procedures – sodium thiopental,

pancuronium bromide, and potassium chloride – although North Carolina only uses two of the three (North Carolina Department of Correction).

The constructive process of lethal injection, then, involved more explicit than implicit dramaturgics in 1983. Not only was the veneer of medicine called upon to redefine a form of execution, the institution of medicine *itself* was absorbed into the administration of punishment. Medical expertise was first used to denounce the qualities of hydrocyanic gas, then was used to construct a more humane, palatable, and acceptable method of institutionalized killing. This construction, however, did not cease at the mere request for scientific knowledge and advice. The new form of punishment was entirely redesigned to mirror a clinical procedure, complete with medical technology, props, and environments. To continue, physicians were asked to be active participants in sanctioned, institutionalized violence – this breach of social institutional boundaries called into question the meaning of punishment as well as the socially constructed limits of modern medicine.

To summarize this important point, the construction of the lethal gas chamber in the 1935 legislature relied solely on the use of scientific *language* and *terminology*. For example, the gas was likened to ‘anesthesia’, and the lethal substance was to be ‘administered’. Medical professionals called upon to consult the General Assembly consistently likened the execution method to a ‘surgical treatment’, or compared the experience to that of a ‘dental visit’. Lethal gas was described as being ‘absolutely painless’ and ‘invisible and odorless’. On the other hand, the 1983 legislative construction of lethal injection involved not only the use of language and terminology, but the explicit absorption of the practice of medicine as a whole. This included the use of medical expertise, participation in the execution by physicians or other healthcare agents, and the adoption of medical equipment and props such as catheters, gurneys, and medications. Thus, while lethal gas was indeed defined as deviating from acceptable norms of state-sanctioned death, the repugnance of cyanide gas was somewhat marginalized in light of the newer method’s qualities. As indicated earlier, this became a more problematic point of contention in the legislature than the issue of lethal gas itself.

## **7.2 POST-ADOPTION CONSEQUENCES OF RECONSTRUCTION**

The redefining of an extant method of execution as deviant, and the subsequent adoption of a newer method, is not without social consequences. In Chapter VI, evidence was presented which

indicated a clearly unexpected result in the first use of the lethal gas chamber in 1936. The Allen Foster lethal gas execution in January of that year revived the debate over what method of execution was more befitting of North Carolina's progressive philosophies. Gas executions following the Foster ordeal were inconsistent at best – while some executions provided little in the way of graphic effects, others revealed unexpected symptoms of dying by cyanide asphyxiation. These unexpected results worked against the manner in which lethal gas was constructed in the legislature in 1935, thus calling into question the qualities and characteristics of the method. In essence, what constituted an acceptable way to kill a human being again became a resurrected point of contention.

### **7.2.1 Post-1935 Dialogue**

By 1937, just one year after the State's first use of the lethal gas chamber, the North Carolina General Assembly was once again faced with the issue of how to conduct executions in a manner as to conform with the State's image of itself. The July 5, 1938 edition of the *News & Observer* aptly noted that while lethal gas was first proposed as a more humane method of execution, its effects after use actually brought the death penalty "...into greater public consciousness" (p. 14). The 1937 legislature saw two bills introduced which spoke directly to the issue of the death penalty – one bill proposed complete abolition of capital punishment, and the other proposed a return to the electric chair. Both bills were defeated, however the newspaper noted that negative public sentiment, most likely arising from consistent media exposure regarding the effects of gas, was largely responsible for the introduction of the legislation. Governor Clyde Roarke Hoey, who served from 1937 to 1941, was quoted as saying that "...the General Assembly would be justified in authorizing the return to the electric chair" (ibid.). The *News & Observer* article also noted that there were firm legislative intentions of re-introducing the idea of electrocution in the 1939 General Assembly.

Governor Hoey's office received several letters from concerned citizens throughout 1938. One woman wrote, "In my opinion, it [the gas chamber] has been the greatest torture inflicted upon man since the age of the rack and screws..." (Letter dated July 3<sup>rd</sup>, 1938). Another citizen expressed his feeling that the gas chamber should be retained because it didn't disfigure the body. Hoey's retort, in part, read:

I have thought a great deal about the death

penalty and the most humane method of enforcing it. I have had the matter investigated rather fully, and the preponderance of opinion seems to be that electrocution is much more humane than asphyxiation. This represents both lay and medical opinion (Letter dated July 7<sup>th</sup>, 1938).

Hoey was clearly concerned about North Carolina's continued use of lethal gas, and urged the legislature to consider a return to the electric chair in the 1939 session. His position was evident in the following excerpts from a letter sent in response to a citizen's request for information regarding execution methods. The retort was drafted by the Governor's personal secretary:

As perhaps you know, North Carolina is one of the few states which has adopted the lethal gas method of execution. The change was made from electrocution to asphyxiation about three years ago, and, of course, the purpose of the change was to find a more humane method of execution. However, in the Governor's opinion, asphyxiation is slower, and consequently far less humane than electrocution, and for that reason he already has recommended that the next legislature consider return to the electric chair. Yours very truly, Robert L. Thompson, Private Secretary (Letter dated October 14<sup>th</sup>, 1938).

Hoey's biennial message to the General Assembly on January 5, 1939, further solidified his position on the use of the gas chamber:

#### THE DEATH PENALTY

Another matter worthy of your consideration is the possible change from the gas chamber to the electric chair as a means of execution. Those who witness the executions are practically unanimous in the view that the electric chair produces death almost instantaneously and is more humane. I share this view. The State continues to kill in the death chamber and, sad to relate, people continue to commit capital crimes in increasing numbers on the outside (Addresses,

Letters, and Papers of Clyde Roarke Hoey, 1937-1941: *Messages to the General Assembly*, p. 49).

Hoey's position in the 1939 biennial address was twofold – he expressed concern regarding the use of the gas chamber, however he also alluded to the possibility that capital punishment was not entirely effective as a deterrent to North Carolina's violent crime problem. From the contents of the message, the possibility exists that Hoey himself was an opponent of the death penalty, given the fact that he was more outspoken about the issue, and tended to voice his concerns in the newspapers on a more regular basis than Governor Ehringhaus, his predecessor.

The Governor was not the only public official concerned about the continued use of the lethal gas chamber in the late 1930s. Former Central Prison Warden H. H. Honeycutt agreed with Hoey's position on the humaneness of lethal gas:

I'm heartily in favor of going back to the electric chair. The gas chamber is horrible. Gas is so long and drawn out; electricity is over in a minute. I believe most of the men on death row would rather die by electricity than gas (*The Salisbury Herald*, July 4<sup>th</sup>, 1938, page illegible).

Central Prison's Deputy Warden John Bray concurred with Honeycutt when he remarked, "It's [electrocution] all over in a hurry. From the day I saw the first victim die in the gas chamber, I've been opposed to asphyxiations" (ibid.). The February, 1938 execution of Edgar Smoak illustrated the Governor's and prison officials' concerns:

Smoak's pointed face, fatter, though than it was during his trial in Wilmington in 1936, jerked skyward at his first whiff of the gas and his lips muttered, "O Lord help me!" as he inhaled the fumes. His bare thighs quivered in broad movement for about 30 seconds. Then his whole body lifted in one big heave, his tongue extended from his mouth and his face became red, then purple. In two minutes, his head had rolled to the side and only spasmodic gasps and convulsive swallows followed. He gave his last gasp after about five minutes and was pronounced dead at 11:33 – 13 minutes and 33 seconds after he first reacted to the gas (*News & Observer*,

February 19<sup>th</sup>, 1938, pp. 1-2).

Smoak's execution was part of a double lethal gassing that day – the prisoner preceding him into the death chamber, Milford Exum, was reported to have taken nearly seventeen minutes to die, "...the longest time on record [at the prison]" (ibid., p. 1; North Carolina Department of Correction).

On January 10, 1939, just five days after Governor Hoey's address to the General Assembly, the legislature was once again charged with debating a bill to replace the lethal gas chamber with the electric chair. Interestingly, an amendment to the bill suggested a "sleeping death", whereby the condemned prisoner would be put to sleep with an injection prior to gassing or electrocution (*News & Observer*, January 11<sup>th</sup>, 1939, p. 1). On January 16, 1939, an article in the *News & Observer* indicated that Reverend Lee C. Sheppard of Pullen Memorial Baptist Church opposed the "sleeping death" because it illuminated North Carolina's "uneasy conscience" about the administration of state-sanctioned death (p. 12). Sheppard's sentiment prophetically illuminated how a society legitimizes the use of a method of punishment, and its image as a whole, by painting the method of death in more palatable colors. A few days after Sheppard's commentary, the bill to replace lethal gas with electrocution was sent before the House Judiciary Committee I for debate. Central Prison officials called to testify at the hearing indicated that lethal gas, *not* electrocution, was more favorable because electrocution required degrading, pre-execution rituals. Warden H. H. Wilson told newspaper reporters that "...shaving heads, dampening them, fixing the electrodes and drawing a black hood over the victim's face in preparation for execution is more terrifying than asphyxiation..." (*News & Observer*, January 17<sup>th</sup>, 1939, p. 16 ). A physician present at the House Committee concurred by adding that, "...asphyxiation is devoid of many disagreeable steps necessary for an electrocution" (ibid., January 18<sup>th</sup>, 1939, p. 14).

After hearing testimony for a good portion of the day, legislators defeated the bill to replace the newly adopted lethal gas chamber with the electrocution. The prison's chaplain, E. C. Cooper, later voiced his opposition to the electric chair and the "sleeping death" proposal because "...during the first 30 or 40 seconds while he [the inmate] is losing consciousness [from gas], he usually is asking for forgiveness and is for the first time seeing things in their true light" (*News & Observer*, January 27<sup>th</sup>, 1939, p. 2). The bill to abolish capital punishment in the 1939 North Carolina General Assembly was defeated on February 10, 1939. Editorials from readers

continued to fill the newspapers for the next several years, including this excerpt from a piece entitled “Hanging and Humanity”:

I don't hear of people committing suicide by inhaling fumes of hydrocyanic gas, neither do I hear of people committing suicide by electricity, but often you see in the papers where some person has committed suicide by hanging. Surely some tortured soul that after much deliberation was seeking the easiest way out  
(*News & Observer*, February 23<sup>rd</sup>, 1939, p. 4).

The author of the editorial, a physician, made an interesting observation toward the end of the article by asserting, “The people who commit crimes are not generally readers of newspapers, so know little or nothing of the methods used today in the execution of criminals” (ibid.). This is a striking statement, because it brings to light the frequent argument that changes in execution methods and rituals are indeed for those meting out the sentence, not for those receiving it (see Haney, 1997; Johnson, 1997; Masur, 1989).

The negative sentiment arising from North Carolina's adoption of lethal gas continued well into the 1940s. As previous paragraphs indicated, several legislative attempts were made to replace the lethal gas chamber with the electric chair, however those efforts failed. In 1941, the following excerpt from an piece entitled “Torture Chamber” appeared in the *News & Observer*. Interestingly, the article did not originate in North Carolina – instead, it first appeared in the *Baltimore Evening Sun*, and was placed in the Raleigh paper as a reminder to citizens that other states had taken notice of North Carolina's dilemma in finding an appropriate method of execution:

The object of the lethal gas chamber, however, is hard to understand. Almost every account of an execution by that method describes how the victim screamed, writhed, ran about, and after holding his breath as long as he could, grimaced in paroxysms of agony, sometimes for considerably more than a quarter of an hour. That is torture. That is not a quick and tidy way to administer the death penalty...Perhaps it is a little overdrawn, for no execution is pretty. At its best, the taking of a human life is a serious and debatable business. But certainly

when the State assumes responsibility for the killing, all the people of the State must share responsibility for the method...The gas chamber at the State Prison was installed in good faith in the name of humanity. That it actually provided a more humane method of death than electrocution was rather warmly disputed at the time. But there is little room for dispute after several years of experience...North Carolina wants no 'torture chamber' (June 6<sup>th</sup>, 1941, p. 4).

By 1942, even while the public's attention was turned toward the events in World War II, horrific accounts of death in North Carolina's lethal gas chamber still managed to find themselves in the first few pages of the daily news. Roland Wescott's January 9, 1942 execution was depicted as "gruesome" and "ugly" (*News & Observer*, January 10<sup>th</sup>, 1942, p. 2). The article contained the all-too-familiar details of past asphyxiations:

His round, full face was pale and twitching when he entered the chamber. As he began to inhale the gas, gasps and groans could be heard through the thick glass panel that separated him from the spectators. He struggled in his chair and beat his arms and legs against the wood and the leather straps that bound him. Before going in, he had said he would prefer to be shot by a firing squad rather than face the tiny, triangular death chamber (ibid.).

Almost a year to the day after the Wescott execution, North Carolina's General Assembly was again, for the third time in six years, debating a bill to abolish the gas chamber and return to the electric chair (*News & Observer*, January 12<sup>th</sup>, 1943). Although the newspaper gave no motive behind the reintroduction, it is safe to assume that continued media exposure of the gas chamber, and the growing ambiguity of the benefits of the death penalty, were likely catalysts. The paper also indicated that, "The bill was the chief item of general interest [in the legislature]" (ibid., p. 1). Nine days after the introduction of the Chaffin Bill, named after its sponsor, the Senate defeated the proposal by a 7-1 vote. While prison officials in the 1930s appeared to have favored electrocution, Central Prison's Warden R. A. Bridges indicated that in his opinion, gas was the preferred method because electrocution leaves the body in such a poor state of condition. Prison

physician Dr. W. G. Cheves believed that death by gas "...more clearly approaches natural death" (*News & Observer*, January 20<sup>th</sup>, 1943, p. 14). Although Chaffin's bill was defeated, he later remarked that, "...if the State is going to carry out capital punishment, it should be made as easy as possible" (*ibid.*). The comments by physicians, prison officials, and legislators in the late 1930s and into the 1940s spoke to an issue vital to the theoretical position of this study. The manner in which state-sanctioned death is administered functions as an agent which characterizes how a particular society views the ending of life. The image and philosophies of the State are illustrated in the method by which it disposes of its condemned population, therefore a death that is 'easy', 'painless', and 'natural' is more easily rendered and justified.

### **7.2.2 Post-1983 Dialogue**

While the consequences of shifting to lethal gas were still very apparent several years after the 1935 legislative session, the 1983 change to lethal injection produced little in the way of public reaction to the new method. The 1960s and 1970s were a turbulent time period with regard to the use of the death penalty, and most of the focus on the sanction centered around moral implications and issues of constitutionality (Haines, 1996). Throughout the early 1970s, North Carolina had endured rising violent crime rates, partially a result of "soft on crime" politics during the first few years of the decade (Walker, 1998). The State's death penalty statutes had been found unconstitutional by the United States Supreme Court, and in the meantime, a "tough on crime" political stance had been set in motion. Thus, North Carolina quickly sought to have its capital punishment laws reinstated in order to firmly communicate its intolerance to the criminal element.

By the time the lethal injection bill was proposed, the State had not conducted an execution since 1961 – thus, it is understandable that much of the public debate would center around death as a matter of 'right and wrong', not death as a matter of 'process'. The lethal gas chamber had not been an object of attention for quite some time, however the death penalty *itself* had been placed center stage for the six years leading up to the proposed adoption. Given that the gas chamber had been largely invisible to the public eye and the media prior to the Davis Bill, the method had not succumbed to the consistent scrutiny that the electric chair endured throughout the 1920s and 1930s. This pattern of unremarkable attention to the new method continued well after its adoption, and parallels Shipman's (1996) argument that due to the seemingly benign

qualities of the procedure, interest in the method soon wanes and shifts back to the moral implications of the punishment. After the execution of John Rook on September 19, 1986, one witness said, “This is so non-painful that unless you are a sensitive person, people could watch this and say, ‘So what?’” (*The Spectator*, October 2<sup>nd</sup>, 1986).

The sterile nature of lethal injection was criticized in the legislature as being somewhat of an antithesis to harsh punishment. Perhaps the November 2, 1984 execution of Velma Barfield best illustrated the concerns of lethal injection opponents that the method would characterize state-sanctioned death as ‘easy’ and ‘soft on crime’. Barfield, a fifty-two year old grandmother, had been convicted of murdering her fiancée with rat and roach poison, and later confessed to the murders of four other individuals, including her mother (Gillespie, 1997). Between June 1 and September 21, 1984, the Governor’s office received a total of 4,798 letters from the general public regarding her execution. Out of 3,591 North Carolinians who wrote the Governor, nearly 3,000 favored the execution (Memorandum to the Honorable James B. Hunt from the Governor’s Office of Citizen Affairs, 9/26/84: Calls and letters concerning Velma Barfield). Most out-of-state writers, however, opposed it, and it is unknown whether this opposition was the result of Barfield’s being a woman. Her execution would stand as the first of a woman since California executed Elizabeth Duncan in 1962 (Gillespie, 1997). For all intents and purposes, the Barfield execution was indeed described as a non-punishment – she walked to her death “...dressed in pink cotton pajamas and wearing blue slippers” (ibid., p. xvi).

North Carolina executed one prisoner in 1991, and one in 1992 – both condemned men chose lethal injection rather than death by lethal gas, and again, most of the media focus and public sentiment was geared toward the nature of the crimes and the moral implications of the punishment (North Carolina Department of Correction). The deterrent effect of a ‘sterilized’ method of execution was again resurrected as a point of contention in the legislature. On February 10, 1994, ten years after he objected to the adoption of the Davis Bill, Senator Frank Ballance once again introduced a bill proposing public executions. The bill, aimed at bringing to light the ineffectiveness of the death penalty, also contained an amendment for a return to the electric chair and the gallows. According to Ballance, these pieces of machinery could be trundled around the State “...using a tractor-trailer” (*Durham Morning Herald*, February 11<sup>th</sup>, 1994, p. 1A). He further commented that, “We’re not doing that many executions right now; but

if need be, we could have two tractor-trailers – one for the east and one for the west” (ibid.). Legislators apparently took Ballance’s bill as a mockery of the system, and newspapers reported that many representatives were “...jocular...” as they continued through the debate. The mood in the legislature quickly changed as Central Prison’s Warden Gary Dixon described the processes of taking a prisoner’s life. After Dixon’s graphic descriptions, the Senate soon realized that the bill contained serious implications – the measure was defeated soon afterward (*Winston-Salem Journal*, February 24<sup>th</sup>, 1994).

On June 14, 1994, North Carolina prepared to conduct its sixth execution since the reinstatement of the death penalty in 1977. This execution, however, would dramatically alter the State’s use of capital punishment, and would cast North Carolina into the national spotlight. David Lawson, a Michigan native who had come to North Carolina in search of his birth parents, was convicted in the early 1980s of the murder of Wayne Shinn and the attempted murder of Shinn’s son. Lawson received the death penalty for the crime, described as a brutal, execution-style shooting in which one of the victims was forced to beg for his life before being shot point blank in the head (*The Executioners*, A&E Documentary, 1995).

As the time approached for Lawson’s execution, one of his attorneys advised him of his option in choosing his method of execution. Unless Lawson submitted his choice in writing, he would be executed by the default method, lethal gas. Another of Lawson’s attorneys, Marshall Dayan, presented him with over sixty witness affidavits from lethal gas executions, adamantly attempting to persuade his client to choose the more painless method. Lawson refused to choose, thus sealing his fate in North Carolina’s gas chamber, a method that had not been used in almost twenty-five years. In a strange turn of events, Lawson agreed to have his execution aired on the Phil Donahue Show in order to “...educate people about the meanness of the death penalty” (*News & Observer*, May 12<sup>th</sup>, 1994, p. A13). “Lethal injection only makes it easier on the state to kill a person”, Lawson said. “It looks like you’re going to sleep. I want them to know they’re killing a human being” (*News & Observer*, May 19<sup>th</sup>, 1994, p. A1). Another attorney representing Lawson remarked:

He [Lawson] feels if people get to see what really happens behind prison walls at 2 o’clock in the morning when capital punishment is carried out, that most people will be appalled by what they see,

that it will take them from an abstract concept to the reality (ibid.).

A third attorney for Lawson stated:

David wants to do something positive to make up for the injury that he's done. If the public wants to see David Lawson dead, then he feels they should see what they're getting for their tax dollars, and then make a decision about whether they want the death penalty (ibid.).

While Phil Donahue was denied the right to film Lawson's gas execution, his show on the eve of the execution focused specifically on Lawson's life, apparently marred by years of depression and chemical imbalance (*News & Observer*, June 15<sup>th</sup>, 1994). In the hours leading up to Lawson's execution, ten satellite television vehicles crowded the Central prison parking lot, and Japanese television news programs aired regular broadcasts regarding the impending event (ibid.). A thirty-seven page program of prayers, hymns, and spiritual readings was distributed to protesters outside the prison, and copies were also made available to inmates if they wanted to participate in the vigil.

Lawson's attorneys lost a last-minute appeal to the United States Supreme Court which claimed that death by gas was cruel and unusual punishment. He was led into North Carolina's lethal gas chamber just before 2:00 a.m., and secured with leather straps in the high-backed oak chair. A leather mask was secured to his face, then affixed to the headrest. The mask is perforated around the nose and mouth to allow for the introduction of gas into the prisoner's body, however is primarily used to keep the inmate's head still during the execution. Marshall Dayan described Lawson's execution, eerily reminiscent of past gassings, in his sworn affidavit:

At about 2:01, I saw a vaporous cloud rise up from the floor, so I knew that the execution had commenced. I saw David inhale deeply, then saw him begin to thrash violently. His forehead turned bright red, then, slowly to ashen white. He cried out loudly, "I am human!" He took another breath, and his leg (right leg, I believe) strained so hard against the leather strap that it broke. I saw a large amount of mucous drop from his nose, and he again cried out loudly, "I am human!" This

continued for about three minutes or so. I heard a young television reporter from Charlotte, North Carolina quietly weeping behind me. After about three or four minutes, he was unable to say the full sentence “I am human”, but was still crying out the word “Human!” about every twenty seconds. He did this for another two to three minutes. After that he couldn’t say the whole word “human”, but he was shouting “hume”. He did this about every twenty seconds for another two minutes. Finally, he couldn’t say even the part of this word, but he continued to grunt about every twenty seconds for another minute or minute and a half. His body continued to quiver for another minute or so, then he was still (February 9<sup>th</sup>, 1999).

It was later learned that the leather strap which broke during the event was partially caused by Lawson’s reaction to the acid mixture as it splashed onto the back of his leg during the first moments of the execution. After Lawson’s execution, plastic ‘splash-guards’ were affixed to the legs of the chair to prevent a similar incident in the future (North Carolina Museum of History). Lawson’s execution had a profound effect on the witnesses present that night – Warden Gary Dixon was said to have been so disturbed by the process that he resigned two weeks later (*The Executioners*, A&E Documentary, 1995).

On January 30, 1998, Ricky Lee Sanderson became only the second inmate since 1961 to die by lethal gas in North Carolina. Sanderson selected lethal gas because he felt “It would make him suffer more” for his crime (*News & Observer*, October 5<sup>th</sup>, 1998, p. A1). While removing Sanderson’s body from the gas chamber after the execution, a correctional officer tripped and dislodged the air tank worn by another staff member. Although no injuries were reported, Central Prison officials petitioned the North Carolina General Assembly to propose a bill banning the use of lethal gas for safety reasons. While some North Carolinians saw the move as “...prettifying death” (*News & Observer*, October 7<sup>th</sup>, 1998, p. A16), Representative Larry Justus stated, “It’s primarily a safety issue, and anything else that’s good about it is a spin-off. I also don’t see any reason to have three or four methods. Some inmates have used gas to make a statement or showboat” (*News & Observer*, October 5<sup>th</sup>, 1998, p. A4).

A statutory amendment to North Carolina General Statute 15-187 was signed into law on October 28, 1998, abolishing lethal gas as a method of execution. An unpublished opinion found in California's Fierro v. Gomez (77 F. 3d 301 [9<sup>th</sup> Circuit, 1996]), which argued lethal gas as a cruel and unusual method of execution, summarized the national legislative trend toward complete abolition of the practice. The opinion began by asserting:

There is a national consensus rejecting the use of the gas chamber as an acceptable method of execution. Since capital punishment was reenacted following the United States Supreme Court decision in Gregg v. Georgia, 428 U.S. 153 (1976), the overwhelming majority of states that used cyanide gas as a method of execution prior to Gregg have abandoned or rejected the use of lethal gas as a method of execution (No. C-92-1482 MHP, p. 42).

The opinion continued by indicating that in 1970, "...lethal gas was the second most widely used method of execution, following the electric chair" (ibid.). During that year, thirty-nine states had capital punishment statutes – in ten of those states, lethal gas was the sole method of execution. By the time the Fierro case emerged in the early 1990s, thirty-six states had death penalty laws, however only one (Maryland) retained lethal gas as its sole method of execution. All other states had either adopted lethal injection, retained the electric chair, or offered the option of lethal injection alongside an extant method (ibid.). From 1970 until the Fierro litigation, no state had adopted lethal gas as its preferred method of execution, and it appeared to have lost its "innovative" appeal during that twenty-year time span (ibid., p. 44). The opinion further noted that of the 226 executions which had been conducted nationally between 1976 and 1994, "...only eight had been conducted by the administration of lethal gas" (ibid., p. 46). As of mid-March, 2001, all nineteen executions in the United States had been conducted by lethal injection (Death Penalty News and Updates: 2001 Executions in the US [On-line]).

The Fierro opinion clearly bore out the fact that legislative behavior has differed with regard to electrocution versus lethal gas, given that abandonment of lethal gas occurred at a much higher rate than the abolition of the electric chair throughout the late twentieth century. The opinion in Fierro stressed that, "The pattern seen with electrocution states reflects the powerful force of legislative inertia; the movement away from lethal gas deviates dramatically from the expected

pattern” (ibid.). To continue, the opinion added that, “The gas chamber is widely viewed as an antiquated mode of execution, causing a slow, painful, and inhumane death” (ibid.). This corresponds with another observation – that the appeal and attractiveness of lethal injection, at face value, should have an equal effect in legislative shifts from other methods of execution, not just gas. However, as the Fierro opinion notes, “If the attractiveness of lethal injection were the *primary* motivation for the change in methods, then those states using electrocution would be switching to lethal injection at a rate comparable to those using gas” [my emphases] (ibid., pp. 46-47).

This commentary speaks to the seemingly inherent distasteful qualities of the gas chamber itself, not just to the benign characteristics of lethal injection. Finally, and relevant to the 1998 North Carolina abolition of gas, is the claim that concerns over safety motivate legislatures to shift away from asphyxiation. The Fierro opinion noted:

...Nor can the flight from gas be adequately explained by safety concerns. Those same concerns would have been present in the 1930s – 1960s; however, no dramatic shift from gas is seen at that time. In addition, of the eight states other than California that had changed from lethal gas as the sole method at the time of trial [Fierro], three still provide lethal gas as an option...and two methods are likely more expensive than one. This indicates that safety is not the primary factor influencing the move from lethal gas (ibid., p. 47).

Again, while safety concerns were reported as being the primary catalyst behind North Carolina’s repeal of lethal gas in 1998, it is quite possible that the aftermath of the Lawson execution had not entirely been forgotten. In addition, David Lawson and Ricky Lee Sanderson had both requested to die by lethal gas in order to make firm statements to the State – that if the State’s people chooses to execute its condemned by a particular method, that method should be exposed to the public in order to shed light on its true effects. If not, the method remains an abstraction of the realities of ritualized death, and its impact on the image of the State is never truly recognized.

### **7.3 A SOUTHERN PROPHECY**

During the 1939 General Assembly debate to abolish North Carolina's death penalty statutes, playwright and Pulitzer Prize winner Paul Green told legislators that in the future, "the death chair would become a symbol of ignorance and horror" (*News & Observer*, February 11<sup>th</sup>, 1939, p. 1). He continued his eloquent testimony this way:

Some day the electric chair and the gas chamber will be set up in the State Museum as symbols of an age of horror and ignorance. School children will look at them and feel superior to us as they look back upon an era of ignorance. They will be superior to us. If the Legislature could make some step in the direction of justice – and I mean justice – to the Negro and the poor white, it would do a great service to the South (ibid.).

On August 2, 2000, maintenance personnel at North Carolina's Central Prison removed the gas chamber chair from the confines of the death chamber, placed it in a large wooden crate, and loaded it into the back of a truck. The following day, the front page of the *News & Observer* contained the headline, "Death Chair Now Museum Piece".

## CHAPTER VIII

### DISCUSSION

#### **Introduction**

This chapter is a brief summary of the results in light of the theoretical structures presented in these pages. Also included will be a review and discussion of the sociological perspectives that have been useful in examining the topic matter presented. The chapter will also address any similarities or differences between this study and previous research which has made use of similar theories and perspectives. This dissertation's contributions to the extant body of sociological theoretical literature will also be addressed.

#### **8.1 Summary of the Findings**

This research set out to explore and describe two legislative shifts in execution methods in North Carolina. These shifts were driven by dynamic, ongoing negotiations and reconstructions of the social meanings attached to state sanctioned death. In the 1930s, the deterrent effect and overall effectiveness of the death penalty were largely unknown, drawing much of society's attention toward the method of execution used. The public derived many of its perceptions and definitions of the realities of capital punishment through increased press exposure of the method. The language and vivid descriptions of death in the electric chair appeared to have generated images which directly conflicted with the State's more progressive ideologies regarding punishment and death.

This imagery and subsequent conflict between act and values resulted in a multi-faceted negotiation process whereby various social influences contributed to the labeling of a form of institutionalized violence. These agents included the press, private citizens, humanitarians, politicians, the medical community, and death penalty opponents. Seeking to parallel a progressive ideology with a mode of punishment, the legislature drew heavily upon the institutions of science, technology, and medicine to redefine a more acceptable form of execution. Through the use of dramaturgics and language, the new method was couched in a technologically advanced veneer which initially supplanted the images and realities of the former method. In the post-adoption years, however, the evidence showed that these strategies of negotiation appeared to have failed, largely due to the unpredictability of the gas chamber. This

disruption in meaning created a sense of increased ambiguity regarding the use of the death penalty in the years following 1936.

The 1983 lethal injection transition yielded quite dissimilar findings. The evidence suggested that North Carolina's attentions were primarily focused on the recent reinstatement of the death penalty in 1977. Because an execution had not occurred since 1961, the lethal gas chamber had largely become a non-issue. Instead, the death penalty as a matter of right and wrong appeared to have been the primary point of social contention, as evidenced by the media and citizens' correspondence during the late 1970s and early 1980s. The labeling process of the lethal gas chamber was initially perpetuated by the efforts of one individual who sought to adopt a more humane method of execution. Given that the media and the public had not afforded much attention to the qualities of the gas chamber, reconstructive dialogue and strategies largely arose and took place once the legislature convened.

The redefinition of a method of punishment again relied heavily on the contributions of medicine and science. North Carolina's stern anti-crime philosophies of the early 1980s, however, proved to be problematic during this process. The nature of lethal injection appeared to have been in direct conflict with a "tough on crime" ideology which permeated the State during the era. In addition, because of the clinical features of the proposed method, the definition of punishment itself became a major point of contention. The reliance on more explicit medical knowledge and participation blurred the meaning of execution as an ultimate social sanction. The perceived non-violent characteristics of lethal injection deflected media and public attention away from the method after its adoption, and served to refocus the meaning of punishment on issues of effectiveness.

## **8.2 Functionalism and State-Sanctioned Death**

As discussed in earlier chapters of the dissertation, the functionalist perspective has been a useful foundation on which to build the remaining theoretical position of this study. In the spirit of Durkheimian functionalism, institutional rituals are means by which values are reinforced and affirmed in society, and thus integrated into our public lives. Executions stand as one facet of a state's institution of justice, and more importantly, can be viewed as institutionalized productions of violence. The methods of execution used to take the life of a condemned prisoner are indeed one part of the state-sanctioned ritual of dispensing death. Thus, the method by which the state

employs to kill its undesirable criminal element functions to illuminate and perpetuate that state's value system with respect to the use of violence, death, and punishment. These rituals also function to provide a sense of order, understanding, and meaning to the event.

While functionalism is a viable theoretical perspective in examining the meaning of execution ritual, interactionism and dramaturgy were considered more suitable perspectives for this study, and thus will remain the primary features of this discussion. The basis for this assertion stems from several criticisms of the structural-functionalist perspective specific to explaining change in execution methods. First, Durkheimian views of ritual tend to be more applicable to pre-industrialized societies where value consensus and social cohesion are established social features. To continue, the death rituals that Durkheim spoke of were heavily informed by religion – thus, his theoretical approach is inadequate for examining more contemporary ritualistic behaviors (Durkheim, 1965, orig. 1915; Moller, 1996).

Functionalist perspectives also tend to be ahistorical and inattentive to the dynamic impetus for social change (Lemert, 1981; Tumin, 1985). As discussed in Chapter II, Foucault (1977) used a structural-functional perspective to examine changes in execution ritual in Europe (Discipline and Punish: The Birth of the Prison). While the findings in his analysis were attentive to the manner in which language and power transformed modes of punishment, execution rituals were, in his view, transformed entirely out of *political concern and motivation*. Smith (1996) explains:

Foucault's structuralist logic leads him to treat his own insight into the intersection of history, action, and semiosis as an under-theorized residuum of data that is analyzed in terms of its political rather than cultural implications...[It is suggested] that a shift in analytical focus can pay dividends by bringing action and meaning in from the periphery to the core of analysis – opening the prospect of a more multidimensional explanation of a complex historical transformation (p. 238).

From a structural-functionalist perspective, then, this dissertation took Smith's (1996) criticisms into account by acknowledging other sources of social influence which may have impacted or driven political motive in transforming meaning. In addition, political motives are heavily influenced by cultural philosophies at any given moment in time. As Smith (1996) concludes:

...reformers and state ideologists were less concerned with the political consequences of public executions than with their symbolic decorum, and above all their power to transform and discipline the inner, moral life of the citizen. Because reformers and state ideologists were more concerned with sentiments, propriety and solemnity, reforms were directed in response to a peculiarly *cultural* crisis of semiosis and interpretation (knowledge) rather than towards an incipient political crisis [his emphases] (p. 238).

In a similar vein as Foucault (1977), Giddens (1985) interpreted the transformation of punishment as a consequence of "...the expansion of administrative power" (p. 188). In other words, Giddens took a Weberian stance toward the shift in modes of punishment, arguing that public, theatrical displays were eventually supplanted by private events in order to illustrate the state's "...figurative and material imprisonment of the individual" (Smith, 1996; see also Spierenburg, 1984). By specifically concentrating his interpretation of the transformation of punishment on the relationship between the criminal and the state, Giddens overlooked the *role of meaning* and how societal ideology factors into the process of changing meanings of social situations. While legislative shifts in methods of punishment may initially appear to be politically driven, there are indeed other social forces at play. Thus, at the macro level, this study considered the variance of societal ideology, the concept of human agency, and the important issue of recognizing extra-political motivations in the dialectical process of transforming meaning within a society over time.

### **8.3 The Interactionist/Dramaturgical Foundation**

There is a wealth of extant sociological literature which has utilized and applied interactionist/dramaturgical approaches in the study of deviant behavior (Alotta, 1985; Bryant, 1990; Goffman, 1959, 1961; Haines, 1992; Haas & Shaffir, 1982; Unruh, 1979). While great strides have been taken to include organizational acts within the auspices of the study of deviance, most research has tended to focus on individualistic forms of deviant behavior such as alcoholism, compulsive gambling, and spousal battering (Conrad & Schneider, 1980; Kurz, 1987; Rosencrance, 1985).

Given that executions are state-sanctioned acts of institutionalized violence, they can be viewed much in the same light as other organizational behaviors that are subject to deviant labeling (Charmaz, 1980). These include acts such as organized crime, political malfeasance, corporate wrong-doing, and police corruption (see Bryant, 1990; Ermann & Lundman, 1978). Most interactionist examinations of institutional deviance rely on the premise of norm violation – that is to say, the act in question has violated or breached a social rule of expected behavior, and thus becomes subject to negative sanction (Bryant, 1990; Dotter & Roebuck, 1988; Ermann & Lundman, 1978; Traub, 1985). Drawing on this notion, this dissertation has posited that the institutional act of execution, in the *manner in which it is carried out*, can violate social norms regarding the dispensation of state-sanctioned death. These norms, however, are contingent upon where a society is situated spatio-temporally. To continue, traditional sociological explanations of organizational deviance do not account for a) the absence of intent to commit a deviant act in certain instances, and b) specific sources of the labeling. These observations are deserving of further discussion.

Ermann and Lundman (1978) posited a model for examining the process by which institutional acts become labeled as deviant. While this model is useful in sociological explanations of white-collar crime, organized mob activity, or political misconduct, it is somewhat insufficient in accounting for or addressing institutional acts which have no apparent malicious agency, such as the case presented in this study. Another example to illustrate this issue could be the banning of certain extreme fighting competitions in modern society. The act in question – unbridled, unregulated violence – simply becomes a behavior within the institution of sport which violates social norms of ‘acceptable’ athletic competition. In other words, there appears to be no inherent motivation within the ranks of the organization to commit a deviant act. Thus, in more traditional analyses of organizational deviance, there seems to be an assumption of institutional intent or agency in committing the act in question. This differs greatly from individualistic forms of deviant behavior, in which the subject in question may not realize he or she is violating a social norm (see Bryant, 1990; Goffman, 1959, 1961).

This dissertation is both similar and dissimilar with past sociological research focusing on the ritual of execution. Although the extant literature is scarce, it greatly informed the position of this study. The work of Lofland (1975) and Haines (1992) addressed the importance of dramaturgics

as a strategy for legitimizing state-sanctioned death and establishing socially acceptable meaning to the execution. Both studies attend to the manner in which execution rituals are transformed through the manipulation of environments, machinery, timing, and protocol, and also allude to how these dramaturgics can reflect social sentiment. On the other hand, while both researchers draw attention to decreasing public approval of certain methods of execution, there is little focus on how this social dissent manifested itself. This dissertation has attempted to expand on the work of Lofland (1975) and Haines (1992) by specifically identifying viable sources which dialectically operated in the institutional labeling process.

While the media was not a solitary factor in the labeling of execution methods in North Carolina, its impact in conveying social definitions and meanings to the public was an integral theoretical component of this dissertation. As Jorgensen (1990) noted, “What information is available to the general public and even to many experts derives from the media...The media control access to decision-making information, and they supply certain images and labels” (in Bryant, 1990, p. 232). Given the importance of the media as an agent for conveying, maintaining and transforming socially constructed meaning, this dissertation relied heavily upon the literature generated within the realm of journalism and political science (Leff, 1994; Madow, 1995; Shipman, 1996). In a similar analytical fashion as Madow (1995) and Shipman (1996), one part of this study focused on examining the manner in which execution rituals and methods were described and constructed in historical and more current newspapers and magazines. While Madow’s (1995) analysis centered around 19<sup>th</sup> century New York newspaper reporting, Shipman’s (1996) research more closely paralleled the analysis used in this dissertation – that is, a more historical, comparative examination of how social context informed the media’s construction of a method of punishment.

The research of Shipman (1996), Leff (1994), and Jorgensen (1990) all attend to the notion that the press serves as an agent of conveying meaning to society. Drawing upon these assertions, it can be said with a good degree of confidence that the media is an active participant in the deviant labeling process. The general public, however, is a receptacle for the information disseminated by the press. As mentioned in previous paragraphs, both Haines (1992) and Lofland (1975) alluded to the notion of public disfavor with regard to methods of execution, and their analyses concluded that the dramaturgics employed to transform these methods largely derived

from this sentiment. The theoretical position in this dissertation made an attempt to account for the continuation of the labeling process *beyond* the press. In other words, while previous research has insinuated the impact of the media on the society in question, this study offered empirical evidence in the form of extra-media dialogue to bolster that assumption.

Interactionist and labeling approaches used in the study of deviant behavior have been criticized for their tendency to be ahistorical as well as insufficient in explaining the etiology for certain deviant acts (Dotter & Roebuck, 1988; Lemert, 1981; Tumin, 1985). For instance, while studies such as Sijuwade (1996), Turner and Edgley (1976), and Unruh (1979) dramaturgically analyzed the manner in which meaning is maintained, perpetuated and constructed in social situations, there is little room for historical or future generalization to similar incidents. Given that the social-constructivist paradigm views meaning as relative to culture and time, societal propensities toward equalizing ‘act’ with ‘ideology’ should be of some concern when using or applying interactionist theories and perspectives (see Tumin, 1985). Thus, it is argued that this dissertation has expanded traditional dramaturgical considerations by introducing the components of historical comparison and social context.

### **Summary**

While not the key theoretical features of this dissertation, structural-functional perspectives such as those proffered by Durkheim (1915), Foucault (1977), and Giddens (1980, 1985) are crucial in establishing a viable foundation for the remaining sociological perspectives relied on in this study. Because this endeavor stands as a comparative social history, the existence of a larger social structure must be accounted for and acknowledged insofar as ideological framing is concerned. In a broad view, each of these perspectives identify the social functions of punishment rituals – these range from maintaining social cohesion to establishing the continued omnipresence of state power.

Attention to meaning and extra-political agency has tended to be overlooked in some sociological functionalist analyses of the transition of executions (Foucault, 1977; Giddens, 1980; Spierenberg, 1984). Moreover, shifts in modes of punishment have not been sociologically viewed specifically in terms of deviance. While sociological research on deviant behavior tends toward examining more individualistic behaviors, there has been some progress made toward more vigorous study of organizational and institutional deviance (Bryant, 1990; Ermann &

Lundman, 1978). Therefore, this study has integrated interactionist perspectives of labeling and dramaturgics to help bridge this gap and provide a clearer understanding of the dynamics involved in the construction and transformation of meaning (Goffman, 1959; Lofland, 1975).

Although this dissertation did not empirically test the perspectives and theoretical positions discussed, it is argued that they provided a logical foundation for explanation given the nature of this project as a narrative descriptive social history.

## CHAPTER IX

### CONCLUSIONS AND IMPLICATIONS FOR FUTURE RESEARCH

#### **Introduction**

Included within this final chapter of the dissertation will be a brief discussion of the justification for selecting the unit of analysis. A summation of the project will then be offered, followed by a discussion of the sociological import of the research. Limitations of the study will be attended to, as well as implications for future sociological research.

#### **9.1 Justification for the Study**

This dissertation was designed as a comparative, descriptive social history of two time periods in North Carolina's history. The study examined the years 1935 and 1983, given that those two years marked that State's legislative shift to different execution methods. North Carolina was selected for analysis for several reasons. First, there is a dearth of research and literature which focuses specifically on North Carolina's death penalty history. No concise, organized work has been generated which combines that State's rich social history with its legislation and use of capital punishment. It is argued that this project will stand as a unique addition to the paucity of extant literature.

Second, North Carolina was the only state in the East during the 1930s that considered and adopted lethal gas as an execution method. Most southern and eastern states during that time period steadfastly adhered to the use of the electric chair. Therefore, one motive behind conducting this study was to discover, describe, and explain that phenomenon from a sociological perspective. Third, while a social history could have been conducted by examining just the 1930s, it is argued that a comparative analysis of two legislative changes in execution methods yielded more robust and useful findings. Thus, North Carolina's shift to lethal injection in 1983 was also closely examined. Finally, this study will likely be used as a reference source for North Carolina's justice community and the State's various historical societies. Several agencies and organizations have already voiced the need for a detailed, well-researched work that addresses the topic matter presented within these pages. It is hoped that this project will benefit those organizations and their missions.

## **9.2 Summation of the Study**

Sociological studies of the death penalty have primarily been directed toward examining and explaining attitudes toward the sanction (Ellsworth & Gross, 1994), examining race as a factor in arbitrary capital sentencing (Phillips, 1986; Radelet, 1981), or viewing capital punishment in terms of formal social control (Phillips, 1986, 1987). While each of these perspectives is extremely useful for explaining and determining the social consequences of such a sanction, there are no sociologically informed social histories that combine these issues and examine a specific state's use of the death penalty over time save the work of Marquart, *et al.* (1994).

This dissertation has presented state-sanctioned executions as forms of institutionalized violence. Past literature has posited that through time, states' legislatures will change their methods of execution in keeping with changing social norms regarding the imposition of death as punishment (Bohm, 1999; Denno, 1997, 1994; Johnson, 1998; Lynch, 2000; Masur, 1989). As social definitions of acceptable punishment change, disfavor with an extant method of execution will occur, resulting in a labeling process whereby the method is perceived and defined as deviant by various social influences. Given that questionable individual behaviors are labeled deviant due to violations of social norms, this study has proffered the notion that executions, as institutionalized violence, can be examined under the same sociological lens.

This study has utilized several sociological theoretical perspectives in grounding the arguments expressed in these pages. While structural-functionalist views are useful in explaining the social function of execution rituals at the macro level, they tend to be somewhat inadequate in accounting for social change, human agency, and reasons for negotiating or reconstructing meaning (Berger, 1963; Smith, 1996; Tumin, 1985). Therefore, aspects of micro interactionist perspectives such as labeling and dramaturgics were integrated into the study to better formulate its theoretical foundation. Dramaturgical perspectives were extremely useful because they illustrated the manner in which methods of ritualized punishment were re-characterized, legitimized and perceived (Haines, 1992; Lofland, 1975, 1977). While sociological research on deviant behavior typically applies these perspectives to explain more individualistic behaviors, this study has demonstrated that they are equally beneficial in describing and explaining institutional acts.

### **9.3 Sociological Import and Contributions of the Research**

This dissertation provides several important contributions to the discipline of sociology, and to other bodies of literature as well. First, there is much to be gained by the increased examination of how social meanings and definitions are constructed, negotiated, and legitimized in any given society. Given the unique nature of death as sanctioned punishment, this is especially crucial. The death penalty has been a prolific and somewhat permanent fixture in United States history, however it has been largely overlooked in terms of how social ideologies and values manifest themselves into the methods used to carry out the act.

#### **9.3.1 The Variation and Differentiation of Social Ideologies**

Masur (1989), Foucault (1977), Giddens (1985), and Johnson (1998) have all generated work which describes and explains the transformation of judicial execution, albeit Foucault's analyses were directed at examining western European shifts in punishment. Although the research of Johnson (1998) and Masur (1989) attended to changing social norms as the catalyst for legislative shifts in execution methods, their studies were more broadly focused on the country as a whole. This dissertation draws heavily on the ideas of both researchers, and utilizes their perspectives to expand on the notion of social context and the construction of meaning within a selected state. This study recognizes the differentiation of values and social norms between and within regions of the same country. As Chapters V and VI demonstrate, North Carolina's progressive ideologies regarding punishment differed than the values and philosophies of other southern states during the 1930s. The research of Phillips (1986) noted this ideological variance when he analyzed the discriminatory execution of blacks in North Carolina and Georgia between 1925 and 1935; however, he did not expound on the social forces or reasons responsible for the difference.

#### **9.3.2 Agency and the Reconceptualization of Social Disfavor**

While the sociological literature does allude to societal disfavor as the primary impetus for changing execution methods, little is mentioned about the *specific* social agents or influences that have a voice or role in the process of reconstructing or redefining meaning. The media are implied or assumed agents of disseminating social definitions to society at large, and their influence in shaping, negotiating and affirming meaning has been successfully confirmed in several studies (Leff, 1994; Madow, 1995; Shipman, 1996). The press, however, is but one facet

in the dynamic process by which social meanings are questioned, reshaped, and negotiated. The information conveyed by the media reaches countless numbers of interested social agents – in the case of this study, these agents included politicians, advocacy and opposition organizations, philanthropists, private citizens, educators, and medical and scientific professionals. Attention to these social influences was key in the research at hand, given that extra-political negotiations of social meaning drove, continued throughout, and culminated in the legislative process. Thus, another vital contribution of this study is its attention to a more adequate conceptualization of ‘social disfavor’ as an impetus for redefining meaning.

### **9.3.3 State-Sanctioned Death as Deviant**

In Chapter II, theoretical discussions were directed toward the labeling process of deviant behavior. While research on institutional and organizational deviance has accelerated over the past two decades, there is no sociological research which *expressly* identifies state-sanctioned death as an institutional act subject to deviant labels. An extensive review of the literature pertaining to capital punishment reveals an implied or inherent deviant component inasmuch as execution methods were a) consistently referred to as violating social norms, and/or b) were changed or altered to accommodate newly defined meanings of death as punishment (Denno, 1994, 1997; Foucault, 1977; Lofland, 1975, 1977; Haines, 1992; Johnson, 1998; Masur, 1989; Spierenburg, 1984) . However, in light of these observations, no sociological studies of the death penalty revealed analyses specific to examining execution methods as deviant vehicles for carrying out sanctioned institutionalized violence. This dissertation stands as a unique addition to the extant literature pertaining to the study of organizational and institutional deviance, and provided an alternative angle by which the death penalty can be viewed.

### **9.3.4 Addressing History as an Influence in Labeling**

In keeping with the discussion of interactionist approaches to deviance, this study addresses some of the major limitations found in those perspectives. Peter Berger (1963) once argued that, “A humanistic understanding of sociology leads to an almost symbiotic relationship with history...” (p. 169). Indeed, a primary criticism of interactionist and labeling perspectives used in sociological research is their ahistorical quality (Tumin, 1985). In addition, interactionist approaches tend to be applied to specific acts during one identified time period, which mutes the possibility for identifying and addressing the dynamic nature of the ongoing reconstruction and

negotiation of meaning in society (see Berger, 1963). By applying these approaches to a historical comparative analysis, this dissertation has contributed an example of how meaning is consistently affirmed, renegotiated, and redefined through time with regard to fluid social ideologies and societal values.

#### **9.4 Limitations of the Study**

The social constructivist paradigm carries with it a unique set of criteria by which to evaluate the quality and integrity of qualitative sociological research. While traditional standards of evaluation include internal validity, external validity, and reliability, constructivist-based research is typically scrutinized in terms of trustworthiness, transferability, and dependability (Denzin & Lincoln, 1994).

##### **9.4.1 Trustworthiness**

The trustworthiness of this research endeavor hinges on the types of data selected for analysis. Given the nature of the study as a social history, the use of historical primary data comprised a large part of the project, especially within the examination of the 1930s. The theoretical position of the study relied heavily on locating and collecting original, antiquated documents which spoke to the change in social norms regarding death as punishment. While Chapter III outlined these types of data in great detail, it is sufficient here to mention artifacts such as original letters and correspondence, prison documents, newspaper clippings and articles, and personal papers and collections as targets for analysis.

The location of these pieces of data was relatively unproblematic, however several issues do need some attention here. First, there were a few pieces of data that would have increasingly enhanced this study, but it was nearly impossible to determine their location. For instance, newspaper reels for the *Durham Morning Herald*, spanning the years 1930 – 1936, were unobtainable. Therefore, a second newspaper with a similar orientation had to be chosen for analysis. While the *News & Observer* articles were primitively catalogued, those in the *Greensboro Daily News* were not, presenting difficulty in confidently obtaining a somewhat exhaustive sample.

Secondly, original personal correspondence drafted by Central Prison wardens during the 1930s and 1940s was apparently destroyed in a fire, making these materials impossible to obtain. In addition to this, not all prison documents from that time period were archived or stored for

later public perusal. Thus, there is a definite possibility that data pertinent to the findings in this research were destroyed, discarded, or misplaced during the reorganization of the Prison Department during the era.

Third, while there was evidence of a North Carolina anti-death penalty organization in existence during the 1930s, no trace of this organization could be found insofar as leaflets, mission statements, or other materials are concerned. Thus, this group's voice in the process of negotiating the meaning of punishment during the era was largely reliant on press references. It is quite possible that these materials were either not archived, or they were donated to another agency for storage. This also became an important issue when exploring the reconstructive strategies in North Carolina's 1935 General Assembly, given that House and Senate subcommittee reports were not physically filed with the legislative library until the late 1960s.

Trustworthiness in qualitative research not only depends upon the types of data selected, but their genuineness and the manner in which they are interpreted. It can be said with a high degree of confidence that original pieces of primary data used in this study were authentic. For instance, some original letters and papers stored at the archives required the use of gloves during examination in order to preserve and protect their condition. In addition to this, there appeared to be no evidence of tampering or defacing – all letters collected were carefully photocopied by personnel at the archives. To preserve the pristine state of these materials, examination was limited to one folder or box at a time, and materials were required to be placed back in their original order once perused. No bags or briefcases were allowed in the viewing room, which decreased the possibility that original historical materials would be stolen. All notebooks carried into the viewing room were searched upon entry and exit.

The constructivist paradigm is premised on the notion of interpretation. Thus, the risk of value-laden arguments and findings within the research is understandably increased (Denzin & Lincoln, 1994). While original data is genuine and objective on its face, its contents are subject to individual interpretation. The researcher must then trust that he or she is interpreting the text as it was intended to be understood, and that the author of the material accurately portrayed the event or issue as it actually happened. Thus, while newspaper articles conveyed highly interpretive definitions of social meaning, a diligent effort was made to locate other data to parallel and

substantiate these claims. Moreover, evidence which contradicted these interpretations was also sought and used to minimize the risk of uni-dimensional findings.

#### **9.4.2 Transferability**

An important goal of any sociologist is to say, with confidence, that his or her findings are generalizable to the larger population or unit of study. In constructivist-based qualitative research, this is referred to as transferability. This dissertation was specifically focused upon examining the negotiation and redefinition of meaning within a particular state over time. One important finding in this study was the dissimilarity between North Carolina's ideologies, and those found in other southern states during the same time frame. In this regard, while this study's findings may not be wholly generalized to other states, this research has refuted generalizations of a unique, ubiquitous southern ideology and value system to North Carolina.

Given that legislative motives differ with respect to change in execution methods, the findings in this research may or may not be generalized to a similar legislative change in another state. For instance, it cannot be assumed that the medical community's opposition to lethal injection in North Carolina's 1983 legislative transition was the standard reaction in all states' shifts to the method, although there is some evidence to suggest this may have been the case in Louisiana (Anderson, *The Times-Picayune*, June 27<sup>th</sup>, 1989). In addition, while the institution of medicine does voice strong opposition to the redefinition of punishment as clinical, other institutions may have a stronger voice in opposing a change of method. For instance, Utah's retention of the firing squad as an option, in light of its adoption of lethal injection, was based on Mormon belief systems in "blood atonement" for crimes (Gill, *The Times-Picayune*, January 28<sup>th</sup>, 1996, p. B7:3).

#### **9.4.3 Dependability**

While the findings in this study may or may not be generalized to the shift in execution methods in other states, the methods of analysis employed would likely prove reliable in a similar study. This largely depends, however, on the disciplinary, theoretical and paradigmatic orientation of the researcher. Furthermore, the reliability of the methods is largely contingent upon the time period under analysis, the availability of existing data, and the ease with which these materials can be obtained. For instance, Nevada's prison system has its own museum, complete with prisoner records and files. The State of Texas also has a similar collection of

historical information, which includes exhibits of the electric chair and other death penalty related materials (Texas Department of Criminal Justice). Thus, while the availability of data in North Carolina was problematic at times, a similar method in another state may yield more fruitful data. It can be said with a high degree of confidence, however, that the methods used in this particular research project would be dependable and reliable if re-employed to examine the same unit of analysis.

### **9.5 Implications for Future Research**

This dissertation has generated numerous potential avenues for future sociological endeavors. One possibility that comes to mind is the further examination of contemporary medical opposition to lethal injection as a method of state-sanctioned punishment. The findings in this project revealed obvious dissent by North Carolina medical associations with regard to physicians' involvement in modern executions by lethal injection. This appears to be a growing national trend as well (The American College of Physicians, *et al.*, 1994; The American Medical Association, 1996; The American Medical Association, *et al.*, 1996; Aprile, 1996; Loewy, 1992; Michalos, 1997; Physicians for Human Rights, 1994). It is of interest to explore whether the opinions of independent physicians, on a large-scale, would differ from those espoused by their respective medical associations. A sociological project of this kind would be beneficial in detecting and explaining any differences or similarities between organizational values, and the values inherent within the individual practitioner.

Another expansion of this research endeavor could be the empirical analysis of public opinion with regard to existing execution methods. Given that most public opinion polls are geared toward measuring approval or disapproval of the sanction itself, this would likely be an viable addition to the existing public opinion data (Ellsworth & Gross, 1994). A study of this type would also provide additional support for the theoretical arguments proffered in this dissertation, inasmuch as changes in execution methods have been presented as deriving from public disfavor.

An additional benefit of conducting research on public opinion and execution methods is its possible effect on future public policy. An example of this is Florida's recent legislative shift to lethal injection in 1999. After a much publicized botched electrocution earlier that year, the State considered a change in execution methods fearing an increase in public disfavor with capital punishment and the electric chair. Schroth & Associates, a Washington-based survey

organization, conducted a poll of 600 registered Florida voters, and found that nearly 60% favored the change to lethal injection (Freedberg, 1999)). While this was only a poll, it was an attempt in measuring disfavor prior to an execution method change in the legislature. A more in-depth sociological analysis on this topic could be designed to explain the *bases* for disfavor or approval of a method, and could likely tease out any variance in national opinion based upon the differentiation of regional values and ideologies.

Another area within sociology that could benefit from an expansion of this dissertation is the study of death. There are several other disciplines which have specifically addressed the effects of execution on prisoners and witnesses. This research includes Bluestone and McGahee's (1962) psychiatric analysis of stress and impending death by execution, Freinkel, Coopman, and Spiegel's (1994) psychiatric examination of dissociative symptoms in media eyewitnesses of executions, and Haney's (1997) research on psychological secrecy and the death penalty.

While rituals are key points of interest in the sociological study of death, their importance within the scope of capital punishment has been largely overlooked. Furthermore, death rituals not only serve to provide meaning for those witnessing the execution, but they provide a sense of order and control for correctional personnel involved in carrying out the task (see Johnson, 1998). Dramaturgical analyses have broadened our current understanding of how meaning is maintained, negotiated, and redefined in occupations where death and dying are inherent components, such as physicians and surgeons (Haas & Shaffir, 1982; Katz, 1999) and funeral directors (Turner & Edgley, 1976; Unruh, 1979). Given that correctional execution teams are a unique group charged with expediting and carrying out the planned death of a human being, rituals during the process of death are of extreme importance in maintaining acceptable occupational comportment. Therefore, further research in this area is greatly needed to bolster the existing dramaturgical and occupational literature with regard to routinized death work.

Finally, studies such as this one address the importance of incorporating history into the examination of social behavior, value systems, and the negotiation of meaning (see Berger, 1963; Tumin, 1985). While quantitative sociological research does yield useful findings which attempt to establish cause and effect in social phenomena, the effects of human agency, social change and historical context on these phenomena can remain largely undetected. In addition, while some longitudinal analyses can explain variance in values and meaning over time, the social forces

driving the dynamic process of redefining and negotiating social situations may be inadvertently cast to the periphery. Historical sociology would greatly benefit from continued qualitative research endeavors which incorporate data that illustrate the humanistic element of agency in transforming social definitions and value systems over time.

### **9.6 Concluding Remarks**

This research endeavor has provided the discipline of sociology with a fresh and unique approach to the study and understanding of state-sanctioned death. While this analysis will become a useful addition to the extant sociological literature, it also stands as a foundation on which to build and generate a complete social history of North Carolina's use of capital punishment from colonization to the present. As evidenced in these pages, that State's history is one of unique and dynamic ideological change; therefore, it is of great interest to provide the people of North Carolina with a concise, informative source from which they can better understand their heritage.

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## APPENDIX A

### THE MARCH 25, 1998 EXECUTION OF RONALD WATKINS

This appendix represents a vital and unique segment of this study, in that it stands as an eyewitness account of the lethal injection protocol as it is currently administered in the State of Virginia. Attending such a procedure was strictly voluntary, however it was felt that through direct observation of lethal injection as a method of execution, the suggested case to be made would be greatly enhanced, and the study more grounded as a whole.

#### **Procedures in Procuring Witness Status**

Being unfamiliar with witness selection procedures in the State of Virginia, I corresponded via telephone with the office of a local district legislator in hopes of receiving some assistance with this process. Upon explaining the importance of attending such a procedure to the legislative aid, my request was forwarded directly to the district legislator who then contacted the Virginia Department of Corrections concerning this matter. The following day, I was contacted once again by the legislative aid, who instructed me to submit my request in writing to the Deputy Director of the Virginia Department of Corrections, and that a decision would be made shortly thereafter.

Approximately four days after my written request was submitted, I received confirmation from the Department of Corrections that my request for witnessing an upcoming execution had been approved, and that I would be allowed to serve as a V.I.P. witness. Taking my research needs into account, the Deputy Director stipulated that although I was a V.I.P witness, I would be allowed to attend the briefing session with official witnesses in order to gather as much information concerning the procedure as possible. The execution I was to witness was to take place on March 25, 1998, at the Greensville Correctional Center in Jarrat, Virginia. In addition, all of the condemned inmate's appeals had been exhausted, and a stay of execution was unlikely pending a reprieve from the governor's office on the evening of the procedure. Shortly before the date of the execution, I received directives via fax regarding such issues as what items could be brought into the correctional facility, directions for travel, and where I was to meet the witness group once I arrived in town.

## **The Prison Environment**

Witnesses were directed to rendezvous at the Virginia State Police headquarters in Emporia, Virginia, and meet with representatives from the prison. Upon receiving color-coded identification badges, the witnesses and accompanying prison representatives were shuttled via a facility van to the prison, located six miles from our meeting area. Upon entering the grounds of the facility, I was able to observe the brightly lit perimeter of the correctional center, a rather new facility built in 1991. The van was briefly stopped at the front gate, at which time two correctional officers made certain of our identification as witnesses and prison personnel. No death penalty demonstrators were visible, however I was instructed that a grassy area was cordoned off just outside this main gate for their use.

As we approached the actual prison grounds, I noticed the enormity of the facility. Housing approximately 3,000 inmates, the prison stood out from its surrounding environment in that it was painted entirely white, and stood nearly five stories high at most points. The grounds were completely contained in tall chain-link fencing, with an additional layer of razor wire at the top. Three trucks bearing news channel insignia and satellite dishes were visible to my left in a small parking area, with a few reporters and other media personnel close by. Absent these individuals, I saw no other movement on the grounds other than a higher number than usual of correctional officers strategically posted near the main entrance of the facility and on its perimeters. This, I assume, is normal facility protocol for the evening of an execution, seeing as most prisons are 'locked down' and more tightly monitored during these events.

The van traveled to the left-most side of the prison to a minimum security work camp area, at which time we were instructed to leave the van and enter a large, conference-like room within the fenced in area. This was the usual witness briefing area, and is entirely secluded from the remainder of the prison. At approximately 7:30 p.m., the regional representative of the Department of Corrections began his briefing, mainly explaining the procedure we were about to witness and the brief history of executions in the State of Virginia. We were simultaneously asked to sign a prison log book, indicating our affiliations and our status as witnesses. Most witnesses present were affiliated with local law enforcement agencies or the media. It is required in Virginia that six of the witnesses not be employed or affiliated with the Department of Corrections; the remaining witnesses can be officials associated with the inmate's case, such as district attorneys, detectives, and officers. Among the witnesses present with me was the best

friend of the victim in this case -- I would learn the details of his friend's death during the course of the evening. At the conclusion of the briefing, all witnesses, most of which had never seen an execution, were allowed to ask questions. I inquired as to the condemned man's age at the time of his crime, and was told that at the time of arrest, he was 25. Thus, on the evening of his execution, the inmate was 35 years old, having spent the last ten years on death row.

The witnesses also learned that the Greensville Correctional Center is the only prison in the state which conducts executions; therefore, all condemned inmates are transferred to this facility from their assigned prisons 3-4 days prior to their scheduled execution, and spend their remaining days on "death watch"; in short, this facility does not have a death row, but rather has an "L-unit" which houses the death watch cells. We were also instructed that this particular inmate did not request, nor eat, a last meal. I inquired as to the nature of the last meal, and to what extent condemned inmates could deviate from their normal, prison-prepared dinner. The regional director advised me that the inmate can request, as a last meal, any food item which is normally kept in the prison kitchen -- no outside meals can be brought in, nor items which require special ordering. The meal is offered between 4:45 p.m. and 5:00 p.m., normal dining time for the prison inmates. Condemned inmates, I was told, have ordered such last meal items as candy bars, ice cream cones, cheeseburgers, pizza, and steak. If an inmate refuses a last meal, he or she is offered the standard prison dinner, and it is brought to the inmate's cell regardless of whether they choose to eat it.

### **Pre-Execution Protocol and Virginia's Execution History**

During the last days before the inmate's execution, they are allowed restricted visits from immediate family. In addition, the inmate's spiritual advisor (if desired) may visit with the condemned, as well as his or her legal counsel. This particular inmate did not request that his family visit with him -- only his spiritual advisor and attorney had seen him during this last day. The inmate had chosen lethal injection as his preferred method of execution, and this was done fifteen days prior to his scheduled execution. As we understood it, the inmate is given a small card on which he or she can either check "lethal injection" or "electrocution". All inmates, we were told, have chosen lethal injection since its adoption as an execution method in 1994. Prior to that time, electrocution was the standard method, and still remains a choice for the inmate. Since 1991, there have been 38 executions at the Greensville Correctional Center, the year its construction was finished. In addition, 285 executions have taken place in the State of Virginia

over its history, and the inmate we were to witness die that evening represented the third execution so far in 1998. Currently, there are approximately 47 death row inmates in Virginia, each averaging a ten-year stay on death row due to the appeals process. We were instructed that due to the appellate overhaul in recent years, executions may become more regular occurrences in this particular state.

During the historical background of executions in Virginia, the witnesses were advised that sheriffs of small locales were charged with the duty of expediting death sentences. Public hangings were conducted in front of the local courthouse, until executions were privatized in 1879 by the Virginia General Assembly. The last hanging in Virginia took place in 1909, however the first electrocution took place one year prior, on October 13, 1908. Until the 1950's, most executions by electrocution took place no more than 45-60 days after the pronouncement of the death sentence in court. During the latter portion of the 1940's and 1950's, appellate procedures became more prevalent, and by the 1960's, executions were delayed by any number of procedures, as is currently the case today. Executions, historically, took place at 7:00 am, however this was changed to 11:00 pm to allow the inmate time to visit with family and counsel, and to receive more time for a possible stay of execution from the higher courts. The time of execution has since been set at 9:00 p.m., still allowing for protracted visitation and appellate consideration.

During the allowed question and answer segment of the briefing, I asked specifics regarding both the lethal injection procedure and electrocution, and inquired as to why lethal injection was adopted. Cost, I was told, was not a prevailing factor, seeing as the local electric company in the area of the prison charged the facility six cents to activate the electric chair. The regional representative remarked, "The electric chair does its job -- it does what it's designed to do. I imagine those pushing to adopt lethal injection saw the rest of the country doing it...sort of like a trend. So, we followed suit. But, I'm sure they thought lethal injection was cleaner...I mean, the chair is messy at times, but it works." I also asked from whom or what company the prison procured its lethal injection materials such as I.V. tubing, gurneys, heart monitors, and the like. The regional representative then said, "Well, it's standard stuff. I mean, there's a few hospitals around here where we could easily get it. It's whoever provides the lowest bid, so the companies vary. We use different ones."

At approximately 8:20, the witnesses were separated by sex as to be searched one last time before reboarding the van for the ride to “L-Unit”, the execution chamber. A female guard patted down the female witnesses, of which there were only three -- myself, a member of the Associated Press, and an ombudsman from the facility itself. Upon completing the search, we boarded the van and were driven around the right side of the prison on a gravel road. I couldn't help but notice the stillness of the facility -- it was eerily quiet, however one could detect a sense that something was about to happen. Upon arriving at “L-Unit”, located at the far rear of the facility, the van pulled directly to the door of the death watch area. A plain, cement protrusion from the rest of the building, we were told that this section of the facility housed the most dangerous of inmates -- it was described as “a prison within a prison” by the ombudsman seated next to me. Upon exiting the van, we were searched once again before entering this part of the building, this time with hand-held metal detectors. We filed down a long hallway, occasionally hearing the yelling of inmates, and were led to the witness chamber. This room was glassed in on two sides; that which faced the hallway, and that which faced the execution room directly ahead. We were seated in plastic chairs, usually three to a row, and all of us curiously looked around and seemed amazed at the abundance of activity in this small section of the prison. I was seated on the second row, and had an unobstructed view of what was in front of me.

### **The Execution Chamber**

Through the glass, directly ahead, was a gurney. Covered in white sheets, it was in the shape of a cross, leather straps affixed to each part of the gurney on which an extremity of the condemned would be. To my right, and outside the glass, was a red telephone, which appeared to be the center of the officials' attention. This phone, we were advised, was a direct line to the governor's office -- in the event that a phone disruption occurred, backup systems through highway patrol radio were in place in order to keep constant communication lines open. The Governor, we were told, had given word to proceed with the execution at 5:00 p.m. -- any last minute stays would be communicated over this phone just prior to the procedure commencing. At one point, I counted eleven individuals on or near this phone, all of whom were nervously checking their watches and engaging in what appeared to be idle, nervous chat occasionally accompanied by a thin smile. Aside from this red phone, the clock on the wall just above it attracted many a glance from those present. Johnson (1998) cites this as common, seeing as studies of execution witnesses indicate that time and space awareness become distorted, and that

the senses become more acute, such as hearing and sight focus. To my left, I noticed more prison officials, one of whom was constantly speaking into a small, hand-held tape recorder, as if to document every movement in this regimented, official process. The attention paid to detail during this event was enormous, as the literature also indicates. I couldn't help but notice the "reception-like" atmosphere around me; that is, nicely dressed officials, standing in small groups and engaged in unknown discussions. It was as if I were preparing to watch the opening act of a play or theater act, or perhaps preparing to be seated for the opening address at a social function.

All of the discussion seemed to be taking place outside the glass; that is, not a word was spoken amongst the witnesses, and I suspect this was due to an absence of knowing *what* to say at a time such as this. To the right of the gurney, I noticed a door, and we were instructed that this would be the door into which the inmate and attending officers would enter the death chamber. Directly behind the gurney (the "feet" end of which was nearest to me) was a large blue curtain which spanned the length of the room, preventing any of us from viewing what was behind it. We were told, however, that behind this curtain were the execution technicians and the prison physician, as well as the heart monitor and other instruments used. I found it a curious notion that just below the curtain to the left of the gurney, the legs of the electric chair were visible -- evidence of more violent ways to die were indeed present, however the gurney lended a rather reticent appearance to the decor. Above the "head end" of the gurney, I noticed a plastic window flap and two small portals. Extending from these small openings were two intravenous lines and a cardiac monitor line, leading to the gurney itself. Although movement could be detected behind this curtain, I could see no one except an occasional brief glimpse of an individual passing by one of these tiny portals. Indeed, although my view of these individuals was obstructed by the curtain, the bustling preparatory activity behind it could not be ignored. The execution chamber itself was white...the walls, the floors, the ceiling. It lended a notion of cleanliness to the atmosphere, and the blue-colored curtains reminded me somewhat of a hospital environment. Absent the restraining devices on the gurney, one might actually be deceived altogether that this place was constructed to administer the ultimate punishment.

### **The Execution**

I had been seated in the witness room at 8:45 p.m. – by 8:55 p.m., the silence was deafening. It amazed me that just a few feet away, so much activity was taking place in preparation for this event. At 9:03 p.m., just a few moments beyond the scheduled execution time, a man standing

near the door to the right opened the miniblinds affixed to a window on the door itself. He peered through briefly, as if to verify the inmate was ready to be escorted in. The individual speaking on the red phone hung it up, and all eyes turned to the group entering from the right. I observed a guard in front, followed by two more officers clutching the inmate's elbows. Directly behind, two more correctional officers had a firm grasp on either pants pocket of the inmate. This "stationing" of officers around the condemned has its purpose, however it is not due to absolute inmate resistance at the realization of impending death. Johnson (1998) explains a similar situation he encountered when witnessing an execution by electrocution:

At 10:58, Jones entered the death chamber. He walked quickly and silently toward the chair, his escort of officers in tow. Three officers maintained contact with Jones at all times, offering him physical support. Two were stationed at his elbows; a third brought up the rear, holding Jones's back pockets... Were he not held secure by the three officers, he might have fallen. Were the routine to be broken in this or any other way, the officers believe, the prisoner might faint or panic and become violent, and have to forcibly be restrained (p. 175).

The attention of everyone present was now on the condemned man, a rather short, stocky African-American with light skin. His eyes remained transfixed, staring blankly at the floor as he entered the room, possibly avoiding the inevitable of seeing the gurney for the first time. His eyes then focused on the gurney in front of him, and his nature as a human became even more apparent and his eyelids lowered in a sickening realization of death. It had now become real to this man -- he had prepared himself throughout the years for death, however it seemed as though he had just *realized* it in this brief walk to the gurney. Ever so slightly, his knees weakened -- so slightly that if one were not looking closely for it, they would likely miss it altogether. He shuffled his last few steps to the gurney in prison-issued slippers, a pair of jeans, and a light blue prison shirt of which the sleeves had been cut away at the biceps. He was turned around by the escorting officers, and his handcuffs removed. His spiritual advisor, a stately woman in a green

dress, removed her hand from his shoulder and stepped aside as to allow the officers to conduct their next duties in the process.

Never making eye contact with the inmate, the officers quickly laid him in a supine position on the gurney and swiftly buckled the restraints – one on each lower leg, one across the thigh region, one across the upper chest, and one across each arm. His head was not restrained, however the inmate never once moved his head to the right or left, staring blankly at the ceiling during this one-minute process. Each officer, six of them, had a specific strap to secure, and was responsible for a designated part of the inmate’s physicality. This division of labor within the execution team serves several purposes, one of which being the alleviation of psychological responsibility for the death of an inmate. If the task is segmented, then each officer cannot ultimately be held any more responsible for the death of the condemned than his partner. In addition, executions are extremely regimented, and are usually timed by a stopwatch in “practice” or simulated executions. Johnson (1998) further expounds on this division of labor by adding, “In part to avoid any problems, big or little, the deathwatch team has been carefully drilled in the mechanics of execution. The execution process has been broken down into simple, discrete tasks and practiced repeatedly” (p. 132). Johnson also comments that, “This division of labor allows each member of the execution team to become a specialist in one specific task, an expert technician who takes pride in his work” (ibid.). Similar procedures are followed with the electric chair restraints and the use of firing squads, whereby five officers are assigned rifles, but only four have live rounds which fire. No officer, then, is ever sure if he actually fired a live round, removing some of the psychological trauma of participating in the killing of an inmate.

As the officers completed the securing of restraints, I noticed one officer stationed at the “head end” of the gurney. He neither looked down, nor made any eye contact with his fellow officers or those officials still present in the room. His presence, I felt, was to remind the inmate that resistance was futile – the guard’s size alone would prevent most inmates from lashing out in last-minute efforts to defy the process, and his stature was representative and symbolic of quintessential order and control. This officer remained totally stoic and showed no emotion, staring blankly ahead with arms crossed at his chest as if to look directly through the back wall of the witness chamber. As his partners completed their tasks, he moved away with them and exited the execution chamber through a door to the left.

The inmate's spiritual advisor then approached the gurney, and with her right hand, rubbed his chest and patted him as a last effort of comfort. She spoke a few soft words to him which were inaudible to the witnesses, and the inmate's head nodded as she finished. She then stepped away, and walked slowly to the witness booth to join us. At 9:04 p.m., which had only been one minute since his arrival in the room, the curtain was drawn in front of the witness room to restrict our view of the vein cannulation procedure. Those inserting the intravenous lines are commonly granted confidentiality, however this process can also be difficult to watch if a vein cannot be located on the inmate due to his or her extensive IV drug abuse in the past. Haines (1992), Cheevers (The Los Angeles Times, 1996), Weisberg (1991), and Harding (1996) all cite occasions where inmates were either subjected to protracted time on the gurney while a vein could be located (upwards of 45 minutes), or experienced discomfort as intravenous lines actually became dislodged or sprung leaks during the procedure. In addition, several sources indicate that the performance of a "venous cutdown", or the actual exposure of the vein above the skin, is sometimes necessary at the hands of a physician in order to properly insert an intravenous line (Michalos, *et al.*, 1997). It is unknown as to the average time of a vein cannulation prior to execution, however this process took upwards of eleven minutes during this particular execution. We were instructed in the briefing that two intravenous lines were inserted, one in each arm, which guaranteed that if one line became obstructed or failed to flow properly, the other would be activated. I recalled the dead silence once again, and for nearly ten minutes the witnesses were speechless. The only noises in the witness room were the ticking of wristwatches and the scribbling of a pencil on paper directly behind me. The silence was broken as one media representative remarked, "This is taking too long...it never takes this long". The correctional officers directly outside the witness area in the hallway began to look anxious and impatient, as if their schedules were being somehow delayed by this process. The room began to get hot, and the stuffiness was beginning to affect us all. The regional representative, who was our official escort for the evening, looked at his watch and sighed, remarking on the rise in temperature in the room.

The curtain was then opened at 9:14 p.m., ten minutes after it had been closed for purposes of intravenous line preparation. Indeed, I had also thought that behind this curtain was the only human contact with the condemned that symbolized his impending death. The machinery of the execution, however, appeared only *after* the curtain was reopened, those applying it having

disappeared just moments before. The inmate was now alone in the chamber, the only others present being a good distance from him and standing against the walls. The individual with the hand-held recorder, who I had since learned was the prison warden, walked to the gurney and asked the inmate for any final words. In his right hand was a telephone receiver which was wired into the witness chamber, allowing us to hear any final remarks from the inmate. The inmate spoke into the recorder and phone receiver simultaneously, however a last-minute and unexpected malfunction in the audio system prevented us from hearing anything. We later learned that he apologized to the victim's family, and that was all.

The warden then stepped away, and nodded toward an individual standing to the right of the blue curtain across the room. This individual, in turn, nodded to an unknown technician behind the curtain, and the process began. The intravenous line in the inmate's right arm began to move slightly, and bubbling, clear fluid was visibly flowing through the tubing. His fingers taped securely to the armrests, the inmate remained completely still and continued staring directly toward the ceiling. Human nature had turned my attention to his breathing; that is, in waiting for death, we somehow become aware of each breath a person takes, and I found this to be the case here. The very environment of the room, its cleanliness and sterility, had somehow prevented me from realizing what was occurring. I found myself silently convincing myself that this *was* an execution – a man dying – the termination of life. His appearance on the gurney was not one of impending death nor suffering, but of rest or comfort, especially as he wore slippers to this procedure.

The first injection, sodium pentothal, is actually a short-acting barbiturate, commonly used in surgical procedures to put patients into a deep sleep. The effects of this first injection are rather fast, and some sources have noted the inmate beginning to snore or yawn as they drift off to sleep (Los Angeles Times, 1996; Prejean, 1993). The inmate's breathing was slowing, and after approximately 30 seconds, his chest began heaving as if in spasms. The condemned then began to blow outward, the sounds reminiscent of strangling, choking, or removing an obstruction from one's airway without success. This continued for about ten seconds, then subsided, followed by two more slow breaths. We were now witnessing the effects of the drug pancuronium bromide (gen. Pavulon), a paralytic agent traditionally designed as a muscle relaxant, but used in this case to stop the diaphragm and collapse the lungs. This chemical is also used in medical surgery, however not in the elevated doses utilized during an execution. The inmate, by this time, had

ceased to breathe, and remained totally still for the following two minutes. At 9:16 p.m., his diaphragm once again quickly spasmed approximately four times, and then once again he remained motionless. The effects of the third injection, potassium chloride, are designed to stop all cardiac activity – in essence, this chemical completely stops the heart. At 9:17 p.m., only three minutes and ten seconds after the procedure had begun, a physician pronounced death, then walked back behind the curtain. The regional representative, verifying the physician’s words to us in the event we couldn’t clearly hear, repeated “death, 9:17 – that’s it.”

The witnesses were then directed to file out of the witness booth and down the hallway in which we had entered earlier. I passed by the numerous prison officials who had, just moments before, been in the execution chamber during the procedure. Their faces remained emotionless, their only gestures to us being an occasional weakened smile as if to extend appreciation for our time during this event. We boarded the awaiting facility van, and prepared for the six-mile trip back to the witness meeting area. There was no conversation, still, among those witnesses around me, however I made a special effort to evaluate any possible communication or conversations between them. As we began to exit the grounds of the facility, I heard one witness ask the best friend of the victim how he felt about his friend. The victim’s friend remarked, “Well, I can’t say I’m *happy* about this [the execution]...I mean, I feel a *little* better. He [the victim] would’ve done this for me, so I did the same for him. This is a little bit of a conclusion [his emphases].” After this brief exchange between these two witnesses, there was once again silence. It was apparent that most of us felt the need to leave the victim’s best friend alone in his thoughts – there was no prying for information concerning the details of the crime, nor comments about his friend or his own feelings which may have seemed intrusive. I had learned earlier that his friend, a store owner, was the victim of an armed robbery. During the attack, his friend was stabbed multiple times in the neck and chest, and died as a result of his wounds. In turn, the robbery netted only a nominal amount of money for the offender. I never learned as to why no other family of the victim were present that evening, and no one asked his friend as to why this was so. Perhaps the victim’s friend elected himself as the representative for this event, charged with the duty of seeing the sentence carried out, leaving the others to remember the victim in their own way. This is entirely speculative.

As the van approached the main road, the silence was broken by the regional representative, who turned in his seat and asked, “So, what’dya think?” No one answered, however one witness

did inquire, “What was that noise he was making...that choking sound?” The prison representative replied, “Well, some of ‘em’ll go to snorin’, because they’re sleeping. I really don’t know. They make all kinds of noises during these things.” The prison ombudsman, seated next to me, then innocuously remarked, “He [the inmate] looked like he had gained weight since the last time I saw him – I don’t remember him being that big.” There was no other conversation after this exchange – as we arrived back at the meeting area, we quickly said good-bye to one another, then left.

## APPENDIX B

### THE OCTOBER 19, 1999 EXECUTION OF JASON M. JOSEPH

#### **Introduction**

The following represents observations and notes regarding an execution that took place on October 19, 1999, at the Greensville Correctional Center in Jarrat, Virginia. As with the first execution, this sentence was carried out by means of a lethal intravenous injection, one of the two methods of execution currently in place for use in the State of Virginia<sup>1</sup>.

#### **Procuring Witness Status**

Permission to witness this execution was obtained by submitting a request, in writing, to the Operations Officer at the correctional facility. A standard application form was completed, and a background check was conducted by the prison to ensure safety inside the facility and credibility of the witness. As with the prior execution, witnesses were requested to rendezvous with a facility representative (in this case, the regional manager) at the Virginia State Police area headquarters in Emporia, Virginia, at 7:00 p.m. From this location, witnesses were supplied colored identification badges and shuttled via a prison van to the correctional facility, located approximately 6 miles from the rendezvous location.

Upon arrival to the correctional center at 7:15 p.m., witnesses were sequestered in a minimum security work camp area located at the south end of the prison. Within this area is a facility containing a cafeteria, conference room, and various offices. The witnesses were seated in a large conference room commonly used during the day by the work camp inmates. The regional manager proceeded to brief the witness group on specifics regarding the execution procedure, the history of executions in the State of Virginia, and also entertained questions voiced by official witnesses and media personnel. We were notified that at approximately 8:30 p.m., the witnesses would be subjected to a minor pat-down search by correctional staff, then escorted by van to the west end of the prison where the execution would take place.

At 8:34 p.m., the witnesses boarded the facility van, and were driven to the opposite end of the prison to "L-Unit", a maximum security area housing the execution chamber itself. This area was described as a "...prison within a prison" by the regional director, and was usually reserved

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<sup>1</sup> Virginia also employs electrocution as a method, however since 1995, only one inmate has chosen it over lethal injection.

for the more violent inmates. Along with housing violent or incorrigible inmates, “L-Unit” also stands as the “death watch” area for a condemned inmate in the State of Virginia. Typically, inmates condemned to death are transferred to this unit from their death row facilities no less than four days prior to their execution. The unit itself is rather nondescript, painted white just as the remainder of the correctional facility, although there are two sally-port gates which are opened alternately to allow the entrance and exit of vehicles. This alternating gate pattern affords a higher level of security inside the prison, and guarantees at least one barrier between an individual or vehicle and the outside perimeter of the prison should an escape attempt occur.

At approximately 8:45 p.m., the witness van was driven to an entrance door to “L-Unit”, and the witnesses were asked to pass through this doorway and proceed down a hallway to the execution chamber itself. This passage was granted only after another clothing search, this time with the use of a metal detector. It is important to note the heightened level of security during the time leading up to an execution procedure, in that maintaining complete order is paramount for an unimpeded event. In addition, inmates within the prison are aware of the impending execution, and may exhibit unruly or disruptive behavior to show their overall disapproval for the procedure. For these reasons, extra correctional staff and additional security policies are set in place until the execution has been conducted.

### **The Execution Environment**

The witnesses were escorted to a small, glassed-in viewing area adjacent to the execution chamber. From this room, all activities within the execution chamber itself are completely visible through a glass wall. It is also important to note that the chairs within the witness chamber are staggered, much like an auditorium, to ensure that each witness may view the sentence being carried out without visual obstructions.

Given that the witnesses had around eight minutes to wait before the execution began, observations were made concerning the overall appearance of the chamber and those charged with the duties of carrying out the sentence. Thirteen officials, either from the State’s Attorney General’s Office or the Department of Corrections, meandered about the execution chamber. The chamber itself contained only a hospital gurney, bolted to the floor. The gurney itself is unremarkable, although additional arm rests are attached to either side. In other words, once the inmate is placed on the gurney, he or she is in the general position of a “cross”, facing upward.

The gurney is covered in a white sheet, tightly draped over a black padded mattress, and there are tan leather restraining straps for the arms, legs, and torso of the condemned.

On the far right wall of the execution chamber is a red telephone. This telephone provides a direct line of communication between the Director of the Department of Corrections and the State's Governor. The governor, it should be noted, is the only individual who can provide relief for the inmate once his or her process of judicial appeals is exhausted. In rare instances, the Governor may communicate an indefinite stay of execution, or a commutation of sentence, at the last moments leading up to the actual execution. Otherwise, the Director of the Department of Corrections is charged with informing the Governor, via this telephone, of the proceedings as they occur throughout the execution process.

Also visible is a long, blue curtain, which spans the length of the execution chamber and literally divides the chamber in half. The gurney is forward of this curtain – behind it, the medical technicians and materials necessary to execute the inmate. The regional director, our escort, remarked that "...two medical technicians are seated behind this curtain at a table". They are accompanied by "...the prison physician", who at the conclusion of the execution "...will pronounce death" via an electrocardiograph attached by wires to the chest of the inmate. The wires of the electrocardiograph, as well as the intravenous tubing that carries the lethal chemicals into the arms of the inmate, are visible only until they disappear behind a small, plastic portal in the curtain. Unlike several states, execution by lethal injection in the State of Virginia is carried out by manual operation of the syringes. In other words, rather than a lethal injection machine (see Trombley, 1992) that sequentially depresses each syringe, medical technicians introduce the chemicals into the intravenous lines by hand.

The use of three chemicals is standard practice in lethal injection executions, although the regional manager would not expound on what these chemicals would be. It is suspected that the chemicals used were those used in most of the thirty-plus states that now employ lethal injection as an execution method – Pentothal (or Sodium Thiopental), Pancuronium Bromide (Pavulon), and Potassium Chloride. In order, these chemicals anesthetize the inmate, cease the respiratory functions, and stop all cardiac function. In between injections of the substances, saline flushes are used to assure that the chemicals do not precipitate or crystalize during the procedure (Amnesty International Report 50/01/98, p. 29 [footnote]). This precipitation results in blockage of the intravenous lines, and could result in a less than pleasant experience for the inmate.

Although an injection of any one of the three chemicals would induce death due to increased dosage, utilizing a series of chemicals assures that witnesses will not be subjected to the possible discomfort and suffering experienced by the inmate if only one were used. In short, death is accomplished in stages, and usually occurs once the inmate is 'asleep' from the injection of the first chemical.

### **The Condemned**

The inmate to be executed on this evening was Jason Matthew Joseph, a twenty-five year old black male sentenced to death for a 1992 murder of a Portsmouth, Virginia Subway sandwich shop clerk. The clerk, we were told, was ordered by Joseph and his accomplices to hand over money in the cash register. Upon the victim complying, Joseph then ordered the victim to lie face down on the floor and allegedly shot the victim in the back, killing him. The robbery was said to have occurred due to Joseph and his accomplices needing drug money, given that they had "...run out of crack cocaine earlier in the evening" (Virginians Against The Death Penalty, 1999). Joseph was convicted and sentenced to death in 1994 for the offense, and had spent just under five years on death row, four years under the usual national average of nine years.

Our escort, the regional director<sup>2</sup>, also informed us of the inmate's activities during his last day leading up to the time of his execution. Joseph was visited by his mother and sister from 1:00 p.m. until approximately 3:00 p.m. that afternoon, although they were not permitted to witness the execution<sup>3</sup>. At approximately 5:05 p.m., the inmate was afforded a last meal that he had requested, although he expressly wished not to have the nature of this meal revealed publicly. We were told that the last meal was nothing remarkable, and that the condemned most likely kept this information private for his own peace of mind. The inmate, until the time of his execution, was also accompanied in the death watch cell by his counsel, an attorney by the name of Doug Robinson. Interestingly, it was later revealed to me by a member of the press that Robinson had recently been involved in a Texas death penalty case in which his client was found innocent and released.

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<sup>2</sup> Our escort indicated that he had "lost count" of the number of executions he had witnessed, however estimated that he had seen "...over 50".

<sup>3</sup> Family members of the condemned, under Virginia policy, are not permitted to witness an execution due to the possibility of emotional displays or inter-family confrontations.

## **The Execution**

At approximately 8:56 p.m., a door to the right of the execution chamber opened, and through it walked the condemned, escorted by five correctional officers and staff. The condemned was dressed in standard prison clothing, consisting of dark blue jeans, a light blue prison shirt with the sleeves cut away at the biceps, socks, and prison slippers. Although his feet were not shackled, his hands were restrained by handcuffs. The inmate appeared solemn but lucid, only briefly glancing at the witness booth – his attentions seemed more focused on the gurney directly in front of him, given that this gurney is the centerpiece of the execution chamber and is usually in the direct line of sight of the inmate. Correctional staff quickly turned the inmate around, and directed him to seat himself on the edge of the gurney. He was then placed in a supine position, and the handcuffs removed. The execution team members then expediently restrained the condemned, each staff member having been assigned a specific area of the body. In approximately twenty seconds, the restraints were secured, inspected by the team leader, and all execution team members exited through a door to the left of the execution chamber. A blue curtain spanning the length of the witness viewing glass was drawn, and this marked the time at which the intravenous lines and heart monitor would be affixed to the inmate. Execution witnesses are not privy to the insertion of intravenous lines, and this is likely so due to possible complications in locating a suitable vein for cannulation. Many death row inmates are prior intravenous drug abusers, and have collapsed or severely damaged the veins in their arms. Thus, occasions arise in which alternative veins must be selected, such as those in the groin, feet, or neck. It is also possible that on occasion, an “I.V. cutdown” be performed to adequately cannulate the vein. This requires that the vein actually be exposed above the skin by making a small incision. Such a procedure requires that a physician or other qualified medical technician be called upon. In addition to possible complications with intravenous lines, the anonymity of the medical staff is paramount, and as such, they are kept from the view of witnesses in the adjacent room by use of this curtain.

The insertion of the intravenous lines into the inmate appeared to have occurred more quickly than in the prior execution I witnessed. By 9:00 p.m., the curtain was drawn back, revealing the inmate in a “cross” position with intravenous lines extending from both arms, then through the plastic portal in the curtain behind him. The condemned did not appear to be breathing heavily, and his eyes remained transfixed on the ceiling above. The only portion of his body unrestrained

was his head – we were told that at times, inmates will attempt to leave their head raised until the chemicals begin to take effect. I assumed that this occurs due to the inmate wanting to remain conscious and aware until his or her last moments.

The condemned was then approached by the warden of the prison, who held in his hand a small tape recorder and telephone receiver. The tape recorder is used as one method of documenting all activities for permanent record. The telephone receiver is a direct line to a speaker mounted in the ceiling of the witness booth. Through this speaker, any last words of the inmate are audible. Although the inmate was seen moving his mouth as if speaking, his words were unintelligible due to the sensitive nature of the speaker. I was told later that his words were "No more pain". A statement of the inmate's last testament was distributed after the execution, and I was able to obtain a copy. The verbatim contents of that statement will be offered in Appendix C.

Upon the inmate speaking his last words, the warden then walked behind the curtain separating the executioners from the main execution room. Receiving notice that the execution would now commence, the medical technicians then began administering the first substance. If one looked closely, it was possible to see the chemical passing through the intravenous line into the arm of the inmate. The condemned kept his eyes open for approximately seven seconds, then closed them as if falling to sleep. Shortly thereafter, his chest began heaving, as if in an exaggerated, deliberate attempt to breathe. The condemned breathed heavily in this manner approximately six times, attempted to move his right arm slightly against the tension of the restraint, then appeared still again. The second chemical was then administered, and shortly afterward, the inmate's breathing appeared to cease. After breathing ceases, it is difficult to tell when death is actually occurring to cardiac arrest. Given that the inmate is first anesthetized (or paralyzed) and his breathing is stopped, no visual indicators are apparent which point to an exact time at which the inmate dies. Thus, the last minute of the execution appears, for all intents and purposes, to be a time of watching someone sleeping without breathing. Three minutes into the execution, the inmate's diaphragm appeared to spasm twice. This marked the last visually detectable movement of the condemned. During the procedure, officials in the execution chamber itself are positioned to the right and left of the gurney, but do not impede the view of witnesses. Throughout the four minute process, their eyes were fixed on the inmate, and occasionally they would make concerted, yet subtle attempts to look at his face.

At approximately 9:05 p.m., the prison physician appeared from behind the blue curtain carrying a stethoscope. He approached the inmate's body and listened for any signs of cardiac activity. Shortly thereafter, the physician looked in the direction of the state's officials and indicated that "...[inaudible] this man has expired. The sentence of the court has been carried out. Time of death is 9:05 p.m.". The activities of the prison physician marked a difference between this execution and the execution of one year ago at the same facility. At the March 25, 1998 execution, the prison doctor did not approach the inmate's body with a stethoscope. Instead, he merely stepped from behind the curtain and pronounced the time of death. It is unknown as to why the prison physician manually checked for cardiac activity at this event, or whether policy has been changed since my last visit which now requires him to perform such a task.

After the physician's announcement to the witnesses, the curtain separating the witness booth and execution chamber was again drawn. This is done in order for staff to prepare the body for removal from the room and subsequent transportation to the medical examiner's office in Richmond, Virginia. Once an autopsy has been performed, and "execution" noted as the official cause of death, the body is released to the family. If no family member claims the condemned man's body, his remains are interred at a state-maintained burial location or they are cremated at the state's expense. After a few moments wait while official witnesses and attorneys were escorted from the unit, we were then escorted back to the facility van which waited outside the door of the execution chamber. This van then transported us back to the State Police Headquarters, our original rendezvous point. On the ride back, one witness, apparently an individual involved with the original crime investigation, remarked, "...he looked like he'd gained some weight since we saw him last". It is ironic that during the ride back from the execution of a year ago, a witness in the van uttered the same words, verbatim.

Jason Matthew Joseph was the 307<sup>th</sup> inmate legally executed in the State of Virginia, and the 12<sup>th</sup> inmate executed this calendar year.

### **Impressions**

This execution was similar in most respects to the prior execution on March 25<sup>th</sup>, 1998. At this event, I was more familiar with the general process, and as such, was afforded the luxury of speaking to several individuals regarding their impressions of the evening.

I spoke with two individuals present at the execution. One was a representative of the Swedish Broadcasting Company, and served as one of two United States correspondents. The other individual was a college graduate student, and was serving as an official witness for the State of Virginia. I asked both about their overall impression regarding the method of lethal injection. The Swedish media correspondent, only having been in the United States for six months, remarked:

I was struck by the casual nature of the execution. It seemed so matter-of-fact...I noticed one official speaking to another about his needing a day off [from work] on Friday...this was right before the execution happened. It was like business as usual for them... .

The college graduate student had a similar response when asked how she felt after the execution took place:

I wasn't really affected at all. It was just an inmate lying on a gurney...he looked like he was asleep. But it did sort of look like a [staged] play...the way they open and close the curtains. It's broken down into acts...I think I might have felt differently if it was the electric chair or the gas chamber. You see them suffer more, so it looks like they're dying.

Given that the media correspondent was from another culture, I inquired as to her overall impressions of capital punishment, and how her fellow countrymen feel about the process. She replied:

We think it's barbaric...I mean, it just creates another victim....it's just one form of violence justifying another form. They just make it look better [than the crime].

As previously noted, there were few differences between this event and the execution of one year ago. I did notice one striking deviation from the protocol of the March, 1998 event, that being the actual presence of the physician in the execution chamber upon the inmate's death. At the 1998 execution, the physician briefly appeared from behind the blue curtain at the rear of the

head-end of the gurney. He only remarked “Time of death is 9:17 p.m.”. At this most recent execution, the physician approached the condemned, placed a stethoscope to his chest, listened for sounds of cardiac activity, and then loudly remarked that “...this man has expired”. It can only be assumed as to why these protocols differed. One possibility is that the victim’s family members were present at the 1999 execution, and were not present at the execution of one year ago. It is reasonable to suspect that due to the presence of victim family members, the execution staff took an additional step in assuring that the inmate had expired for the sake of the family of the victim. One witness at the execution later commented:

I thought it was weird that the doctor actually came out and said “this man has expired”...it sounded very rehearsed and deliberate...like they practiced it.

Another notable difference between the events was the increased number of state officials present in the execution chamber. At the execution in 1998, I counted eleven individuals present near or around the gurney. The 1999 execution was a bit different, in that thirteen state representatives were in the room. Due to the confined space of the execution chamber, the additional individuals seemed to almost ‘crowd’ the room.

Finally, the inmate’s counsel was present in the witness chamber and viewed the execution of his client. He was seated in the rear of the witness area, and sat alone. I took notice as to his overall demeanor, which seemed to be a state of restrained anger or disgust. He did not converse with other witnesses directly after the execution, and left promptly when the correctional staff escort summoned him. Prior to his exit from the witness area, the attorney distributed copies of his client’s last statement.

Having witnessed two of these procedures, I remain perplexed as to how unemotional I felt upon leaving the events. Great precaution is taken at these executions to assure the least amount of physical trauma to the inmate as possible. As such, and with the overall sterility of the environment, I consistently reassure myself that the condemned actually expired in my presence. I imagine that this reassurance does not continue upon viewing a more violent method of execution, such as lethal gas or electrocution. In other words, death is amplified by those means – there is no question that what one sees is in fact an individual dying, sometimes painfully. I am in the firm opinion that lethal injection, above all other methods of execution, is a clever

juxtaposition of comfort and death. This marriage of medicine and punishment suspends the reality that I have of violent death – although the end result is the same for any execution, this method removes all salient aspects of suffering and violence. Perhaps this is the true motive serving as the catalyst for continued use of this method, in that any form of punishment that does not resemble such is more palatable to those who enforce it.

## **APPENDIX C**

### **LAST WORDS OF JASON M. JOSEPH**

I hope the friends and family of Jeffrey Anderson can finally find some closure and peace. I am truly sorry for the pain I've caused your family and mine. I've brought so much pain to so many people. All that I can say to both families is I wish you all NO MORE PAIN.

Jason M. Joseph [signature], October 19, 1999

## VITA

Katrina N. Seitz

Katrina N. (Trina) Seitz is a native of Blowing Rock, North Carolina. She attended Lees-McRae College in Banner Elk, North Carolina from 1982-1984, where she studied Liberal Arts. In early 1986, she served as a death row correctional officer at the North Carolina Correctional Institution for Women in Raleigh, North Carolina. Later that year, she changed careers and joined the Wake County Sheriff's Department in Raleigh, where she served as a patrol officer for nearly nine years. During her career at the Sheriff's Department, Trina received the Basic, Intermediate, and Advanced Law Enforcement Awards. While serving in law enforcement, Trina pursued a Bachelor of Arts degree in Justice and Public Policy from North Carolina Wesleyan College, and graduated Magna Cum Laude in 1994.

After suffering an injury in the line of duty, she retired on disability from law enforcement in the Fall of 1994 and relocated to Boone, North Carolina. She enrolled as a Master of Arts candidate in the Department of Sociology at Appalachian State University in the Spring of 1995, and graduated with university and departmental honors in May, 1996. During her tenure at Appalachian State University, Trina wrote several articles on police response tactics in domestic violence situations as well as techniques for successfully communicating with emotionally handicapped juveniles. These articles were accepted for publication and appeared in two law enforcement periodicals – *WomenPolice* and *Police and Security News*.

In the Fall of 1996, Trina was accepted into the Department of Sociology doctoral program at Virginia Tech to pursue the present degree, Doctor of Philosophy in Sociology with an emphasis in criminology and deviant behavior. During her tenure at Virginia Tech, she has served as a graduate teaching assistant for Dr. Clifton Bryant, Dr. Peggy de Wolf, and Dr. Toni Calasanti. Trina also served as a teaching assistant in the Women's Studies program from 1996-1997, working under the guidance of Dr. Martha McCaughey, Dr. Carol Burch-Brown, and Dr. Ann Kilkelly.

Since 1997, Trina has taught numerous undergraduate Sociology courses, including Criminology, Deviant Behavior, Juvenile Delinquency, and Gender Relations. In April, 2000, she was awarded a university-wide commendation for outstanding teaching in the undergraduate setting, and has been nominated twice in as many years for the Virginia Tech Graduate Instructor

of the Year Award. Upon graduating from Virginia Tech, she desires to continue her passion for teaching at the university level, and also has an interest in pursuing consultation work for law enforcement and correctional agencies.

Professionally, Trina is a member of the Academy for Criminal Justice Sciences, The American Sociological Association, The Southern Sociological Society, The American Correctional Association, and the International Association of Women Police. She is also a member of the Alpha Sigma Lambda Honor Society, the Alpha Kappa Delta Honor Society, and the Pi Gamma Mu International Honor Society in Social Science.

Trina is the adopted daughter Elizabeth P. Seitz of Garner, North Carolina, and the late Robert P. Seitz of Barrington, New Jersey. Her grandmother is Mrs. Nannie Kelly Stephenson, also of Garner.