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Twenty-Five Years of Death: A Report of the Cornell Death Penalty Project on the "Modern" Era of Capital Punishment in South Carolina

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TWENTY-FIVE YEARS OF DEATH: A REPORT OF THE CORNELL DEATH PENALTY PROJECT ON THE “MODERN” ERA OF CAPITAL PUNISHMENT IN SOUTH CAROLINA

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I. INTRODUCTION

In 1972, the United States Supreme Court determined that the death penalty, as then administered in this country, violated the Eighth Amendment's prohibition against cruel and unusual punishment.¹ Many states, including South Carolina, scurried to enact new, "improved" capital punishment statutes which would satisfy the Supreme Court's rather vague mandate. In 1976, the High Court approved some of the new laws,² and the American death penalty was back in business. After a wrong turn or two, including a statutory scheme which did not pass constitutional muster,³ the South Carolina General Assembly passed the current death penalty statute in 1977.⁴ The first death sentences under the new capital sentencing regime were imposed on October 7 of the same year.⁵ With twenty-five years of experience under the South Carolina "death belt," an examination of how the new, improved death penalty statute is working is in order. It is time for a report card.

The time is right to examine South Carolina's capital punishment scheme not only due to the new regime's twenty-fifth anniversary, but also because of several recent national studies raising troublesome findings about the administration of the death penalty in the United States. For example, Professor James Liebman and his colleagues, in their "Broken System" studies, found high rates of error in capital cases, as well as racial inequities, geographical

1. *Furman v. Georgia*, 408 U.S. 238, 239-40 (1972) (per curiam).

2. *See infra* notes 20-24 and accompanying text.

3. *See infra* notes 28-30 and accompanying text.

4. *See* S.C. CODE ANN. § 16-3-20 (Law. Co-op. Supp. 2001).

5. J.D. Gleaton and his half brother, Larry Gilbert, were sentenced to death in a joint trial in Lexington County and were executed on December 4, 1998. *See* Sid Gauden, *Brothers Executed by Lethal Injection*, THE POST AND COURIER (Charleston, S.C.), December 5, 1998, at A1.

disparities, and other systemic defects in the administration of the death penalty.⁶

This Study, with its focus on South Carolina, is much more modest. It is an attempt to scrutinize one state's new death penalty from a variety of perspectives in light of these national findings. Thus, after first discussing the legal landscape against which the current capital punishment statute was enacted,⁷ this Article will explore who has been sentenced to death in this state; how jurors, the South Carolina Supreme Court, other reviewing courts, and South Carolina's governors have performed their various functions in the system; and how the system stacks up against the promise of a "new and improved" death penalty.⁸ Furthermore, the Capital Jury Project is briefly discussed.⁹

II. FROM *FURMAN* TO *GREGG* TO *STATE V. SHAW*

In *Furman v. Georgia*¹⁰ a bare 5-4 majority of the Supreme Court invalidated all then-existing death penalty statutes. Each of the Justices in the majority wrote separately, and no clear consensus emerged as to why the death penalty, which had been upheld against constitutional attack the year before,¹¹ was now unconstitutional. At the risk of oversimplification, the constitutional rub arose from the fact that the death penalty was imposed in only a fraction of cases in which it was legally available. The Justices could divine no rational basis explaining why some offenders were sentenced to death while others were spared.¹² For this reason, the Court found that the state systems allowed for the arbitrary and capricious imposition of capital punishment. Justice Brennan's concurring opinion captures this sentiment: "When the punishment of death is inflicted in a trivial number of the cases in which it is legally available, the conclusion is virtually inescapable that it is being inflicted arbitrarily. Indeed, it smacks of little more than a lottery system."¹³ There was,

6. See JAMES S. LIEBMAN ET AL., A BROKEN SYSTEM: ERROR RATES IN CAPITAL CASES, 1973-1995 (2000) [hereinafter BROKEN SYSTEM I]; JAMES S. LIEBMAN ET AL., A BROKEN SYSTEM, PART II: WHY THERE IS SO MUCH ERROR IN CAPITAL CASES, AND WHAT CAN BE DONE ABOUT IT (2002) [hereinafter BROKEN SYSTEM II].

7. See discussion *infra* Part II.

8. See discussion *infra* Parts III-IV.

9. See discussion *infra* Part V.

10. 408 U.S. 238, 239-40 (1972).

11. See *McGautha v. California*, 402 U.S. 183, 193 (1971) (rejecting argument that absence of standards to guide jury's discretion in death penalty sentencing was "fundamentally lawless" and violated Fourteenth Amendment).

12. In most pre-*Furman* schemes, including South Carolina's, the jury decided the issue of the defendant's guilt and the appropriateness of the death penalty in the same unitary proceeding. See S.C. CODE § 16-52 (Michie 1962). If the jury found the defendant guilty of murder, it would recommend mercy if it thought a life sentence were appropriate and would not recommend mercy if it favored death. *Id.*

13. *Furman*, 408 U.S. at 293 (Brennan, J., concurring).

in short, no “rational basis that could differentiate in those terms the few who die from the many who go to prison.”¹⁴ Justice Stewart echoed Justice Brennan’s concerns: “I simply conclude that the Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed.”¹⁵ The fear that racial discrimination played a significant role in the death selection process was also of grave concern to several members of the Court. For example, in Justice Douglas’ view it was “incontestable that the death penalty inflicted on one defendant is ‘unusual’ if it discriminates against him by reason of his race, religion, wealth, social position, or class, or if it is imposed under a procedure that gives room for the play of such prejudices.”¹⁶ The primary flaw in the statutes before the Court was that those statutes gave juries too much discretion in deciding whether to impose the death penalty.¹⁷ However, there was no majority consensus that the death penalty was per se a constitutionally excessive punishment.

Many states, including South Carolina, rushed to create capital sentencing schemes that would satisfy the new constitutional standard. In retrospect, the *Furman* backlash was predictable.¹⁸ The post-*Furman* statutes fell into two broad categories: mandatory death penalty statutes and guided discretion statutes. Both types of new death penalty laws were intended to reduce the role of jury discretion. The mandatory statutes did so by eliminating it; if a defendant was found guilty of a capital offense, then the death penalty was imposed—no ifs, ands, or buts. The guided discretion statutes attempted to reduce arbitrariness by creating new procedures. The central features of most

14. *Id.* at 294.

15. *Id.* at 310 (Stewart, J., concurring). Justice Stewart went on to say:

These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. For, of all the people convicted of rapes and murders in 1967 and 1968, many just as reprehensible as these, the petitioners are among a capriciously selected random handful upon whom the sentence of death has in fact been imposed. My concurring Brothers have demonstrated that, if any basis can be discerned for the selection of these few to be sentenced to die, it is the constitutionally impermissible basis of race.

Id. at 309-10 (citations omitted).

16. *Id.* at 242 (Douglas, J., concurring). Justice Marshall agreed:

It is immediately apparent that Negroes were executed far more often than whites in proportion to their percentage of the population. Studies indicate that while the higher rate of execution among Negroes is partially due to a higher rate of crime, there is evidence of racial discrimination. Racial or other discriminations should not be surprising.

Id. at 364-65 (Marshall, J., concurring).

17. The South Carolina Supreme Court, following *Furman*, struck down the South Carolina statute in *State v. Gibson*, 259 S.C. 459, 462, 192 S.E.2d 720, 720 (1972).

18. See FRANKLIN E. ZIMRING & GORDON HAWKINS, CAPITAL PUNISHMENT AND THE AMERICAN AGENDA 98-102 (1986) (arguing various arms of government wish to “pass the buck” to other arms ultimately to beat the responsibility for ending the death penalty).

guided discretion schemes included bifurcated trials, the creation of statutory aggravating circumstances limiting eligibility for capital punishment, permitting consideration of mitigating circumstances, and mandatory appellate review (including proportionality review). By 1976, the new laws made their way back to the United States Supreme Court. The Court upheld the guided discretion statutes, but held the mandatory statutes violated the Eighth Amendment.¹⁹

Gregg v. Georgia was the lead case. Justice Stewart's opinion stated, "Despite the continuing debate, dating back to the 19th century, over the morality and utility of capital punishment, it is now evident that a large proportion of American society continues to regard it as an appropriate and necessary criminal sanction."²⁰ Thus, the Court concluded the death penalty was not per se violative of the Eighth Amendment. The Georgia statute passed constitutional muster even though "some jury discretion still exists" because "'the discretion to be exercised is controlled by clear and objective standards so as to produce non-discriminatory application.'"²¹ The Court concluded:

In summary, the concerns expressed in *Furman* that the penalty of death not be imposed in an arbitrary or capricious manner can be met by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance. As a general proposition these concerns are best met by a system that provides for a bifurcated proceeding at which the sentencing authority is apprised of the

19. The Court granted certiorari in five cases. *Gregg v. Georgia*, 428 U.S. 153 (1976), *Proffitt v. Florida*, 428 U.S. 242 (1976), and *Jurek v. Texas*, 428 U.S. 262 (1976), involved guided discretion statutes of various types that were deemed constitutional. *Woodson v. North Carolina*, 428 U.S. 280 (1976), and *Roberts v. Louisiana*, 428 U.S. 325 (1976), involved mandatory statutes which were invalidated.

20. *Gregg*, 428 U.S. at 179. Justice Stewart continued:

The most marked indication of society's endorsement of the death penalty for murder is the legislative response to *Furman*. The legislatures of at least [thirty-five] States have enacted new statutes that provide for the death penalty for at least some crimes that result in the death of another person. And the Congress of the United States, in 1974, enacted a statute providing the death penalty for aircraft piracy that results in death. These recently adopted statutes have attempted to address the concerns expressed by the Court in *Furman* primarily (i) by specifying the factors to be weighed and the procedures to be followed in deciding when to impose a capital sentence, or (ii) by making the death penalty mandatory for specified crimes. But all of the post-*Furman* statutes make clear that capital punishment itself has not been rejected by the elected representatives of the people.

Id. at 179-81 (citations omitted).

21. *Id.* at 198 (quoting *Coley v. State*, 204 S.E.2d 612, 615 (Ga. 1974)).

information relevant to the imposition of sentence and provided with standards to guide its use of the information.²²

The Court also emphasized the importance of appellate review:

As an important additional safeguard against arbitrariness and caprice, the Georgia statutory scheme provides for automatic appeal of all death sentences to the State's Supreme Court. That court is required by statute to review each sentence of death and determine whether it was imposed under the influence of passion or prejudice, whether the evidence supports the jury's finding of a statutory aggravating circumstance, and whether the sentence is disproportionate compared to those sentences imposed in similar cases.²³

On the other hand, the mandatory statutes did not fare so well. In *Woodson v. North Carolina*²⁴ the Court reasoned that mandatory death penalty statutes were out of step with "contemporary" standards of decency because they eliminated the jury's essential role in maintaining a "link" between "community values" and the capital punishment system.²⁵ The Court also believed that the mandatory statutes only "papered over" the problem of unguided and unchecked jury discretion because juries would refuse to convict many defendants of murder if forced with such a Draconian choice.²⁶ The Court also stated that, due to the uniqueness of the death penalty, the Constitution required that the sentencer could not be precluded from considering the "character and record of the individual offender and the circumstances of the particular offense."²⁷

22. *Id.* at 195.

In short, Georgia's new sentencing procedures require as a prerequisite to the imposition of the death penalty, specific jury findings as to the circumstances of the crime or the character of the defendant. Moreover, to guard further against a situation comparable to that presented in *Furman*, the Supreme Court of Georgia compares each death sentence with the sentences imposed on similarly situated defendants to ensure that the sentence of death in a particular case is not disproportionate. On their face these procedures seem to satisfy the concerns of *Furman*. No longer should there be "no meaningful basis for distinguishing the few cases in which [the death penalty] is imposed from the many cases in which it is not."

Id. at 198 (alteration in original) (quoting *Furman v. Georgia*, 408 U.S. 238, 313 (1972) (White, J., concurring)).

23. *Id.* at 198.

24. 428 U.S. 280 (1976).

25. *Id.* at 295.

26. *Id.* at 302.

27. *Id.* at 304.

South Carolina initially bet on the wrong constitutional horse by enacting a mandatory capital punishment scheme.²⁸ After the Supreme Court's *Woodson* decision, the South Carolina Supreme Court declared the mandatory statute invalid in *State v. Rumsey*.²⁹ In 1977, the General Assembly passed the current death penalty statute,³⁰ which was closely modeled after the Georgia law approved by the High Court in *Gregg*.³¹

The South Carolina Supreme Court upheld the new statute in *State v. Shaw*.³² The court concluded that the "statutory death penalty complex adopted by the General Assembly . . . is constitutionally indistinguishable from the statutory complex approved by the United States Supreme Court in *Gregg*."³³ In the state court's opinion, the new procedures "focus the sentencing authorities' attention on the particularized nature of the crime and the particularized characteristics of the individual defendant."³⁴ This guidance sufficiently reduced the likelihood of the death penalty being imposed capriciously.³⁵ The court also noted that the statutorily mandated appellate review, including the requirement that the court determine whether the death sentence was disproportionate or excessive, served "[as] an additional check against the random imposition of the death penalty."³⁶

Against this background of assurances as to how the new capital sentencing scheme was supposed to work, I will now turn to how it in fact works.

28. See S.C. CODE § 16-52 (Michie 1962).

29. 267 S.C. 236, 239, 226 S.E.2d 894, 895 (1976) ("As our statute does not permit the exercise of controlled discretion in imposing the death penalty required by the recent decision . . . it too is constitutionally defective.").

30. See S.C. CODE ANN. § 16-3-20 (Law. Co-op. Supp. 2001).

31. See *Gregg*, 428 U.S. at 162-68 (describing Georgia's death penalty sentencing scheme). There have been no substantial changes to the South Carolina death penalty statute in the last twenty-five years. The number of statutory aggravating circumstances has grown from seven to eleven; one statutory mitigating circumstance has been added; and a capital defendant's parole eligibility (if the sentencer chooses the life option) has been extended from twenty years to thirty years and then eliminated. S.C. CODE ANN. § 16-3-20 note (Law. Co-op. Supp. 2001) (Effect of Amendment).

32. 273 S.C. 194, 205, 255 S.E.2d 799, 804 (1979).

33. *Id.* at 203, 255 S.E.2d at 803-04.

34. *Id.*, 255 S.E.2d at 804.

35. *Id.*

36. *Id.* at 211, 255 S.E.2d at 807.

III. THE SOUTH CAROLINA DEATH PENALTY BY THE NUMBERS

A. *An Overview of Twenty-five Years of Death Sentences and Executions*

In the so called “modern era” of capital punishment in South Carolina, 152 men and 1 woman have been sentenced to death.³⁷ Eighty-one of the 153 people to receive a death sentence (53%) were white, 71 (46%) were African-American, and 1 (.65%) was Native American. Of the 153 sentenced to death, 126 (82%) were convicted for killing someone white.³⁸

As of September 13, 2002, sixty-two men, and no women, wait to die on South Carolina’s death row.³⁹ Even though African-Americans comprise only 29% of the population in this state, thirty-one of the death row inmates—50%—are black. Twenty-four of the thirty-one African-American inmates (77%) and twenty-seven of the thirty-one white inmates (87%) were convicted of murdering one or more white victims.⁴⁰

There have been twenty-eight executions in South Carolina since 1977, the most recent of which occurred on September 13, 2002 when Michael Passaro was put to death by lethal injection.⁴¹ Only six states have executed more death-

37. Appendix A to this Article lists all individuals sentenced to death in South Carolina under the new statute with information about their race, the victim’s race, and county of conviction. The single most prevalent statutory aggravating circumstance found in cases where the death penalty has been imposed is murder during the commission of armed robbery. The armed robbery aggravating factor was found in 102 cases. Murder during the commission of kidnapping has been found in fifty-seven cases. Murder during the commission of burglary has been found in thirty-nine cases, as has rape (or criminal sexual conduct) and murder during the commission of armed larceny (an offense which does not exist under South Carolina law). Physical torture has been found in twenty-seven cases. Murder of two or more persons has been found in twenty cases. Murder of a police officer has been found in fourteen cases. Murder for the purpose of monetary value has been found in twelve cases. Murder during the commission of housebreaking has been found in nine cases. Murder of a child under eleven has been found in seven cases. Murder by a person with a prior conviction for murder has been found in seven cases. Risk to more than one person in a public place has been found in seven cases. Murder as the agent of another has been found in four cases. Murder during the commission of assault with intent to ravish has been found in three cases. Murder by poison was found in one case. A number of cases, of course, had more than one aggravating circumstance. The average case in which the death sentence is imposed had two statutory aggravating circumstances. Appendix B to this Article lists the cases by aggravating circumstances.

38. One hundred and twenty-six of the 153 defendants were charged with killing one or more white victims. *See infra* Appendix A.

39. Appendix C to this Article is a list of the sixty-two inmates currently under sentence of death in South Carolina.

40. *See infra* Appendix C.

41. Appendix D to this Article lists those individuals executed in South Carolina since the current statute went into effect. The last execution in South Carolina before the Supreme Court’s decision in *Furman* was in 1962. From 1912 to 1962, South Carolina executed 241 persons. Bruce L. Pearson, *Why the Death Penalty is an Issue*, in *THE DEATH PENALTY IN SOUTH CAROLINA: OUTLOOK FOR THE 1980S* 9 (Bruce L. Pearson ed., 1981). One hundred and ninety-five were black (81%) and forty-six (19%) were white. *Id.* at 10. All but two were men. *Id.* at 11.

sentenced inmates.⁴² All those executed were men; sixteen (57%) were white, eleven (39%) were African-American, and one (4%) was Native American.⁴³ Four death row inmates died while on death row: three died of natural causes while one was killed by another inmate.⁴⁴

Forty-four men and one woman who were originally sentenced to death are no longer on death row. Three were found not guilty at their retrials. Forty-two were sentenced to life imprisonment after a jury or bench trial or a plea bargain.⁴⁵ Of the forty-five individuals, twenty-three were white and twenty-two were African-American.⁴⁶ Thus, approximately 30% of those individuals who were sentenced to death in the modern era of capital punishment were subsequently determined to be either not guilty of the charged offense or deserving of a sentence less than the death penalty.

B. Error Rates

Let us now look at the error rate in South Carolina capital cases. For the purposes of this Article, error is defined as an error occurring at trial serious enough to warrant a new trial either as to the capital defendant's guilt or as to the appropriate punishment. I have not counted cases in which a reviewing court found trial error but nevertheless concluded that the error was harmless or not prejudicial.

The South Carolina Supreme Court has reviewed 174 death judgments in connection with the first mandatory, or "direct," appeal⁴⁷ and has granted new trials or resentencing proceedings in sixty-nine cases, for an error rate of 39%.⁴⁸

42. Those states are: Texas (285); Virginia (86); Missouri (58); Oklahoma (52); Florida (52); and Georgia (30). DEATH PENALTY INFORMATION CENTER, NUMBER OF EXECUTIONS BY STATE SINCE 1976, <http://www.deathpenaltyinfo.org/dpicreg.html> (last updated Oct. 2, 2002).

43. Five individuals who were executed were "volunteers," or individuals who waived their appeals at some point in the capital appeals process. All five were white males. At least two of the executed inmates were mentally retarded. One was a juvenile. *See infra* Appendix D.

44. Two were African-American and two were white. *See infra* Appendix A.

45. *See infra* Appendix A. Sixteen individuals were sentenced to life at a jury trial, ten following a bench trial (by a judge), and sixteen life sentences resulted from plea agreements. *See infra* Appendix A.

46. *See infra* Appendix A.

47. The number of cases reviewed is greater than the total number of individuals sentenced to death because some individuals were sentenced to death on more than one occasion. As of this writing, of the 153 persons sentenced to death, sixteen have not yet had their cases decided on direct appeal. Appendix E to this Article lists all cases reviewed on direct appeal by the South Carolina Supreme Court.

48. In thirty-four cases, the court granted an entire new trial. In thirty-five cases, the court ordered a new sentencing trial. The direct appeal affirmance rate in capital cases in South Carolina rose after Attorney General Charles Condon was elected, due in part to his making death penalty appeals a political issue. Part of Condon's campaign involved criticizing the South Carolina Supreme Court for its record in capital cases. *See* John Blume & Theodore Eisenberg, *Judicial Politics, Death Penalty Appeals, and Case Selection: An Empirical Study*, 72 S. CAL. L. REV. 465, 474-75 (1999). The national error rate on direct appeal as found by Professor Liebman and his colleagues was 41%. BROKEN SYSTEM II, *supra* note 6, at 9.

The United States Supreme Court found error in eight cases affirmed by the state supreme court,⁴⁹ for an overall error rate on direct appeal of 44%.⁵⁰

The types of error detected in the direct appeal cases can be broadly categorized.⁵¹ The three largest categories of error are prosecutorial misconduct, instructional error, and evidentiary error.⁵² In twenty-seven cases, prosecutorial misconduct was a reason, if not the sole reason, for reversal.⁵³ In thirty-nine cases, there was prejudicial error in the trial court's instructions to the jury.⁵⁴ In thirty-three cases there was evidentiary error, which, for the purposes of this Article, refers to situations where the trial judge either permitted prejudicial evidence or excluded relevant evidence.⁵⁵ Most, but not

49. See *Kelly v. South Carolina*, 534 U.S. 246, 258 (2002); *Shafer v. South Carolina*, 532 U.S. 36, 55 (2001); *Simmons v. South Carolina*, 512 U.S. 154, 171 (1994); *Patterson v. South Carolina*, 493 U.S. 1013, 1013 (1990) (order); *Jones v. South Carolina*, 476 U.S. 1102, 1102 (1986) (order); *Plemmons v. South Carolina*, 476 U.S. 1102, 1102 (1986) (order); *Elmore v. South Carolina*, 476 U.S. 1101, 1101 (1986) (order); *Skipper v. South Carolina*, 476 U.S. 1, 9 (1986).

50. The error rate would be substantially higher if the South Carolina Supreme Court had not jettisoned *in favorem vitae* (in favor of life) review. For two hundred years, errors could be raised on direct appeal even if there was no objection at trial. However, in *State v. Torrence*, 305 S.C. 45, 60-69, 406 S.E.2d 315, 324-28 (1991) (plurality opinion) (Toal, J., concurring) the court determined that the *in favorem vitae* rule was outdated and, despite the absence of evidence to support the assertion, it encouraged "sandbagging" by defense counsel. South Carolina now has very unforgiving and confusing procedural default rules which preclude appellate review of many trial errors. See generally John H. Blume & Pamela A. Wilkins, *Death by Default: State Procedural Default Doctrine in Capital Cases*, 50 S.C. L. REV. 1 (1998) (criticizing the South Carolina rules for error preservation and offering alternatives). The error rate on direct appeal prior to *Torrence* was 56% (in fifty of ninety cases the state supreme court granted either an entire new trial or a new sentencing trial). After *Torrence*, the error rate fell to 24% (error was found in eighteen of seventy-five cases). See *infra* Appendix E.

51. Appendix F to this Article sets forth the errors found by category.

52. Some cases had more than one error, and error of more than one type.

53. Most of these cases involved improper prosecutorial argument. See, e.g., *State v. Cockerham*, 294 S.C. 380, 381, 365 S.E.2d 22, 22-23 (1988) (reversing based on prosecution's improper reference to defendant's refusal to testify). However, other types of misconduct occurred as well. See, e.g., *State v. Quattlebaum*, 338 S.C. 441, 449, 527 S.E.2d 105, 109 (2000) (reversing based on finding that Sixth Amendment right to counsel was violated when a deputy solicitor intentionally eavesdropped on a privileged conversation between appellant and his attorney).

54. Some of the instructional errors involved the failure to give a legally correct instruction required by the facts of the case. See, e.g., *State v. Young*, 305 S.C. 380, 386, 409 S.E.2d 352, 356 (1991) (reversing based on failure to submit statutory mitigating circumstance to the jury). Other cases involved the trial court giving the jury a legally incorrect instruction. See, e.g., *State v. Manning*, 305 S.C. 413, 417, 409 S.E.2d 372, 374-75 (1991) (reversing based on incorrect reasonable doubt instruction).

55. See, e.g., *State v. Jones*, 343 S.C. 562, 571, 541 S.E.2d 813, 818 (2001) (reversing because trial court improperly prohibited cross-examination of accomplice, who provided essential testimony for the prosecution, concerning the accomplice's history of plea bargaining and cooperating with the solicitor's office); *State v. Howard*, 295 S.C. 462, 473, 369 S.E.2d 132, 138 (1988) (reversing based on trial court's exclusion at penalty phase of defendant's confession which defendant hoped to use to demonstrate susceptibility to domination).

all, detected errors fit into these categories.⁵⁶ As will be discussed in more detail below, it is also important to note a type of error which has *never* been found. The South Carolina Supreme Court has never determined that any death sentence is disproportionate to the offense.⁵⁷

Error was found in an additional twenty cases in the capital collateral appeals process (after direct appeal).⁵⁸ The overall error

56. See, e.g., *State v. Bennett*, 328 S.C. 251, 256, 493 S.E.2d 845, 847-48 (1997) (reversing based on improper qualification of juror who indicated he would go with the majority even if he did not agree with them); *State v. Davis*, 306 S.C. 246, 250, 411 S.E.2d 220, 222 (1991) (reversing based on prosecutor using peremptory challenge in racially discriminatory manner); *State v. Diddlemeyer*, 296 S.C. 235, 238, 371 S.E.2d 793, 794-95 (1988) (reversing because appointed counsel did not meet the statutory qualifications for lead counsel in a capital case); *State v. Reed*, 293 S.C. 515, 517, 362 S.E.2d 13, 14 (1987) (reversing after finding that defendant was denied his statutory right to the final argument); *State v. Pierce*, 289 S.C. 430, 434, 346 S.E.2d 707, 710 (1986) (reversing based on finding improper comments by judge to defendant on defendant's right to remain silent); *State v. Elmore*, 279 S.C. 417, 423, 308 S.E.2d 781, 785 (1983) (reversing because trial judge entered jury room during deliberations and discussed case with jurors).

57. See discussion *infra* Part IV.D.

58. In twelve cases, error was found by the state post-conviction court or the South Carolina Supreme Court in state post-conviction proceedings. See *Southerland v. State*, 337 S.C. 610, 617, 524 S.E.2d 833, 836 (1999) (finding defendant prejudiced by ineffective assistance of counsel); *Hudgins v. Moore*, 337 S.C. 333, 339, 524 S.E.2d 105, 108 (1999) (same); *Chaffee v. State*, 294 S.C. 88, 91, 362 S.E.2d 875, 877 (1987) (finding error in trial court's exclusion of expert testimony regarding defendant's adaptability to prison life); *Thompson v. Aiken*, 281 S.C. 239, 240, 315 S.E.2d 110, 110 (1984) (finding error in trial court's ruling that solicitor's introduction of his own opinion into closing argument was not prejudicial); *Patterson v. State*, No. 98-CP-32-0097 (S.C. 11th Cir. C.P. Sept. 23, 1999); *Whipple v. Moore*, No. 97-CP-26-417 (S.C. 15th Cir. C.P. Dec. 10, 1998); *Holmes v. Moore*, No. 96-CP-46-966 (S.C. 16th Cir. C.P. Jan. 15, 1998); *Cain v. Evatt*, No. 90-CP-13-382 (S.C. 4th Cir. C.P. May 4, 1995); *Owens v. McKellar*, 88-CP-26-605 (S.C. 15th Cir. C.P. Apr. 5, 1988); *Damon v. Aiken*, 86-CP-38-211 (S.C. 1st Cir. C.P. June 22, 1987); *Smith v. Aiken*, 86-CP-04-995 (S.C. 10th Cir. C.P. June 26, 1987). In four cases the United States Supreme Court found prejudicial error following the state court's post-conviction review. See *Yates v. Aiken*, 500 U.S. 391, 393 (1991) (finding South Carolina Supreme Court employed deficient standard of review); *Truesdale v. Aiken*, 480 U.S. 527, 527 (1987) (per curiam) (finding error in South Carolina Supreme Court decisions that refused to retroactively apply *Skipper v. South Carolina*, 476 U.S. 1 (1986)); *Koon v. Aiken*, 480 U.S. 943, 943 (1987) (order) (same); *Patterson v. Aiken*, 480 U.S. 943, 943 (1987) (order) (vacating and remanding for reconsideration in light of *Truesdale*). In one case a motion for new trial was granted due to newly discovered evidence of actual innocence. See *State v. Spann*, 334 S.C. 618, 621-22, 513 S.E.2d 98, 100 (1999). In *State v. South*, 310 S.C. 504, 509, 427 S.E.2d 666, 670 (1993), the trial judge granted a new sentencing trial based on newly discovered evidence that the defendant South had a brain tumor at the time of the offense. On appeal, the South Carolina Supreme Court concluded that the judge applied the wrong standard and remanded the case for reconsideration. *Id.* Before the court could act on the case, South waived his appeals and was voluntarily executed. See *infra* Appendix D. In another case, a new trial was ordered in a federal habeas corpus proceedings. *Hyman v. Aiken*, 824 F.2d 1405, 1410 (4th Cir. 1987) (ordering retrial based on erroneous jury instruction). In two cases, the South Carolina Supreme Court granted a new trial after a petition for writ of habeas corpus was filed in the court's original jurisdiction. *Tucker v. Catoe*, 346 S.C. 483, 485, 552 S.E.2d 712, 713 (2001) (finding trial judge's instructions to deadlocked jury unconstitutionally coercive); *Butler v. State*, 302 S.C. 466, 467-68, 397 S.E.2d 87, 88 (1990) (finding trial judge unfairly coerced defendant

rate, when factoring in state post-conviction appeals, motions for new trial due to newly discovered evidence, federal habeas corpus, and state habeas corpus is 64%.⁵⁹ The error rate would likely be higher if South Carolina capital cases were not reviewed in federal habeas corpus proceedings by the United States Court of Appeals for the Fourth Circuit.⁶⁰ The Fourth Circuit is by far the stingiest federal court of appeals when it comes to granting relief in capital cases. The Fourth Circuit has found prejudicial error in only 8 of 174 (4.5%) capital cases it has reviewed since 1976;⁶¹ nationally, the percentage of cases reversed on habeas is 40%.⁶² Only one of the eight cases arose from South Carolina.⁶³

The largest category of error detected in post-conviction proceedings, not surprisingly, is denial of the right to the effective assistance of counsel. Nine of the twenty post-conviction reversals were due to various failings by counsel.⁶⁴ But post-conviction relief has also been granted due to prosecutorial

to testify). There are several cases currently pending on appeal in which error was found in post-conviction proceedings. Because those cases are not yet final, they have not been included in the twenty cases where error was found in the capital collateral appeals process. I have also not included one case in which a death-sentenced inmate was found incompetent to be executed. *See Singleton v. State*, 313 S.C. 75, 84, 437 S.E.2d 53, 58 (1993). For a discussion of the state and federal collateral appeals process available to death row inmates in South Carolina, see John H. Blume, *An Introduction to Post-Conviction Remedies, Practice and Procedure in South Carolina*, 45 S.C. L. REV. 235 (1994), and John H. Blume & David P. Voisin, *An Introduction to Federal Habeas Corpus Practice and Procedure*, 47 S.C. L. REV. 271 (1996).

59. Nationally, error is found in 68% of all capital cases. *BROKEN SYSTEM I*, *supra* note 6, at 4-5.

60. The Fourth Circuit is the federal court of appeals for South Carolina as well as North Carolina, Maryland, Virginia, and West Virginia.

61. Appendix G to this Article lists all capital cases decided by the Fourth Circuit in the modern era of capital punishment.

62. *BROKEN SYSTEM II*, *supra* note 6, at 9.

63. *See Hyman v. Aiken*, 824 F.2d 1405 (4th Cir. 1987); *infra* Appendix G.

64. *See, e.g., Hudgins v. Moore*, 337 S.C. 333, 339, 524 S.E.2d 105, 108 (1999) (reversing based on finding that counsel was ineffective for failing to object when the prosecutor improperly cross-examined the defendant using a psychological test). The most common failing of counsel is the failure to adequately develop and present evidence in mitigation at the sentencing phase of the trial. *See, e.g., Whipple v. Moore*, No. 97-CP-26-4172 (S.C. 15th Cir. C.P. Dec. 10, 1998). There are currently four cases on appeal to the South Carolina Supreme Court where the post-conviction trial court found counsel to have rendered ineffective assistance. *See Simpson v. Moore*, No. 97-CP-42-1911 (S.C. 7th Cir. C.P. Aug. 6, 2002); *Ray v. Catoe*, No. 99-CP-42-662 (S.C. 7th Cir. C.P. May 31, 2002); *Conyers v. Moore*, No. 97-CP-14-506 (S.C. 3d Cir. C.P. Feb. 10, 2000); *Franklin v. Moore*, No. 96-CP-45-117 (S.C. 3d Cir. C.P. Oct. 2, 1998). These cases are not included in the nine reversals figure reported above. More cases of ineffective assistance of counsel would likely have been found were it not for the Fourth Circuit's restrictive view of the Supreme Court's decision in *Strickland v. Washington*, 466 U.S. 668 (1984) (establishing standard for ineffective assistance of counsel claims). *See John H. Blume & Sheri Lynn Johnson, The Fourth Circuit's "Double-Edged Sword": Eviscerating the Right to Present Mitigating Evidence and Beheading the Right to the Assistance of Counsel*, 58 Md. L. REV. 1480, 1497 (1999) (arguing 4th Circuit's approach will defeat virtually every allegation of improper assistance of counsel based on failure to present evidence).

misconduct,⁶⁵ instructional error,⁶⁶ evidentiary error,⁶⁷ newly discovered evidence of actual innocence,⁶⁸ and a death sentenced inmate's mental incompetency to be executed.⁶⁹

While executive clemency is not part of the judicial capital appeals process, it has always been thought of as an important part of any capital punishment scheme.⁷⁰ No South Carolina death row inmate has been granted clemency since the new death penalty statute has been in effect.⁷¹ No other state has executed so many inmates without a single commutation.⁷²

C. *Murder and Death Sentencing Rates*

South Carolina does not have a particularly high murder rate. In 1999, for example, the last year for which the Department of Justice has nationwide data, there were 258 murders in the state.⁷³ South Carolina's murder rate was 6.6 murders for every 100,000 people.⁷⁴ This placed South Carolina in a three way tie for 15th nationally; the national average was 5.7 murders for every 100,000 people.⁷⁵ Since 1977, South Carolina's murder rate has been, as it was in 1999, slightly above the national average. Like most other states, including those without capital punishment, the murder rate in South Carolina has declined steadily in the last twenty-five years.⁷⁶

Nor does South Carolina have an uncommonly high death sentencing rate. For purposes of this Article, the death sentencing rate is determined by

65. *Thompson v. Aiken*, 281 S.C. 239, 240, 315 S.E.2d 110, 110 (1984) (reversing based on improper closing argument).

66. *Yates v. Evatt*, 500 U.S. 391, 393 (1991) (reversing because of improper burden-shifting instruction regarding implied malice).

67. *Chaffee v. State*, 294 S.C. 88, 91, 362 S.E.2d 875, 877 (1987) (reversing because the judge did not allow evidence of adaptability to confinement).

68. *State v. Spann*, 334 S.C. 618, 621-22, 513 S.E.2d 98, 100 (1999) (reversing based on trial judge's rejection of exculpatory expert testimony at new trial hearing).

69. *Singleton v. State*, 313 S.C. 75, 84, 437 S.E.2d 53, 58 (1993) (finding incompetency based on inmate's complete inability to communicate).

70. *Herrera v. Collins*, 506 U.S. 390, 415 (1993) (stating "[e]xecutive clemency has provided the 'fail safe'" in the capital punishment system) (citations omitted); see also Michael Heise, *Mercy By the Numbers: An Empirical Analysis of Clemency and Its Structure*, 89 VA. L. REV. (forthcoming 2003) (exploring and criticizing interaction of executive clemency and capital punishment).

71. Not all of the twenty-eight inmates who have been executed have requested clemency. In addition to the five "volunteers," at least three other inmates (Donald H. Gaskins, Ronnie Howard, and Anthony Green) elected not to ask the governor for a commutation.

72. DEATH PENALTY INFORMATION CENTER, FACTS ABOUT CLEMENCY, <http://www.deathpenaltyinfo.org/dpicreg.html> (last updated Oct. 2, 2000).

73. FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS, http://www.fbi.gov/ucr/Cius_99/w99tbl05.xls (last modified June 14, 2002). This number includes non-negligent manslaughter. *Id.*

74. *Id.*

75. *Id.* at http://www.fbi.gov/ucr/cius_99/w99tbl01.xls.

76. *Id.* at <http://www.149.101.22.40/dataonline/search/homicide/state/statebystate.cfm>.

calculating the number of death sentences imposed in relation to the number of murders.⁷⁷ The national average is twenty-one death sentences for every 1000 homicides.⁷⁸ South Carolina's death sentencing rate is sixteen death sentences for every 1000 homicides, putting it in twenty-first place among the thirty-eight states with the death penalty.⁷⁹

However, substantial variation exists in South Carolina's death sentencing rates when the race of the defendant and the race of the victim are taken into account. African-Americans who kill whites are sentenced to death at approximately three times the rate of whites who kill whites.⁸⁰ The death penalty is rarely sought or obtained when the murder victim is African-American. Even though most murder victims are African-American, only 0.46% of black victim cases result in a death sentence.⁸¹ However, white victim cases are quite a different matter; they result in a death sentence in 3.4% of the cases.⁸² Thus, a person charged with killing someone who is white is more than seven times more likely to be sentenced to death than a person charged with killing an African-American. And an African-American charged with killing a white person is approximately five times more likely to be sentenced to death than in cases involving any other racial combination.⁸³

D. Locale

A review of the available statistical information reveals that it is not completely accurate to talk about a "South Carolina death penalty." There is wide variation from county to county, and from judicial circuit to judicial circuit, in whether the death penalty will be sought, or obtained. Ten of South

77. See John Blume et al., *Explaining Death Row's Population and Racial Composition* (Oct. 4, 2002) (unpublished manuscript at 9 tbl.1, on file with authors) (listing death sentence cases by state).

78. See *id.*

79. *Id.* Nevada has the highest death sentencing rate (sixty death sentences per 1000 murders) and Colorado has the lowest (four death sentences per 1000 murders). *Id.*

80. In black defendant/white victim cases, the death sentencing rate is 67.8 death sentences per 1000 homicides (fifty death sentences for 738 murders). *Id.* at 37 tbl.8. In white defendant/white victim cases, the death sentencing rate is 27.1 death sentences per 1000 homicides (seventy-two death sentences for 2,654 murders). *Id.* An earlier study by Professor Raymond Paternoster and Anne Marie Kazyaka made similar findings. See Raymond Paternoster and Marie Kazyaka, *The Administration of the Death Penalty in South Carolina: Experiences Over the First Few Years*, 39 S.C. L. REV. 245, 324 (1988).

81. Using the same calculus previously described, the death sentencing rate in black victim cases is 4.6 death sentences per 1000 homicides. See Blume et al., *supra* note 77, at 37 tbl.8.

82. Using the same calculus previously described, the death sentencing rate in white victim cases is thirty-six death sentences per 1000 homicides. See *id.*

83. As noted above, the death sentencing rate is 67.8 death sentences per 1000 homicides (6.78%) in cases where the defendant is African-American and the victim is white. *Id.* The death sentencing rate for all other cases is 12.4 death sentences per 1000 homicides (1.24%). See *id.*

Carolina's forty-six (22%) counties have never produced a death sentence.⁸⁴ Other counties, even though they are relatively large and have, at least comparatively speaking, significantly more murders, produce very few death sentences.⁸⁵ By contrast, more than one-third of the death sentences imposed in the last ten years arose from two of the state's sixteen Judicial Circuits. Twenty-four of the sixty-two (39%) persons sentenced to death from January 1993 to the present came from either the First Judicial Circuit (Calhoun, Dorchester, and Orangeburg counties) or the Eleventh Judicial Circuit (Edgefield, Lexington, and Saluda counties). However, these counties do not have higher homicide rates than other counties.⁸⁶ In fact, while Lexington County is the fifth most heavily populated county in the state, it ranks twelfth in the number of homicides. From 1977 to 1998, there were 255 murders, which resulted in twenty-eight death sentences. Thus, Lexington County's death sentencing rate of 11% is approximately five times greater than the national average and seven times the South Carolina average of 1.6%.⁸⁷ Based on currently available data, Lexington County has the highest death sentencing rate of *any* large county in the United States.⁸⁸ Lexington County also has a high reversal rate; error was found in 18 of the 30 cases arising from Lexington County (60%), with more reversals likely on the horizon.⁸⁹

84. These counties are the following: Allendale, Bamberg, Fairfield, Hampton, Kershaw, Laurens, Lee, Marion, Marlboro, and McCormick. *See infra* Appendix A.

85. For example, Richland County had 952 murders from 1976-1998. *See* JAMES ALAN FOX, INTER-UNIVERSITY CONSORTIUM FOR POLITICAL AND SOCIAL RESEARCH, UNIFORM CRIME REPORTS [UNITED STATES]: SUPPLEMENTARY HOMICIDE REPORTS, 1976-1998 (2000), <http://www.ilpsr.umich.edu:8080/NACID-STUDY/03000.xml>. That was more than any other county in South Carolina. Only five individuals have been sentenced to death in Richland County, and the last death sentence was imposed in March of 1995. *See infra* Appendix A. Thus, the county death sentencing rate is .6%, which is substantially below the state average of 1.6%. Greenville County and Charleston County also have relatively low death sentencing rates. *See id.*

86. Orangeburg, Dorchester and Calhoun rank ninth, twenty-seventh and forty-first respectively in number of homicides. Lexington, Edgefield, and Saluda rank twelfth, thirty-seventh, and thirty-ninth respectively in terms of the number of homicides. FOX, *supra* note 85.

87. The national average is 2.2%, or twenty-one death sentences per 1000 homicides. *See* Blume et al., *supra* note 77, at 7. The South Carolina average is 1.6%, or sixteen death sentences per 1000 homicides. *See id.* at 9 tbl.1.

88. *See* BROKEN SYSTEM II, *supra* note 6, at 294 tbl.13A. The highest county death sentencing rate, found by Liebman and his colleagues, was Pima County, Arizona. Pima County's death sentencing rate is 6.4% or sixty-four death sentences per 1000 homicides. *Id.* Lexington County was not included in Liebman's study due to its size.

89. From 1977 to the present, there have been thirty death sentences imposed on twenty-two different individuals. *See infra* Appendix A. Eighteen of the cases have been reversed to date. *Id.* Five individuals sentenced to death in Lexington County have been executed. Two of the five were "volunteers." *See infra* Appendix D. Two are no longer on death row. Two cases were never reviewed by any court because the inmate died prior to any judicial review. *See infra* Appendix A.

E. Juveniles

South Carolina is one of the few states that has no age restriction on eligibility for the death penalty. The United States Supreme Court has held that persons below the age of sixteen are not subject to capital punishment,⁹⁰ but many states do not allow offenders below the age of eighteen to be sentenced to death.⁹¹ This number is rising as additional states enact legislation banning the execution of juveniles convicted of murder.⁹² Of the states that technically permit juveniles to be sentenced to death, few do it in practice,⁹³ and even fewer actually carry out a death sentence once it has been imposed.⁹⁴ Internationally, the practice of executing juveniles is all but extinct. The United States is one of only three countries in the world that permits the practice, the other two being Iran and the Democratic Republic of the Congo.⁹⁵

90. *Thompson v. Oklahoma*, 487 U.S. 815, 838 (1988) (holding death penalty for those below the age of sixteen violates Eighth Amendment). *But see Stanford v. Kentucky*, 492 U.S. 361, 380 (1989) (holding death penalty is a permissible punishment for sixteen and seventeen year olds). However, in light of the Supreme Court's recent decision in *Atkins v. Virginia*, ___ U.S. ___, 122 S.Ct. 2242, 2252 (2002) (holding that the Eighth Amendment prohibits the execution of the mentally retarded), there is reason to question the current constitutional status of executing juveniles. In fact, three members of the Supreme Court recently indicated that the question should be revisited. *See Patterson v. Texas*, ___ U.S. ___, 2002 WL 1986618 (Aug. 28, 2002) (Mem.) (Stephens, J., dissenting and Ginsburg, J., joined by Breyer, J., dissenting). South Carolina was one of a dwindling number of states that, prior to *Atkins*, permitted the execution of individuals with mental retardation. At least two of the twenty-eight individuals executed in South Carolina (Sylvester Adams and Frank Middleton) were mentally retarded. *See infra* Appendix D. Evidence of mental retardation was presented in other cases where the individual was ultimately executed. *See infra* Appendix D. South Carolina is also the only state in the country that has sanctioned the death penalty for a defendant found guilty but mentally ill pursuant to a scheme which requires a finding that, because of the defendant's illness, he lacked the capacity to conform his conduct to the requirements of the law. *See State v. Wilson*, 306 S.C. 498, 504, 413 S.E.2d 19, 22 (1992); *see also* John Blume & Sheri Johnson, *Killing the Non-Willing: Atkins, the Volitionally Incapacitated, and the Death Penalty*, (forthcoming).

91. Twenty-two states currently permit the execution of juvenile offenders. *The Juvenile Death Penalty in the United States*, 2002 A.B.A. SEC. CRIM. JUST., JUVENILE JUSTICE CENTER, FACT SHEET: THE JUVENILE DEATH PENALTY IN THE UNITED STATES [hereinafter FACT SHEET].

92. For example, Indiana enacted a bar to the execution of persons below the age of eighteen at the time of the offense in 2002. *Id.* In 1999, the Florida Supreme Court held that the Florida Constitution did not permit sixteen year olds to be executed. *See Brennan v. State*, 754 So. 2d 1, 5-6 (Fla. 1999). Also in 1999, Montana legislatively abolished the death penalty for juveniles. *Id.*

93. Only sixteen of the twenty-two states that permit the execution of juvenile offenders have juvenile offenders on death row. *Id.*

94. Only seven states have actually executed a defendant who was under eighteen at the time of the offense. Those states are Georgia, Louisiana, Missouri, Oklahoma, South Carolina, Virginia, and Texas. *Id.*

95. *Id.* China, Pakistan, and Yemen recently abolished the death penalty for juvenile offenders. FACT SHEET, *supra* note 91 (citations omitted). Every major international human rights treaty, e.g. the International Covenant on Civil and Political Rights, expressly prohibits executing persons for crimes committed before the age of eighteen. *See id.* There is no denying that the United States is in clear violation of international human rights law, and the Inter-American

Currently, South Carolina has three individuals on death row who were sixteen years old at the time of the crimes for which they were convicted and sentenced to death.⁹⁶ The convictions and death sentences of all three were affirmed on direct appeal by the state supreme court.⁹⁷ Two are African-American while one is white.⁹⁸ Three other juvenile offenders, all seventeen at the time of the offense, have been sentenced to death in South Carolina in the modern era. One was executed,⁹⁹ one was resentenced to life imprisonment,¹⁰⁰ and one recently had his death sentence vacated by the United States Supreme Court.¹⁰¹ South Carolina is one of only seven states to have executed a juvenile offender since reinstatement of the death penalty in the late 1970s. James Terry Roach, who was executed in 1986, was seventeen at the time of the crime for which he was convicted and sentenced to death.¹⁰² As a historical note, South Carolina holds the infamous distinction of having executed the youngest person in the United States in the last 50 years.¹⁰³ George Stinney was only 14 years old at the time he was convicted and executed in 1944.¹⁰⁴ He was so small his mask fell off during his electrocution.¹⁰⁵

Commission on Human Rights specifically found South Carolina violated international law after the execution of Terry Roach. See Washington College of Law, *Decisions of the Inter-American Commission on Human Rights*, Case 9647, Res. 3/87 (1987), at http://www.wcl.american.edu/pub/humright/digest/Inter-American/english/annual/1986_87.

96. Victor L. Streib, *Case Summaries for Current Death Row Inmates Under Juvenile Death Sentences*, at <http://www.deathpenaltyinfo.org/juvcases.html> (last visited Oct. 18, 2002). The three inmates who were sixteen years old at the time of the offense are Robert Conyers, Herman Hughes, and Ted Benjamin Powers. *Id.*

97. See *State v. Powers*, 331 S.C. 37, 50, 501 S.E.2d 116, 122 (1998); *State v. Hughes*, 328 S.C. 146, 155, 493 S.E.2d 821, 825 (1997); *State v. Conyers*, 326 S.C. 263, 267, 487 S.E.2d 181, 183-84 (1997).

98. Conyers and Hughes are African-American; Powers is white. See *infra* Appendix A.

99. James Terry Roach was sentenced to death in 1977, and he was executed in January of 1986. See *infra* Appendix D.

100. Joseph Hudgins was sentenced to death in 1993. His conviction was reversed in state post-conviction proceedings on the basis of ineffective assistance of counsel. *Hudgins v. Moore*, 337 S.C. 333, 339, 524 S.E.2d 105, 108 (1999). He was sentenced to life imprisonment in 2001 in a negotiated plea agreement whereby he agreed to waive any right to parole in exchange for a life sentence. Interview with David Bruck, counsel for Mr. Joseph Hudgins, in Columbia, S.C. (Sept. 9, 2002).

101. William Kelly was sentenced to death in Lexington County in 1998. The South Carolina Supreme Court affirmed his convictions and sentence. *State v. Kelly*, 343 S.C. 350, 354, 540 S.E.2d 851, 853 (2001). The United States Supreme Court reversed due to the trial court's failure to inform the jury that Kelly would not be eligible for parole if sentenced to life imprisonment. *Kelly v. South Carolina*, 534 U.S. 246, 248 (2002).

102. See Washington College of Law, *Decisions of the Inter-American Commission on Human Rights*, Case 9647, Res. 3/87 (1987), at http://www.wcl.american.edu/pub/humright/digest/Inter-American/english/annual/1986_87.

103. David I. Bruck, *Executing Teen Killers Again*, WASH. POST, Sept. 15, 1985, at D1.

104. *Id.*

105. *Id.*

A bill is currently pending in the South Carolina legislature that would prohibit the execution of individuals under the age of eighteen.¹⁰⁶ If enacted, this bill would reflect the majority of South Carolinians' views on the juvenile death penalty as evidenced by statewide poll results indicating close to 60% of South Carolinians do not support the death penalty for juveniles convicted of murder.¹⁰⁷

IV. OBSERVATIONS BASED ON THE DATA

So what, if anything, do the numbers tell us? While reasonable people may draw different conclusions from various aspects of the data, hopefully some consensus may emerge on needed modifications to the existing scheme.

A. Error Rates

First, let us examine error rates. Some may argue that the large number of reversals indicates that the capital appeals system is working. After all, error is detected in more than half the cases. On the other hand, what does it say that a system charged with determining who should live and who should die is fraught with error? Is the death penalty just another inept government program?¹⁰⁸ Substantial questions about the current death penalty system's ability to discern "death-worthiness" also arise from the fact that error detection makes a tremendous difference in the ultimate outcome of the case. Of the sixty cases in which error was found that are now "final"—either as a result of execution following a death sentence imposed at a retrial or because the inmate was exonerated, found guilty of a crime that was not death-eligible, or received a sentence of life imprisonment—forty-five are no longer on death row. Thus, 75% of the death sentenced inmates in whose cases error was found, and whose cases are now completed, were ultimately either exonerated or received a sentence less than the death penalty.¹⁰⁹ This figure represents almost one third of the total number of individuals who have been sentenced to death since 1977. Additionally, because most death row inmates still have appeals pending, the number who eventually leave death row either exonerated or with a lesser sentence will inevitably be higher. Three individuals who were convicted and

106. See S.B. 236, 114th Gen. Assem., 2d Sess. (S.C. 2001).

107. See The Institute for Public Service and Policy Research of the University of South Carolina, South Carolina State Survey 12 (Fall 2001) (on file with author).

108. See *BROKEN SYSTEMS II*, *supra* note 6, at vi (stating that the "capital system is collapsing under the weight of [serious] error").

109. Nationally, 82% of cases in which error was found ended in sentences less than death. *BROKEN SYSTEMS I*, *supra* note 6, at 6. Of those, 7% of the defendants were found not guilty. *Id.*

sentenced to death were acquitted of murder at their retrial.¹¹⁰ There have been other cases where the defendant's guilt was seriously called into question.¹¹¹

The error rate could—and should—be much higher were it not for the development of legal rules whose effect, if not design, is to limit the number of cases in which reversible error is found, and were it not for the deferential nature of the federal courts that review South Carolina death penalty cases. In addition to the increasing use of procedural default to avoid reviewing the merits of claims of error raised by death sentenced inmates,¹¹² the South Carolina General Assembly and the United States Congress, through various “effective” death penalty acts, have limited death sentenced inmates’ ability to seek state and federal post-conviction review of their convictions and death sentences.¹¹³ Furthermore, on average, error is detected by the federal courts at a rate of 40%.¹¹⁴ The Fourth Circuit’s reversal rate in capital cases is 4%, a fraction of the national average.¹¹⁵

The possibility of wrongful executions led to a moratorium on executions in Illinois. Governor George H. Ryan, a Republican, appointed a bipartisan commission of defense lawyers, former prosecutors, and judges to study the death penalty in his state, and the report the Ryan Commission ultimately

110. Michael Linder, Jesse Keith Brown, and Warren Douglas Manning were all acquitted of murder at their retrials. See *infra* Appendix A. Nationwide, since 1973, 102 people have been released from death row due to evidence of their innocence. DEATH PENALTY INFORMATION CENTER, INNOCENCE AND THE DEATH PENALTY, <http://www.deathpenaltyinfo.org/innoc.html> (last visited Oct. 18, 2002).

111. For example, Richard Charles Johnson was executed on May 3, 2002 despite a signed confession from his co-defendant that she was the actual perpetrator. There was no physical evidence implicating Johnson, and the State’s case consisted entirely of the testimony of immunized co-defendants and a jailhouse informant. Even the victim’s mother asked that Mr. Johnson not be executed due to doubts about his guilt. See Lora Hines, *Ex-Justice Joins Chorus of Pleas to Spare Life*, THE STATE (Columbia, S.C.), May 2, 2002, at A1. Sterling Spann was granted a new trial in 1999 due to newly discovered evidence of innocence. See *State v. Spann*, 334 S.C. 618, 619, 513 S.E.2d 98, 99 (1999). Mr. Spann was released on bond and worked in the community for three years. Shortly prior to his re-trial, Mr. Spann accepted a plea bargain which did not require an admission of guilt and rendered him immediately eligible for parole. *Spann Case Ends With Guilty Plea*, GASTON GAZETTE, May 9, 2002, at 1A.

112. Blume & Wilkins, *supra* note 50, at 3 (arguing South Carolina courts enforce procedural rules more strictly than any jurisdiction with the death penalty).

113. These acts contain various “reforms.” See 28 U.S.C. § 2244(d) (2000) (one year statute of limitations in which to file for federal habeas corpus review); S.C. CODE ANN. § 17-27-45(A) (West Supp. 2001) (one year statute of limitation in which to file for state post-conviction review); 28 U.S.C. § 2244(b) (2000) (restrictions on second or successive petitions); S.C. CODE ANN. § 17-27-90 (Law. Co-op. 1985) (same); 28 U.S.C. § 2254(e) (2000) (restrictions on the ability to present new evidence in collateral proceedings); 28 U.S.C. § 2254(d) (2000) (limiting a federal court’s power to grant relief unless the state court’s decision was “contrary to” or “an unreasonable application of” “clearly established” law or involved an “unreasonable determination of the facts”).

114. BROKEN SYSTEMS II, *supra* note 6, at 9.

115. See *infra* Appendix G.

produced suggested a number of reforms to minimize wrongful execution.¹¹⁶ Professor James S. Liebman and his colleagues also suggest a number of reforms which would reduce error and increase reliability in capital cases.¹¹⁷ The South Carolina General Assembly would do well to carefully examine these recommendations.

Due to the number of cases in which ineffective assistance of counsel has been found, another proposal that should be given serious consideration is the establishment of a statewide capital trial unit. Many other states have created centralized defender offices to represent indigent defendants facing the death penalty. These units have greatly improved the quality of trial representation by introducing experience and resource “parity” into the trial process. In too many cases, the only experienced capital trial lawyer in the courtroom is the prosecutor.¹¹⁸ At the very least, efforts should be made to ensure that appointed counsel are compensated at something approaching the market rate in order to

116. See REPORT OF THE GOVERNOR’S COMMISSION ON CAPITAL PUNISHMENT (2002), http://www.idoc.state.il.us/ccp/reports/commission_reports.html. The Commission made eighty-five recommendations including the following: continuing the investigation after the arrest of a suspect (No. 1); videotaping custodial interrogations (No. 4); recording interviews with significant witnesses (No. 8); modifications to lineup procedures (Nos. 10-15); training of police officers (Nos. 16-19); making DNA testing available (Nos. 20-26); limiting the number of death-eligible offenses (No. 28); establishing a committee to review and approve a prosecutor’s decision to seek the death penalty (No. 30); increased judicial training (Nos. 32-39); enhanced requirements for qualifications for defense counsel, increasing training and funding for defense counsel, and training for prosecutors involved in capital cases (Nos. 40-45, 76-82); increased discovery in capital cases (Nos. 46-54, 60); instructions regarding the unreliability of certain statements, eyewitness, and jailhouse informants (Nos. 56-59, 69); and expanding proportionality review (No. 70).

117. The suggested reforms are as follows: (1) require proof beyond all doubt that the defendant committed the capital crime; (2) require that aggravating factors substantially outweigh the mitigating factors to warrant the death penalty; (3) bar the death penalty for defendants with inherently extenuating conditions (the mentally retarded, juveniles, and severely mentally disordered defendants); (4) make life imprisonment without parole an alternative to the death penalty and clearly inform juries of the option; (5) abolish judicial overrides of jury verdicts imposing life sentences; (6) use comparative review of murder sentences to identify what counts as “the worst of the worst” in the state and overturn outlying death verdicts; (7) base charging decisions in potentially capital cases on full and informed deliberations; (8) make all police and prosecution evidence on guilt, innocence, aggravation, and mitigation available to the jury at trial; (9) insulate capital sentencing and appellate judges from political pressure; and (10) identify, appoint, and compensate capital defense counsel in ways that attract an adequate number of well-qualified lawyers to do the work. BROKEN SYSTEMS II, *supra* note 6, at v-vi (executive summary).

118. While South Carolina Law contains standards for appointed counsel in capital cases, the standards do not require any capital case experience or even experience in homicide cases. See S.C. CODE ANN. §16-3-26(B)(1) (West Supp. 2001). An attorney is qualified to be appointed as lead counsel in a capital case in South Carolina if she has five years experience as an attorney, three of which involve the “actual trial of felony cases.” *Id.* For a discussion of the problem of inadequate representation in capital cases, see generally Stephen B. Bright, *Counsel for the Poor: The Death Sentence Not for the Worst Crime but for the Worst Lawyer*, 103 YALE L.J. 1835 (1994).

provide incentives for experienced criminal defense attorneys to remain involved in capital cases at the trial level.¹¹⁹

B. Locale

As noted above, there is wide disparity from county to county and judicial circuit to judicial circuit in the frequency in which prosecutors seek the death penalty and in which the death penalty is imposed.¹²⁰ Furthermore, the number of death sentences imposed at the county level is not correlated with the number of murders. Richland County has the most murders, but as noted above, has imposed very few death sentences. Charleston and Greenville Counties also have, comparatively speaking, a large number of murders but relatively few death sentences. A number of counties, most notably Lexington County, have death sentencing rates well above the state and national average.¹²¹

Thus, at the county level, the most plausible explanation for the number of death sentences imposed appears to be the willingness of the particular solicitor to seek the death penalty. For example, Donald V. Myers has been prosecuting capital cases in Lexington County from 1977 to the present. Solicitor Myers makes no bones about his fondness for the death penalty.¹²² In the First Judicial Circuit, which, with Lexington County, is responsible for more than one-third of the death sentences imposed in the last ten years, the death sentencing rate increased dramatically after Walter Bailey was elected solicitor in the early 1990s.¹²³ Similar decreases and increases in death sentencing rates can be attributed to the enthusiasm for the death penalty of the solicitor in office at the time of the murder.¹²⁴

It is important to keep in mind that the “over-production of death” is not without costs. Lexington County, for example, has a very high reversal rate; error was found in fifteen of the twenty-four cases arising from Lexington

119. See S.C. CODE ANN. § 16-3-26(B)(2) (West Supp. 2001). Section 16-3-26(B)(2) authorizes payment for appointed counsel in capital cases at fifty dollars an hour for out-of-court services and seventy-five dollars an hour for in-court services. The statutory provision also “caps” compensation for appointed counsel at twenty-five thousand dollars. *Id.* These hourly rates are below most attorneys’ hourly overhead. Interviews with Attorneys in Columbia, South Carolina (Sept. 9, 24, 25, 2002). And no competent, experienced capital defense attorney would agree to accept a capital case on a retained basis for twenty-five thousand dollars. It is likely for this reason that many trial judges in recent years have compensated counsel at rates above those provided in section 16-3-26(B)(2).

120. See discussion *infra* Part III.D.

121. Lexington County’s death sentencing rate of 11% is approximately five times greater the national average and seven times the South Carolina average. See *infra* Appendix A.

122. See Eric Frazier, *Lawyer Relishes Death Row Record*, CHARLOTTE OBSERVER, Sept. 12, 2000, at 8A.

123. Prior to Solicitor Bailey’s election, there had been only one death sentence imposed in the First Judicial Circuit in the modern era of capital punishment. See *infra* Appendix A.

124. For example, James Dunn was Solicitor in the Fifteenth Judicial Circuit from 1978 to 1988. In that eight year period, eight individuals were sentenced to death in Horry County alone. See *infra* Appendix A.

County (62%) which have been reviewed at least through the direct appeal stage, with more reversals inevitably on the horizon.¹²⁵ When James Dunn was solicitor in the Fifteenth Circuit, the cases of all eight men against whom he obtained the death penalty were reversed at least once. Ultimately, one of the eight men was executed, one died on death row, and the other six individuals received sentences less than the original death sentence. These data are consistent with prior studies indicating that the higher a death sentence rate in a particular state, the higher the rate at which error is detected.¹²⁶ Thus, just as states with high death sentencing rates “tend to have [their death sentences] overturned at a high rate,”¹²⁷ so do counties. And a legitimate question of public policy is whether all the taxpayers of South Carolina—since the death penalty system is primarily funded by the state—should subsidize particular prosecutors’ penchant for death.¹²⁸

C. Race

Race—the race of the defendant and the race of the victim—plays a role in who receives the death penalty in the United States. Virtually every study, including the federal government’s General Accounting Office review of twenty-eight studies, has so concluded.¹²⁹ South Carolina is no exception. As noted above, an examination of all homicide cases from 1977 to 1998 using the FBI’s data reveals that African-Americans who kill whites are sentenced to death at approximately three times the rate of whites who kill whites.¹³⁰ In fact, two powerful forms of discrimination appear to be at work in the South

125. See *infra* Appendices A, E.

126. See Blume & Eisenberg, *supra* note 50, at 469.

127. *Id.* at 503.

128. The author is not aware of any South Carolina study documenting the cost of a capital case. However, studies in other states indicate that costs of capital trials generally run into the hundreds of thousands of dollars and that it costs several million dollars for a capital case to proceed from trial through execution. For example, a comprehensive study conducted in North Carolina by Duke University revealed that North Carolina spent \$2.16 million more on each case resulting in execution than it would have if the case had been treated as a non-capital murder. PHILIP J. COOK & DONNA B. SLAWSON, THE COSTS OF PROCESSING MURDER CASES IN NORTH CAROLINA 78 (1993), <http://www.pubpol.duke.edu/people/faculty/cook/comnc.pdf> (last visited Oct. 26, 2002).

129. See *Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities: Hearing on GAO Report Before the Subcomm. on Civil and Constitutional Rights, House Comm. on the Judiciary*, 101 Cong. 1 (1990) (statement of Lowell Dodge, Director, Administration of Justice Issues) (finding racial disparities in capital sentencing). The recent report of the Illinois Commission on Capital Punishment found significant race-of-victim effects, i.e., defendants of any race who murder whites are more likely to be sentenced to death than those who murder black victims. See REPORT OF THE GOVERNOR’S COMMISSION ON CAPITAL PUNISHMENT, *supra* note 116, at 196 (citing Glenn Pierce & Michael Radalet, *Race, Region, and Death Sentencing in Illinois 1988-1997* (Mar. 20, 2002)).

130. See *supra* notes 80-83 and accompanying text. A more recent empirical study also detected clear victim race effects. David McCord, *A Year in the Life of Death: Murders and Capital Sentences in South Carolina, 1998*, 53 S.C. L. REV. 249, 296-97 (2002).

Carolina capital punishment scheme. The death penalty is rarely sought (or obtained) when the murder victim is African-American. Even though most murder victims are African-American, only .46% of black victim cases result in a death sentence.¹³¹ However, white victim cases are a different matter: 3.4% of white victim cases result in the death penalty.¹³² Thus, a person charged with killing someone who is white is seven times more likely to be sentenced to death than a person charged with killing an African-American. And an African-American charged with killing a white person is approximately six times more likely to be sentenced to death than cases involving any other race of victim/defendant combination.¹³³

More sophisticated, localized statistical analyses have been conducted in a number of South Carolina counties. For example, an examination of all homicide cases in Charleston County from 1981-1990, during the time period that South Carolina Attorney General Charlie Condon was solicitor, revealed that the prosecution sought the death penalty in ten of twenty-five cases (40%) in which the defendant was African-American and the victim was white and only two of seventy cases (2.9%) in which the defendant and the victim were both black.¹³⁴ This pattern could occur by chance less than one time in a thousand. Similarly, the prosecution sought the death penalty in 32% of all white victim cases and 5% in all black victim cases, another statistical discrepancy which could occur by chance less than one time in one thousand.¹³⁵ Similar results have been found in other counties and judicial circuits throughout the state.¹³⁶

In some cases, direct evidence exists of racial discrimination in the death penalty process. In a recent Lexington County case, the prosecutor referred to a large African-American capital defendant as "King-Kong."¹³⁷ Louis Truesdale was executed in 1998 despite uncontradicted evidence that jurors openly used racial slurs during deliberations at the sentencing phase of his trial. Truesdale, an African-American, was accused of raping and murdering a young, white female in Lancaster County.¹³⁸ One of the jurors provided an

131. See *supra* note 81.

132. See *supra* note 82.

133. See *supra* note 83.

134. See John H. Blume et al., *Post-McCleskey Racial Discrimination Claims in Capital Cases*, 83 CORNELL L. REV. 1771, 1782 (1998).

135. See *id.*

136. See *id.* at 1794 n.116. For example, a recent study of homicide cases through 1993 in the Seventh Judicial Circuit, including Cherokee and Spartanburg Counties, established that the prosecution sought the death penalty in 44% of white victim cases and 0% of black victim cases. See Transcript of Record, at 267-68, *Simpson v. Moore*, No. 98-CP-42-1911 (S.C. 7th Cir. C.P. Dec. 10, 2001).

137. Frazier, *supra* note 122, at 8A.

138. Carrie Armstrong, *Truesdale Executed for Murder*, THE STATE (Columbia, S.C.), December 12, 1998, at B1.

affidavit to Truesdale's counsel which stated that two white male jurors used a racial slur and said Truesdale "has to fry."¹³⁹

In addition to racial discrimination in deciding whether to seek or impose the death penalty, prosecutors have also used race in connection with the exercise of peremptory challenges. It is generally understood that the "death qualification" process dilutes the number of African-Americans who serve on capital juries.¹⁴⁰ However, beyond that, many prosecutors use their peremptory challenges to remove all or most African-Americans from the jury. For example, a study of the use of peremptory challenges in Lexington County capital cases conducted by Professor William Jacoby of the University of South Carolina found systematic elimination of potential black jurors.¹⁴¹ In fact, the study concluded that the statistical likelihood that racial discrimination did not explain the disparity was less than one in a billion.¹⁴² The statistical evidence was supported by the observations of lawyers and even a judge.¹⁴³ At least twelve African-American defendants were convicted and sentenced to death by all-white juries.¹⁴⁴ The most recent case occurred in October of 2001 in Spartanburg County.¹⁴⁵

139. *Id.*

140. As a general matter, individuals who are opposed to capital punishment are not eligible to serve on a jury where the death penalty is a possible punishment. *See Witherspoon v. Illinois*, 391 U.S. 510, 522-23 n.21 (1968) (holding that, while jurors could not be excluded simply for general objections to the death penalty, jurors who would automatically recommend life could be excluded). *See also* *Wainwright v. Witt*, 469 U.S. 412, 424 (1985) (holding juror could be excluded when view on death penalty would preclude voting for death). During voir dire, potential juror's views on the death penalty are explored in order to "death qualify" the jury. This process inevitably leads to juries more likely to convict the defendant. *See Lockhart v. McCree*, 476 U.S. 162, 167-73 (1986) (discussing studies demonstrating heightened propensity for conviction among death-qualified juries). Also, because more African-Americans than whites are opposed to the death penalty, the "death qualification process" dilutes minority participation in capital cases.

141. *See* Blume et al., *supra* note 134, at 1792.

142. *See id.*

143. *Id.* at 1791-92. Pat McWhirter, the former Public Defender for Lexington County, testified that in the fourteen years he was public defender "I never had a black on a jury. I mean I'm not talking about a death penalty trial, but I'm talkin' about [any] trial. I never had a black on a jury when I had a black defendant." *Id.* at 1792 n.112 (alteration in original).

144. These defendants are: J.D. Gleaton, Larry Gilbert, Sterling Spann, Andrew Smith, Donald Jones, Raymond Patterson, Theodore Kelly, Richard Stewart, Albert Thompson, Jeffrey Jones, Andre Rosemond, and Richard Moore. In several of these cases, the selection of an all white jury was not reviewed on appeal due to a procedural default by trial counsel.

145. The defendant's name was Richard Moore. He was convicted of murder and sentenced to death in October of 2001. The South Carolina Supreme Court's restrictive view of the Supreme Court's decision in *Batson v. Kentucky*, 476 U.S. 79, 98 (1986) (articulating defendant burden of proof when challenging peremptory strikes as racially motivated), has permitted continued discrimination in jury selection in capital cases. *See* John H. Blume, *Racial Discrimination in the State's Use of Peremptory Challenges: The Application of the United States Supreme Court's Decision in Batson v. Kentucky in South Carolina*, 40 S.C. L. REV. 299 (1989) (arguing South Carolina Supreme Court has rendered *Batson* meaningless). Prior to *Batson* the state court deemed "bizarre" a capital defendant's request to limit the prosecution's

There have also been shocking examples of discrimination by defense lawyers. In one case appointed counsel referred to his client as a “big black . . . buck” in an attempt to defend his client who was charged with raping and killing a young white female.¹⁴⁶ Counsel’s point was that his client could not have committed the rape, and thus the murder, because the victim had no vaginal tearing.

The question arises as to what can be done to eliminate or minimize racial discrimination. One step would be to modify the current legal restrictions which make statistical evidence sufficient to establish a *prima facie* case of racial discrimination in any other context for all practical purposes irrelevant.¹⁴⁷ Thus, a statistical showing of racial disparity in the decision to seek the death penalty would shift the burden to the prosecution to provide a race-neutral reason for its decision to pursue the death penalty.¹⁴⁸ Another possibility would be to create a committee or authorizing agency which would be required to review the case and approve a solicitor’s decision to seek the death penalty.¹⁴⁹ Finally, more rigorous enforcement of the Supreme Court’s decision in *Batson v. Kentucky* would decrease the discriminatory use of peremptory challenges in capital cases.¹⁵⁰

D. Proportionality and Clemency

Two things of significance have never happened in the twenty-five years South Carolina has had its new death penalty law. The South Carolina Supreme Court has never found a death sentence disproportionate when utilizing the statutorily mandated proportionality review, and no governor has granted clemency. Let me first discuss proportionality.

The South Carolina death penalty statute mandates that the South Carolina Supreme Court shall review all death sentences to determine “[w]hether the sentence of death is excessive or disproportionate to the penalty imposed in

racially discriminatory use of its peremptory challenges. *State v. Truesdale*, 278 S.C. 368, 373, 296 S.E.2d 528, 531 (1982). The South Carolina Supreme Court’s post-*Batson* decisions narrowly construing the Court’s mandate have done little to alleviate the problem.

146. Application for Post-Conviction Relief at app. 17, *State v. Butler*, 277 S.C. 543, 290 S.E.2d 420 (S.C. 9th Cir. C.P. Sept. 24, 1980) (statement of R.M. Brissie, Medical Examiner). The same attorney made the following remark about African-Americans during trial: “I know them. I grew up with them. I played with them. I understand them as much as most people can.” Transcript of Testimony and Judge’s Charge at 116, *State v. Butler* (S.C. Ct. Gen. Sess. Jan. 20, 1981).

147. Blume et al., *supra* note 134, at 1806-07 (advocating burden-shifting rule in racial discrimination challenges).

148. *Id.*; see also *Foster v. State*, 614 So. 2d 455, 468 (Fla. 1993) (Barkett, C.J., concurring) (advocating a similar approach).

149. This recommendation was also made by the Illinois Commission. See *supra* note 116. If such a committee were created, it hopefully would have some minority representation. At present, not a single one of the sixteen elected solicitors in South Carolina is African-American.

150. See Blume, *supra* note 145, at 337-38.

similar cases, considering both the crime and the defendant.”¹⁵¹ In *State v. Shaw* the court acknowledged the statutorily required review is intended to serve as “[a]n additional check against the random imposition of the death penalty.”¹⁵² However, in practice the state court’s proportionality review has been, and continues to be, perfunctory.¹⁵³ Since 1977, the court has considered 175 capital appeals. It has never determined that a death sentence was excessive or disproportionate. And, given its method of assessing disproportionality, it is highly unlikely it will ever do so. In *State v. Copeland* the court determined that it would only consider other cases in which the death penalty was imposed.¹⁵⁴ The court rejected the view of other jurisdictions that the appropriate “universe” of cases included both those in which the death penalty was not imposed as well as those in which it was, because to do so would involve “pure conjecture.”¹⁵⁵ The court reasoned that life cases “represent acts of mercy,” and it would thus not subject “these verdicts to scrutiny in pursuit of phantom ‘similar cases,’ when a meaningful sample lies ready at hand in those cases where the jury has spoken unequivocally.”¹⁵⁶ As other commentators have pointed out, this mode of proportionality review is meaningless. Virtually any death sentence can be justified on the basis that the jury found an aggravating circumstance, regardless of how aberrational the sentence was when considering statewide sentencing patterns.¹⁵⁷ For example, in *State v. Butler* the court found that the death sentence was not disproportionate because the murder was committed “maliciously and purposefully.”¹⁵⁸ But all murders are, by definition, malicious and purposeful; the jury must find malice and intent to convict.¹⁵⁹ Furthermore, several of the early decisions affirmed by the state

151. S.C. CODE ANN. §16-3-25(C)(3) (Law. Co-op. 1976).

152. 273 S.C. 194, 211, 255 S.E.2d 799, 807 (1979).

153. Leigh B. Bienen, *The Proportionality Review of Capital Cases by State High Courts After Gregg: Only “The Appearance of Justice?”*, 87 J. CRIM. L. & CRIMINOLOGY 130, 253-54 (1996) (noting criticism of court for “its unsystematic and cursory approach”) (citations omitted).

154. 278 S.C. 572, 591, 300 S.E.2d 63, 74 (1982).

In our view, the search for “similar cases” can only begin with an actual conviction and sentence of death rendered by a trier of fact in accordance with § 16-3-20 of the Code. We consider such findings by the trial court to be a threshold requirement for comparative study and indeed the only foundation of “similarity” consonant with our role as an appellate court.

Id.

155. *Id.*

156. *Id.* This ignores the fact that when a jury imposes a life sentence, it too has spoken “unequivocally.” Paternoster & Kazyaka, *supra* note 80, at 393 (quoting *Copeland*, 278 S.C. at 591, 300 S.E.2d 63, 74). It is unclear what purpose the court envisions the statutory review serving unless it is to check to see if the defendant “deserved” the death penalty when considering the facts of the offense and the offender regardless of how infrequently the death penalty is imposed for similar crimes. *Id.* at 387.

157. Paternoster & Kazyaka, *supra* note 80, at 391.

158. 277 S.C. 452, 458, 290 S.E.2d 1, 4 (1982). The murder was also accompanied by rape.

Id.

159. See S.C. CODE ANN. § 16-3-10 (Law. Co-op. 1985).

court were, in the scheme of things, relatively unaggravated murders. For example, *State v. Gilbert*¹⁶⁰ involved a homicide which occurred during a struggle that erupted during a botched armed robbery.¹⁶¹ The two African-American defendants—half brothers with low I.Q.'s—were convicted and sentenced to death in joint trials by all white juries.¹⁶² Placing such low aggravation cases in the relevant comparison pool all but guarantees that no subsequent sentence will be found disproportionate. Moreover, every case that is affirmed decreases the likelihood that any subsequent sentence will be found disproportionate because of the fact that another case, to which some future case may be similar, has entered the comparison pool.

In its most recent decision discussing its method of proportionality review, the South Carolina Supreme Court adhered to its restrictive approach. In *State v. Passaro* the court affirmed that in “conducting proportionality review, this court searches for ‘similar cases’ where the death sentence has been upheld.”¹⁶³ However, in Passaro’s case the court found no similar cases.¹⁶⁴ This proved to be only a bump in the road to affirmance. The court determined that the death sentence was not disproportionate by reasoning that it had affirmed other death sentences where the victim was under the age of eleven and that Passaro’s crime was “no less gruesome than those.”¹⁶⁵ However, the court failed to mention that all of the cited cases involved multiple murders.¹⁶⁶ Passaro, on the other hand, was sentenced to death for murdering one victim, his daughter, during a failed suicide attempt arising from depression resulting from a failed marriage.¹⁶⁷ The court also stated that it had affirmed death sentences where similar mitigation—mental illness and no prior history of violent behavior—was presented.¹⁶⁸ However, in Passaro’s case, little mitigation was developed and less was presented because his appointed counsel did not advocate for him due to his expressed wish to die. Furthermore, the mitigation

160. 277 S.C. 53, 283 S.E.2d 179 (1981).

161. *Gilbert v. Moore*, 134 F.3d 642, 645-56 (4th Cir. 1998).

162. *Id.*

163. *State v. Passaro*, No. 25507, Ad. Sh. No. 26 at 21, 31 (S.C. July 29, 2002) (quoting *State v. Copeland*, 278 S.C. 572, 590, 300 S.E.2d 63, 74 (1982)).

164. *Id.* at 31. Passaro pled guilty to killing his daughter. During the course of a bitter divorce, Passaro, who had a history of mental illness, drove his van to his ex-wife’s condominium, poured gasoline in the car, and set it on fire with both himself and his daughter in the automobile. Passaro jumped out, but was badly burned in the fire. His daughter died. *Id.* at 22.

165. *Id.* at 32.

166. The state court referenced *State v. Ard*, 332 S.C. 370, 505 S.E.2d 328 (1998), *State v. Rosemond*, 335 S.C. 593, 518 S.E.2d 588 (1999), and *State v. Wilson*, 306 S.C. 498, 413 S.E.2d 19 (1992). *Passaro*, No. 25507 at 32. All three cases involved multiple homicides. *Ard*, 332 S.C. at 374, 505 S.E.2d at 330 (involving murder of defendant’s girlfriend and unborn son); *Rosemond*, 335 S.C. at 595, 518 S.E.2d at 589 (involving murder of defendant’s girlfriend and girlfriend’s daughter); *Wilson*, 306 S.C. at 500-01, 413 S.E.2d at 20-21 (involving shooting spree at elementary school resulting in multiple deaths).

167. *Passaro*, No. 25507 at 22.

168. *Id.* at 32 (citing *Wilson*, 306 S.C. 498, 413 S.E.2d 19).

presented at trial can not fairly be considered in isolation, divorced from the case as a whole. The court, not surprisingly, concluded that Passaro's death sentence was not disproportionate.¹⁶⁹

At a minimum, proportionality review is supposed to serve as a check on the sentencing jury to ensure that the imposition of a particular death sentence is in line with the conscience of the broader community.¹⁷⁰ However, the state supreme court's focus on the individual case and the court's refusal to consider cases in which the death penalty was not sought or obtained robs the statutorily mandated review of this essential function and explains why no death sentence has been vacated on proportionality grounds in twenty-five years. This restrictive approach to proportionality review should be changed, either by the South Carolina Supreme Court or by the state legislature.¹⁷¹

Executive clemency has likewise been nonexistent in South Carolina's modern death penalty era.¹⁷² Twenty-eight men have been executed since 1977, and there have been no commutations.¹⁷³ Most, but not all, asked the governor to commute their death sentence to life without parole.¹⁷⁴ However, the United States Supreme Court has indicated that executive clemency is an important part of the capital appeals process. In *Herrera v. Collins*¹⁷⁵ the Court stated, "Clemency is deeply rooted in our Anglo-American tradition of law, and is the

169. *Id.* at 32. Had the court considered cases in which the death penalty was not sought or obtained, it would likely have concluded that the death sentence was disproportionate. The death penalty is rarely imposed in cases like Passaro's, involving the murder of one's own children. Recent proof of this comes from the Susan Smith case which arose in Union County. Ms. Smith drowned her two children in a failed suicide attempt. See Margaret N. O'Shea et al., *Mother Gets Two Life Terms; Boys' Father Disappointed*, THE STATE (Columbia, S.C.), July 29, 1995, at A1. Other examples known to the author are *State v. Beckham*, 334 S.C. 302, 308, 513 S.E.2d 606, 609 (1999) (sentencing defendant to life imprisonment for the murder of his wife); and *State v. Knoten*, 347 S.C. 296, 299, 555 S.E.2d 391, 393 (2001) (sentencing defendant to life imprisonment for the murder of his girlfriend and her two-year-old niece). Two other examples are the trials of Shanan Ardis and Myra Pearson. See Rick Brundrett, *Judge Spares Ardis, but 2nd Trial Awaits*, THE STATE (Columbia, S.C.), June 6, 1998, at A1 (regarding sentencing of defendant to life imprisonment for the murder of this father); Lisa Greene, *Pearson Gets Life Term in Stepson's Killing*, THE STATE (Columbia, S.C.), June 2, 1995, at A1.

170. See Paternoster & Kazyaka, *supra* note 80, at 393.

171. Liebman and his colleagues and the Illinois Commission made similar recommendations. See *supra* notes 116-17.

172. In the pre-*Furman* era, grants of clemency were fairly routine. From October 22, 1940 to May 10, 1961, eight South Carolina governors commuted twenty-three death sentences. See *Application for Executive Clemency In the Matter of Louis Joe Truesdale, Jr., Addressed to The Honorable David Beasley*, app. B (Dec. 7, 1998) (on file with the author).

173. The governor has limited options in capital cases. The governor can commute a death sentence to one of life imprisonment without possibility of parole or grant a reprieve and refer the case to the Board of Pardon and Paroles for a recommendation. S.C. CONST. art. IV, § 14. No governor in the modern era has commuted a sentence, granted a reprieve, or referred the case to the Board of Pardon and Paroles.

174. Several inmates—Donald Gaskins, Ronnie Howard and Anthony Green—did not seek clemency due to their perception that it was futile to do so. Additionally, the five "volunteers" also did not request clemency.

175. 506 U.S. 390 (1993).

historic remedy for preventing miscarriages of justice where judicial process has been exhausted.”¹⁷⁶ It is supposed to serve, the Court opined, as the “‘fail safe’ in our criminal justice system.”¹⁷⁷ Thus, clemency is a necessary part of the process, despite the appellate avenues open to a person under sentence of death, because of the “unalterable fact that our judicial system, like the human beings who administer it, is fallible.”¹⁷⁸

If any question existed about the viability of clemency, a recent South Carolina execution put it to rest and left a blemish on the United States Supreme Court’s statement that “[r]ecent authority confirms that over the past century clemency has been exercised frequently in capital cases in which demonstrations of ‘actual innocence’ have been made.”¹⁷⁹ Richard Charles Johnson was executed on May 3, 2002 despite substantial newly discovered evidence of innocence in the form of a sworn confession from one of Johnson’s original co-defendants indicating that she, not Johnson, committed the murder.¹⁸⁰ Johnson’s conviction for the murder of a South Carolina Highway Patrolman was based entirely on the testimony of immunized co-defendants and a career jailhouse informant.¹⁸¹ There was no physical evidence establishing Johnson was the triggerman.¹⁸² The South Carolina Supreme Court denied Johnson’s final appeal based on the confession by a bare 3-2 majority.¹⁸³ Johnson’s justification for his request for commutation was straightforward: when a court splits three to two on the question of innocence, clemency is warranted.¹⁸⁴ Despite thousands of requests for clemency from former governors, former prosecutors, former Bar presidents, a former South Carolina Supreme Court Justice, the heads of most religious denominations, members of the South Carolina legislature, and even the victim’s mother, the governor allowed the execution to proceed.¹⁸⁵

176. *Id.* at 411-12.

177. *Id.* at 415 (citing KATHLEEN DEAN MOORE, *PARDONS: JUSTICE, MERCY, AND THE PUBLIC INTEREST* 131 (1989)).

178. *Id.*; see also Heise, *supra* note 70 (noting that fallibility persists until the final state of the penalty process as well).

179. *Herrera*, 506 U.S. at 415 (citing MICHAEL L. RADELET ET AL., *IN SPITE OF INNOCENCE* 282-356 (1992)). “History shows that the traditional remedy for claims of innocence based on new evidence, discovered too late in the day to file a new trial motion, has been executive clemency.” *Id.* at 417.

180. See *Johnson v. Catoe*, 345 S.C. 389, 394, 548 S.E.2d 587, 590 (2001).

181. See *Application for Executive Clemency Submitted on Behalf of Richard Charles Johnson, Addressed to The Honorable Jim Hodges*, 2-3 (Apr. 23, 2002) (on file with the author).

182. *Johnson*, 345 S.C. at 403, 548 S.E.2d at 594 (Pleicones, J., dissenting).

183. *Id.* at 400, 548 S.E.2d at 593.

184. *Application for Executive Clemency*, *supra* note 181, at 16.

185. Hines, *supra* note 112, at A1 (discussing Governor Jim Hodges’ decision regarding clemency and the efforts of many in the community to persuade Hodges to grant clemency). Supporters included the state President of the National Association for the Advancement of Colored People, James Gallman, and former Chief Justice Finney who “wrote a letter to Hodges.” *Id.* Also, State Senator Clementa Pinckney, whose constituents include the victim’s family, called Hodges asking for clemency. Finally, Thelma Blue, the victim’s mother, “asked

The problem primarily lies in the fact that the post-*Gregg* governors have misconstrued the purpose of clemency. Beginning with Governor Riley, who presided over South Carolina's first modern era execution, all executives have viewed their role as determining whether the case involved legal error that went unremedied by the courts.¹⁸⁶ But that is the job of the courts, not the governor. The clemency power exists for cases where, despite the absence of legal error and access to the courts, unresolved questions of guilt remain or the sentence is, for various reasons, out of step with the conscience of the community. While clemency nationwide has been relatively rare since 1977,¹⁸⁷ other governors

Hodges to spare Johnson." *Id.*

186. See, e.g., Margaret N. O'Shea, *Riley Refuses Shaw's Plea for Clemency*, THE STATE (Columbia, S.C.), Dec. 27, 1984, at A1 (remarking that Governor Dick Riley denied clemency because "he could find nothing in the trial and appellate records to warrant his intervention."). Furthermore, Governor Riley stated:

I have carefully reviewed the case of Joseph Carl Shaw. Members of my staff have met with him personally, as well as with members of his family and with his attorneys. I have thoroughly reviewed the trial record and the issues that have been raised on appeal.

My review of this case clearly indicates that Joseph Carl Shaw received a fair trial, and I have also concluded that the state and federal courts have given his appeals full and fair consideration. Therefore, I find no reason to intervene in the judicial process by granting the request for clemency.

Id. See also Jeff Miller, *Despite Plea, Campbell Won't Stop Woomer's Electrocution*, THE STATE (Columbia, S.C.), June 14, 1989, at A1 (noting that Governor Carroll Campbell denied clemency to Ronald Woomer because "the governor 'will not intervene in the workings of the judicial process'"); Lisa Greene & John Allard, *Governor Won't Spare Adams' Life*, THE STATE (Columbia, S.C.), Aug. 16, 1995, at A1 (quoting Governor David Beasley regarding his denial of clemency for Sylvester Adams: "I have expressed my confidence in the judicial system, and I believe Sylvester Adams received every consideration in numerous hearings from the South Carolina circuit courts to the United States Supreme Court."); John Allard & Lisa Greene, *Murderer of Teen is S.C.'s 1st to Die by Lethal Injection*, THE STATE (Columbia, S.C.), Aug. 18, 1998, at A1 ("Beasley said that after reviewing court transcripts, he was convinced Adams had been treated fairly by the courts."); Carolyn Click & John Allard, *Beasley Won't Stop Executions*, THE STATE (Columbia, S.C.), Dec. 4, 1998, at B1 (stating that Governor David Beasley refused to grant clemency because "[h]e didn't want to interfere in the judicial process."); Kimathi Lewis, *Hodges Denies Clemency, Cites Inmate's Testimony as Crucial*, THE STATE (Columbia, S.C.), May 3, 2002, at A1 (noting that Governor Jim Hodges denied clemency for Richard Johnson because Johnson "ha[d] been tried, convicted and sentenced to death for the murder of South Carolina Trooper Bruce Smalls on two separate occasions"). Hodges also stated that the victim's family "expressed to me their belief that the jury and court's decision should not be disturbed." *Id.* Furthermore, Governor Hodges stated the following:

Upon a thorough review of the record and careful consideration of all information provided, I am convinced that Mr. Johnson is guilty as charged. The decision of two juries and the many state and federal courts involved in this case speak for themselves and should not be overturned. The jury's sentence must be carried out. Clemency is not granted.

Id.

187. In the modern era, there have been forty-eight commutations of death sentences. DEATH PENALTY INFORMATION CENTER, FACTS ABOUT CLEMENCY, <http://www.deathpenaltyinfo.org/clemency.html> (last visited Oct. 19, 2002).

have intervened under circumstances similar to those which have arisen in South Carolina cases.¹⁸⁸ One possible modification to the existing clemency procedure which should be entertained is to have requests for clemency in capital cases automatically referred to a board, presumably the South Carolina Board of Pardon and Paroles, for either a recommendation or for resolution. At least one study has found that clemency applications are more likely to be reviewed favorably when the decision is not made by the governor acting alone.¹⁸⁹

The combined effect of the lack of proportionality review and the absence of meaningful clemency is especially troubling. While each mechanism serves other purposes, a primary function of both is to have some actor or entity act as a “thirteenth juror.” In other words, after a death sentence is imposed, some entity or individual—preferably both—should assess whether the person deserves to die, whether the death sentence imposed is out of step with contemporary values, or whether it is clear the person is guilty of the offense. In South Carolina, this critical function, which is essential to the integrity of the capital punishment process, is unfulfilled.¹⁹⁰

V. A BRIEF REVIEW OF CAPITAL JURY PROJECT STUDIES OF SOUTH CAROLINA’S DEATH PENALTY

Other available empirical evidence from the Capital Jury Project¹⁹¹ reveals that the lofty goal of guided discretion is much more theoretical than actual. This is evident from several clear findings. First, many jurors that survive the death qualification process are not qualified to serve under existing law.¹⁹² For example, 14% of jurors who actually sat in South Carolina capital cases believed that the death penalty was the *only* acceptable punishment for

188. See *id.* A recent empirical study found that clemency is more likely to be granted in states that vest authority in administrative boards rather than in the governor alone. Heise, *supra* note 70 (manuscript at 21, on file with author).

189. See Heise, *supra* note 70 (manuscript at 19 tbl.1).

190. The combined negative effect of a lack of proportionality review and no meaningful clemency is also exacerbated by the jettisoning of *in favorem vitae* review. This review, while it existed, also served to ensure the integrity of capital verdicts and sentences by ensuring that all claims of legal error were reviewed at least by one court. See *supra* note 49.

191. The Capital Jury Project (CJP) is a National Science Foundation-funded, multistate research effort designed to better understand the dynamics of juror decision making in capital cases. The CJP is a loose association of academics from different disciplines (primarily law and criminology) and institutions; in 1990, its members began interviewing jurors from several different states who had served on capital cases, some of which resulted in sentences of death, and some sentences of life imprisonment. Analyses of the data collected during these interviews began appearing as early as 1993. In South Carolina, 222 jurors have been interviewed.

192. For a discussion of the qualifications for jury service in capital cases, see John H. Blume et al., *Probing “Life Qualification” Through Expanded Voir Dire*, 29 HOFSTRA L. REV. 1209, 1212-19 (2001) [hereinafter *Expanded Voir Dire*].

murder.¹⁹³ Furthermore, substantial minorities of jurors believed that the law required them to impose the death penalty if the crime was “heinous, vile or depraved” or if the evidence proved the defendant would be dangerous in the future.¹⁹⁴ Many jurors who survive the death-qualification process also are unable to consider evidence in mitigation of punishment which the law requires them to consider.¹⁹⁵

Second, jurors do not understand the sentencing phase instructions and are mistaken about most key concepts of aggravation and mitigation, which are the cornerstone of the Supreme Court’s belief that a capital sentencing jury’s discretion can be suitably limited and channeled.¹⁹⁶ For example, the sentencing phase of a capital case begins with many jurors presuming that the death penalty is the correct punishment, or with a “presumption of death.”¹⁹⁷ Furthermore, a significant number of jurors do not understand that aggravating circumstances must be established beyond a reasonable doubt.¹⁹⁸ Many jurors believe that the jury must unanimously agree that a mitigating circumstance has been established before it can be considered even though the United States Supreme Court has clearly said otherwise.¹⁹⁹ More than half of the South Carolina jurors interviewed believed that the defendant was required to establish a mitigating factor beyond a reasonable doubt.²⁰⁰ Again, that is not the

193. John H. Blume et al., *Lessons from the Capital Jury Project*, in AMERICA’S DEATH PENALTY: BEYOND REPAIR? (forthcoming 2002) (manuscript at 8 tbl.1) (on file with authors) [hereinafter *Lessons*]. The Supreme Court has held that jurors who would automatically impose the death penalty if the defendant is convicted of murder or if an aggravating circumstance is found are not qualified to serve on a capital jury. *Morgan v. Illinois*, 504 U.S. 719, 729, 739 (1992).

194. See *Lessons*, *supra* note 193, at 22 tbl.6.

195. *Expanded Voir Dire*, *supra* note 192, at 1228-31.

196. See *id.* at 1230.

197. See Theodore Eisenberg & Martin T. Wells, *Deadly Confusion: Juror Instructions in Capital Cases*, 79 CORNELL L. REV. 1, 12 (1993). Eisenberg and Wells note the following:

[Our] data suggest that the sentencing phase of a capital trial commences with a substantial bias in favor of death. This is not itself an indictment of the death trial phase. But the tilt towards death suggests that a defendant with a confused jury may receive the death sentence by default, without having a chance to benefit from the legal standards designed to give him a chance for life.

Id.

198. *Id.* at 10 (reporting 20% of South Carolina jurors who actually served in capital cases “believe that an aggravating factor can be established by preponderance of the evidence or only to a juror’s personal satisfaction”). But see S.C. CODE ANN. § 16-3-20(C) (Law. Co-op. 1976) (requiring aggravating circumstances to be proven beyond a reasonable doubt).

199. *Lessons*, *supra* note 193 (manuscript at 19-20 tbl.4) (reporting 66% of South Carolina jurors believed that all jurors had to agree on the existence of a mitigating circumstance before the jury could consider that factor in reaching a decision); see also *Mills v. Maryland*, 486 U.S. 367, 375 (1988) (holding jurors do not have to unanimously agree on the existence of a mitigating factor).

200. *Lessons*, *supra* note 193 (manuscript at 19) (reporting 51% of South Carolina jurors believed that the defendant was required to prove the existence of a mitigating factor beyond a reasonable doubt); see also Eisenberg & Wells, *supra* note 197, at 11 (stating in 1993, “[a]bout

law.²⁰¹ And the confusion is prejudicial to capital defendants. Confused jurors are more likely to vote for the death penalty.²⁰² Furthermore, many jurors believe that a life sentence does not really mean life. Even though a life sentence in South Carolina carries no possibility of parole when imposed in a capital case,²⁰³ many jurors do not know or believe this.²⁰⁴ Consequently, jurors' mistaken beliefs that a defendant will soon be eligible for parole leads them to choose to impose the death penalty.²⁰⁵

Less death-prone jurors certainly could be discovered through more relaxed rules on voir dire and improved attorney performance during voir dire.²⁰⁶ Some juror confusion can be ameliorated through more comprehensible jury instructions,²⁰⁷ and jurors definitely should be instructed in every case that

half the jurors incorrectly believe that a mitigating factor must be proven beyond a reasonable doubt.”).

201. See *State v. Bell*, 293 S.C. 391, 405, 360 S.E.2d 706, 713 (1987) (placing no burden of proof on capital defendant with regard to evidence of mitigating circumstances). “Rather, the jury is to consider the evidence presented and determine whether the mitigating factors exist and, if so, the significance to be accorded them.” *Id.* (citations omitted).

202. Eisenberg & Wells, *supra* note 197, at 12 (“[I]ndecision tends to be resolved in favor of death. When jurors report predeliberation indecision about either guilt or sentence, the undecided jurors tend to vote for death.”).

203. See S.C. CODE ANN. § 16-3-20(A) (West Supp. 2001).

204. Theodore Eisenberg et al., *The Deadly Paradox of Capital Jurors*, 74 S. CAL. L. REV. 371, 373 (2001) (“Where [life without parole] is the alternative, jurors either do not know about it, or do not believe it really means the defendant will, in fact, never be released on parole.”).

205. Eisenberg & Wells, *supra* note 197, at 8.

206. See *Expanded Voir Dire*, *supra* note 192, at 1255-61. Much more attention must be devoted to teaching defense lawyers effective voir dire techniques such as the ability to “strip away” the boilerplate answers most jurors give and probe potential jurors’ true feelings about the death penalty. And, based upon this data, defense counsel should question jurors under the assumption that the juror will vote for death. Counsel should require the juror to prove to counsel’s satisfaction that the juror can legitimately consider voting for life, rather than assuming from the juror’s occupation, educational level, or other personal characteristics that he will be sympathetic. Furthermore, trial counsel should use these findings to challenge limitations on voir dire. Many jurors who say they can “follow the law” are in truth automatic death penalty (ADP) jurors, and, unfortunately, the voir dire process itself often contributes to this perception. *Id.*

207. See generally Stephen P. Garvey et al., *Correcting Deadly Confusion: Responding to Jury Inquiries in Capital Cases*, 85 CORNELL L. REV. 627 (2000) (exploring jury sentencing instruction problems). Importantly, if the jury asks a question, a directly responsive answer is better than giving them the same instructions they failed to understand in the first place. One first step may be affirmative instructions from the court telling the jury prior to the time evidence is presented at the sentencing phase that the death penalty is not the presumptive punishment (in fact, there is a presumption that life imprisonment is the appropriate penalty) and that the jury is never required to sentence the defendant to death. See Beth S. Brinkmann, Note, *The Presumption of Life: A Starting Point for a Due Process Analysis of Capital Sentencing*, 94 YALE L.J. 351 (1984) (analyzing and recommending this instruction). A similar instruction should be given regarding the jury’s responsibility for the sentencing decision. Furthermore, the jury should be properly instructed about mitigation, burdens of proof, nonunanimity for mitigating circumstances, and any other material factor before the sentencing phase evidence is presented and before the final instructions. By the time the court begins to discuss mitigation, the jurors are hopelessly confused.

a life sentence means a life sentence without possibility of parole.²⁰⁸ Certainly, defense attorneys could do more to ensure juror comprehension of key capital sentencing concepts.²⁰⁹ But the widespread nature of the confusion raises serious doubts about the reality of guided discretion.

VI. CONCLUSION

We now have more than twenty-five years of experience with the supposedly “new and improved” South Carolina death penalty. In this Article, I have attempted to lay out the facts about who has been sentenced to death, who has been executed, who is no longer on death row, in how many cases error has been found, and the types of error found by the courts. I have also discussed some of the implications I see arising from available data. The bottom line is that the death penalty in this state is not so new and improved after all. Serious defects in South Carolina’s capital punishment scheme persist. Other readers may, and inevitably will, draw different conclusions. I hope they do, because a more informed and rigorous debate about how the death penalty is administered in this state and whether the goal of guided discretion is attainable is long overdue. I will close with a quote from one of my former law school professors, Charles Black, to whom I owe much. Professor Black’s observations about the death penalty shortly after *Gregg* was decided ring equally true to my ears when considering South Carolina’s current capital sentencing scheme:

Whatever may have been the case in the past, the death penalty for a long time has been and definitely promises to continue being administered by a system that is characterized by a large amount of arbitrariness and mistake-proneness. Those who are to die have been chosen by a process which, at every critical stage, proceeds on no clearly articulated or understandable criteria The net effect is that virtually full discretion exists, taking the system as a whole, to select or not to select the particular defendant, out of the very many who might have been eligible, for suffering the supreme agony. Such a system, it seems to me, is not good enough for making this choice.²¹⁰

208. John H. Blume et al., *Future Dangerousness in Capital Cases: Always “At Issue,”* 86 CORNELL L. REV. 397, 410 (2001).

209. The take home message to counsel representing death-sentenced inmates is that, if there are legal concepts and principles which are important to the client’s chance of obtaining a life sentence, counsel must educate the jurors by explaining the concepts early and repeatedly.

210. CHARLES L. BLACK, JR., *CAPITAL PUNISHMENT: THE INEVITABILITY OF CAPRICE AND MISTAKE* 158-59 (2d ed. 1981).

APPENDIX A*
SOUTH CAROLINA DEATH SENTENCES
COMPLETE LIST OF THOSE SENTENCED
TO DEATH 1977-2002

NAME	DEF.'S RACE & SEX	VICTIM'S RACE & SEX	COUNTY OF CONVICTION	ORIGINAL SENTENCE DATE	FINAL RESULT
Gleaton, J.D.	B/M	W/M	Lexington	10/7/77	Executed
Gilbert, Larry	B/M	W/M	Lexington	10/7/77	Executed
Gill, Eric Andre	B/M	W/M	York	1977	Life Imprisonment
Shaw, Joseph Carl	W/M	W/F W/M	Richland	12/16/77	Executed
Roach, James Terry	W/M	W/F W/M	Richland	12/16/77	Executed
Tyner, Rudolph	B/M	W/F W/M	Horry	8/11/78	Died on Death Row
Plath, John	W/M	B/F	Beaufort	9/26/78	Executed
Arnold, John	W/M	B/F	Beaufort	9/26/78	Executed
Goolsby, Sidney Ross	W/M	W/F	Greenwood	1979	Life Imprisonment
Woomer, Ronald	W/M	W/F W/M	Horry Colleton	7/20/79 6/27/80	Executed
Linder, Michael	W/M	B/M	Colleton	1979	Acquitted
Hyman, William Gibbs	W/M	W/M	Charleston	10/12/79	Life Imprisonment
Adams, Sylvester	B/M	B/M	York	3/3/80	Executed
Thompson, Albert "Bo"	B/M	W/M	Greenville	9/27/80	Life Imprisonment
Truesdale, Louis	B/M	W/F	Lancaster	12/11/80	Executed
Roberts, Sammy David	W/M	2W/M B/M	Berkeley	1/19/81	Executed
Copeland, Henry Wesley	W/M	2W/M B/M	Berkeley	1/19/81	Died on Death Row
Butler, Horace	B/M	W/F	Charleston	1/26/81	Life Imprisonment
Smart, Ronald Francis	W/M	W/M	Lexington	3/11/81	Life Imprisonment

* The information in Appendix A was obtained from the reports completed by the trial judge in all cases in which a death sentence was imposed as required by S.C. Code §16-3-25(A). See also *State v. Shaw*, 273 S.C. 194, 219-42, 255 S.E.2d 799, 811-28 (1979), *cert denied*, 444 U.S. 957 (1979) (the report is included as Appendix B to the opinion). Copies of the sentencing reports are on file with the author.

NAME	DEF.'S RACE & SEX	VICTIM'S RACE & SEX	COUNTY OF CONVICTION	ORIGINAL SENTENCE DATE	FINAL RESULT
Yates, Dale Roberts	W/M	W/F	Greenville	5/2/81	Life Imprisonment
Butler, James Anthony	W/M	Asian/M	Orangeburg	?	Life Imprisonment
Patterson, Wardell	B/M	W/M	York	10/29/80	Life Imprisonment
Koon, Paul Finley	W/M	W/F	Aiken	6/12/81	Life Imprisonment
Sloan, Michael A.	W/M	W/F	Lexington	10/2/81	Life Imprisonment
Elmore, Edward Lee	B/M	W/F	Greenwood	4/19/82	Pending
Spann, Sterling Barnett	B/M	W/F	York	4/26/82	Life Imprisonment
Woods, Stanley Eugene	B/M	W	Greenville	?	Life Imprisonment
Stewart, Richard	B/M	W/F	Union	3/14/83	Life Imprisonment
Gaskins, Donald Henry	W/M	B/M	Richland	3/26/83	Executed
Chaffee, Jonathan	W/M	W/F	Florence ¹	4/2/83	Life Imprisonment
Ferrell, Dallas Clarence	W/M	W/F	Florence ²	4/2/83	Life Imprisonment
Norris, John Foster	B/M	B/F	Anderson	6/10/83	Life Imprisonment
Damon, Shellie	B/M	B/F B/M	Orangeburg	1/16/84	Life Imprisonment
Skipper, Ronald DeRay	W/M	W/F	Horry	6/28/83	Life Imprisonment
Lucas, Cecil Doyle	W/M	W/F W/M	York	7/27/83	Executed
Singleton, Fred	B/M	W/F	Newberry ³	9/17/83	Found Incompetent
South, Robert	W/M	W/M	Lexington	11/17/83	Executed
Smith, Andrew Lavern	B/M	B/F B/M	Anderson	1/19/84	Executed
Jones, Donald Allen	B/M	W/F	Lancaster	2/8/84	Pending
Plemmons, Jerry	W/M	W/F	Union	2/26/84	Life Imprisonment
Peterson, Mose, III	B/M	W/M	Florence	8/6/84	Life Imprisonment
Stubbs, Craig Anthony	B/M	W/M	Florence	8/6/84	Life Imprisonment
Drayton, Leroy	B/M	W/F	Charleston	10/8/84	Executed

1. Tried in Sumter County.

2. Tried in Sumter County.

3. Jury from Greenwood County.

NAME	DEF.'S RACE & SEX	VICTIM'S RACE & SEX	COUNTY OF CONVICTION	ORIGINAL SENTENCE DATE	FINAL RESULT
Pierce, Marcellus, Jr.	B/M	W/F	Richland	11/7/84	Life Imprisonment
Brown, Jessie Keith	W/M	W/M	Spartanburg	1/28/85	Acquitted of Murder
Middleton, Frank	B/M	W/F B/F	Charleston	2/4/85	Executed
Patrick, Gary Lee	W/M	W/M	Oconee	4/15/85	Life Imprisonment
Matthews, Earl	B/M	W/F	Charleston	5/13/85	Executed
Arthur, Limmie	B/M	B/M	Horry	8/8/85	Life Imprisonment
Patterson, Raymond, Jr.	B/M	W/M	Lexington	9/7/85	Pending Retrial
Cooper, Kamathene	B/M	W/M	Florence	10/4/85	Life Imprisonment
Kornahrens, Fred	W/M	W/F 2W/M	Charleston	11/19/85	Executed
Riddle, Ernest	W/M	W/F	Cherokee	2/1/86	Pending
Hawkins, Calvin	B/M	W/M	Darlington	11/17/85	Life Imprisonment
Johnson, Richard	W/M	B/M	Jasper	2/19/86	Executed
Howard, Ronnie	B/M	W/F	Greenville	6/15/86	Executed
Weldon, Dana	B/M	W/F	Greenville	6/15/86	Life Imprisonment
Bell, Larry Gene	W/M	W/F W/F	Saluda Lexington	2/27/86 ⁴ 4/2/87 ⁵	Executed
Bellamy, Lee Grant	B/M	B/M	Horry	6/28/86	Life Imprisonment
Atkins, Joseph	NA/M	B/F W/M	Charleston	7/1/86 6/25/88	Executed
Reed, Jerry Lee	B/M	W/M	Abbeville	7/22/86	Life Imprisonment
Diddlemeyer, Gerald	W/M	B/M	Horry	9/13/86	Life Imprisonment
West, Floyd	W/M	W/M	Lexington	10/21/86	Died on Death Row
Cockerham, Harold	W/M	W/F	Horry	11/11/86	Life Imprisonment
Owens, Alvin	W/M	W/M	Horry	11/19/86	Life Imprisonment
Cain, James Russell	W/M	2W/M	Chesterfield	11/25/86	Life Imprisonment
Gathers, Demetrius	B/M	B/M	Charleston	3/21/87	Life Imprisonment

4. Tried in Berkeley County.

5. Tried in Pickens County.

NAME	DEF.'S RACE & SEX	VICTIM'S RACE & SEX	COUNTY OF CONVICTION	ORIGINAL SENTENCE DATE	FINAL RESULT
Caldwell, Rickie Tim	W/M	W/M	York	5/23/88	Life Imprisonment
Torrence, Michael	W/M	W/M	Lexington	5/28/88	Executed
Victor, William Keith	W/M	W/M	Edgefield	10/1/88	Life Imprisonment
Green, Anthony	B/M	W/F	Charleston	10/1/88	Executed
Bell, William Henry, Jr.	B/M	W/M	Anderson	3/14/89	Pending
Manning, Warren D.	B/M	W/M	Dillon	4/15/89 ⁶	Acquitted
Wilson, James William	W/M	2B/F	Greenwood	5/9/89	Pending
Sims, Mitchell	W/M	W/M	Berkeley	5/13/89 ⁷	Pending
Young, Kevin Dean	B/M	W/M	Anderson	5/23/89	Executed
Orr, Ronald John	W/M	W/F W/M	Chester	11/14/89	Life Imprisonment
Davis, Wilbert Ray	B/M	W/M	Florence	3/23/90	Life Imprisonment
Davis, Tommy Lee	B/M	W/F	Greenwood	5/14/90 ⁸	Pending
Smith, Rebecca	W/F	W/M	Horry	12/10/90	Life Imprisonment
Simmons, Jonathan Dale	B/M	W/F	Richland	1/30/91	Life Imprisonment
Cooper, Gene Tony	W/M	W/F	Lexington	2/15/91	Pending Retrial
Elkins, Michael	W/M	W/F	Jasper	3/30/91	Executed
Charping, Michael	W/M	W/F	Lexington	4/29/91	Pending
Ray, Johnny, Jr.	W/M	W/F	Spartanburg	5/2/91	Pending Resentencing
Von Dohlen, Herman	W/M	W/M	Berkeley	5/28/91	Pending
Rocheville, David	W/M	W/M	Spartanburg	7/15/91	Executed
Longworth, Richard	W/M	W/M	Spartanburg	9/10/91 ⁹	Pending
Hall, Larry Eugene	W/M	2W/F	Pickens	1/28/92 ¹⁰	Pending
Southerland, Robert	W/M	W/F	Lexington	3/9/92	Pending Retrial
Franklin, Ellis	B/M	W/F	Williamsburg	1/22/93	Pending
Holmes, Bobby Lee	B/M	B/F	York	4/20/93	Pending
Nance, Robert Lee	B/M	W/F	Florence	6/25/93	Pending
Hudgins, Joseph	W/M	W/M	Anderson	7/27/93	Life Imprisonment
Tucker, Richard	B/M	W/F	Spartanburg	10/28/93	Pending Retrial
Williams, Luke, III	W/M	W/F W/M	Edgefield	11/23/93	Pending
Tucker, James N.	W/M	W/F W/F	Calhoun Sumter	12/8/93 12/16/94	Pending

6. Tried in Kershaw County.

7. Tried in Aiken County.

8. Jury from Florence County.

9. Jury from York County.

10. Jury from Lancaster County.

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APPENDIX A

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NAME	DEF.'S RACE & SEX	VICTIM'S RACE & SEX	COUNTY OF CONVICTION	ORIGINAL SENTENCE DATE	FINAL RESULT
George, Ricky	B/M	W/M	Horry	1/20/94	Pending
McWee, Jerry	W/M	W/M	Aiken	1/23/94	Pending
Conyers, Robert	B/M	W/F	Clarendon	2/17/94	Pending
Whipple, James	W/M	W/F	Horry	2/18/94	Pending Retrial
Rogers, Timothy D.	B/M	W/F	Dorchester	3/6/94	Pending
Humphries, Shawn	W/M	W/M	Greenville	8/10/94	Pending
Simpson, Keith L.	B/M	W/M	Spartanburg	9/17/94	Pending
Ivey, Thomas	B/M	W/M	Orangeburg Orangeburg	1/20/95 7/17/95	Pending
Byram, Jason	W/M	W/F	Richland	3/9/95	Pending
Kelly, Theodore	B/M	B/M B/F	Spartanburg	8/12/95	Pending
Hughes, Herman	B/M	W/M	Calhoun	9/12/95	Pending
Hughes, Mar-Reece	B/M	W/M	York	9/22/95	Pending
Bennett, Johnny	B/M	B/M	Lexington	10/19/95	Pending
Hill, David Clayton	W/M	W/M	Georgetown	11/1/95	Pending
Gardner, Joseph	B/M	W/F	Dorchester	12/13/95	Pending
Powers, Ted	W/M	W/F	Lexington	2/23/96	Pending
Johnson, Roger Dale	W/M	W/F	Calhoun	2/27/96	Pending
Rosemond, Andre	B/M	W/F	Spartanburg	3/30/96	Pending
Ard, Joseph	W/M	W/F &Fetus	Lexington	4/25/96	Pending
Hicks, William	B/M	W/M	Aiken	4/30/96	Pending
Reed, James	B/M	B/F B/M	Charleston	6/9/96	Pending
Huggins, Titus	B/M	W/M	Horry	9/12/96	Pending
Council, Donney	B/M	W/F	Aiken	10/23/96	Pending
Stone, Bobby Wayne	W/M	W/M	Sumter	1/28/97	Pending Retrial
Williams, George Allen	B/M	B/F	Lexington	2/7/97	Died on Death Row
Starnes, Norman	W/M	W/M	Lexington	4/25/97	Pending Retrial
Terry, Gary	W/M	B/F	Lexington	9/21/97	Pending
Hughey, John	B/M	B/F	Abbeville	10/30/97	Pending
Shafer, Wesley	W/M	W/M	Union	1/22/98	Pending
Quattlebaum, B.J.	W/M	W/M	Lexington	3/4/98	Pending Retrial
McClure, David, Jr.	W/M	W/M	Barnwell	4/29/98	Pending
Aleksey, Bayan	B/M	B/M	Orangeburg	9/1/98	Pending
Kelly, William	W/M	W/M	Lexington	9/19/98	Pending Retrial
Locklair, Jimmy	W/M	W/F	Spartanburg	10/5/98	Pending
Jones, Jeffrey L.	B/M	W/F W/M	Lexington	11/11/98	Pending Retrial
Shuler, Calvin	B/M	W/M	Dorchester	11/12/98	Pending
Owens, Freddie	B/M	B/F	Greenville	2/24/99	Pending Retrial
Simmons, Kenneth	B/M	B/F	Dorchester	3/2/99	Pending
Robertson, James	W/M	W/F W/M	York	3/26/99	Pending

NAME	DEF.'S RACE & SEX	VICTIM'S RACE & SEX	COUNTY OF CONVICTION	ORIGINAL SENTENCE DATE	FINAL RESULT
Weik, John Edward	W/M	W/F	Dorchester	6/21/99	Pending
Stokes, Samuel Louis	B/M	W/F	Orangeburg	10/31/99	Pending
Hill, David Mark	W/M	W/M W/F B/F	Aiken	2/15/00	Pending
Burkhart, Troy Alan	W/M	2W/M W/F	Anderson	3/19/00	Pending Retrial
Tench, Christopher Dale	W/M	W/M	Anderson	5/8/00	Pending
Passaro, Michael	W/M	W/F	Horry	8/17/00	Executed
Wise, Arthur Hastings	B/M	1W/F 3W/M	Aiken	2/1/01	Pending
Haselden, Jeffery	W/M	W/M	Lexington	2/13/01	Pending
Shuler, Charles	W/M	3W/F	Orangeburg	3/22/01	Pending
Bryant, James Nathaniel	B/M	W/M	Horry	6/25/01	Pending
Crisp, Denisona	W/M	2B/M	Anderson	10/19/01	Pending
Laney, Michael	W/M	2B/F	Greenville	10/20/01	Pending
Moore, Richard Bernard	B/M	W/M	Spartanburg	10/23/01	Pending
Wood, John Richard	W/M	W/M	Greenville	2/16/02	Pending
Bowman, Marion	B/M	W/F	Dorchester	5/23/02	Pending
Downs, William	W/M	W/M	Aiken	6/27/02	Pending
Sigmon, Brad Keith	W/M	W/M W/F	Greenville	7/21/02	Pending

RACE	NUMBERS	PERCENTAGES
Black Defendants sentenced to death	71	46.41%
White Defendants sentenced to death	81	52.94%
Native Americans sentenced to death	1	0.65%
Defendants sentenced to death for killing black victims	26	16.99%
Defendants sentenced to death for killing white victims	126	82.35%
Defendants sentenced to death for killing Asian victims	1	0.65%
Black Defendants/White Victims	55	35.95%
Black Defendants/Black Victims	16	10.46%
Black Defendant/Asian Victim	1	0.65%
White Defendants/White Victims	70	45.75%
White Defendants/Black Victims	10	6.54%
Native American Defendant/White Victim	1	0.65%

APPENDIX B*

SOUTH CAROLINA DEATH SENTENCES (LISTED BY AGGRAVATING CIRCUMSTANCES) 1977-2001

A = Rape/Criminal Sexual Conduct	G = House Breaking	M = Agent
B = Assault with Ravish	H = Poison	N = Police Officer
C = Kidnap	I = Physical Torture	O = 2 Murders
D = Burglary	J = Risk to > 1 Person in Public Place	One Act Scheme
E = Armed Robbery	K = Prior Murder	P = Child < 11 years old
F = Armed Larceny	L = Monetary Value	

As of July 16, 2001

Name	Sent. Date	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Total
Gleaton	10/7/77					X	Ins.											1
Gleaton	2/26/80					X	X											2
Gilbert	10/7/77					X	Ins.											1
Gilbert	2/26/80					X	X											2
Gill	?					X												1
Shaw	Plea 12/16/77	X		X		X												3
Roach	Plea 12/16/77	X		X		X												3
Tyner	8/11/78					X												1
Tyner	10/11/80					X												1
Plath	9/26/78			X														1
Plath	5/14/82		X	X														2
Arnold	9/26/78			X														1
Arnold	5/14/82		Ins.	X														1
Goolsby	?			X			X											2
Woomer (Horry)	7/20/79	X		X														2
Woomer (Horry)	7/23/82	X		X														2

* The information in Appendix B was obtained from the reports completed by the trial judge in all cases in which a death sentence was imposed as required by S.C. Code §16-3-25(A). See also *State v. Shaw*, 273 S.C. 194, 219-42, 255 S.E.2d 799, 811-28 (1979), *cert denied* 444 U.S. 957 (1979) (the report is included as Appendix B to the opinion). Copies of the sentencing reports are on file with the author.

Name	Sent. Date	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Total
Woomer (Colleton)	6/27/80				X	X							X					3
Linder	?														X			1
Hyman	10/12/79				X	X												2
Adams	3/3/80							X										1
Adams	1/30/82			X				X										2
Thompson	9/27/80					X												1
Truesdale	12/11/80	X		X														2
Truesdale	5/17/83	X		X														2
Truesdale	9/25/87	X		X														2
Roberts	1/19/81			X		X												2
Copeland	1/19/81			X		X												2
Butler, H.	1/26/81	X																1
Smart	?						X											1
Smart	3/11/81					X	X											2
Yates	5/2/81					X												1
Butler, J.	?					X												1
Patterson, W.	10/29/80 Plea					X												1
Patterson, W.	6/20/83					X												1
Koon	6/12/81			X														1
Koon	2/18/83			X														1
Sloan	10/2/81	X																1
Elmore	4/19/82	X	Ins.		Ins.													1
Elmore	4/2/84	X			X													2
Elmore	2/28/87	X			Ins.					X								2
Spann	4/26/82				X					X								2
Woods	?					X				X								2
Stewart	3/14/83		X			X	X	X										4
Stewart	1/25/85		X			X	X	X										4
Gaskins	3/26/83											X		X				2
Chaffee	4/2/83	X																1

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Name	Sent. Date	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Total
Ferrell	4/2/83	X						X		X								3
Norris	6/10/83	X						X		X		X						4
Damon	1/16/84					X	X											2
Skipper	6/28/83	X																1
Lucas	7/27/83				X	X												2
Singleton	9/17/83	X			X													2
South	11/17/83														X			1
Smith, A.	1/19/84					X	X			X								3
Smith, A.	10/31/87					Ins.	X			X								2
Jones, D	2/8/84	X		X		X	X	X										5
Jones, D	4/17/87	X		X		X	X	X										5
Plemmons	2/26/84					X												1
Plemmons	5/8/87					X												1
Peterson	8/6/84					X	X											2
Stubbs	8/6/84					X												1
Drayton	10/8/84			X		X												2
Drayton	4/12/86			X		X												2
Pierce	11/7/84	X		X			X											3
Brown	1/28/85					X	X											2
Brown	3/24/87					X	X											2
Middleton	2/4/85	X				X												2
Middleton	11/24/86	X				X												2
Patrick	4/15/85					X	Ins.											1
Matthews	5/13/85					X												1
Matthews	4/24/87					X												1
Arthur	8/8/85					X												1
Arthur	5/13/87					X												1
Patterson, R.	9/7/85					X												1
Patterson, R.	11/7/87					X												1
Patterson, R.	2/14/95					X												1
Cooper, K.	10/4/85					X												1

Name	Sent. Date	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Total
Kornahrens	11/19/85			X	X													2
Riddle	2/1/86				X	X												2
Riddle	10/1/87				X	X												2
Riddle	11/15/91				X	X												2
Hawkins	11/17/85				X													1
Johnson, Ric.	2/19/86					X									X			2
Johnson, Ric.	3/13/88														X			1
Howard	6/15/86			X		X												2
Weldon	6/15/86			X		X												2
Bell, L. (Saluda)	2/27/86			X														1
Bell, L. (Lexington)	4/2/87			X														1
Bellamy	6/28/86												X	X				2
Atkins	7/1/86											X						1
Atkins	6/25/88											X						1
Reed, Jerry	7/22/86					X	X											2
Diddlemeyer	9/13/86												X					1
West, Floyd	10/21/86					X												1
Cockerham	11/11/86			X														1
Owens, A.	11/19/86			X														1
Cain	11/25/86												X	X				2
Gathers	3/21/87	X																1
Caldwell	5/23/88			X		X												2
Torrence	5/28/88				X	X										X		3
Torrence	9/26/92				X	X										X		3
Victor	10/1/88			X														1
Green	10/1/88					X												1
Bell, W.	3/14/89					X												1
Manning	4/15/89														X			1
Manning	4/3/95			X		X									X			3

Name	Sent. Date	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Total
Wilson	Guilty But Mentally Incomp. Plea 5/9/89															X	X	2
Sims	5/13/89					X												1
Young	5/23/89					X												1
Young	6/12/93					X												1
Orr	11/14/89				X	X	X									X		4
Davis, W.	3/23/90					X												1
Davis, T.	5/14/90	X		X						X								3
Smith, R.	12/10/90					X												1
Simmons, J.	1/30/91				X													1
Cooper, G.	2/15/91			X		X	X											3
Elkins	3/30/91					X	X											2
Charping	4/29/91	X		X						X								3
Charping	9/20/96	Ins.		X						X								2
Ray	Alford Plea 5/2/91			X										Ins.		X		2
Ray	Alford Plea 1/20/94			X														1
Von Dohlen	5/28/91					X												1
Rocheville	7/15/91			X		X												2
Longworth	9/10/91			X		X										X		3
Hall	1/28/92	X		X		X										X		4
Southerland	3/9/92	Ins.			X	X												2
Franklin	1/22/93	X			X		X			X								4
Holmes	4/20/93	X			X													2
Holmes	3/29/01	X			X					X								3
Nance	6/25/93	X			X	X												3
Hudgins	7/27/93						X									X		2
Tucker, R.	10/28/93	X		X	X								X					4
Williams, L.	11/23/93												X			X		2

Name	Sent. Date	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Total
Tucker, J. (Calhoun)	12/8/93				X	X	X									Ins.		3
Tucker, J. (Calhoun)	7/17/96			X	X	X	X											4
Tucker, J. (Sumter)	12/16/94			X	X	X										Ins.		3
George	1/20/94					X												1
McWee	1/23/94					X	X											2
Conyers	Plea 2/17/94	X			X												X	3
Whipple	2/18/94	X				X												2
Rogers	3/6/94										X						X	2
Rogers	12/?/96																X	1
Humphries	8/10/94					X												1
Simpson	9/17/94					X							X					2
Ivey (Orangeburg)	1/20/95										X				X	Ins.		2
Ivey (Orangeburg)	7/17/95			X		X	X					X						4
Byram	3/9/95				X	X												2
Kelly, T.	8/12/95															X		1
Hughes, H.	9/12/95					X	X				X							3
Hughes, M.	9/22/95					Ins.	Ins.								X			1
Bennett	10/19/95			X		X	X			X								4
Bennett	7/16/00			X		X	X			X								4
Hill, David C.	11/1/95														X			1
Gardner	12/13/95	X		X						X								3
Powers	2/23/96				X	X	Ins.											2
Johnson, Roger	2/27/96			X		X	X			X								4
Rosemond	3/30/96															X	X	2
Ard	4/25/96															X	X	2
Hicks	4/30/96			X		X				Ins.								2
Reed, James	6/9/96						Ins.									X		1
Huggins	9/12/96					X												1
Council	10/23/96	X		X	X			X	X				X					6
Stone	1/28/97				X										X			2

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Name	Sent Date	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Total
Williams, G.	2/7/97				X	X												2
Starnes	4/25/97					Ins.	Ins.									X		1
Terry	9/21/97	X			X													2
Hughey	10/30/97				X		X									X		3
Shafer	1/22/98					X												1
Quattlebaum	3/4/98				X	X	X											3
McClure	4/29/98						X			X						X		3
Aleksey	9/1/98														X			1
♦Kelly, W.	9/19/98			X	X	X	X											4
Locklair	10/5/98										X	X				Ins.		2
Jones, J.	11/11/98				X	X	Ins.			X						X		4
Shuler, Cal.	11/12/98			X		X												2
Owens, F.	2/24/99					X	X											2
Simmons, K.	3/2/99	X		X	X	X				X			X					6
Robertson	3/26/99					X	X			X			X			X		5
Weik	6/21/99				X					X								2
Stokes	10/31/99	X		X						X			X	X		Ins.		5
Hill, David M.	2/15/00			X							X							2
Burkhart	3/19/00															X		1
Tench	5/8/00				X	X												2
Passaro	Plea									X							X	2
Wise	2/1/01				X											X		2
Haselden	2/13/01									X								1
Shuler, Cha.	3/22/01				X					X						X		3
Bryant	6/25/01					X	X			X					X			4
Crisp, D.	10/26/01									X		X						2
Laney, M.	11/14/01	X		X														2
Moore, R.	10/26/01					X					X		X					3
Wood, J.	3/15/02														X			1
TOTAL (Not Counting INST)		39	3	57	39	102	39	9	1	27	7	7	12	4	14	20	.7	387
Total number of single agg. cases																		72

APPENDIX C

SOUTH CAROLINA'S CURRENT DEATH ROW

NAME	DEF.'S RACE & SEX	VICTIM'S RACE & SEX	COUNTY OF CONVICTION	ORIGINAL SENTENCE DATE
Elmore, Edward Lee	B/M	W/F	Greenwood	4/19/82
Jones, Donald Allen	B/M	W/F	Lancaster	2/8/84
Riddle, Ernest	W/M	W/F	Cherokee	2/1/86
Bell, William Henry, Jr.	B/M	W/M	Anderson	3/14/89
Wilson, James William	W/M	2B/F	Greenwood	5/9/89
Sims, Mitchell	W/M	W/M	Berkeley	5/13/89
Davis, Tommy Lee	B/M	W/F	Greenwood	5/14/90
Charping, Michael	W/M	W/F	Lexington	4/29/91
Von Dohlen, Herman	W/M	W/M	Berkeley	5/28/91
Longworth, Richard	W/M	W/M	Spartanburg	9/10/91
Hall, Larry Eugene	W/M	2W/F	Pickens	1/28/92
Franklin, Ellis	B/M	W/F	Williamsburg	1/22/93
Holmes, Bobby Lee	B/M	B/F	York	4/20/93
Nance, Robert Lee	B/M	W/F	Florence	6/25/93
Williams, Luke, III	W/M	W/F W/M	Edgefield	11/23/93
Tucker, James N.	W/M	W/F W/F	Calhoun Sumter	12/8/93 12/16/94
George, Ricky	B/M	W/M	Horry	1/20/94
McWee, Jerry	W/M	W/M	Aiken	1/23/94
Conyers, Robert	B/M	W/F	Clarendon	2/17/94
Rogers, Timothy D.	B/M	W/F	Dorchester	3/6/94
Humphries, Shawn	W/M	W/M	Greenville	8/10/94
Simpson, Keith L.	B/M	W/M	Spartanburg	9/17/94
Ivey, Thomas	B/M	W/M	Orangeburg Orangeburg	1/20/95 7/17/95

* The information in Appendix C was obtained from a comparison of the information in Appendix A, Appendix D and Appendix E.

NAME	DEF.'S RACE & SEX	VICTIM'S RACE & SEX	COUNTY OF CONVICTION	ORIGINAL SENTENCE DATE
Byram, Jason	W/M	W/F	Richland	3/9/95
Kelly, Theodore	B/M	B/M B/F	Spartanburg	8/12/95
Hughes, Herman	B/M	W/M	Calhoun	9/12/95
Hughes, Mar-Reece	B/M	W/M	York	9/22/95
Bennett, Johnny	B/M	B/M	Lexington	10/19/95
Hill, David Clayton	W/M	W/M	Georgetown	11/1/95
Gardner, Joseph	B/M	W/F	Dorchester	12/13/95
Powers, Ted	W/M	W/F	Lexington	2/23/96
Johnson, Roger Dale	W/M	W/F	Calhoun	2/27/96
Rosemond, Andre	B/M	W/F	Spartanburg	3/30/96
Ard, Joseph	W/M	W/F & Fetus	Lexington	4/25/96
Hicks, William	B/M	W/M	Aiken	4/30/96
Reed, James	B/M	B/F B/M	Charleston	6/9/96
Huggins, Titus	B/M	W/M	Horry	9/12/96
Council, Donney	B/M	W/F	Aiken	10/23/96
Terry, Gary	W/M	B/F	Lexington	9/21/97
Hughey, John	B/M	B/F	Abbeville	10/30/97
Shafer, Wesley	W/M	W/M	Union	1/22/98
McClure, David, Jr.	W/M	W/M	Barnwell	4/29/98
Aleksey, Bayan	B/M	B/M	Orangeburg	9/1/98
Locklair, Jimmy	W/M	W/F	Spartanburg	10/5/98
Shuler, Calvin	B/M	W/M	Dorchester	11/12/98
Simmons, Kenneth	B/M	B/F	Dorchester	3/2/99
Robertson, James	W/M	W/F W/M	York	3/26/99
Weik, John Edward	W/M	W/F	Dorchester	6/21/99
Stokes, Samuel Louis	B/M	W/F	Orangeburg	10/31/99
Hill, David Mark	W/M	W/M W/F B/F	Aiken	2/15/00

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APPENDIX C

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NAME	DEF.'S RACE & SEX	VICTIM'S RACE & SEX	COUNTY OF CONVICTION	ORIGINAL SENTENCE DATE
Tench, Christopher Dale	W/M	W/M	Anderson	5/8/00
Wise, Arthur Hastings	B/M	1 W/F 3 W/M	Aiken	2/1/01
Haselden, Jeffery	W/M	W/M	Lexington	2/13/01
Shuler, Charles	W/M	3 W/F	Orangeburg	3/22/01
Bryant, James Nathaniel	B/M	W/M	Horry	6/25/01
Crisp, Denisona	W/M	2 B/M	Anderson	10/19/01
Laney, Michael	W/M	2 B/F	Greenville	10/20/01
Moore, Richard Bernard	B/M	W/M	Spartanburg	10/23/01
Wood, John Richard	W/M	W/M	Greenville	2/16/02
Bowman, Marion	B/M	W/F	Dorchester	5/23/02
Downs, William	W/M	W/M	Aiken	6/27/02
Sigmon, Brad Keith	W/M	W/M W/F	Greenville	7/21/02

TOTALS:

RACE	NUMBER	PERCENTAGE
Black Defendants	31	50%
White Defendants	31	50%
White Victims	11	17.74%
Black Victims	51	82.26%
Black Defendants/Black Victims	24	38.71%
Black Defendants/White Victims	7	11.29%
White Defendants/White Victims	27	43.55%
White Defendants/Black Victims	4	6.45%

APPENDIX D*

SOUTH CAROLINA EXECUTIONS 1977-2002

NAME	DEF.'S RACE & SEX	VICTIMS RACE & SEX	COUNTY OF CONVICTION	SENTENCE DATE	EXECUTION DATE	OTHER
Shaw, Joseph Carl	W/M	W/F W/M	Richland	12/16/77	Executed 1/11/85	
Roach, James Terry	W/M	W/F W/M	Richland	12/16/77	Executed 1/10/86	Juvenile
Woomer, Ronald	W/M	W/F W/M	Horry Colleton	7/20/79 6/27/80	Executed 4/27/90	
Gaskins, Donald Henry	W/M	B/M	Richland	3/26/83	Executed 9/6/91	
Adams, Sylvester	B/M	B/M	York	3/3/80	Executed 8/18/95	Mental Retardation
South, Robert	W/M	W/M	Lexington	11/17/83	Executed 5/31/96	Volunteer
Kornahrens, Fred	W/M	W/F 2W/M	Charleston	11/19/85	Executed 7/19/96	
Torrence, Michael	W/M	W/M	Lexington	5/28/88	Executed 9/6/96	Volunteer
Bell, Larry Gene	W/M	W/F W/F	Berkeley Pickens	2/27/86 4/2/87	Executed 10/4/96	Competency to be executed questioned
Lucas, Doyle Cecil	W/M	W/F W/M	York	7/27/83	Executed 11/15/96	Volunteer
Middleton, Frank	B/M	W/F B/F	Charleston	2/4/85	Executed 11/22/96	Mental Retardation
Elkins, Michael	W/M	W/F	Jasper	3/30/91	Executed 6/13/97	Volunteer
Matthews, Earl	B/M	W/F	Charleston	5/13/85	Executed 11/7/97	
Arnold, John	W/M	B/F	Beaufort	9/26/78	Executed 3/6/98	
Plath, John	W/M	B/F	Beaufort	9/26/78	Executed 7/10/98	
Roberts, Sammy David	W/M	2W/M B/M	Berkeley	1/19/81	Executed 9/25/98	
Gleaton, J.D.	B/M	W/M	Lexington	10/7/77	Executed 12/4/98	
Gilbert, Larry	B/M	W/M	Lexington	10/7/77	Executed 12/4/98	Evidence of Mental Retardation

* The information in Appendix D has been systematically maintained by the author since the first South Carolina execution in 1985. It was confirmed by a similar list maintained by the Center for Capital Litigation and also by comparison to information maintained by the Death Penalty Information Center (www.deathpenaltyinfo.org).

NAME	DEF.'S RACE & SEX	VICTIMS RACE & SEX	COUNTY OF CONVICTION	SENTENCE DATE	EXECUTION DATE	OTHER
Truesdale, Louis	B/M	W/F	Lancaster	12/11/80	Executed 12/11/98	
Smith, Andy Lavern	B/M	B/F B/M	Anderson	1/19/84	Executed 12/18/98	
Howard, Ronnie	B/M	Asian/F	Greenville	6/15/86	Executed 1/8/99	
Atkins, Joseph	NA/M	B/F W/M	Charleston	7/1/86	Executed 1/22/99	
Drayton, Leroy	B/M	W/F	Charleston	10/8/84	Executed 11/12/99	
Rocheville, David	W/M	W/M	Spartanburg	7/15/91	Executed 12/3/99	
Young, Kevin Dean	B/M	W/M	Anderson	5/23/89	Executed 11/3/00	
Johnson, Richard	W/M	B/M	Jasper	2/19/86	Executed 5/3/02	
Green, Anthony	B/M	W/F	Charleston	10/1/88	Executed 8/23/02	
Passaro, Michael	W/M	W/F	Horry	8/17/00	Executed 9/13/02	Volunteer

TOTALS:

RACE	NUMBER	PERCENTAGE
Black Defendants	11	39.28%
White Defendants	16	57.14%
Native American Defendants	1	3.57%
Defendants executed for killing white victims	21	75%
Defendants executed for killing black victims	6	21.42%
Defendants executed for killing Asian victims	1	3.57%
Black Defendants/White victims	7	25%
Black Defendants/Black Victims	1	3.57%
Black Defendant/Asian Victim	1	3.57%
White Defendants/White Victims	11	39.28%
White Defendants/Black Victims	5	17.86%
Native American Defendant/White Victim	1	3.57%

APPENDIX E*

SOUTH CAROLINA DIRECT APPEALS CASES 1977-2002

CASE NAME	RESULT
<i>State v. Gill</i> , 273 S.C. 190, 255 S.E.2d 455 (1979)	Reversed-NT ¹
<i>State v. Shaw</i> , 273 S.C. 194, 255 S.E.2d 799 (1979), <i>cert. denied</i> , 444 U.S. 957 (1979) ²	Affirmed ³
<i>State v. Tyner</i> , 273 S.C. 646, 258 S.E.2d 559 (1979)	Reversed-S ⁴
<i>State v. Gilbert</i> , 273 S.C. 690, 258 S.E.2d 890 (1979) ⁵	Reversed-S
<i>State v. Goolsby</i> , 275 S.C. 110, 268 S.E.2d 31 (1980), <i>cert. denied</i> , 449 U.S. 1037 (1980)	Reversed-S
<i>State v. Woomer</i> , 276 S.C. 258, 277 S.E.2d 696 (1981)	Reversed-S
<i>State v. Linder</i> , 276 S.C. 304, 278 S.E.2d 335 (1981)	Reversed-NT
<i>State v. Hyman</i> , 276 S.C. 559, 281 S.E.2d 209 (1981), <i>cert. denied</i> , 459 U.S. 1122 (1982)	Affirmed
<i>State v. Gilbert</i> , 277 S.C. 53, 283 S.E.2d 179 (1981), <i>cert. denied</i> , 456 U.S. 984 (1982) ⁶	Affirmed
<i>State v. Adams</i> , 277 S.C. 115, 283 S.E.2d 582 (1981)	Reversed-NT
<i>State v. Plath</i> , 277 S.C. 126, 284 S.E.2d 221 (1981) ⁷	Reversed-S
<i>State v. Woomer</i> , 277 S.C. 170, 284 S.E.2d 357 (1981)	Reversed-NT
<i>State v. (James) Butler</i> , 277 S.C. 543, 290 S.E.2d 420 (1982)	Reversed-NT
<i>State v. Thompson</i> , 278 S.C. 1, 292 S.E.2d 581 (1982), <i>cert. denied</i> , 456 U.S. 938 (1982)	Affirmed

* The information in Appendix E was obtained from the Center for Capital Litigation, which has systematically maintained a list of all capital cases decided by the South Carolina Supreme Court. It was confirmed by the author's independent computer assisted legal research.

1. "Reversed-NT" means the South Carolina Supreme Court found the error in the guilt-or-innocence phase of the proceedings and ordered an entirely new trial.

2. This affirmed the death sentences of two defendants.

3. "Affirmed" means the South Carolina Supreme Court found no reversible error in the case.

4. "Reversed-S" means the South Carolina Supreme Court affirmed the defendant's conviction(s) but vacated the death sentence and ordered a new sentencing proceeding.

5. This reversed the death sentences of two defendants.

6. This affirmed the death sentences of two defendants.

7. This reversed the death sentences of two defendants.

CASE NAME	RESULT
<i>State v. Patterson</i> , 278 S.C. 319, 295 S.E.2d 264 (1982)	Reversed-NT
<i>State v. Truesdale</i> , 278 S.C. 368, 296 S.E.2d 528 (1982)	Reversed-NT
<i>State v. Butler</i> 277 S.C. 452, 290 S.E.2d 1 (1982), <i>cert. denied</i> , 459 U.S. 932 (1982)	Affirmed
<i>State v. Sloan</i> , 278 S.C. 435, 298 S.E.2d 92 (1982)	Reversed-NT
<i>State v. Woomey</i> , 278 S.C. 468, 299 S.E.2d 317 (1982), <i>cert. denied</i> , 463 U.S. 1229 (1983)	Affirmed
<i>State v. Smart</i> , 278 S.C. 515, 299 S.E.2d 686 (1982), <i>cert. denied</i> , 460 U.S. 1088 (1983)	Reversed-S
<i>State v. Koon</i> , 278 S.C. 528, 298 S.E.2d 769 (1982)	Reversed-S
<i>State v. Copeland</i> , 278 S.C. 572, 300 S.E.2d 63 (1982), <i>cert. denied</i> , 460 U.S. 1103 (1983) ⁸	Affirmed
<i>State v. Adams</i> , 279 S.C. 228, 306 S.E.2d 208 (1983), <i>cert. denied</i> , 464 U.S. 1023 (1983)	Affirmed
<i>State v. Spann</i> , 279 S.C. 399, 308 S.E.2d 518 (1983), <i>cert. denied</i> , 466 U.S. 947 (1984)	Affirmed
<i>State v. Elmore</i> , 279 S.C. 417, 308 S.E.2d 781 (1983)	Reversed-NT
<i>State v. Yates</i> , 280 S.C. 29, 310 S.E.2d 805 (1982), <i>cert. denied</i> , 462 U.S. 1124 (1983)	Affirmed
<i>State v. Plath</i> , 281 S.C. 1, 313 S.E.2d 619 (1984) ⁹	Affirmed
<i>State v. Woods</i> , 282 S.C. 18, 316 S.E.2d 673 (1984)	Reversed-NT
<i>State v. Stewart</i> , 283 S.C. 104, 320 S.E.2d 447 (1984)	Reversed-S
<i>State v. Gaskins</i> , 284 S.C. 105, 326 S.E.2d 132 (1985), <i>cert. denied</i> , 471 U.S. 1120 (1985)	Affirmed
<i>State v. Singleton</i> , 284 S.C. 388, 326 S.E.2d 153 (1985), <i>cert. denied</i> , 471 U.S. 1111 (1985)	Affirmed
<i>State v. Koon</i> , 285 S.C. 1, 328 S.E.2d 625 (1985), <i>cert. denied</i> , 471 U.S. 1036 (1985)	Affirmed
<i>State v. Patterson</i> , 285 S.C. 5, 327 S.E.2d 650 (1984), <i>cert. denied</i> , 471 U.S. 1036 (1985)	Affirmed
<i>State v. Truesdale</i> , 285 S.C. 13, 328 S.E.2d 53 (1984), <i>cert. denied</i> , 471 U.S. 1009 (1985)	Affirmed

8. This decision affirmed the death sentences of two defendants.

9. This decision affirmed the death sentences of two defendants.

CASE NAME	RESULT
<i>State v. Chaffee</i> , 285 S.C. 21, 328 S.E.2d 464 (1984), <i>cert. denied</i> , 471 U.S. 1009 (1985) ¹⁰	Affirmed
<i>State v. Lucas</i> , 285 S.C. 37, 328 S.E.2d 63 (1985), <i>cert. denied</i> , 472 U.S. 1012 (1985)	Affirmed
<i>State v. Skipper</i> , 285 S.C. 42, 328 S.E.2d 58 (1985), <i>rev'd</i> , 476 U.S. 1 (1986)	Affirmed
<i>State v. Norris</i> , 285 S.C. 86, 328 S.E.2d 339 (1985)	Reversed-S
<i>State v. Damon</i> , 285 S.C. 125, 328 S.E.2d 628 (1985), <i>cert. denied</i> , 474 U.S. 865 (1985)	Affirmed
<i>State v. South</i> , 285 S.C. 529, 331 S.E.2d 775 (1985), <i>cert. denied</i> , 474 U.S. 888 (1985)	Affirmed
<i>State v. Elmore</i> , 286 S.C. 70, 332 S.E.2d 762 (1985), <i>rev'd in part and remanded</i> , 476 U.S. 1101 (1986) (per curiam)	Affirmed
<i>State v. Plemmons</i> , 286 S.C. 78, 332 S.E.2d 765 (1985), <i>rev'd in part and remanded</i> , 476 U.S. 1102 (1986) (per curiam)	Affirmed
<i>State v. (Andrew Lavern) Smith</i> , 286 S.C. 406, 334 S.E.2d 277 (1985), <i>cert. denied</i> , 475 U.S. 1031 (1986)	Affirmed
<i>State v. Drayton</i> , 287 S.C. 226, 337 S.E.2d 216 (1985)	Reversed-NT
<i>State v. Peterson</i> , 287 S.C. 244, 335 S.E.2d 800 (1985) ¹¹	Reversed-NT
<i>State v. (Donald) Jones</i> , 288 S.C. 1, 340 S.E.2d 782 (1985), <i>rev'd on other grounds</i> , 476 U.S. 102 (1986) (per curiam)	Affirmed
<i>State v. Middleton</i> , 288 S.C. 21, 339 S.E.2d 692 (1986)	Reversed-NT
<i>State v. Stewart</i> , 288 S.C. 232, 341 S.E.2d 789 (1986)	Reversed-S
<i>State v. Patrick</i> , 289 S.C. 301, 345 S.E.2d 481 (1986)	Reversed-S
<i>State v. Pierce</i> , 289 S.C. 430, 346 S.E.2d 707 (1986)	Reversed-NT
<i>State v. Brown</i> , 289 S.C. 581, 347 S.E.2d 882 (1986)	Reversed-NT
<i>State v. Kornahrens</i> , 290 S.C. 281, 350 S.E.2d 180 (1986), <i>cert. denied</i> , 480 U.S. 940 (1987)	Affirmed
<i>State v. Arther</i> , 290 S.C. 291, 350 S.E.2d 187 (1986)	Reversed-S
<i>State v. (Raymond) Patterson</i> , 290 S.C. 523, 351 S.E.2d 853 (1986), <i>cert. denied</i> , 482 U.S. 902 (1987)	Reversed-S

10. This decision affirmed the death sentences of two defendants.

11. This decision reversed the death sentences of two defendants.

CASE NAME	RESULT
<i>State v. Riddle</i> , 291 S.C. 232, 353 S.E.2d 138 (1987)	Reversed-S
<i>State v. Cooper</i> , 291 S.C. 332, 353 S.E.2d 441 (1986)	Reversed-NT
<i>State v. Matthews</i> , 291 S.C. 339, 353 S.E.2d 444 (1986)	Reversed-S
<i>State v. Hawkins</i> , 292 S.C. 418, 357 S.E.2d 10 (1987)	Reversed-NT
<i>State v. Bellamy</i> , 293 S.C. 103, 359 S.E.2d 63 (1987)	Reversed-NT
<i>State v. (Alvin) Owens</i> , 293 S.C. 161, 359 S.E.2d 275 (1987), <i>cert. denied</i> , 484 U.S. 982 (1987)	Affirmed
<i>State v. Atkins</i> , 293 S.C. 294, 360 S.E.2d 302 (1987)	Reversed-S
<i>State v. (Richard) Johnson</i> , 293 S.C. 321, 360 S.E.2d 317 (1987)	Reversed-NT
<i>State v. (Larry) Bell</i> , 293 S.C. 391, 360 S.E.2d 706 (1987), <i>cert. denied</i> , 484 U.S. 1020 (1988)	Affirmed
<i>State v. Drayton</i> , 293 S.C. 417, 361 S.E.2d 329 (1987), <i>cert. denied</i> , 484 U.S. 1079 (1988)	Affirmed
<i>State v. Reed</i> , 293 S.C. 515, 362 S.E.2d 13 (1987)	Reversed-S
<i>State v. Cockerham</i> , 294 S.C. 380, 365 S.E.2d 22 (1988)	Reversed-NT
<i>State v. Middleton</i> , 295 S.C. 318, 368 S.E.2d 457 (1988), <i>cert. denied</i> , 488 U.S. 872 (1988)	Affirmed
<i>State v. Howard</i> , 295 S.C. 462, 369 S.E.2d 132 (1988), <i>cert. denied</i> , 490 U.S. 1113 (1989) ¹²	Reversed-S/ Affirmed
<i>State v. Gathers</i> , 295 S.C. 476, 369 S.E.2d 140 (1988), <i>aff'd</i> , 490 U.S. 805 (1989)	Reversed-S
<i>State v. Plemmons</i> , 296 S.C. 76, 370 S.E.2d 871 (1988)	Reversed-S
<i>State v. Brown</i> , 296 S.C. 191, 371 S.E.2d 523 (1988)	Reversed-NT
<i>State v. Diddlemeyer</i> , 296 S.C. 235, 371 S.E.2d 793 (1988)	Reversed-NT
<i>State v. Matthews</i> , 296 S.C. 379, 373 S.E.2d 587 (1988), <i>cert. denied</i> , 489 U.S. 1091 (1989)	Affirmed
<i>State v. Arthur</i> , 296 S.C. 495, 374 S.E.2d 291 (1988)	Reversed-S
<i>State v. Cain</i> , 297 S.C. 497, 377 S.E.2d 556 (1988), <i>cert. denied</i> , 497 U.S. 1010 (1990)	Affirmed
<i>State v. (Donald) Jones</i> , 298 S.C. 118, 378 S.E.2d 594 (1989), <i>cert. denied</i> , 494 U.S. 1060 (1990)	Affirmed

12. One of the defendants was affirmed and one was given a new sentencing hearing.

CASE NAME	RESULT
<i>State v. Smith</i> , 298 S.C. 482, 381 S.E.2d 724 (1989), <i>cert. denied</i> , 494 U.S. 1060 (1990)	Affirmed
<i>State v. (Raymond) Patterson</i> , 299 S.C. 280, 384 S.E.2d 699 (1989), <i>vacated</i> , 493 U.S. 1013 (1991)	Affirmed
<i>State v. Elmore</i> , 300 S.C. 130, 386 S.E.2d 769 (1989), <i>cert. denied</i> , 496 U.S. 931 (1990)	Affirmed
<i>State v. Victor</i> , 300 S.C. 220, 387 S.E.2d 248 (1989)	Reversed-NT
<i>State v. Caldwell</i> , 300 S.C. 494, 388 S.E.2d 816 (1990)	Reversed-S
<i>State v. Riddle</i> , 301 S.C. 68, 389 S.E.2d 665 (1990)	Reversed-S
<i>State v. Truesdale</i> , 301 S.C. 347, 393 S.E.2d 168 (1990), <i>cert. denied</i> , 498 U.S. 1074 (1990)	Affirmed
<i>State v. Green</i> , 301 S.C. 347, 392 S.E.2d 157 (1990), <i>cert. denied</i> , 498 U.S. 881 (1990)	Affirmed
<i>State v. (Larry) Bell</i> , 302 S.C. 18, 393 S.E.2d 364 (1990), <i>cert. denied</i> , 498 U.S. 881 (1990)	Affirmed
<i>State v. (Raymond) Patterson</i> , 302 S.C. 384, 396 S.E.2d 366 (1990), <i>vacated</i> , 500 U.S. 950 (1991)	Affirmed
<i>State v. Atkins</i> , 303 S.C. 214, 399 S.E.2d 760 (1990), <i>cert. denied</i> , 501 U.S. 1259 (1991)	Affirmed
<i>State v. Orr</i> , 304 S.C. 185, 403 S.E.2d 623 (1991)	Reversed-NT
<i>State v. Sims</i> , 304 S.C. 409, 405 S.E.2d 377 (1991), <i>cert. denied</i> , 502 U.S. 1103 (1992)	Affirmed
<i>State v. (William) Bell</i> , 305 S.C. 11, 406 S.E.2d 165 (1991), <i>cert. denied</i> , 502 U.S. 1038 (1992)	Affirmed
<i>State v. Torrence</i> , 305 S.C. 45, 406 S.E.2d 315 (1991)	Reversed-S
<i>State v. Young</i> , 305 S.C. 380, 409 S.E.2d 352 (1991)	Reversed-S
<i>State v. Manning</i> , 305 S.C. 413, 409 S.E.2d 372 (1991), <i>cert. denied</i> , 503 U.S. 914 (1992)	Reversed-NT
<i>State v. (Richard) Johnson</i> , 306 S.C. 119, 410 S.E.2d 547 (1991), <i>cert. denied</i> , 503 U.S. 993 (1992)	Affirmed
<i>State v. (Wilbert Ray) Davis</i> , 306 S.C.246, 411 S.E.2d 220 (1991)	Reversed-NT
<i>State v. Wilson</i> , 306 S.C.498, 413 S.E.2d 19 (1992), <i>cert. denied</i> , 506 U.S. 846 (1992)	Affirmed
<i>State v. (Tommy Lee) Davis</i> , 309 S.C. 326, 422 S.E.2d 133 (1992), <i>cert. denied</i> , 508 U.S. 915 (1993)	Affirmed

CASE NAME	RESULT
<i>State v. (Rebecca) Smith</i> , 309 S.C. 442, 424 S.E.2d 496 (1992)	Reversed-NT
<i>State v. Rocheville</i> , 310 S.C. 20, 425 S.E.2d 32 (1993), <i>cert. denied</i> , 508 U.S. 978 (1993)	Affirmed
<i>State v. Ray</i> , 310 S.C. 431, 427 S.E.2d 171 (1993)	Reversed-S
<i>State v. (Jonathan) Simmons</i> , 310 S.C. 439, 427 S.E.2d 175 (1993), <i>rev'd</i> , 512 U.S. 154 (1994)	Affirmed
<i>State v. Cooper</i> , 312 S.C. 90, 439 S.E.2d 276 (1994)	Reversed-NT
<i>State v. Hall</i> , 312 S.C. 95, 439 S.E.2d 278 (1994), <i>cert. denied</i> , 512 U.S. 1246 (1994)	Affirmed
<i>State v. Elkins</i> , 312 S.C. 541, 436 S.E.2d 178 (1993), <i>cert. denied</i> , 511 U.S. 1063 (1994)	Affirmed
<i>State v. Charping</i> , 313 S.C. 147, 437 S.E.2d 88 (1993)	Reversed-NT
<i>State v. Longworth</i> , 313 S.C. 360, 438 S.E.2d 219 (1993), <i>cert. denied</i> , 513 U.S. 831 (1994)	Affirmed
<i>State v. Riddle</i> , 314 S.C. 1, 443 S.E.2d 557 (1994), <i>cert. denied</i> , 513 U.S. 1003 (1994)	Affirmed
<i>State v. Southerland</i> , 316 S.C. 377, 447 S.E.2d 862 (1994), <i>cert. denied</i> , 513 U.S. 1166 (1995)	Affirmed
<i>State v. Franklin</i> , 318 S.C. 47, 456 S.E.2d 357 (1995), <i>cert. denied</i> , 516 U.S. 856 (1995)	Affirmed
<i>State v. Young</i> , 319 S.C. 33, 459 S.E.2d 84 (1995), <i>cert. denied</i> , 516 U.S. 1051 (1996)	Affirmed
<i>State v. Hudgins</i> , 319 S.C. 233, 460 S.E.2d 388 (1995), <i>cert. denied</i> , 516 U.S. 1096 (1996)	Affirmed
<i>State v. (Richard) Tucker</i> , 319 S.C. 425, 462 S.E.2d 263 (1995), <i>cert. denied</i> , 516 U.S. 1080 (1996)	Affirmed
<i>State v. (James) Tucker</i> , 320 S.C. 206, 464 S.E.2d 105 (1995)	Reversed-S
<i>State v. Holmes</i> , 320 S.C. 259, 464 S.E.2d 334 (1995), <i>cert. denied</i> , 517 U.S. 1248 (1996).	Affirmed
<i>State v. Nance</i> , 320 S.C. 501, 466 S.E.2d 349 (1996), <i>cert. denied</i> , 518 U.S. 1026 (1996)	Affirmed
<i>State v. Rogers</i> , 320 S.C. 520, 466 S.E.2d 360 (1996)	Reversed-S
<i>State v. Williams</i> , 321 S.C. 327, 468 S.E.2d 626 (1996), <i>cert. denied</i> , 519 U.S. 891 (1996)	Affirmed

CASE NAME	RESULT
<i>State v. Von Dohlen</i> , 322 S.C. 234, 471 S.E.2d 689 (1996), <i>cert. denied</i> , 519 U.S. 972 (1996).	Affirmed
<i>State v. McWee</i> , 322 S.C. 387, 472 S.E.2d 235 (1996), <i>cert. denied</i> , 519 U.S. 1061 (1997)	Affirmed
<i>State v. Torrence</i> , 322 S.C. 475, 473 S.E.2d 703 (1996)	Affirmed
<i>State v. George</i> , 323 S.C. 496, 476 S.E.2d 903 (1996), <i>cert. denied</i> , 520 U.S. 1123 (1997)	Affirmed
<i>State v. (Raymond) Patterson</i> , 324 S.C. 5, 482 S.E.2d 760 (1997), <i>cert. denied</i> , 522 U.S. 853 (1997)	Affirmed
<i>State v. Whipple</i> , 324 S.C. 43, 476 S.E.2d 683 (1996), <i>cert. denied</i> , 519 U.S. 1045 (1996)	Affirmed
<i>State v. (James) Tucker</i> , 324 S.C. 155, 478 S.E.2d 260 (1996), <i>cert. denied</i> , 520 U.S. 1200 (1997)	Affirmed
<i>State v. Humphries</i> , 325 S.C. 28, 479 S.E.2d 52 (1996), <i>cert. denied</i> , 520 U.S. 1268 (1997)	Affirmed
<i>State v. Simpson</i> , 325 S.C. 37, 479 S.E.2d 57 (1996), <i>cert. denied</i> , 520 U.S. 1277 (1997)	Affirmed
<i>State v. Ivey</i> , 325 S.C. 137, 481 S.E.2d 125 (1997)	Affirmed
<i>State v. Byram</i> , 326 S.C. 107, 485 S.E.2d 360 (1997)	Affirmed
<i>State v. Conyers</i> , 326 S.C. 263, 487 S.E.2d 181 (1997)	Affirmed
<i>State v. (Herman) Hughes</i> , 328 S.C. 146, 493 S.E.2d 821 (1997), <i>cert. denied</i> , 523 U.S. 1097 (1998)	Affirmed
<i>State v. Bennett</i> , 328 S.C. 251, 493 S.E.2d 845 (1997)	Reversed-S
<i>State v. Manning</i> , 329 S.C.1, 495 S.E.2d 191 (1997)	Reversed-NT
<i>Ray v. State</i> , 330 S.C. 184, 498 S.E.2d 640 (1998), <i>cert. denied</i> , 525 U.S. 905 (1998) (per curiam)	Affirmed
<i>State v. Hicks</i> , 330 S.C. 207, 499 S.E.2d 209 (1998), <i>cert. denied</i> , 525 U.S. 1022 (1998)	Affirmed
<i>State v. Powers</i> , 331 S.C. 37, 501 S.E.2d 116 (1998), <i>cert. denied</i> , 525 U.S. 1043 (1998)	Affirmed
<i>State v. Hill</i> , 331 S.C. 94, 501 S.E.2d 122 (1998), <i>cert. denied</i> , 525 U.S. 1043 (1998)	Affirmed
<i>State v. Ivey</i> , 331 S.C. 118, 502 S.E.2d 92 (1998), <i>cert. denied</i> , 525 U.S. 1075 (1999)	Affirmed

CASE NAME	RESULT
<i>State v. Kelly</i> , 331 S.C. 132, 502 S.E.2d 99 (1998), <i>cert. denied</i> , 525 U.S. 1077 (1999)	Affirmed
<i>State v. George</i> , 331 S.C. 342, 503 S.E.2d 168 (1998), <i>cert. denied</i> , 525 U.S. 1149 (1999)	Affirmed
<i>State v. Reed</i> , 332 S.C. 35, 503 S.E.2d 747 (1998), <i>cert. denied</i> , 525 U.S. 1150 (1999)	Affirmed
<i>State v. Ard</i> , 332 S.C. 370, 505 S.E.2d 328 (1998)	Affirmed
<i>State v. Gardner</i> , 332 S.C. 389, 505 S.E.2d 338 (1998), <i>cert. denied</i> , 526 U.S.1022 (1999) (per curiam)	Affirmed
<i>State v. Charping</i> , 333 S.C. 124, 508 S.E.2d 851 (1998), <i>cert. denied</i> , 527 U.S. 1007 (1999)	Affirmed
<i>State v. (James) Tucker</i> , 334 S.C. 1, 512 S.E.2d 99 (1999), <i>cert. denied</i> , 527 U.S. 1042 (1999)	Affirmed
<i>State v. Council</i> , 335 S.C. 1, 515 S.E.2d 508 (1999), <i>cert. denied</i> , 528 U.S. 803 (1999)	Affirmed
<i>State v. Rosemond</i> , 335 S.C. 593, 518 S.E.2d 588 (1999)	Affirmed
<i>State v. Huggins</i> , 336 S.C. 200, 519 S.E.2d 574 (1999) (per curiam), <i>cert. denied</i> , 528 U.S. 1172 (2000)	Affirmed
<i>State v. (Mar-Reece) Hughes</i> , 336 S.C.585, 521 S.E.2d 500 (1999), <i>cert. denied</i> , 529 U.S.1025 (2000)	Affirmed
<i>State v.(Roger) Johnson</i> , 338 S.C. 114, 525 S.E.2d 519 (2000), <i>cert. denied</i> , 531 U.S. 840 (2000)	Affirmed
<i>State v. Rogers</i> , 338 S.C. 435, 527 S.E.2d 101 (2000)	Affirmed
<i>State v.Quattlebaum</i> , 338 S.C. 441, 527 S.E.2d 105 (2000)	Reversed-NT
<i>State v. Terry</i> , 339 S.C. 352, 529 S.E.2d 274 (2000), <i>cert. denied</i> , 531 U.S. 882 (2000)	Affirmed
<i>State v. Hughey</i> , 339 S.C. 439, 529 S.E.2d 721 (2000), <i>cert. denied</i> , 531 U.S. 946, 121 S. Ct. 345 (2000)	Affirmed
<i>State v. Shafer</i> , 340 S.C. 291, 531 S.E.2d 524 (2000), <i>rev'd</i> , 532 U.S. 36 (2001)	Affirmed
<i>State v. Starnes</i> , 340 S.C. 312, 531 S.E.2d 907 (2000)	Reversed-NT
<i>State v. Locklair</i> , 341 S.C. 352, 535 S.E.2d 420 (2000), <i>cert. denied</i> , 531 U.S. 1093 (2000)	Affirmed
<i>State v. McClure</i> , 342 S.C. 403, 537 S.E.2d 273 (2000)	Reversed-S
<i>State v. Aleksey</i> , 343 S.C. 20, 538 S.E.2d 248 (2000)	Affirmed

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APPENDIX E

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CASE NAME	RESULT
<i>State v. Kelly</i> , 343 S.C. 350, 540 S.E.2d 851 (2001), <i>cert. granted</i> , 533 U.S. 928 (2001)	Affirmed
<i>State v. (Jeffrey) Jones</i> , 343 S.C. 562, 541 S.E.2d 813 (2001)	Reversed-NT
<i>State v. Shuler</i> , 344 S.C. 604, 545 S.E.2d 805 (2001)	Affirmed
<i>State v. Stokes</i> , 345 S.C. 368, 548 S.E.2d 202 (2001)	Affirmed
<i>State v. (Freddie) Owens</i> , 346 S.C. 637, 552 S.E.2d 745 (2001)	Reversed-S
<i>State v. Burkhart</i> , 350 S.C. 252, 565 S.E.2d 298 (2002)	Reversed-NT
<i>State v. Stone</i> , 350 S.C. 442, 567 S.E.2d 244 (2002)	Reversed-S
<i>State v. Passaro</i> , 350 S.C. 499, 567 S.E.2d 862 (2002)	Affirmed

APPENDIX F*

TYPES OF ERROR DETECTED IN SOUTH CAROLINA DEATH CASES

	Direct Appeal	Cert to U.S. Sup. Ct.	State Post-Conv. Relief	Cert to U.S. Sup. Ct.	Fed. Hab. Corp.	State Hab. Corp.	New Trial Motion	TOTAL
GUILT PHASE								
Prosecutorial Misconduct	12							12
Instructional Error	16			1	1			18
Evidentiary Error	18							18
Juror Qualification or Selection	2	2						4
Other	11					1		12
Inadequate Assistance of Council			4					4
New Evidence							1	1
PENALTY PHASE								
Prosecutorial Misconduct	15		1					16
Instructional Error	23	3				1		26
Evidentiary Error	15	4	2	3				24
Juror Qualification or Selection	3							3
Other	9							9
Inadequate Assistance of Council			3					3
Proportionality								0

* The information in Appendix F was obtained from the author's review of the decisions listed in Appendix E.

APPENDIX G*

THE FOURTH CIRCUIT'S CAPITAL HABEAS CASES IN THE MODERN ERA

NAME OF CASE	SITTING JUDGES	OPINION	COMMENTS
<i>Basden v. Lee</i> , 290 F.3d 602 (4th Cir. 2002)	Motz Wilkinson Gregory	author unanimous	district court's denial of relief affirmed
<i>Wiggins v. Corcoran</i> , 288 F.3d 629 (4th Cir. 2002)	Widener Wilkinson Niemeyer	author concurring concurring	district court's grant of guilt phase relief for insufficient evidence, and sentencing phase relief for IAC reversed
<i>Ivey v. Catoe</i> , No. 01-11, 2002 WL 459004 (4th Cir. Mar. 26, 2002) (unpublished)	Wilkins Widener Niemeyer	author unanimous	Certificate of Appealability (COA) denied; appeal dismissed
<i>Booth-El v. Nuth</i> , 288 F.3d 571 (4th Cir. 2002)	Wilkinson Wilkins Gregory	author unanimous	district court's grant of sentencing phase relief reversed; district court's denial of guilt-phase relief affirmed
<i>Carter v. Lee</i> , 283 F.3d 240 (4th Cir. 2002)	King Motz Gregory	author unanimous	COA denied; appeal dismissed
<i>Hartman v. Lee</i> , 283 F.3d 190 (4th Cir. 2002)	Wilkins Wilkinson Michael	author unanimous	district court's denial of relief affirmed
<i>McWee v. Weldon</i> , 283 F.3d 179 (4th Cir. 2002)	Luttig Michael King	author unanimous	COA denied; appeal dismissed
<i>Burch v. Corcoran</i> , 273 F.3d 577 (4th Cir. 2001)	King Wilkinson Niemeyer	author unanimous	district court's denial of relief affirmed
<i>Beck v. Angelone</i> , 261 F.3d 377 (4th Cir. 2001)	Hamilton Widener Motz	author unanimous	COA denied; appeal dismissed
<i>Jones v. Catoe</i> , No. 00-10 2001 WL 574630 (4th Cir. May 29, 2001) (unpublished)	Wilkins Niemeyer Luttig	author unanimous	district court's denial of relief affirmed

* The information in Appendix G has been systematically maintained by the author since 1988. It was confirmed by independent computer assisted legal research.

NAME OF CASE	SITTING JUDGES	OPINION	COMMENTS
<i>Rose v. Lee</i> , 252 F.3d 676 (4th Cir. 2001)	Williams Michael Traxler	author unanimous	district court's grant of sentencing phase relief reversed; COA denied on petitioner's cross-appeal
<i>Mickens v. Taylor</i> , 240 F.3d 348 (4th Cir. 2001) (en banc)	Widener Wilkinson Niemeyer Luttig Williams Traxler Michael Motz King	author majority majority majority majority majority dissenting joined Michael joined Michael	panel's grant of relief on conflict of interest claim vacated; district court's denial of relief affirmed
<i>Frye v. Lee</i> , 235 F.3d 897 (4th Cir. 2000)	King Wilkinson Motz	author unanimous	COA denied; appeal dismissed
<i>Skipper v. Lee</i> , No. 00-8, 2000 WL 1853330 (4th Cir. Dec. 19, 2000) (unpublished)	Williams Widener Michael	author unanimous	denial of relief affirmed
<i>White v. Lee</i> , No. 00-3 2000 WL 1803290 (4th Cir. Dec. 8, 2000) (unpublished)	Traxler Niemeyer Stamp (sitting by designation)	author unanimous	denial of relief affirmed
<i>Goins v. Angelone</i> , 226 F.3d 312 (4th Cir. 2000)	King Luttig Traxler	author unanimous	COA denied; appeal dismissed
<i>Bacon v. Lee</i> , 225 F.3d 470 (4th Cir. 2000)	Niemeyer Traxler King	author majority dissenting in part	district court's grant of sentencing phase relief on Inadequate Assistance of Council (IAC) claim reversed; district court's denial of relief on other grounds affirmed
<i>Fisher v. Lee</i> , 215 F.3d 438 (4th Cir. 2000)	Traxler Widener Goodwin (district judge)	author unanimous	COA denied; appeal dismissed
<i>Graham v. Angelone</i> , No. 94-4, 1999 WL 710385 (4th Cir. Sept. 13, 1999) (unpublished)	Traxler Widener Niemeyer	author unanimous	district court's grant of partial COA affirmed; COA on remaining claims denied; appeal dismissed.
<i>Royal v. Taylor</i> , 188 F.3d 239 (4th Cir. 1999)	Motz Luttig Michael	author unanimous	dismissal of habeas relief affirmed

NAME OF CASE	SITTING JUDGES	OPINION	COMMENTS
<i>Ramdass v. Angelone</i> , 187 F.3d 396 (4th Cir. 1999), <i>aff'd in part</i> , 530 U.S. 156 (2000)	Niemeyer Widener Murnaghan	author majority concurring in part; dissenting in part	district court's grant of habeas relief on <i>Simmons</i> claim reversed; district court's denial of relief on remaining claims affirmed.
<i>Williams v. Taylor</i> , 189 F.3d 421 (4th Cir. 1999), <i>aff'd in part, rev'd in part</i> , 529 U.S. 420 (2000)	Wilkinson Hamilton Williams	author unanimous	denial of habeas relief affirmed.
<i>Harris v. French</i> , No. 98-34, 1999 WL 496941 (4th Cir. July 14, 1999) (per curiam)	Ervin Hamilton Williams	per curiam	denial of habeas relief affirmed.
<i>Joseph v. Angelone</i> , 184 F.3d 320 (4th Cir. 1999)	Widener Murnaghan Motz	author unanimous	COA denied; appeal dismissed
<i>Colvin-El v. Nuth</i> , Nos. 98-27, 98-29, 1999 WL 436776 (4th Cir. June 17, 1999) (unpublished)	Niemeyer Wilkinson Michael	author unanimous	district court's grant of habeas relief on <i>Strickland</i> claim reversed; district court's denial of relief on other grounds affirmed.
<i>Mueller v. Angelone</i> , 181 F.3d 557 (4th Cir. 1999)	Luttig Motz Traxler	author unanimous	COA denied; appeal dismissed.
<i>Weeks v. Angelone</i> , 176 F.3d 249 (4th Cir. 1999)	Williams Wilkinson Hamilton	author unanimous	COA denied; petition dismissed.
<i>Roach v. Angelone</i> , 176 F.3d 210 (4th Cir. 1999)	King Widener Niemeyer	author unanimous	COA denied; appeal dismissed.
<i>Williams v. Angelone</i> , No. 98-28, 1999 WL 249026 (4th Cir. April 28, 1999) (unpublished)	Wilkins Traxler Faber (district judge)	author unanimous	district court's denial of relief affirmed.
<i>Thomas v. Taylor</i> , 170 F.3d 466 (4th Cir. 1999)	Luttig Ervin King	author unanimous	COA denied; appeal dismissed
<i>Rocheville v. Moore</i> , No. 98-23, 1999 WL 140668 (4th Cir. Mar. 16, 1999) (unpublished)	Wilkins Michael Traxler	per curiam	COA denied; appeal dismissed

NAME OF CASE	SITTING JUDGES	OPINION	COMMENTS
<i>Swann v. Taylor</i> , No. 98-20, 1999 WL 86690 (4th Cir. Feb. 18, 1999) (unpublished)	Traxler Michael Butzner	author unanimous	COA granted; denial of habeas relief affirmed in part; district court's denial of claim relating to competency to be executed vacated and remanded with instructions to dismiss without prejudice
<i>Jenkins v. Angelone</i> , No. 98-13, 1999 WL 9944 (4th Cir. Jan. 12, 1999)	Niemeyer Ervin Butzner	author unanimous	denial of habeas relief affirmed
<i>Yeatts v. Angelone</i> , 166 F.3d 255 (4th Cir. 1999)	Wilkins Luttig Hamilton	author majority concurring in part and concurring in the judgment	Certificate of Probable Cause (CPC) denied; appeal dismissed
<i>Drayton v. Moore</i> , No. 98-18, 1999 WL 10073 (4th Cir. Jan. 12, 1999)	Hamilton Michael Murnaghan	per curiam dissenting	district court's denial of relief affirmed
<i>Chichester v. Taylor</i> , No. 98-15, 1999 WL 3736 (4th Cir. Jan. 6, 1999) (unpublished)	Wilkinson Luttig Motz	per curiam	COA denied; appeal dismissed
<i>Sexton v. French</i> , 163 F.3d 874 (4th Cir. 1998)	Hamilton Wilkinson Motz	author unanimous	district court's denial of relief affirmed
<i>Williams v. Taylor</i> , 163 F.3d 860 (4th Cir. 1998), <i>rev'd</i> , 592 U.S. 362 (2000)	Williams Widener Michael	author unanimous	grant of sentencing phase relief reversed; denial of relief on all other claims affirmed
<i>Fisher v. Angelone</i> , 163 F.3d 835 (4th Cir. 1998)	Williams Widener Luttig	author unanimous	district court's denial of relief affirmed
<i>Keel v. French</i> , 162 F.3d 263 (4th Cir. 1998)	Murnaghan Williams Motz	author unanimous	district court's denial of relief affirmed
<i>Quesinberry v. Taylor</i> , 162 F.3d 273 (4th Cir. 1998)	Butzner Niemeyer Motz	author unanimous	district court's denial of relief affirmed
<i>Fry v. Angelone</i> , No. 98-8, 1998 WL 746859 (4th Cir. Oct. 26, 1999) (unpublished)	Wilkins Murnaghan Luttig	author unanimous	COA denied; appeal dismissed

NAME OF CASE	SITTING JUDGES	OPINION	COMMENTS
<i>Sheppard v. Taylor</i> , No. 98-12, 1998 WL 743663 (4th Cir. Oct. 23, 1998) (unpublished)	Wilkins Wilkinson Niemeyer	author unanimous	district court's denial of relief affirmed
<i>Ward v. French</i> , No. 98-7, 1998 WL 743664 (4th Cir. Oct. 23, 1998) (unpublished)	Wilkins Niemeyer Michael	author unanimous	district court's denial of relief affirmed
<i>Johnson v. Moore</i> , No. 97-33, 97-7801, 1998 WL 708691 (4th Cir. Sept. 24, 1998) (unpublished)	Wilkins Williams Ervin	author majority concurring in part; dissenting in part	district court's denial of relief affirmed
<i>Wilson v. Greene</i> , 155 F.3d 396 (4th Cir. 1998)	Wilkinson Niemeyer Michael	author majority concurring in part; concurring in the judgment	district court's denial of relief affirmed
<i>Cardwell v. Greene</i> , 152 F.3d 331 (4th Cir. 1998)	Murnaghan Widener Michael	author unanimous	district court's denial of relief affirmed
<i>Wright v. Angelone</i> , 151 F.3d 151 (4th Cir. 1998)	Williams Michael	author unanimous (quorum)	COA denied; appeal dismissed
<i>Fitzgerald v. Greene</i> , 150 F.3d 357 (4th Cir. 1998)	Williams Widener Hamilton	author unanimous	COA denied; appeal dismissed
<i>Boyd v. French</i> , 147 F.3d 319 (4th Cir. 1998)	Wilkins Ervin Murnaghan	author majority concurring in the result	district court's denial of relief affirmed
<i>Strickler v. Pruett</i> , Nos. 97-29, 97-30, 1998 WL 340420 (4th Cir. June 17, 1998) (unpublished)	Niemeyer Hamilton Luttig	per curiam writing separately	district court's grant of guilt phase relief reversed; denial of relief on remaining claims affirmed
<i>Brown v. French</i> , 147 F.3d 307 (4th Cir. 1998)	Ervin Murnaghan Moon (U.S. Dist. Judge, W.D.Va., sitting by designation)	author unanimous	district court's denial of relief affirmed

NAME OF CASE	SITTING JUDGES	OPINION	COMMENTS
<i>Stewart v. Angelone</i> , No. 97-26, 1998 WL 276291 (4th Cir. May 29, 1998) (unpublished)	Widener Hamilton Motz	per curiam	district court's dismissal of habeas petition affirmed
<i>DuBois v. Greene</i> , No. 97-21, 1998 WL 276282 (4th Cir. May 26, 1998) (unpublished)	Wilkins Luttig Motz	per curiam	COA denied; appeal dismissed
<i>Chandler v. Greene</i> , No. 97-27, 1998 WL 279344 (4th Cir. May 20, 1998) (unpublished)	Niemeyer Wilkinson Widener	author unanimous	district court's denial of relief affirmed
<i>Williams v. French</i> , 146 F.3d 203 (4th Cir. 1998)	Hamilton Butzner Moon (U.S. Dist. Judge, W.D.Va., sitting by designation)	author unanimous	district court's denial of relief affirmed
<i>Green v. French</i> , 143 F.3d 865 (4th Cir. 1998)	Luttig Butzner Ervin	author majority concurring in the result	district court's dismissal of habeas petition affirmed
<i>Truesdale v. Moore</i> , 142 F.3d 749 (4th Cir. 1998)	Wilkinson Williams Michael	author unanimous	district court's denial of relief affirmed
<i>King v. Greene</i> , 1998 No. 97-28, WL 183909 (4th Cir. April 20, 1998) (unpublished)	Widener Motz Clarke (Senior U.S. Dist. Judge sitting by designation)	per curiam	district court's denial of relief affirmed
<i>Eaton v. Angelone</i> , 139 F.3d 990 (4th Cir. 1998)	Wilkinson Hamilton Michael	author unanimous	district court's denial of relief affirmed
<i>Roberts v. Moore</i> , No. 97-12, 1998 WL 41683 (4th Cir. Feb. 4, 1998) (unpublished)	Wilkins Williams Niemeyer	author unanimous	CPC denied; appeal dismissed
<i>Smith v. Moore</i> , 137 F.3d 808 (4th Cir. 1998)	Williams Luttig Motz	author majority concurring	district court's denial of relief affirmed

NAME OF CASE	SITTING JUDGES	OPINION	COMMENTS
<i>Atkins v. Moore</i> , No. 97-17, 1998 WL 93409 (4th Cir. Mar. 5, 1998) (unpublished)	Wilkins Widener Russell (present at oral argument but died prior to decision)	quorum	district court's denial of relief affirmed
<i>Arnold v. Evatt</i> , 113 F.3d 1352 (4th Cir. 1997)	Russell Motz Niemeyer	author unanimous	district court's denial of relief affirmed
<i>Breard v. Pruett</i> , 134 F.3d 615 (4th Cir. 1998)	Hamilton Williams Butzner	author majority concurring	district court's denial of relief affirmed
<i>Gilbert v. Moore</i> , 134 F.3d 642 (4th Cir. 1998) (en banc)	Wilkinson Widener Murnaghan Ervin Wilkins Niemeyer Luttig Williams Hamilton Michael Motz	unanimous concurring concurring joining Michael	granting rehearing of panel's affirmance of district court's grant of relief; reversing district court's grant of relief
<i>Gilliam v. Simms</i> , No. 97-14, 1998 WL 17041 (4th Cir. Jan. 13, 1998) (unpublished)	Niemeyer Murnaghan Hamilton	author unanimous	district court's denial of relief affirmed
<i>Noland v. French</i> , 134 F.3d 208 (4th Cir. 1998)	Ervin Hamilton Luttig	author unanimous	district court's denial of guilt phase relief affirmed; grant of sentencing phase relief reversed
<i>Watkins v. Angelone</i> , No. 97-9, 1998 WL 2861 (4th Cir. Jan. 7, 1998) (unpublished)	Michael Butzner Bullock	per curiam	district court's denial of relief affirmed
<i>Mackall v. Angelone</i> , 131 F.3d 442 (4th Cir. 1997)	Wilkins Wilkinson Russell Widener Niemeyer Hamilton Luttig Williams Michael Motz Butzner Murnaghan	author majority majority majority majority majority majority majority majority majority dissenting joined Butzner	district court's denial of relief affirmed

NAME OF CASE	SITTING JUDGES	OPINION	COMMENTS
<i>Howard v. Moore</i> , 131 F.3d 399 (4th Cir. 1997)	Williams Wilkinson Russell Widener Wilkins Niemeyer Hamilton Luttig Michael Hall Murnaghan Motz	author majority majority majority majority majority majority majority dissenting joined Michael joined Michael joined Michael	district court's denial of relief affirmed
<i>Skipper v. French</i> , 130 F.3d 603 (4th Cir. 1997)	Phillips Widener Michael	author unanimous	vacating district court's procedural default dismissal and remanding for merits review
<i>Plath v. Moore</i> , 130 F.3d 595 (4th Cir. 1997)	Russell Niemeyer Motz	author unanimous	district court's denial of relief affirmed
<i>Beavers v. Pruett</i> , No. 97-4, 1997 WL 585739 (4th Cir. Sept 23, 1997) (unpublished)	Wilkins Luttig Williams	author unanimous	district court's denial of relief affirmed
<i>Satcher v. Pruett</i> , 126 F.3d 561 (4th Cir. 1997)	Michael Widener Wilkins	author unanimous	district court's grant of relief reversed
<i>Mu'min v. Pruett</i> , 125 F.3d 192 (4th Cir. 1997)	Wilkins Wilkinson Motz	author unanimous	district court's dismissal of habeas petition affirmed
<i>Matthews v. Evatt</i> , 105 F.3d 907 (4th Cir. 1997)	Hamilton Widener Phillips	author unanimous	district court's denial of relief affirmed
<i>Gilbert v. Moore</i> , 121 F.3d 144 (4th Cir. 1997)	Russell Murnaghan Motz	author unanimous	district court's grant of relief affirmed (opinion later withdrawn; grant of relief reversed on rehearing en banc)
<i>Murphy v. Netherland</i> , 116 F.3d 97 (4th Cir. 1997)	Luttig Niemeyer Michael	author unanimous	COA denied; appeal dismissed
<i>Pope v. Netherland</i> , 113 F.3d 1364 (4th Cir. 1997)	Butzner Hall Wilkinson	author majority concurring	district court's grant of relief reversed

NAME OF CASE	SITTING JUDGES	OPINION	COMMENTS
<i>Smith v. Angelone</i> , 111 F.3d 1126 (4th Cir. 1997)	Motz Niemeyer Luttig	author unanimous	district court's denial of relief affirmed
<i>Booth v. Maryland</i> , 112 F.3d 139 (4th Cir. 1997)	Wilkinson Hall Butzner	author unanimous	death row prisoner suit: district court's grant of declaratory and injunctive relief vacated
<i>Mackall v. Murray</i> , 109 F.3d 957 (4th Cir. 1997)	Ervin Butzner Murnaghan	author unanimous	district court's dismissal of petition affirmed in part, reversed in part, and remanded (opinion later vacated; dismissal affirmed on rehearing en banc)
<i>Buchanan v. Angelone</i> , 103 F.3d 344 (4th Cir. 1996)	Butzner Hall Ervin	author unanimous	district court's denial of relief affirmed
<i>George v. Angelone</i> , 100 F.3d 353 (4th Cir. 1996)	Wilkins Wilkinson Williams	author unanimous	district court's dismissal of petition modified to provide for dismissal with prejudice
<i>Beaver v. Netherland</i> , 101 F.3d 977 (4th Cir. 1996)	Widener Luttig Hall	author concurring in denial of stay of execution; dissenting from extension of stay of mandate concurring in stay of mandate; dissenting from denial of stay	district court's dismissal of petition affirmed; stay of mandate extended; stay of execution denied
<i>Gray v. Netherland</i> , 99 F.3d 158 (4th Cir. 1996)	Wilkinson Hall Wilkins	author unanimous	case remanded for dismissal of petition (on remand from Supreme Court following vacatur of court of appeals' decision reversing grant of sentencing phase relief)

NAME OF CASE	SITTING JUDGES	OPINION	COMMENTS
<i>O'Dell v. Netherland</i> , 95 F.3d 1214 (4th Cir. 1996) (en banc)	Luttig Wilkinson Russell Widener Wilkins Niemeyer Williams Ervin Hall Murnaghan Hamilton Michael Motz	author majority majority majority majority majority concurring with regard to guilt phase; dissenting from reversal of district court's grant of sentencing phase relief joined Ervin joined Ervin joined Ervin joined Ervin joined Ervin	district court's grant of sentencing phase relief reversed; denial of guilt phase relief affirmed
<i>Stout v. Netherland</i> , Nos. 95-4007, 95-4008, 1996 WL 496601 (4th Cir. Sept. 3, 1996) (unpublished)	Wilkinson Hamilton Williams	per curiam	district court's grants of relief from capital murder guilty plea, and from death sentence, reversed; case remanded with instructions to reinstate death sentence
<i>Beaver v. Thompson</i> , 93 F.3d 1186 (4th Cir. 1996)	Widener Luttig Hall	author majority dissenting	district court's dismissal of petition affirmed
<i>Hoke v. Netherland</i> , 92 F.3d 1350 (4th Cir. 1996)	Luttig Russell Hall	author majority dissenting	district court's grant of relief reversed
<i>Bennett v. Angelone</i> , 92 F.3d 1336 (4th Cir. 1996)	Phillips Widener Motz	author unanimous	district court's dismissal of petition affirmed
<i>Payne v. Netherland</i> , No. 95-4016, 1996 WL 467642 (4th Cir. Aug. 19, 1996) (unpublished)	Wilkins Widener Michael	author majority concurring	district court's denial of relief affirmed
<i>Savino v. Murray</i> , 82 F.3d 593 (4th Cir. 1996)	Murnaghan Luttig Williams	author unanimous	district court's dismissal of petition affirmed

NAME OF CASE	SITTING JUDGES	OPINION	COMMENTS
<i>Tuggle v. Netherland</i> , 79 F.3d 1386 (4th Cir. 1996)	Hamilton Widener Chapman	author unanimous	case remanded for dismissal of petition (on remand from Supreme Court following vacatur of court of appeals' decision reversing grant of sentencing phase relief)
<i>Middleton v. Evatt</i> , No. 94-4015, 1996 WL 63038 (4th Cir. Feb. 14, 1996) (unpublished)	Wilkins Niemeyer Williams	per curiam	district court's denial of relief affirmed
<i>Townes v. Angelone</i> , 73 F.3d 545 (4th Cir. 1996)	Niemeyer Luttig Phillips	author unanimous	district court's denial of relief affirmed
<i>Bell v. Evatt</i> , 72 F.3d 421 (4th Cir. 1995)	Russell Michael Motz	author unanimous	district court's denial of relief affirmed
<i>Barnes v. Jabe</i> , 71 F.3d 495 (4th Cir. 1995)	Luttig Williams Murnaghan	author majority concurring	application for stay of execution denied
<i>Stockton v. Angelone</i> , 70 F.3d 12 (4th Cir. 1995)	Ervin Widener Wilkinson	author unanimous	stay of execution vacated
<i>Townes v. Murray</i> , 68 F.3d 840 (4th Cir. 1995 1996)	Phillips Niemeyer Luttig	author majority concurring	district court's dismissal of petition affirmed
<i>Kornahrens v. Evatt</i> , 66 F.3d 1350 (4th Cir. 1995)	Williams Hamilton Motz	author majority concurring	district court's denial of relief affirmed
<i>Thomas-Bey v. Nuth</i> , Nos. 95-4000, 95-4001, 1995 WL 561296 (4th Cir. Sept. 22, 1995) (unpublished)	Hall Murnaghan Butzner	per curiam	district court's order granting sentencing phase relief and denying guilt phase relief affirmed
<i>Correll v. Thompson</i> , 63 F.3d 1279 (4th Cir. 1995)	Wilkins Wilkinson Phillips	author unanimous	district court's grant of guilt phase relief reversed
<i>Tuggle v. Thompson</i> , 57 F.3d 1356 (4th Cir. 1995)	Chapman Widener Hamilton	author unanimous	district court's grant of sentencing phase relief reversed
<i>Barnes v. Thompson</i> , 58 F.3d 971 (4th Cir. 1995)	Luttig Williams Murnaghan	author majority concurring	district court's grant of sentencing phase relief reversed
<i>Gray v. Thompson</i> , 58 F.3d 59 (4th Cir. 1995)	Wilkinson Wilkins Hall	author majority concurring	district court's grant of sentencing phase relief reversed

NAME OF CASE	SITTING JUDGES	OPINION	COMMENTS
<i>Hunt v. Nuth</i> , 57 F.3d 1327 (4th Cir. 1995)	Russell Murnaghan Williams	author unanimous	district court's denial of relief affirmed
<i>Turner v. Jabe</i> , 58 F.3d 924 (4th Cir. 1995)	Michael Hall Luttig	author majority concurring	district court's dismissal of petition affirmed
<i>Noland v. Dixon</i> , No. 93-4011, 1995 WL 253149 (4th Cir. May 1, 1995) (unpublished)	Ervin Hamilton Luttig	per curiam	district court's grant of relief vacated; case remanded for further proceedings
<i>Edmonds v. Jabe</i> , No. 95-4002, 1995 WL 26690 (4th Cir. Jan. 23, 1995) (unpublished)	Ervin Luttig Hall	per curiam	district court's denial of motion for stay and dismissal of second petition affirmed
<i>Stockton v. Murray</i> , 41 F.3d 920 (4th Cir. 1994)	Wilkinson Ervin Widener	author unanimous	district court's denial of relief affirmed
<i>Turner v. Williams</i> , 35 F.3d 872 (4th Cir. 1994)	Michael Hall Luttig	author majority concurring	district court's denial of relief affirmed
<i>Adams v. Aiken</i> , 41 F.3d 175 (4th Cir. 1994)	Butzner Wilkins Sprouse	author unanimous	district court's denial of relief affirmed
<i>Huffstetler v. Dixon</i> , No. 93-4003, 1994 WL 31363028 (4th Cir. June 30, 1994) (unpublished)	Ervin Williams Sprouse	per curiam	district court's denial of relief affirmed
<i>Lawson v. Dixon</i> , No. 94-4004, 1994 WL 258586 (4th Cir. June 13, 1994) (unpublished)	Ervin Widener Niemeyer	per curiam	district court's denial of second petition and motion for stay of execution affirmed
<i>Spencer v. Murray</i> , 18 F.3d 237 (4th Cir. 1994)	Widener Phillips Williams	author unanimous	district court's denial of relief affirmed
<i>Edmonds v. Thompson</i> , Nos. 92-4011, 92-4012, 1994 WL 47745 (4th Cir. Feb. 16, 1994) (unpublished)	Luttig Ervin Hall	per curiam	district court's grant of sentencing phase relief reversed

NAME OF CASE	SITTING JUDGES	OPINION	COMMENTS
<i>Smith v. Dixon</i> , 14 F.3d 956 (4th Cir. 1994)	Wilkins Russell Widener Niemeyer Luttig Williams Ervin Phillips Murnaghan Butzner Wilkinson Hall Hamilton Sprouse	author majority majority majority majority majority majority majority majority majority concurring joined Hall dissenting	district court's grant of sentencing phase relief reversed
<i>Washington v. Murray</i> , 4 F.3d 1285 (4th Cir. 1993)	Wilkinson Phillips Butzner	author majority dissenting	district court's denial of relief affirmed
<i>Spencer v. Murray</i> , 5 F.3d 758 (4th Cir. 1993)	Widener Phillips Williams	author unanimous	district court's denial of relief affirmed
<i>Lawson v. Dixon</i> , 3 F.3d 743 (4th Cir. 1993)	Ervin Widener Niemeyer	author unanimous	district court's denial of relief affirmed
<i>Watkins v. Murray</i> , No. 92-4010, 1993 WL 243692 (4th Cir. July 7, 1993) (unpublished)	Ervin Widener Hamilton	per curiam	district court's dismissal of petition affirmed
<i>Smith v. Dixon</i> , 996 F.2d 667 (4th Cir. 1993)	Sprouse Butzner Wilkins	author majority concurring in part; dissenting in part	district court's grant of sentencing phase relief, and denial of other claims for relief, affirmed; (opinion later vacated; grant of relief reversed on rehearing en banc)
<i>Pruett v. Thompson</i> , 996 F.2d 1560 (4th Cir. 1993)	Widener Russell Hall	author unanimous	district court's denial of relief affirmed
<i>DeLong v. Thompson</i> , No. 92-4000, 1993 WL 24788 (4th Cir. Feb. 4, 1993) (unpublished)	Butzner Hall Hamilton	author unanimous	district court's denial of relief affirmed
<i>Stamper v. Wright</i> , No. 93-400, 1993 WL 12492 (4th Cir. Jan. 19, 1993) (unpublished)	Ervin Hamilton Butzner	per curiam	district court's denial of successive petition affirmed

NAME OF CASE	SITTING JUDGES	OPINION	COMMENTS
<i>Wise v. Williams</i> , 982 F.2d 142 (4th Cir. 1992)	Luttig Hall Wilkinson	author unanimous	district court's denial of relief affirmed
<i>Jones v. Murray</i> , 976 F.2d 169 (4th Cir. 1992)	Widener Ervin Wilkinson	author unanimous	district court's denial of relief affirmed
<i>Gardner v. Dixon</i> , No. 91-4010, 1992 WL 119879 (4th Cir. June 4, 1992) (unpublished)	Hamilton Russell Phillips	author unanimous	district court's denial of relief affirmed
<i>Adams v. Aiken</i> , 965 F.2d 1306 (4th Cir. 1992)	Butzner Sprouse Wilkins	author unanimous	district court's denial of relief affirmed
<i>Poyner v. Murray</i> , 964 F.2d 1404 (4th Cir. 1992)	Widener Russell Hall	author unanimous	district court's denial of relief affirmed
<i>Spann v. Martin</i> , 963 F.2d 663 (4th Cir. 1992)	Chapman Ervin Wilkins	author unanimous	district court's denial of request for dismissal without prejudice reversed
<i>Coleman v. Thompson</i> , No. 92-4005, 1992 WL 110717 (4th Cir. May 18, 1992) (unpublished)	Hamilton Luttig Chapman	per curiam	district court's denial of motion for stay of execution affirmed
<i>Williams v. Dixon</i> , 961 F.2d 448 (4th Cir. 1992)	Ervin Butzner Widener	author majority concurring	district court's denial of guilt phase relief affirmed; sentencing phase relief granted
<i>Washington v. Murray</i> , 952 F.2d 1472 (4th Cir. 1991)	Phillips Wilkinson Butzner	author unanimous	district court's dismissal of ineffective assistance of counsel claim vacated; dismissal of all other claims affirmed
<i>Bunch v. Thompson</i> , 949 F.2d 1354 (4th Cir. 1991)	Wilkinson Widener Sprouse	author majority dissenting	district court's dismissal of petition affirmed
<i>Jones v. Murray</i> , 947 F.2d 1106 (4th Cir. 1991)	Ervin Widener Wilkinson	author unanimous	district court's denial of relief affirmed
<i>Gaskins v. Evatt</i> , 91-4009, 1991 WL 176144 (4th Cir. Sept. 5, 1991) (unpublished)	Phillips Hamilton Chapman	per curiam	district court's denial of successive petition and motion for stay of execution affirmed
<i>Fitzgerald v. Thompson</i> , 943 F.2d 463 (4th Cir. 1991)	Wilkinson Russell Chapman	author unanimous	district court's dismissal of petition affirmed

NAME OF CASE	SITTING JUDGES	OPINION	COMMENTS
<i>Peterson v. Murray</i> , 949 F.2d 704 (4th Cir. 1991)	Hall Sprouse Wilkinson	per curiam	district court's dismissal of petition affirmed
<i>Maynard v. Dixon</i> , 943 F.2d 407 (4th Cir. 1991)	Phillips Russell Murnaghan	author unanimous	district court's dismissal of petition affirmed
<i>Stamper v. Muncie</i> , 944 F.2d 170 (4th Cir. 1991)	Murnaghan Ervin Butzner	author unanimous	district court's denial of relief affirmed
<i>McDougall v. Dixon</i> , 921 F.2d 518 (4th Cir. 1990)	Chapman Phillips Wilkins	author unanimous	district court's denial of relief affirmed
<i>Evans v. Muncy</i> , 916 F.2d 163 (4th Cir. 1990)	Ervin Hall Wilkinson	per curiam	district court's grant of stay of execution reversed
<i>Gaskins v. McKellar</i> , 916 F.2d 941 (4th Cir. 1990)	Phillips Ervin Chapman	author unanimous	district court's dismissal of petition affirmed
<i>Bassette v. Thompson</i> , 915 F.2d 932 (4th Cir. 1990)	Chapman Ervin Wilkinson	author unanimous	district court's denial of relief affirmed
<i>Clozza v. Murray</i> , 913 F.2d 1092 (4th Cir. 1990)	Widener Hall Wilkins	author unanimous	district court's denial of relief affirmed
<i>Peterson v. Murray</i> , 904 F.2d 882 (4th Cir. 1990)	Sprouse Hall Wilkinson	author unanimous	district court's denial of relief affirmed
<i>Woomer v. Aiken</i> , Nos. 90-4002, 90-4003, 1990 WL 74225 (4th Cir. Apr. 24, 1990) (unpublished)	Murnaghan Chapman Wilkinson	per curiam	district court's denial of relief and motion for stay of execution affirmed
<i>Justus v. Murray</i> , 897 F.2d 709 (4th Cir. 1990)	Hall Butzner Williams	author unanimous	district court's denial of relief affirmed
<i>Coleman v. Thompson</i> , 895 F.2d 139 (4th Cir. 1990)	Butzner Chapman Merhige	author unanimous	district court's denial of relief affirmed
<i>Grandison v. Warden</i> , No. 89-4004, 1990 WL 2247 (4th Cir. Jan. 12, 1990) (unpublished)	Murnaghan Chapman Michael	per curiam	district court's dismissal of petition without prejudice affirmed
<i>Boggs v. Bair</i> , 892 F.2d 1193 (4th Cir. 1989)	Widener Sprouse Dupree	author unanimous	district court's grant of sentencing phase relief reversed; denial of guilt phase relief affirmed

NAME OF CASE	SITTING JUDGES	OPINION	COMMENTS
<i>Brown v. Dixon</i> , 891 F.2d 490 (4th Cir. 1989)	Ervin Russell Chapman	author unanimous	district court's grant of sentencing phase relief reversed; denial of guilt phase relief affirmed; case remanded for further consideration
<i>Giarratano v. Procnier</i> , 891 F.2d 483 (4th Cir. 1989)	Butzner Hall Wilkins	author unanimous	district court's denial of relief affirmed
<i>Waye v. Murray</i> , 884 F.2d 765 (4th Cir. 1989)	Widener Wilkinson Wilkins	per curiam	district court's denial of relief affirmed
<i>Waye v. Townley</i> , 884 F.2d 762 (4th Cir. 1989)	Widener Wilkinson Wilkins	per curiam	district court's denial of relief affirmed
<i>Evans v. Thompson</i> , 881 F.2d 117 (4th Cir. 1989)	Wilkinson Hall Doumar	author unanimous	district court's denial of relief affirmed
<i>Waye v. Townley</i> , 871 F.2d 18 (4th Cir. 1989)	Wilkins Widener Wilkinson	author unanimous	district court's dismissal of petition affirmed
<i>McDowell v. Dixon</i> , 858 F.2d 945 (4th Cir. 1988)	Winter Ervin Butzner	author unanimous	district court's denial of guilt phase relief reversed
<i>Woomer v. Aiken</i> , 856 F.2d 677 (4th Cir. 1988)	Wilkins Chapman Wilkinson	author unanimous	district court's denial of relief affirmed
<i>Butler v. Aiken</i> , 864 F.2d 24 (4th Cir. 1988)	Hall Russell Chapman Winter Phillips Mumaghan Sprouse Ervin	author majority majority dissenting joined Winter joined Winter joined Winter joined Winter	rehearing en banc of affirmance of district court's denial of relief denied
<i>Stockton v. Commonwealth</i> , 852 F.2d 740 (4th Cir. 1988)	Wilkinson Ervin Widener	author majority concurring & dissenting	district court's denial of guilt phase relief and grant of sentencing relief affirmed
<i>Butler v. Aiken</i> , 846 F.2d 255 (4th Cir. 1988)	Hall Russell Chapman	author unanimous	district court's dismissal of petition affirmed

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APPENDIX G

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NAME OF CASE	SITTING JUDGES	OPINION	COMMENTS
<i>Clanton v. Muncy</i> , 845 F.2d 1238 (4th Cir. 1988)	Widener Hall Wilkinson	per curiam	district court's grant of stay of execution to consider successive petition vacated
<i>Clanton v. Bair</i> , 826 F.2d 1354 (4th Cir. 1987)	Haynsworth Hall Wilkinson	author unanimous	district court's grant of sentencing phase relief reversed; denial of guilt phase relief affirmed
<i>Hyman v. Aiken</i> , 824 F.2d 1405 (4th Cir. 1987)	Butzner Russell Widener	author concurring in part, dissenting in part joined Russell	district court's denial of guilt phase relief reversed
<i>Whitley v. Muncy</i> , 823 F.2d 55 (4th Cir. 1987)	Winter Widener Sprouse	per curiam	district court's denial of relief affirmed
<i>Whitley v. Bair</i> , 802 F.2d 1487 (4th Cir. 1986)	Widener Winter Sprouse	author unanimous	district court's denial of relief affirmed
<i>Rook v. Rice</i> , No. 86-4005, 1986 WL 18624 (4th Cir. Sept. 16, 1986) (unpublished)	Hall Phillips Haynsworth	per curiam	district court's denial of successive petition affirmed; motion for stay of execution denied
<i>Rook v. Rice</i> , 783 F.2d 401 (4th Cir. 1986)	Hall Haynsworth Phillips	author majority concurring in part; dissenting in part	district court's denial of relief affirmed
<i>Clark v. Townley</i> , 791 F.2d 925 (4th Cir. 1986)	Winter Murnaghan Ervin	author unanimous	district court's grant of relief affirmed
<i>Roach v. Aiken</i> , 781 F.2d 379 (4th Cir. 1986)	Widener Ervin Sneeden	per curiam	appeal from district court's denial of relief dismissed
<i>Hyman v. Aiken</i> , 777 F.2d 938 (4th Cir. 1985)	Butzner Russell Sneeden	author unanimous	district court's denial of sentencing phase relief reversed; denial of guilt phase relief affirmed
<i>Smith v. Procunier</i> , 769 F.2d 170 (4th Cir. 1985)	Murnaghan Widener Warriner	author unanimous	district court's denial of relief affirmed
<i>Roach v. Martin</i> , 757 F.2d 1463 (4th Cir. 1985)	Widener Ervin Sneeden	author unanimous	district court's denial of relief affirmed

NAME OF CASE	SITTING JUDGES	OPINION	COMMENTS
<i>Turner v. Bass</i> , 753 F.2d 342 (4th Cir. 1985)	Widener Hall Phillips	author majority concurring	district court's denial of relief affirmed
<i>Briley v. Bass</i> , 750 F.2d 1238 (4th Cir. 1984)	Wilkinson Widener Phillips	author unanimous	district court's denial of relief affirmed
<i>Mason v. Procunier</i> , 748 F.2d 852 (4th Cir. 1984)	Hall Ervin Butzner	per curiam	district court's denial of relief affirmed
<i>Barfield v. Woodard</i> , 748 F.2d 844 (4th Cir. 1984)	Phillips Murnaghan Sprouse	per curiam	district court's denial of relief affirmed
<i>Briley v. Booker</i> , 746 F.2d 225 (4th Cir. 1984)	Widener Russell Hall	per curiam	district court's denial of relief-affirmed
<i>Briley v. Bass</i> , 742 F.2d 155 (4th Cir. 1984)	Russell Widener Hall	author unanimous	district court's denial of relief affirmed
<i>Keeton v. Garrison</i> , 742 F.2d 129 (4th Cir. 1984)	Hall Russell Butzner	author majority concurring in part; dissenting in part	district court's grant of sentencing phase relief reversed
<i>Shaw v. Martin</i> , 733 F.2d 304 (4th Cir. 1984)	Widener Phillips Sprouse	author unanimous	district court's denial of relief affirmed
<i>Hutchins v. Woodard</i> , 730 F.2d 953 (4th Cir. 1984)	Murnaghan Phillips Sprouse	author concurring concurring	district court's denial of relief affirmed
<i>Stamper v. Baskerville</i> , 724 F.2d 1106 (4th Cir. 1984)	Ervin Butzner Murnaghan	author majority concurring	remanding for dismissal for lack of exhaustion
<i>Hutchins v. Garrison</i> , 724 F.2d 1425 (4th Cir. 1983)	Murnaghan Russell Sprouse	author unanimous	district court's denial of relief affirmed
<i>Barfield v. Harris</i> , 719 F.2d 58 (4th Cir. 1983)	Haynsworth Phillips Murnaghan	author unanimous	district court's denial of relief affirmed
<i>Shaw v. Martin</i> , 613 F.2d 487 (4th Cir. 1980)	Phillips	single judge	stay of execution granted

Relevant Statistics (approximated)¹	
Total Number of Dispositions in Capital Cases	181
Affirming Denial of Habeas Petition	144
Reversing Grant of Habeas Relief	27
Affirming Grant of Habeas Relief	5 ²
Reversing Denial of Habeas Relief	4
Remanding for Further Substantive Consideration	5 ³

1. Some of the categories listed below overlap. For example, sometimes a district court has denied habeas relief as to guilt but granted it as to sentence. If the court of appeals affirms the denial of habeas as to guilt but reverses the grant as to sentence, the same case will appear in both the "affirming denial of habeas" and the "reversing grant of habeas" columns.

2. At least two of these opinions, *Gilbert v. Moore*, 121 F.3d 144 (4th Cir. 1997), and *Smith v. Dixon*, 996 F.2d 667 (4th Cir. 1993), were vacated/"reversed" on rehearing.

3. *Mackall v. Murray*, 109 F.3d 957 (4th Cir. 1997), was later vacated and the habeas petition dismissed.

Voting Record of Sitting Judges (in alphabetical order)⁴

JUDGE	VOTES FOR PRISONER	VOTES AGAINST PRISONER
J. Harvie Wilkinson	1	37
Donald S. Russell	2	19
H. Emory Widener	3	53
Kenneth K. Hall	4	32
Francis D. Murnaghan	10	19
Samuel J. Ervin	8	27
William W. Wilkins	0	40
Paul V. Niemeyer	0	28
Clyde H. Hamilton	1	27
J. Michael Luttig	0	34
Karen J. Williams	0	31
M. Blane Michael	3	19
Diana G. Motz	4	19
Robert B. King	1	4
William B. Traxler	0	7
John D. Butzner, Sr. Circuit Judge	9	21
J. Dickson Phillips, Sr. Circuit Judge	1	22
Robert F. Chapman, Sr. Circuit Judge	0	11
Roger L. Gregory	0	1

4. Not all cases from the chart are included in this voting record. Dispositions that concerned *only* the grant or denial of a stay of execution were not included. Prisoner class actions and similar suits were not included. Cases that were remanded for further substantive proceedings (i.e., for proceedings other than the formal entry of dismissal or formal entry granting relief) were not included. A “for prisoner” vote includes a vote for any kind of relief for the prisoner (e.g., affirm denial of habeas on guilt, but reverse denial of habeas on sentence would be a “for prisoner” vote).

These numbers are not guaranteed for accuracy and represent the best estimates based on available information.