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The Pre-Furman Juvenile Death Penalty in South Carolina: Young Black Life Was Cheap

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In its seminal 1972 decision in *Furman v. Georgia*,[1] the Supreme Court held that every then-existing death penalty statute—including South

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Carolina's capital punishment scheme—violated the Eighth Amendment's Cruel and Unusual Punishment Clause.[2] *Furman* is not easily distilled to its essence given that every Justice wrote their own opinion and, of the five justices in the majority, no Justice joined any other Justice's opinion. But, with that caveat, the consensus view is that the various death penalty statutes did not pass constitutional muster because the unfettered discretion given juries to decide who lived and who died produced arbitrary and racially discriminatory results.[3] Most observers (and then sitting Supreme Court Justices) believed at the time that *Furman* marked the end of the American death penalty.[4] But, as we now know, that was a decidedly optimistic (or pessimistic depending on your capital punishment perspective) view. Months after *Furman*, a number of states enacted new (and arguably improved) capital punishment statutes in an attempt to satisfy *Furman*'s mandate.[5] And four years later, in *Gregg v. Georgia*,[6] the Supreme Court put

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1. 408 U.S. 238 (1972).

2. John H. Blume, *Twenty-Five Years of Death: A Report of the Cornell Death Penalty Project on the "Modern" Era of Capital Punishment in South Carolina*, 54 S.C. L. REV. 285, 286 (2002) (citing *Furman*, 408 U.S. at 239–40).

3. *Id.* at 287–88. *See also* EVAN J. MANDERY, A WILD JUSTICE: THE DEATH AND RESURRECTION OF CAPITAL PUNISHMENT IN AMERICA 236–43 (2013) (describing the way in which each Justice wrote a separate opinion in *Furman*, the immediate reaction among death row inmates and legal scholars, and how pre-*Furman* death penalty schemes produced "random" results); David C. Baldus, George Woodworth, David Zuckerman, Neil Alan Weiner & Barbara Broffitt, *Racial Discrimination and the Death Penalty in the Post*-Furman *Era: An Empirical and Legal Overview, with Recent Findings from Philadelphia*, 83 CORNELL L. REV. 1638, 1649 n.28 (1998) (citing Gregg v. Georgia, 428 U.S. 153, 197 (1976)) (indicating that prior to *Furman*, juries could arbitrarily decide whether a defendant receives a death sentence); William J. Bowers, *The Pervasiveness of Arbitrariness and Discrimination Under Post*-Furman *Capital Statutes*, 74 J. CRIM. L. & CRIMINOLOGY 1067, 1067–68 (1983) (indicating that each of the nine Supreme Court Justices issued a separate opinion in *Furman*, and that the Court in *Furman* blamed pre-*Furman* capital statutes for allowing arbitrariness in sentencing); David McCord, *Lightning Still Strikes: Evidence from the Popular Press that Death Sentencing Continues to Be Constitutionally Arbitrary More than Three Decades After* Furman, 71 BROOK. L. REV. 797, 803–04 (2005) (stating that the most common rationale asserted by the Justices in *Furman* for finding various death penalty statues unconstitutional was the lack of statutory guidance that led to results not wholly consistent with the culpability of the defendant).

4. BOB WOODWARD & SCOTT ARMSTRONG, THE BRETHREN: INSIDE THE SUPREME COURT 218, 432–33 (1979).

5. *See Gregg*, 428 U.S. at 179–80 (providing that "at least 35 States have enacted new statutes" in response to concerns expressed by the Court in *Furman*).

6. 428 U.S. 153 (1976).

the death penalty in America back in business, ushering in what is ubiquitously known as the "modern era" of capital punishment.[7]

Virtually all modern-era capital punishment scholarship has focused—not surprisingly—on the post-*Furman/Gregg* death penalty.[8] And critiques of current capital sentencing practices often say—with little to no detail provided regarding pre-*Furman* practices—that the issues of arbitrariness and discrimination identified in *Furman*, and presumably rectified by the new and improved capital punishment schemes that received the Supreme Court's stamp of approval in *Gregg*, persist.[9] In this Article, drawing on recently discovered archival material, we will examine South Carolina's pre-*Furman* practice of sentencing juveniles to death. After discussing, in some

7. Blume, *supra* note 2, at 289.

8. *See generally* Baldus et al., *supra* note 3 (examining the intersection of racial discrimination and the post-*Furman/Gregg* death penalty); Stephen P. Garvey, *Aggravation and Mitigation in Capital Cases: What Do Jurors Think?*, 98 COLUM. L. REV. 1538 (1998) (describing factors considered by South Carolina jurors concerning aggravating and mitigating circumstances in capital cases that occurred post *Furman/Gregg*); Samuel R. Gross, Barbara O'Brien, Chen Hu & Edward H. Kennedy, *Rate of False Conviction of Criminal Defendants Who Are Sentenced to Death*, 111 PROC. NAT'L ACAD. SCI. U.S. AM., 7230 (2014), http://www.pnas.org/content/111/20/7230.full.pdf (examining the rate of exonerations among defendants sentenced to death in the modern era post-*Furman/Gregg*); Valerie P. Hans, John H. Blume, Theodore Eisenberg, Amelia Hritz, Sheri Lynn Johnson, Caisa Royer & Martin T. Wells, *The Death Penalty: Should the Judge or the Jury Decide Who Dies?*, 12 J. EMPIRICAL LEGAL STUD. 70 (2015) (analyzing judge and jury decision making outcomes in post-*Furman/Gregg* capital trials in Delaware); Susan D. Rozelle, *The Principled Executioner: Capital Juries' Bias and the Benefits of True Bifurcation*, 38 ARIZ. ST. L.J. 769 (2006) (advocating for requiring separate juries hear the guilt and punishment phases of modern-era capital trials, wherein one jury decides guilt, and the other jury decides the appropriate sentence); Michael J. Songer & Isaac Unah, *The Effect of Race, Gender, and Location on Prosecutorial Decisions to Seek the Death Penalty in South Carolina*, 58 S.C. L. REV. 161 (2006) (examining how race, gender and geographical location impact prosecutorial decisions to seek the death penalty post-*Furman/Gregg*); Carol S. Steiker & Jordan M. Steiker, *Lessons for Law Reform from the American Experiment with Capital Punishment*, 87 S. CAL. L. REV. 733 (2014) (examining constitutional regulation of capital punishment post *Furman/Gregg*).

9. *See, e.g.*, John H. Blume & Lindsey S. Vann, *Forty Years of Death: The Past, Present, and Future of the Death Penalty in South Carolina (Still Arbitrary After All These Years)*, 11 DUKE J. CONST. L. & PUB. POL'Y 183, 220 (2016) (asserting that South Carolina's post-*Furman/Gregg* death penalty regime exhibits the very arbitrariness *Gregg* was supposed to rectify); John H. Blume, Sheri Lynn Johnson, Emily C. Paavola & Keir M. Weyble, *When Lightning Strikes Back: South Carolina's Return to the Unconstitutional, Standardless Capital Sentencing Regime of the Pre*-Furman *Era*, 4 CHARLESTON L. REV. 479, 483 (2010) (declaring South Carolina's death penalty regime unconstitutional because it is imposed in an arbitrary and capricious manner, similar to the death penalty regimes ruled unconstitutional in *Furman*); John H. Blume & Sheri Lynn Johnson, *Unholy Parallels Between* McClesky v. Kemp *and* Plessy v. Ferguson*: Why* McClesky *(Still) Matters*, 10 OHIO ST. J. CRIM. L. 37, 57 (2012) (describing the presence and persistence of racial discrimination in capital punishment sentencing).

detail, the (quite disturbing) cases of the youngest persons to receive the death penalty in the state, we will step back and look more broadly at all the juvenile capital cases we were able to identify. As will be explored below, it was a punishment reserved exclusively for black children, and almost exclusively for crimes (allegedly) committed by black children involving white victims. Finally, although the Supreme Court exempted juveniles from capital punishment a decade ago in *Roper v. Simmons*,[10] we will discuss what the pre-*Furman* juvenile death penalty regime might tell us about the future of the modern era death penalty in particular and current juvenile sentencing practices more generally.

I. THE YOUNGEST OF THE YOUNG: FOURTEEN-YEAR-OLDS SENTENCED TO DIE

We will first describe the cases involving the youngest persons sentenced to death in South Carolina. Four fourteen year olds[11]—all black and poor—were convicted and sentenced to death. Two were executed

10. 543 U.S. 551 (2005).

11. We focus in this part on the four fourteen-year-olds sentenced to die, but in fact there were also two twelve-year-olds also sentenced to die in South Carolina. We do so because the twelve-year-olds, Axey Cherry and Josey Jones, received a "technical" sentence of death and were never likely to be executed due to recommendations of mercy from their juries. *See infra* Part II.B. Axey Cherry—who was alternatively reported as being eleven or twelve years old—was sentenced to die in Barnwell County in 1887 for allegedly using lye to poison the white infant for whom she was a nurse. *To Save a Child from Hanging*, MORGANTON STAR, July 29, 1887, at 8. Newspapers reported after the sentence was announced that "[s]he has not even now any conception of the nature of the crime of which she was convicted, and has no shadow of conception of the legal consequences of her crime." *Id.* Although the prosecutor in Axey's case declined to recommend mercy, the judge, the jury and citizens from across the country petitioned Governor Richardson to exercise clemency and commute the sentence. *No Hanging for Children*, INTELLIGENCER, Sept. 1, 1887, at 2. Governor Richardson commuted her sentence to five years in prison approximately a month ahead of her scheduled hanging. *Id.* Josey Jones—alternatively reported as being twelve or thirteen—was sentenced to die along with his fifteen-year-old brother, Armistead Jones, for killing their step-mother in Orangeburg in December 1889. YORKVILLE ENQUIRER, May 14, 1890, at 2. The boys allegedly quarreled with their step-mother, then followed her to the spring where she worked and shot her in the head. *Two Youthful Murderers*, ATLANTA CONSTITUTION, May 11, 1890, at 17. Newspapers described the boys as "young fiends" who gave full confessions to police. *Id.* Armistead was executed in July of 1890. YORKVILLE ENQUIRER, July 16, 1890, at 3. The jury, judge, and prosecutor recommended mercy, and Governor Richardson commuted his sentence to ten years in prison in June of 1890, just a month before his older brother was hanged. 1 REPORTS AND RESOLUTIONS OF THE GENERAL ASSEMBLY OF THE STATE OF SOUTH CAROLINA AT THE REGULAR SESSION COMMENCING NOVEMBER 25, 1890, at 279 (1890). Governor Richardson, in issuing the commutation, noted that Josey "was a very young boy". *Id.*

legally, one was lynched following an appellate reversal, and the fourth had his sentence commuted to life imprisonment. We will do our best not to editorialize and let the case stories speak for themselves.

A. George Stinney, Jr.

George Julius Stinney, Jr. is the most well-known pre-*Furman* juvenile executed in South Carolina. George, just fourteen at the time his death was carried out, is the youngest documented person to be legally put to death in the United States.[12] He was convicted of killing two young white girls, Betty June Binnecker (age 11) and Mary Emma Thames (age 8) in the rural town of Alcolu in Clarendon County, South Carolina.[13] When the two girls failed to come home after a flower picking expedition, a search party was organized. Their bodies were found the next morning in a ditch near the "colored" section of the small, segregated community.[14] Both had been beaten to death with a blunt instrument.[15] George, the oldest child of a black sawmill worker, was soon apprehended and after being questioned by the police, orally confessed to attempting to rape Betty June and to killing both girls with a railroad spike.[16] The local Sheriff transported Stinney to another county, purportedly to save him from a lynch mob. George's father was fired from his job at the mill and advised to leave the county immediately.[17] He did; the entire family (sans George) boarded a northbound train with the few personal items they could carry, never to return to South Carolina again.[18]

A month after his arrest, a special term of court was convened in Clarendon County for George's trial.[19] According to newspaper accounts, more than a thousand people showed up for the proceedings.[20] The courtroom was packed beyond capacity with the overflow spilling into the hallways and even outside onto the courthouse grounds.[21] George was

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12. David Bruck, *Executing Teen Killers Again*, WASH. POST, Sept. 15, 1985. The transcript of Stinney's trial has been destroyed. Most of what we know of the case comes from surviving observers and newspaper accounts.

13. State v. George Stinney, Jr., (order entered Dec. 17, 2014) (on file with authors).

14. *Id.*

15. Bruck, *supra* note 12.

16. Corey Hutchins, *A Modern Understanding of a Long Ago Confession and a Boy's Execution*, CTR. FOR PUB. INTEGRITY (Dec. 11, 2013), https://www.publicintegrity.org/2013/12/11/13974/modern-understanding-long-ago-confession-and-boy-s-execution.

17. Bruck, *supra* note 12.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

represented by a young court-appointed lawyer with political aspirations.[22] The trial took approximately three hours; his lawyer filed no motions (not even a motion for a change of venue), did not challenge the admissibility of his client's confession, presented no evidence on young George's behalf and asked very few questions when given the opportunity to cross-examine the prosecution's witnesses.[23] After ten minutes of deliberation, the jury of twelve white men found the teenager guilty of murder and offered no recommendation of mercy.[24] The trial judge sentenced George to death.[25] Witnesses described George as looking "scared to death," "dazed" and as not appearing to realize the seriousness of the situation he was in.[26]

George's counsel filed no notice of appeal, maintaining at the time and even years later that there were no grounds for appeal,[27] and the child was electrocuted on June 16, 1944, less than three months after the two young girls' tragic deaths. According to prison records, George was 5'1" tall and weighed 95 pounds at the time of his execution.[28] He was so small, he had to sit on books in order to be "properly" strapped into the electric chair. Reportedly, when his body convulsed after the electricity entered his body, the execution mask fell, exposing his tear-stained face.[29]

Governor Olin D. Johnston received numerous requests from across the state and the country to commute the sentence based on George's age.[30] But Johnston was challenging the virulent segregationist "Cotton Ed" Smith[31] for a seat in the United States Senate, and he believed—quite likely correctly—that any perceived weakness on what was often referred to as the "race issue," could cost him the election.[32] He denied clemency, young George was executed and Johnston did in fact become the new Senator from South Carolina.

In 2014, seventy years after George was electrocuted, South Carolina Circuit Judge Carmen Mullen posthumously overturned his conviction, noting a lack of credible evidence of guilt and the possibility that his

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22. *Id.*
23. *Id.*
24. Order at 3, State v. Stinney (Clarendon Cty., S.C. 3d Jud. Dist. Ct. Gen. Sess. 2014) (on file with authors).
25. *Id.*
26. Bruck, *supra* note 12.
27. *Id.*
28. *Id.*
29. Lindsey Bever, *It Took 10 Minutes to Convict 14-year-old George Stinney Jr. It Took 70 Years After His Execution to Exonerate Him*, WASH. POST, Dec. 18, 2014.
30. *14-Year-Old Negro to Die For Murder*, ANNISTON STAR, June 11, 1944.
31. WALTER EDGAR, SOUTH CAROLINA: A HISTORY 509–10 (1998).
32. Bruck, *supra* note 12.

confession was coerced.[33] George's sister and other relatives also presented alibi evidence that he was with them at the time the girls were murdered, and persons in jail with George reported that he adamantly denied committing the crime.[34] While not directly exonerating young George, Judge Mullen did note that the trial was grossly unfair and that it was a "truly unfortunate episode in our history."[35]

B. Milbry Brown

Though not as "famous" as George Stinney, Jr., Milbry Brown is an equally tragic figure. She was (most likely) fourteen-years-old when she was executed on October 7, 1892, in the Spartanburg County jail-yard.[36] Milbry was convicted in July of 1892 by an all-white jury of the June 1892 murder of Geraldine Carpenter. Geraldine was an eleven-month-old white infant for whom Milbry acted as the caretaker in her capacity as the Carpenters' "house girl."[37] According to available contemporary sources, Milbry put two drops of carbolic acid in Geraldine's mouth while the baby slept; the motive was said to be revenge for the fact that the infant's mother had scolded Milbry earlier the same day.[38] By some accounts, Milbry confessed to killing the child; in others she denied any intent to kill and insisted she only wanted to make the baby sick. To the jury, it did not matter.

The execution was originally scheduled for September, but due to a robust campaign for clemency based on Milbry's age, her intellectual disability (she was described as "ignorant' and as an "imbecile"), and the lack of clear evidence that she intended to kill Geraldine, Governor "Pitchfork" Ben Tillman delayed the execution so that he could investigate the case.[39] Some of those petitioning for clemency also noted that had Milbry been white, she would not have been sentenced to death.[40] There

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33. Deborah Hastings, *Black Teen Executed in S.C. Has Conviction Overturned*, N.Y. DAILY NEWS, Dec. 17, 2014.

34. Order at 10, 12, State v. Stinney (Clarendon Cty., S.C. 3d Jud. Dist. Ct. Gen. Sess. 2014).

35. Julia Dahl, *S.C. Boy Executed for 1944 Murder is Exonerated*, CBS NEWS (Dec. 17, 2014, 2:51 PM), http://www.cbsnews.com/news/southcarolinaboy-executedfor1944 murderisexonerated/.

36. Some reports indicate she was thirteen at the time of the offense, other reports say she was fifteen, but most existing accounts indicate she was fourteen.

37. DANIEL ALLEN HEARN, LEGAL EXECUTIONS IN NORTH CAROLINA AND SOUTH CAROLINA: A COMPREHENSIVE REGISTRY 1866–1962, at 143 (2015).

38. *A Colored Girls Fiendish Act*, GREENVILLE NEWS, June 27, 1892.

39. Petitions for Clemency (on file with authors).

40. *She Should not be Hanged*, NEWS & COURIER, Sept. 8, 1892.

were also counter-petitions asking the Governor to let the sentence go forward. Governor Tillman decided, without much apparent angst, that the execution should proceed.[41] According to Tillman, Milbry was "convicted of one of the most diabolical, cold-blooded murders in this criminal annals of the state."[42] He went on to say that since South Carolina "courts had decided that fourteen was the age of consent, and in view of the atrocious nature of the murder, I decided to let the law take its course."[43]

Although a large crowd gathered to witness Milbry's original execution, which was halted literally as the young child stood on the gallows waiting to die, when the sentence was actually carried out, only a few people were present. Apparently, this was due to the fact that Tillman did not publicize the clemency denial until after Milbry was dead, and instead quietly sent word to the Sheriff of Spartanburg County to let the execution proceed.[44] Even Milbry's parents did not attend their daughter's execution. Newspaper accounts of her death described the arrangements for the hanging as "perfect"; Milbry—clothed in a white dress—fell approximately six feet, her neck was immediately broken and "not a muscle moved" after the drop.[45] Press reports also noted that according to the Reverend C.C. Scott, pastor of the "colored Methodist church" in Spartanburg, Milbry had come to religious terms with her maker (i.e., "confessed conversion") a few days prior to her death.[46]

C. Clarence Lowman

Substantially less is known about the two remaining fourteen-year-olds who were sentenced to death in South Carolina pre-*Furman*. Clarence Lowman received a death sentence in 1925 for the murder of Aiken County Sheriff Henry H. Howard.[47] Howard and several of his deputies were

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41. Tillman was a known race baiter. During his four years as South Carolina Governor, eighteen African-Americans were lynched. While Tillman publicly stated he was opposed to lynching, his rhetoric was to the contrary. One of Tillman's legacies was the 1895 Constitution, which disenfranchised blacks. EDGAR, *supra* note 31, at 445.

42. *Milbry Brown's Awful Crime*, WATCHMAN & SOUTHRON, Oct. 19, 1892.

43. *Id.* The "age of consent" was the age at which a child could be deemed legally responsible for their actions as an adult. *See, e.g.*, State v. Toney, 15 S.C. 409, 414 (1881) (citing WILLIAM BLACKSTONE, COMMENTARIES 24) ("It is true at common law an infant under fourteen is *prima facie doli incapax*, and before he can be convicted it should appear to the court that he is *doli capax*, and is able to discern between good and evil.").

44. *With Their Life*, ATLANTA CONST., Oct. 8, 1892, at 1.

45. *Three of a Kind*, SANDUSKY REG., Oct. 8, 1892, at 1.

46. *Id.*

47. State v. Lowman, 134 S.C. 485, 485, 133 S.E. 457, 458 (1926) (alleging neither the Sheriff nor his deputies were in uniform at the time of the incident). *But cf.* South Carolina

(according to the surviving deputies) attempting to execute a search warrant at the home of Sam Lowman, a relative of Clarence's, when Howard was shot and killed.[48] In the ensuing gun battle, Annie Lowman, Sam's wife, was killed.[49] Clarence and his cousins, Demon and Bertha Lowman, were charged with Howard's murder.[50] Howard's funeral was attended by more than sixteen hundred people, and then-governor Thomas McLeod gave the eulogy.[51] There was a silent procession of approximately seventy-five hooded and robed Ku Klux Klan members that marched two by two behind Howard's casket from the funeral home to the Aiken County Courthouse.[52]

The co-defendants' joint trial commenced on May 12, 1925, just seventeen days after the incident.[53] All three were convicted by an all-white male jury.[54] Clarence and Demon were sentenced to death; Bertha's life was spared but she was sentenced to life imprisonment.[55] The South Carolina Supreme Court reversed the convictions and sentences, concluding that a new trial was necessary due to the community unrest and inadequate instructions on the issue of whether the Lowmans conspired to kill the lawman.[56] Demon Lowman's retrial was first, and the trial judge directed a verdict of not guilty at the conclusion of the prosecution's case.[57] Later that evening, the three Lowmans were dragged from their cells by an angry white mob, taken to a wooded area and shot to death.[58] While the new Sheriff Nollie Robinson testified at an inquest that he tried to fight off—but was ultimately overwhelmed by—the lynch mob, an investigation conducted by the NAACP shortly after the three were murdered revealed that Sheriff

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Bureau, *Slain Officer's Klan Connections Come Under Debate*, AUGUSTA CHRON., May 12, 2003, at 2 (indicating possible connections between the Sheriff and the Ku Klux Klan and the possible intimidation of a black farming family).

48. *See Lowman*, 134 S.C. at 485, 133 S.E. at 457 (addressing how the deputies were attempting to execute a search warrant at the home of Sam Lowman when Howard was shot and killed).

49. *Id.* at 486, 133 S.E. at 458.

50. *Id.*

51. South Carolina Bureau, *supra* note 47, at 3.

52. *Id.*

53. *See Lowman*, 134 S.C. at 485, 133 S.E. at 458 (indicating the joint trial commenced on May 12, 1925).

54. *Id.* at 486, 133 S.E. at 459.

55. *Id.* at 485, 133 S.E. at 457–58.

56. *Id.* at 486, 133 S.E. at 459–60.

57. *Slayers of Sheriff H.H. Howard Shot to Death by Large Band Early Friday*, FLORENCE MORNING NEWS, Oct. 9, 1926, at 1.

58. *Id.* at 2.

Robinson was the actual leader of the vigilantes and the architect of the lynching.[59]

D. Mack Thompson

In early May 1920, Mack Thompson, age 14,[60] was charged in Lexington County with the assault with intent to ravish (attempted rape) of two young white girls (ages 10 and 12).[61] Thompson approached the two children as they were on their way to school, grabbed the older of the two and dragged her into the woods.[62] The younger girl escaped and ran to get help. Mack was soon apprehended and quickly taken to the state penitentiary in Columbia for safekeeping, apparently just ahead of a lynch mob.[63] Mack was convicted and sentenced to death by an all-white, all-male Lexington County jury.

His death sentence, however, was commuted by then-governor Robert Cooper.[64] Governor Cooper initially granted Mack a reprieve and ordered a mental examination after learning that a "thirteen year old negro, of feeble mind, was in the death house of the penitentiary awaiting execution."[65] The examining doctors concluded that while Thompson may have been fourteen (not thirteen), his "brain had not developed beyond that of a normal child of nine years, that he was a low grade moron, and therefore not fully responsible for his criminal acts."[66] On that basis, the Governor commuted Mack's death sentence to one of life imprisonment.[67] A review of social security and census records indicate Mack was eventually released (by 1952) and he died in Inman, South Carolina in 1988.[68]

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59. South Carolina Bureau, *supra* note 47, at 3.

60. Thompson may have been only thirteen; some sources indicate he was born in August of 1907; thus, in May of 1920 he would only have been thirteen years old.

61. *Negro Boy Charged With Usual Crime*, GAFFNEY LEDGER, May 4, 1920, at 1.

62. *Id.*

63. *Negro Boy Charged With Usual Crime*, CHARLOTTE NEWS, May 1, 1920, at 4.

64. REPORTS AND RESOLUTIONS OF SOUTH CAROLINA TO THE GENERAL ASSEMBLY, VOL. II, PARDONS, PAROLES AND COMMUTATIONS GRANTED BY ROBERT A. COOPER 27 (1920).

65. *Id.*

66. *Id.*

67. *Id.*

68. Social Security Records (on file with authors)

II. PRE-*FURMAN* JUVENILE DEATH SENTENCES IN SOUTH CAROLINA BY THE NUMBERS

A. A Nationwide Overview of Juvenile Executions from 1865-1972

South Carolina juries, like most Southern juries (and many non-Southern ones), had no qualms about sentencing juvenile offenders to death or executing them.[69] Between 1865 and 1972,[70] twenty-seven states (legally) executed a total of 133 individuals who were under the age of eighteen at the time of their execution. Of those states, however, only twelve executed five or more juveniles, and seven states—Georgia, North Carolina, Virginia, South Carolina, Kentucky, Florida and Alabama (all former slave states)—accounted for 56% of all juvenile executions from 1865 to 1972.[71] Georgia alone executed twenty-two juveniles, twice as many as the next closest state, North Carolina; South Carolina executed eight juveniles, the third-highest state total.[72]

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69. Detailed information about death sentences prior to the modern era is not available for all 50 states. For the purposes of standardized interstate comparison, the analysis in this part is based on the Espy File, a comprehensive review of executions from 1608 to 2002. *See* M. Watt Espy & John Ortiz Smykla, *Executions in the U.S. 1608–2002: The Espy File*, DEATH PENALTY INFO. CTR., http://www.deathpenaltyinfo.org/executions-us-1608-2002-espy-file. The Espy File is limited, however, in two major ways: first, it does not include death sentences that were not carried out because of an exercise of executive clemency or because a new sentence was imposed following a retrial; and second, it uses the age of the defendant at the time of execution rather than at the time he or she allegedly committed a capital offense. Nevertheless, because the Espy File contains the same kind of information for each state, it provides a baseline from which we can place South Carolina's history of juvenile executions and death sentences pre-*Furman* in a nationwide context.

70. We selected this time period for both practical and historical reasons. Practically, there is a paucity of reliable information about death sentences imposed prior to the mid-1860s. Historically, the end of the Civil War and the passage of the Thirteenth Amendment and the Civil Rights Act of 1866—the predecessor to the Fourteenth Amendment—marked a dramatic shift in the legal status of African Americans in the United States. *See* U.S. CONST. amend. XIII, § 1; Civil Rights Act of 1866, ch. 31, 14 Stat. 27 (reenacted by Enforcement Act of 1870, ch. 114, 16 Stat. 140, 144, § 18) (codified as amended at 42 U.S.C. §§ 1981–1982 (2012)) (announcing "[t]hat all persons born in the United States . . . are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude . . . shall have the same right . . . to make and enforce contracts; to sue, be parties and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit *of all laws and proceedings for the security of person and property, as is enjoyed by white citizens* . . . .") (emphasis added).

71. *See infra* Figure 1 and Appendix 1.

72. *See infra* Appendix 1. Readers should also know that the death penalty was a mandatory sentence for a number of crimes in South Carolina throughout much of the pre-

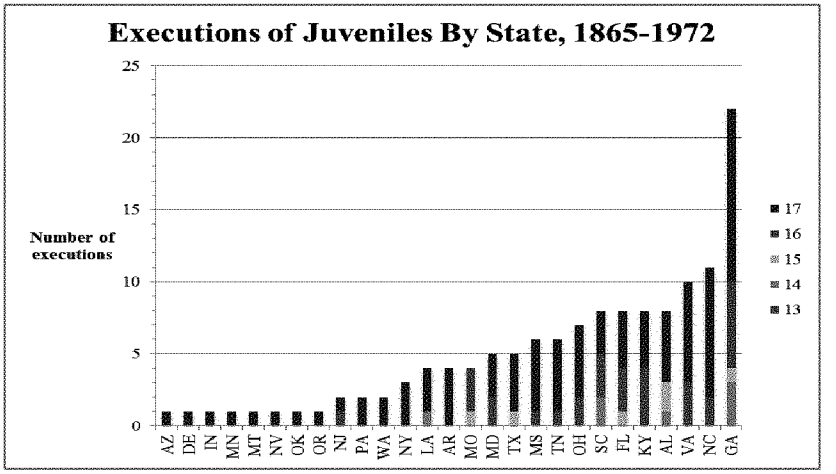

Figure 1.

The high incidence of juvenile executions in southern states is not merely a reflection of the higher overall execution rates in the region during the same time period. Among the nineteen states that executed 200 or more individuals between 1865 and 1972, southern states executed a disproportionate number of juveniles relative to their overall execution rates. South Carolina ranks seventh among all states in terms of the proportion of death sentences executed against juveniles, with juveniles representing 1.9% of all executed individuals.[73]

Furman period. The list of crimes for which death was automatically imposed changed slightly over the years, but always included murder, rape, carnal knowledge of a woman child, and from 1902 to 1928, arson. *See, e.g.*, 1 S.C. CODE Part IV, ch. CXXVIII (1873) (amended 1894) (murder, killing by stabbing, killing by poisoning, obstructing railroads and causing human death within a year and a day of the obstruction); 2 S.C. CODE IX (1894) (amended 1974) (murder, killing by stabbing, obstructing railroads, killing by poison, killing in a duel, rape, carnal knowledge of a woman child under ten years, arson); S.C. CODE ANN. § 1-1-1 (1922) (amended 1974) (murder, killing by stabbing, death from obstructing railroad, killing by poison, killing in a duel, rape, assault with intent to ravish, carnal knowledge of a woman child, arson) (current version of S.C. CODE ANN. § 16-3-20 (2003)). Although death was technically mandatory for capital crimes, a jury could find the defendant guilty with a "recommendation of mercy." Initially, a recommendation of mercy was a signal from the jury that the defendant's life should be spared. Following a recommendation of mercy and receipt of petitions from citizens of the sentencing county, the governor usually extended mercy and commuted a death sentence to life imprisonment or a lesser penalty. Later in the pre-*Furman* period, a verdict of guilty with a recommendation of mercy meant that the jury rejected the death penalty and the trial judge would impose a sentence of life imprisonment.

73. *See infra* Appendix 2.

Additionally, over one-third of juveniles executed between 1865 and 1972, forty-four in total, were sixteen or younger at the time of their executions.[74] A single state—Kentucky—executed a thirteen-year-old, while only four states—Georgia, South Carolina, Alabama and Louisiana—executed fourteen-year-olds.[75] South Carolina and Georgia were the only states that executed more than one child under the age of fifteen.[76]

The race effects are stark: over 80% of all juvenile offenders executed in the United States between 1865 and 1972 were children of color.[77] Black children in particular felt the executioner's brunt. Not surprisingly, that trend was especially pronounced in the former slave states. Specifically, of the 133 juveniles executed in the United States between 1865 and 1972, 100 were black and 25 were white.[78] In seven states—Georgia, North Carolina, Virginia, South Carolina, Kentucky, Florida and Alabama—that carried out over 56% of all juvenile executions, all but three of the 75 total juveniles executed (96%) were black.[79] In the Palmetto State, all eight of the juveniles executed in South Carolina from 1865 to 1972 were black.[80]

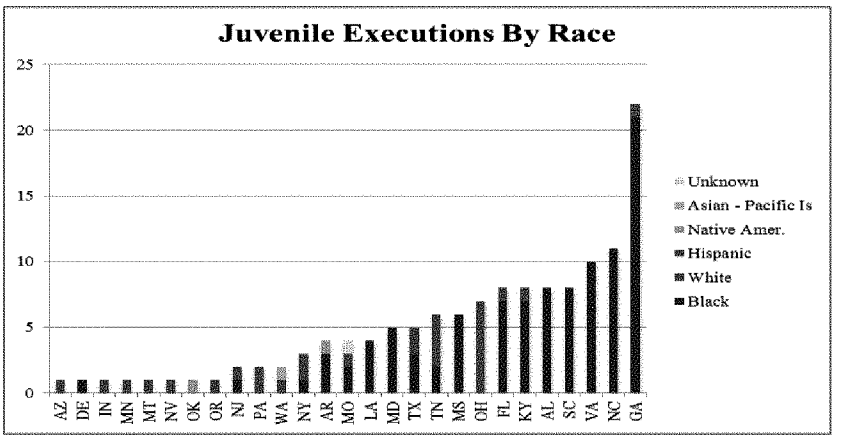

Figure 2.

74. *See infra* Appendix 1.
75. *See infra* Appendix 1.
76. *See infra* Appendix 1.
77. *See infra* Figure 2 and Appendix 3.
78. *See infra* Figure 2 and Appendix 3.
79. *See infra* Appendix 3.
80. *See infra* Appendix 3.

B. An Overview of Juvenile Death Sentences in South Carolina from 1865-1972

We will next examine the juvenile death sentences in South Carolina imposed between 1865–1972 in greater detail. Although South Carolina executed eight individuals between 1865 and 1972 who were under the age of eighteen at the time of their execution, that number does not account for juveniles whose sentences were commuted or vacated or for individuals who were juveniles at the time of their alleged capital offense but who turned eighteen prior to the execution of their sentence.[81] Because the modern legal understanding of the term juvenile encompasses all people who were under eighteen when they committed a crime, we will focus on that broader class of juveniles sentenced to die in South Carolina. Additionally, we will examine both those juveniles whose sentences of death were carried out and those juveniles whose sentences were commuted or vacated by executive action, since the differences between the two outcomes highlight patterns involving race, age and gender.

At least forty-five juveniles were sentenced to die in South Carolina between 1865 and 1972.[82] Thirty-one of those juveniles received the

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81. The Supreme Court's categorical ban on juvenile executions protects not only those who were under eighteen at the time of their sentence, but also those individuals who were under eighteen when they allegedly committed capital offenses. *See Roper v. Simmons*, 543 U.S. 551, 569 (2005). Because the Espy File reports defendants' ages at the time of execution rather than at the time of the alleged offense, it fails to account for juveniles who turned eighteen before they were executed. Moreover, the Espy File does not count offenders whose sentences were commuted or vacated. In order to better understand the patterns of juvenile death sentences in South Carolina, we relied on sources other than the Espy File for this part. Specifically, we began by counting all juvenile offenders who were recorded in the South Carolina Register of Death Sentenced Individual. See REGISTER OF PRISONERS SENTENCED TO DEATH, 1912–2004, *microformed on* Call No. S132109 (S.C. Dep't of Corrections), which the state began keeping in 1912, the year that the state centralized executions. *See* 1912 S.C. Acts 702 (mandating the use of electrocution as the means of execution in South Carolina and requiring that electrocutions be carried out by the state rather than by the counties); *State v. Malloy*, 95 S.C. 441, 441, 78 S.E. 995, 996 (1913) (describing the application of the 1912 law). We then looked through the governors' commutations and pardons records in the annual state records. *See, e.g.*, REPORTS AND RESOLUTIONS OF SOUTH CAROLINA TO THE GENERAL ASSEMBLY, VOL. II, PARDONS, PAROLES AND COMMUTATIONS GRANTED BY ROBERT A. COOPER, at 27 (1920). Finally, we used contemporaneous newspaper records and the Library of Congress archival newspaper project website. *See* NEWSPAPERS.COM, www.newspapers.com; LIBRARY OF CONGRESS: CHRONICLING AMERICA, http://chroniclingamerica.loc.gov/. See also ANCESTRY, www.ancestrylibrary.com for specific information about each defendant's age and the charged offense.

82. We were able to confirm the ages of forty-five juveniles sentenced to die using birth and death records from the United States Census, as well from contemporaneous newspaper articles and clemency and pardon records on file at the South Carolina Archives Department in

ultimate punishment following convictions for murder and twenty-four of those thirty-one were executed. Of the remaining seven, one person (Clarence Lowman, discussed previously) was murdered by a white mob after his death sentence was vacated and a co-defendant was acquitted at a retrial.[83] All four juvenile offenders convicted of rape were executed, while one juvenile was executed for attempted rape and four other juveniles sentenced to die for attempted rape[84] had their sentences commuted to life imprisonment. Eight juveniles in total were sentenced to die for property crimes or attempted rape, including a seventeen-year-old, Boston Singletary, who was hanged for committing the crime of arson in 1882.[85]

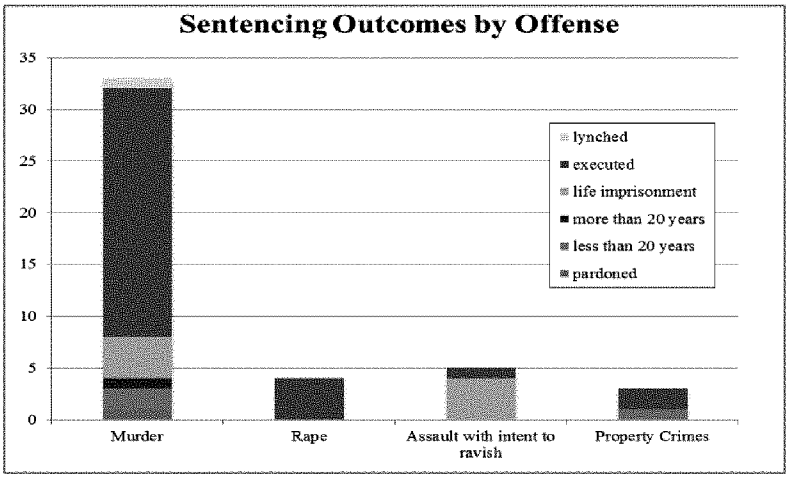

Figure 3.

Over two-thirds of the juvenile death sentences—31 in total—were carried out, while eight death sentences were commuted to a sentence of life imprisonment and another four were commuted to a term of forty years or less. Specifically, governors exercised clemency more often for younger

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Columbia, South Carolina. However, we also identified an additional fifteen individuals who may have been seventeen at the time of their alleged offenses, but whose ages we were unable to confirm. The authors have a list of those individuals on file.

83. *See supra* Part I.

84. Assault with intent to ravish is what the criminal code now calls attempted rape. *See, e.g.*, S.C. CODE ANN. §§ 2-10-141, 142 (1912) (describing the crime of rape and the punishments for the crimes of rape and assault with intent to ravish).

85. DANIEL ALLEN HEARN, LEGAL EXECUTIONS IN NORTH CAROLINA AND SOUTH CAROLINA: A COMPREHENSIVE REGISTRY, 1866–1962, 132 (2015).

defendants than for older defendants, such that most of the seventeen-year-old defendants sentenced to die were ultimately executed.[86] This pattern of generally reserving the most severe sentences for older offenders is reinforced by the reasoning that multiple governors offered in the course of commuting condemned juveniles to sentences less than death: a sentence less than death is sufficiently harsh punishment for a youthful offender.[87]

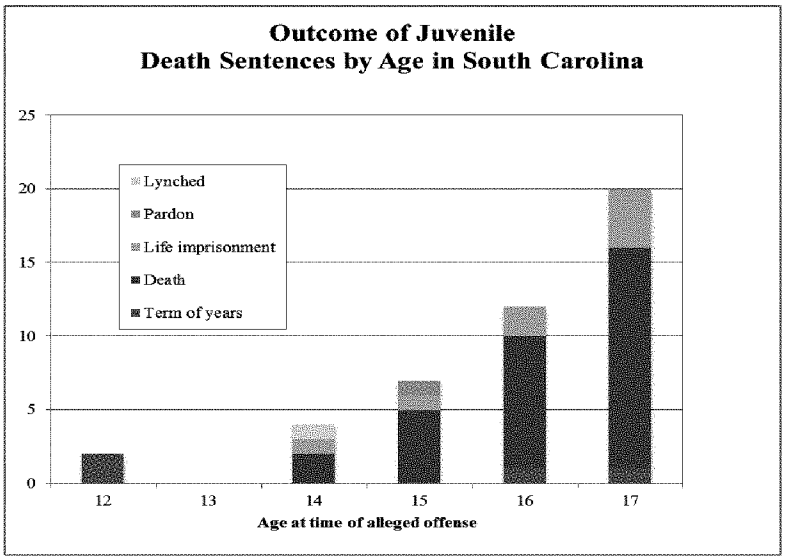

Figure 4.

Additionally, four of the forty-five juveniles sentenced to die were girls, and two of those four girls, fourteen-year-old Milbry Brown[88] and seventeen-year-old Amy Spain,[89] were executed. The only full pardon issued for any of the condemned juveniles was for fifteen-year-old Chaney Burt,

86. *See supra* Figure 3.

87. *See, e.g.*, REPORTS AND RESOLUTIONS OF SOUTH CAROLINA TO THE GENERAL ASSEMBLY, VOL. II, PARDONS, PAROLES AND COMMUTATIONS GRANTED BY JOHN G. RICHARDS, at 58–59 (1930) (commuting the death sentence of John Pinckney, 17 years old, to life imprisonment in part because "John Pinckney was only sixteen years old at the time the Murder was committed, and I was doubly urged to extend clemency in his case, because of his youth, whether he was really connected with the Murder, or not").

88. *See supra* Part I.

89. Eugene Fallon, *Last Hanging in Darlington Was Amy Spain, War Victim*, FLORENCE MORNING NEWS, May 17, 1959, at 5.

who was pregnant when Governor Richardson reviewed her case.[90] The other girl sentenced to die was twelve-year-old Axey Cherry. Axey was convicted of poisoning with lye a white infant for whom she was hired to serve as a nurse.[91] Her sentence was commuted in 1887 to five years in prison.[92] In short, older male offenders convicted of rape or murder were more likely than other offenders to receive the death penalty and to have those sentences carried out.

C. The Role of Race in Juvenile Death Sentences in South Carolina

More than any other variable, race was effectively outcome-determinative for juvenile offenders in the pre-*Furman* era; each and every one of the forty-five juveniles sentenced to die in South Carolina between 1865 and 1972 were black. Moreover, in the thirty-five cases in which the victim was white, twenty-seven (77%) of the juvenile offenders were executed; in the seven cases in which the victim was black, five (70%) of the juvenile offenders were executed. The sole pardon issued was in a case involving a black male victim, while thirty-four out of the thirty-five juvenile offenders whose victims were white were either executed or sentenced to life imprisonment. Not only were all of the juveniles sentenced to die in South Carolina between 1865 and 1972 black, but the majority (78%) of those juveniles were sentenced to die for crimes against white people.

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90. REPORTS AND RESOLUTIONS OF SOUTH CAROLINA TO THE GENERAL ASSEMBLY, VOL. I, STATEMENT OF PARDONS AND COMMUTATIONS GRANTED BY J. P. RICHARDSON, at 243 (1889) ("Chaney Burt while in incarceration voluntarily confessed that her father, Jake Burt, had been killed on Sunday night, December 9th; that Daniel Graham had struck the fatal blow, and that her mother, Lou, and Ephraim had assisted in burying and concealing the body; she, Chaney, had nothing to do with it, but knew what they had done. I believe the confession was made by Chaney hoping that she would be used as a witness, and would therefore escape punishment. She is now pregnant, and I am informed, expected to be confined in a few weeks . . . [t]he girl's case is especially touching as she is now the mother of a young babe. Chaney Burt pardoned.") (internal quotations omitted).

91. *Southern Barbarity*, WASH. BEE, July 23, 1887, at 2.

92. REPORTS AND RESOLUTIONS OF SOUTH CAROLINA TO THE GENERAL ASSEMBLY, *supra* note 81, at 244 ("The entire jury recommended the prisoner to the mercy of the Court in the very strongest terms. The Solicitor recommends that the sentence be commuted to a term of years. The Judge recommends that the sentence be commuted to five years' imprisonment in the Penitentiary. Sentence commuted to five years' imprisonment in the Penitentiary, October 27th, 1888.").

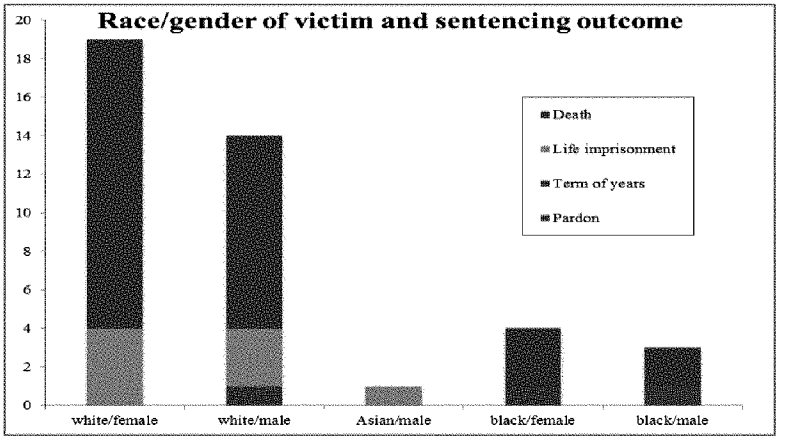

Figure 5.

Additionally, the county where a juvenile offender was tried for a capital crime appears to have played an important role. Spartanburg County, the third most populous county in the state,[93] sentenced five juveniles to die between 1865 and 1972, and all five were executed.[94] Charleston and Greenville counties, the two most historically populous counties in the state, each sentenced four juveniles to die during that time period, but Charleston only carried out one of the death sentences compared to three juvenile executions in Greenville. Significantly, counties with a low relative number of nonwhite residents—like Greenville and Spartanburg—sentenced more juveniles to die and carried out those executions with greater frequency.

93. *See infra* Appendix 6 (ranking country-level population averages from 1860 to 1970 where Spartanburg, with an average population of 952,112, trailed only Charleston and Greenville). Spartanburg was third most populous county in South Carolina, on average, between 1860 and 1970. It is currently the fourth most populous county in the state.

94. *See infra* Figure 6 (displaying a geographic distribution of death sentences for all South Carolina counties and further delineating how many of those death sentences actually resulted in execution).

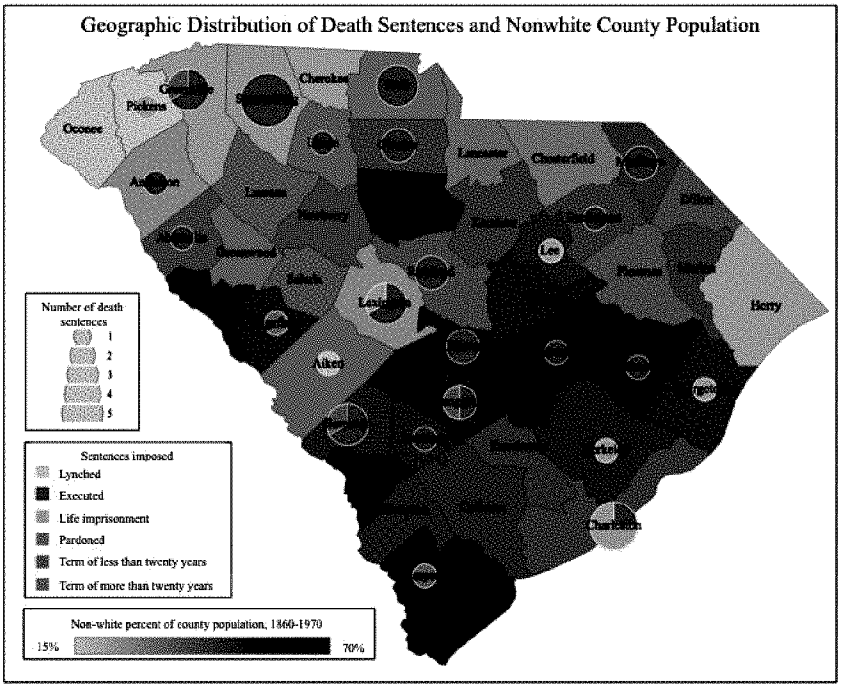

Figure 6.

III. REFLECTIONS

What should we make of this subset of South Carolina's death penalty cases? On several fronts, these cases foreshadow issues that continue to haunt the administration of the death penalty in the post-*Furman* era.

A. Ineffective Assistance of Counsel, Innocence, and Categorical Exceptions

For example, one cannot read George Stinney's story without thinking that his lawyer was completely incompetent; the lawyer presented virtually no evidence, and he failed to even file simple pleadings such as a motion for a change of venue or a notice of appeal. Why he did so little is not clear, as it is often unclear today. Sloth? Ineptitude? Indifference? Fear of public disapproval? Bad lawyers—often shockingly bad lawyers—continue to

bedevil death penalty cases,[95] as is made clear by the fact that the Supreme Court of the United States recently heard oral argument in a case in which defense counsel presented evidence that his own client was likely to be dangerous in the future because he was black.[96] This level of abdication on defense counsel's part reminded us of the representation provided to George Stinney. While it is possible that the death penalty shines a light on the abysmal quality of indigent representation prevalent in the criminal justice system, we hope that the level of representation across the board is not as bad as it was—and often is—in capital cases.

Beyond ineffective assistance of counsel lies the deeper shadow of executing the innocent. Remarkably, of the four fourteen-year-olds sentenced to death, *all* were convicted upon dubious evidence of guilt. Seventy years later, in granting a writ of coram nobis correcting George Stinney's conviction and death sentence, the reviewing court deemed the evidence against George Stinney weak, and the evidence of his potential

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95. *See, e.g.*, John H. Blume & Sheri Lynn Johnson, Gideon *Exceptionalism*, 122 YALE L.J. 2126, 2142 (2014) (arguing that *Gideon v. Wainwright*, which held that the Sixth Amendment's right to counsel in criminal proceedings extended to felonious defendants in state courts, does not in itself guarantee effective assistance of counsel, as shown by myriad of capital cases involving trial counsel who fail to investigate, develop, and present mitigating evidence); 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, 1836 (2013) (finding that people of poverty accused of capital crimes are often represented by lawyers who lack the skills and resources to handle matters of such gravity). A number of Supreme Court Justices, including most recently Justices O'Connor and Ginsburg, have also noted in speeches and interviews that they have never seen a death penalty case in which the defendant had been well-represented. *See Justice Backs Death Penalty Freeze*, CBS NEWS (April 10, 2001, 10:15 AM), http://www.cbsnews.com/news/justice-backs-death-penalty-freeze/ (quoting Justice Ginsburg as saying "I have yet to see a death case among the dozens coming to the Supreme Court on eve-of-execution stay applications in which the defendant was well represented at trial" and that defendants with effective counsel "do not get the death penalty"); *O'Connor Questions Death Penalty*, N.Y. TIMES, July 4, 2001 (quoting Justice O'Connor as saying that defendants with more money have better representation and that "[p]erhaps it's time to look at minimum standards for appointed counsel in death cases and adequate compensation for appointed counsel when they are used").

96. *See* Transcript of Oral Argument at 3, Buck v. Davis, No. 14-70030 (5th Cir. Aug. 20, 2015), *petition for cert. filed*, (U.S. Feb. 4, 2016) (No. 15-8049). *See also* Garrett Epps, *The Legal Fiction that Could Kill Duane Buck*, ATLANTIC, Sept. 29, 2016 (noting that Duane Buck, a black man, was represented by an attorney who "did something that, on first hearing, seems all but unimaginable—he presented an 'expert' who testified that Buck was more likely to commit future violent crimes because he is black"); Adam Liptak, *Supreme Court to Hear Death Penalty Cases*, N.Y. TIMES, June 6, 2016 (noting that Duane Buck, a black man, was represented in this capital case by an incompetent attorney who inconceivably presented testimony from a psychologist who claimed that race is a factor in assessing one's future danger to society).

innocence substantial. The main piece of evidence damning George was his confession, which police secured during an incommunicado interrogation.[97] As DNA exonerations have demonstrated, false confessions, especially by youthful offenders, are a leading cause of wrongful convictions.[98] Milbry Brown's case also bears the earmarks of a coerced confession, has very little corroboration other than the death of the baby and consequently raises doubts both as to causation and to her intent.[99] Clarence Lowman, sentenced to death, was granted a new trial due to inadequate instructions, and then lynched before he could be retried was very likely innocent; it was the acquittal of his older brother (upon retrial) that prompted the lynching.[100] Mack Thompson, who may have done the act necessary for assault with intent to ravish, did not have the necessary intent; his sentence was commuted due to the examining doctor's conclusion that "he was a low grade moron, and therefore not fully responsible for his criminal acts."[101] Quack science, which has had a role in a number of post-*Furman* exonerations,[102] also made an appearance: phrenological examination was cited as providing reassurance that doubts about guilt were not founded.[103]

These cases also shed light on the broad question of whether categorical exemptions from the death penalty are necessary, or whether juries will appropriately weigh categorical traits that, like youth, lessen culpability. When the Supreme Court reconsidered the constitutionality of the death penalty for juveniles, the states defended it by asserting that even assuming juveniles' "diminished culpability in general, jurors nonetheless should be allowed to consider mitigating arguments related to youth on a case-by-case

97. *See supra* Part I.A.

98. *See generally* Megan Crane, Laura Nirider & Steven A. Drizin, *The Truth About Juvenile False Confessions*, 16 INSIGHTS ON L. & SOC. 10 (2016) (finding that children are two to three times more likely to falsely confess than adults); Lindsay C. Malloy, Elizabeth P. Shulman & Elizabeth Cauffman, *Interrogations, Confessions, and Guilty Pleas Among Serious Adolescent Offenders*, 38 LAW & HUMAN BEHAVIOR 181 (2013) (finding that juvenile suspects gave false confessions and guilty pleas at a rate of 35%).

99. *See supra* Part I.B.

100. *See supra* Part I.C.

101. REPORTS AND RESOLUTIONS OF SOUTH CAROLINA TO THE GENERAL ASSEMBLY, *supra* note 64, at 27.

102. *See, e.g.*, Brandon L. Garrett & Peter J. Neufeld, *Invalid Forensic Science Testimony and Wrongful Convictions*, 95 VA. L. REV. 1, 9 (2009) (examining 137 cases where the defendant was convicted but ultimately exonerated and where forensic science contributed to the conviction and finding that invalid forensic science played a role in 60% of those cases).

103. *Tested by Phrenology*, WATCHMAN & SOUTHRON (Apr. 12, 1893), at 1, https://www.newspapers.com/image/89017183.

basis, and in some cases to impose the death penalty if justified."[104] The majority disagreed, citing both

> differences between juvenile and adult offenders [that] are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability [and] [a]n unacceptable likelihood . . . that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death.[105]

Looking at the death-sentenced fourteen-year-olds, it seems clear that the juries did not give any weight to immaturity, for a mature fourteen-year old is rare, and nothing in the facts of any of these cases suggest maturity. Moreover, at least to the modern eye, the juries did not even have particularly aggravated offenses in these cases, and they nonetheless declined to recommend mercy. As discussed below, there is only one apparent reason for these decisions. But it is worth noting that confidence in juror's ability to weigh mitigation against inflammatory crimes seems misplaced, and this observation is pertinent to another possible categorical exemption on the horizon: mental illness.[106]

B. Race

Whatever insights may be gleaned from ineffective assistance of counsel, innocence, or categorical exemptions, their significance pales when compared to the racial import of these cases.

1. Disparity

The three of us have worked on death penalty cases a combined total of more than half a century, and it is impossible to have that experience and remain naïve about the pernicious effects of race in the capital punishment system. We have litigated many capital sentencing racial disparity cases, and

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104. Roper v. Simmons, 543 U.S. 551, 572 (2005).

105. *Id.* at 573.

106. *See, e.g.*, John H. Blume & Sheri Lynn Johnson, *Killing the Non-Willing:* Atkins, *the Volitionally Incapacitated and the Death Penalty*, 55 S.C. L. REV. 93, 132–34 (2003) (arguing for a categorical exemption for people who are unable to control their conduct by reason of mental illness).

from such litigation, one comes to not be surprised by disparity, but to expect it. Yet, despite our jadedness, we found the disparities in these cases shocking. We certainly would have predicted that most of the juveniles sentenced to death would have been black—but not *all* of them. Yet, every single juvenile sentenced to death in this period was black. Forty-five children, one hundred percent. In 1886, the Supreme Court, faced with such disparity in the administration of a San Francisco ordinance concerning laundries concluded that "[n]o reason for it is shown, and the conclusion cannot be resisted that no reason for it exists except hostility to the race and nationality to which the petitioners belong, and which, in the eye of the law, is not justified."[107]

2. *Racialized Fears*

If the numbers are shocking, the news accounts are sickening. Slavery stereotypes and their Jim Crow descendants drove public opinion in all of the cases we could find contemporaneous accounts of. Milbry Brown's and Axey Cherry's cases are prime examples. Brown was accused of killing a child out of anger after the child's mother's reprimanded her. Whether Brown in fact gave the baby carbolic acid or not, the case reprised a common fear among slave owners of being poisoned by house slaves, especially female house slaves.[108] Moreover, the intensity of that fear is revealed by the fact that the only death sentence of a child less than fourteen, that of Axey Cherry, was also for poisoning an infant.

That two of the four fourteen-year-olds sentenced to death were accused of interracial rape is also striking. Both Stinney and Mack represent another common white fear: that African American boys and men have animalistic desires for young white girls and will attempt to rape them if given half a chance to do so.[109] Because black boys purportedly could not be trusted to

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107. Yick Wo v. Hopkins, 118 U.S. 356, 374 (1886).

108. *See* Cynthia R. Greenlee, "Due to Her Tender Age": Black Girls and Childhood on Trial in South Carolina, 1885–1920 (2014) (unpublished Ph.D. dissertation, Duke University) ("Milbry Brown's case reinforced that elite South Carolinians could not be safe in their homes while employing black servants."). These cases also play into the related self-righteous idea that house slaves (and later, domestic workers) were not appreciative of how good they had it and how generous the white owner/employer was.

109. *See, e.g.*, Jamelle Bouie, *The Deadly History of "They're Raping Our Women"*, SLATE (June 18, 2015, 2:22 PM), http://www.slate.com/articles/news_and_politics/history/2015/06/the_deadly_history_of_they_re_raping_our_women_racists_have_long_defended.html (discussing how rape and the concept of defending the honor of the white woman was frequently used in the 19th century to justify racist acts of violence against African-Americans); *First Message of Gov. Martin F. Ansel to the State Legislature*,

keep their libidos in check if they had too much exposure to white girls, segregation was necessary. This animal appetite was another dominant theme justifying segregation in post-reconstruction Jim Crow.[110] That this fear surrounded the Mack prosecution need not be inferred; the newspaper headline trumpeted "Negro Boy Charged with Usual Crime."[111] The numbers reinforce the salience of perceived sexual threat: one hundred percent of the death sentences imposed for the crime of rape were carried out.

Some news articles express not only stereotypes and fears, but overt racial animosity. Some are gratuitously offensive, referring to the defendant as a "young brute,"[112] or a "descendant[] of Ham."[113] The callousness and glee of the articles following execution is also striking. One article jocularly reported competition for the gallows used in the execution of Oliver Greer: "Several citizens have been wanting to buy [it] with a view of building a chicken house out of it."[114] Another article reported with amusement the details of Reuben Robinson's execution, stating that he "bellowed like a baby," that "tears rolled down his black cheeks" and that he asked, "Is you all mad at me?"[115] A third reported, with apparent regret, the Solicitor's announcement that legislators' requests to put the electrocuted body of sixteen-year-old Williams Sanders on public display would not be honored.[116]

One final theme in the newspaper accounts is worth noting: the close connection between the execution of African Americans and lynching. Lowman was lynched; when whites perceived that "justice" was not done, they took matters into their own hands. Lynch mobs were also on the scene in at least three other cases,[117] but turned out to be unnecessary when formal legal proceedings produced the desired result.[118]

MANNING TIMES, Jan. 23, 1907, at 6 (recommending that the legislature pass a law making assault with intent to ravish a capital crime so that "women of this state may be protected from this heinous crime").

110. *See generally* C.VANN WOODWARD, STRANGE CAREER OF JIM CROW (1995) (examining the history of Jim Crow laws in the South following the Civil War).

111. *Negro Boy Charged with Usual Crime*, CHARLOTTE NEWS, May 1, 1920, at 4.

112. *Young Brute Convicted*, WATCHMAN & SOUTHRON, Jan 4, 1919, at 1.

113. *With Their Life*, ATLANTA CONSTITUTION, Oct 8, 1892, at 1.

114. *Want to Buy Gallows*, WATCHMAN & SOUTHRON, Apr 9, 1902, at 1.

115. *Negro Dies for Horrible Crime*, CHEROKEE TIMES, Nov 10, 1924, at 8.

116. *See Negro's Body Is Not to Go On Public View*, THE INDEX-JOURNAL, Feb 13, 1933, at 1 (noting that although he denies the request, the Solicitor stated that he "saw some merit in the suggestion").

117. *Mob Takes Negro But Returns Him*, GAFFNEY LEDGER, Jan 13, 1923, at 6.

118. *See* TOLNAY & BECK, FESTIVAL OF VIOLENCE 110 (U. of Illinois Press) (1995) (noting that the phenomenon of replacing public lynchings with legally sanctioned executions

3. *Racialized Visions of Maturity*

To our eyes, it is inconceivable how these four fourteen-year-olds—*any* fourteen-year-olds—could have been viewed as adults, and consequently, as deserving of the full wrath of the law. To readers prepared to dismiss this as an artifact of history, it is not. This misperception of black children as adults persists today. Black children are eighteen times more likely to be sentenced as adults.[119] The age of juvenile black felony suspects is overestimated, with black felony suspects rated as older than white or Latino suspects. Juvenile black suspects were also deemed more culpable for their actions than white or Latino targets, particularly when those targets were accused of serious crimes. The magnitude of this overestimation is huge: black felony suspects were seen as 4.53 years older than they actually were. The consequence is both striking and consistent with the death sentencing of fourteen-year-olds: black boys—today—are misperceived as legal adults at roughly the age of thirteen-and-a-half.[120]

A dishearteningly similar trend can be found in juvenile sentencing patterns after *Roper v. Simmons*, both nationally and in South Carolina. Now, life without parole rather than death awaits African American children, but what remains the same is that the most severe punishment for juveniles the law allows falls most often on children of color. For example, 75% of the juveniles sentenced to life without parole in South Carolina were minority children, and the racial disparity is starkest among black juveniles, who make up 66% of the state's juvenile life-without-parole population

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began during Reconstruction, when there was a significant inverse relationship between the number of lynchings and executions in the south). *See also* Michael A. Trotti, *The Scaffold's Revival: Race and the Public Execution in the South*, 45 J. SOC. HIST. 207 (2011) (demonstrating the intertwining of lynchings and executions by both the public nature of many early legal executions in the South and by the fact that most lynching victims and executed victims were black); TERENCE FINNEGAN, A DEED SO ACCURSED: LYNCHING IN MISSISSIPPI AND SOUTH CAROLINA, 1881–1940, 145 (2013) (showing the above trends held true in South Carolina by referencing a *Charleston News and Courier* article stating, "[t]here is not a negro judge on the bench in any southern state, nor a negro prosecuting attorney, and the jury box is almost exclusively filled with white men . . . why should there be a resort to mob violence when the law and the courts are competent?").

119. Eileen Poe-Yamagata & Michael A. Jones, *And Justice for Some: Differential Treatment of Youth of Color in the Justice System*, NAT'L COUNS. ON CRIME AND DELINQ., (2007).

120. Philip Goff, et al., *The Essence of Innocence: The Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCHOL. 526, 532 (2014). *See also Racial Profiling in Preschool,* N.Y. TIMES, Oct. 8, 2016 (noting federal data showing that black students are nearly four times as likely to be suspended as their white peers at the preschool level, as well as a recent study demonstrating that both black and white teachers watch black children, especially the boys, longer when looking for signs of trouble).

("LWOP").[121] Given what we know of history and of psychology, it seems unlikely that juvenile LWOP can—at least any time soon—be cleansed of the influence of racially influenced perceptions of maturity.

4. Race and Geography

The intersection of race and geography is also noteworthy. Counties that had relatively small African American populations generally had higher rates of executions of African American juveniles.[122] Spartanburg was easily the city most eager to execute juveniles. Why did juries there not recommend mercy? A comparison between Spartanburg and Charleston is instructive. Charleston had a similar number of death sentences, but recommended mercy for four out of five of those juveniles. Spartanburg residents would not have had any interactions with free African Americans before Reconstruction, but Charleston had a (relatively) high percentage of black freemen before the Civil War, and more of black lower-middle class. This contrast is not intended to praise Charleston, or suggest that it was a racial mecca; at one time, it had the largest slave market in the world. Rather, the point is that a larger African American population seems to have had a protective effect. A larger black population at that time also reduced the frequency of lynchings,[123] and today decreases the rate of death sentences, though the mechanism of the protective effect may be complicated.[124]

IV. CONCLUSION

Capital punishment in this country, and in South Carolina, has its roots in racial subjugation, stereotype, and animosity. The extreme disparities we report here have dampened due to the combined effects of decreasing levels of open racial antagonism, the reforms of the modern death penalty, including categorical exemptions for juveniles and person with intellectual disabilities and prohibition of the imposition of the death penalty for the

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121. Brief for Petitioner at 16, Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572, n.25 (2015), *cert. denied*, 135 S. Ct. 2379 (2015).

122. *See generally* W. FITZHUGH BRUNDAGE, UNDER SENTENCE OF DEATH: LYNCHING IN THE SOUTH (1997) (explaining that a majority of the lynchings in South Carolina occurred in places where the black population was small, primarily the upcountry. Moreover, lynching increased after black disenfranchisement in the 1890s).

123. *Id.*

124. Theodore Eisenberg, *Death Sentence Rates and County Demographics: An Empirical Study*, 90 CORNELL L. REV. 347, 368–69 (2005).

crime of rape, and the (small) increase in diversity in capital juries. But dampened does not mean eradicated. Significant disparities in the administration of capital punishment persist today. The color of a defendant's skin (and the color of the victim's skin) are still the strongest predictors of whether capital punishment will be south and imposed. No less neutral an authority than the Government Accounting Office has concluded that in studies of capital punishment, findings of statistically significant racial disparity, particularly race of victim disparity, are ubiquitous.[125] Similarly, while gross racial stereotyping and animosity is less common in modern death penalty cases, some instances still occur,[126] and many, many cases involve only slightly disguised racism on the part of judges, jurors, prosecutors, and defense counsel.[127] To imagine that a punishment whose history is so steeped in racism can ever be administered in a race neutral way is more than color blindness, and more than wishful thinking; it is willful blindness.

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125. *See also* Sheri Lynn Johnson, *Litigating for Racial Fairness after* McClesky v. Kemp, 39 COLUM. HUM. RTS. L. REV. 178, 181–82 (2007) (noting a post-*Furman* death sentence study showing that during Solicitor Holman Gossett's time as a prosecutor in Spartanburg, he sought death in 50% of the 52 death-eligible white victim cases and in 0% of the 19 death-eligible black victim cases—a result which would only occur by chance about four times in 100,000).

126. *See* Bennett v. Stirling, No. 2:13-391-RMG, 2016 WL 1070812, at *3 (D.S.C. March 16, 2016) *appeal docketed*, No. 16-3 (4th Cir. April 15, 2016) (ordering a new sentencing trial after the state courts refused to intervene when a juror admitted his belief that defendant committed the charged crime because he was "just a dumb nigger"). *See also id.*, WL 1070812, at *7 (noting the prosecution elicited evidence that the defendant had sexual relations with a white female and referred to the defendant as being like "King Kong on a bad day").

127. John H. Blume, Theodore Eisenberg & Sheri Lynn Johnson, *Post-*McClesky *Racial Discrimination Claims in Capital Cases*, 83 CORNELL L. REV. 1771, 1782–83 (1998).

APPENDIX I

Number of executions of individuals aged seventeen or younger by state[128]

Count of juveniles executed and age at execution by state							
State							
AL		1	2		5	8	6.02%
AR					4	4	3.01%
AZ					1	1	0.75%
DE					1	1	0.75%
FL			1	3	4	8	6.02%
GA		3	1	6	12	22	16.54%
IN					1	1	0.75%
KY	1			3	4	8	6.02%
LA		1			3	4	3.01%
MD				2	3	5	3.76%
MN					1	1	0.75%
MO			1	3		4	3.01%
MS				1	5	6	4.51%
MT					1	1	0.75%
NC				2	9	11	8.27%
NJ				1	1	2	1.50%
NV					1	1	0.75%
NY					3	3	2.26%
OH				2	5	7	5.26%
OK					1	1	0.75%
OR					1	1	0.75%
PA					2	2	1.50%
SC		2		3	3	8	6.02%
TN				1	5	6	4.51%
TX			1		4	5	3.76%
VA				3	7	10	7.52%

128. Espy File, *supra* note 69.

Count of juveniles executed and age at execution by state							
State							
WA					2	2	1.50%
Total	1	7	6	30	89	133	100%
% of total	0.75 %	5.26%	4.51%	22.56%	66.92%	100%	

APPENDIX II

Proportion of juvenile executions compared to overall execution rates in states that executed more than 200 individuals between 1865 and 1972[129]

Relative proportion of executions carried out against juveniles				
Number	**State**	**Total number of executions**	**Total number of juvenile executions**	**Percent of individuals executed as juveniles**
1	FL	298	8	2.68%
2	KY	300	8	2.67%
3	GA	848	22	2.59%
4	VA	400	10	2.50%
5	TN	263	6	2.28%
6	NC	520	11	2.12%
7	SC	422	8	1.90%
8	MS	325	6	1.85%
9	AL	448	8	1.79%
10	OH	395	7	1.77%
11	MO	236	4	1.69%
12	LA	429	4	0.93%
13	AR	449	4	0.89%
14	NJ	243	2	0.82%
15	TX	714	5	0.70%
16	NY	801	3	0.37%

129. *Id.*

Relative proportion of executions carried out against juveniles				
Number	**State**	**Total number of executions**	**Total number of juvenile executions**	**Percent of individuals executed as juveniles**
17	PA	729	2	0.27%
18	CA	596	0	0.00%
19	IL	301	0	0.00%

APPENDIX III

Racial composition of juveniles executed by state[130]

Racial breakdown of juveniles executed in each state, 1865–1972							
State	**Black**	**His-panic**	**White**	**Native American**	**Asian Pacific Island**	**unknown**	**% nonwhite executed**
AL	8						100.00%
AR	3			1			100.00%
AZ		1					100.00%
DE	1						100.00%
FL	7		1				87.50%
GA	21		1				95.45%
IN			1				0.00%
KY	7		1				87.50%
LA	4						100.00%
MD	5						100.00%
MN			1				0.00%
MO	2		1			1	50.00%
MS	6						100.00%
MT			1				0.00%
NC	11						100.00%
NJ	1		1				50.00%
NV			1				0.00%

130. *Id.*

Racial breakdown of juveniles executed in each state, 1865–1972							
State	**Black**	**His-panic**	**White**	**Native American**	**Asian Pacific Island**	**unknown**	**% nonwhite executed**
NY	1		2				33.33%
OH			7				0.00%
OK				1			100.00%
OR		1					100.00%
PA			2				0.00%
SC	8						100.00%
TN	2		4				33.33%
TX	3	2					100.00%
VA	10						100.00%
WA			1		1		50.00%
Total	**100**	**4**	**25**	**2**	**1**	**1**	**80.45%**
% of total	**75.19 %**	**3.01 %**	**18.80 %**	**1.50%**	**0.75%**	**0.75%**	

APPENDIX IV

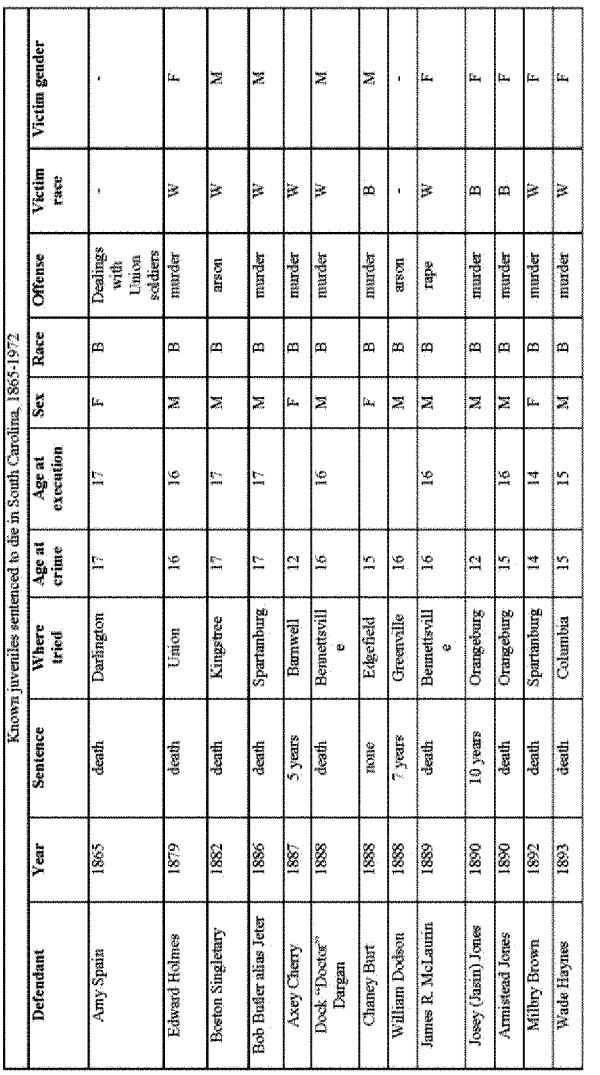
Juvenile executions by crime of conviction in South Carolina[131]

Crimes for which juveniles were sentenced to die in South Carolina, 1865-1972		
Crime	**Number**	**Percent of total**
Murder	33	73.33%
Assault with intent to ravish	5	11.11%
Rape	4	8.89%
Property offenses	3	6.67%

131. John H. Blume, Sheri Lynn Johnson & Hannah L. Freedman, *Juvenile Executions by Crime of Conviction in South Carolina* (2016) (unpublished dataset) (on file with author).

APPENDIX V
Known juveniles sentenced to die in South Carolina between 1865 and 1972[132]

132. *See* John H. Blume, Sheri Lynn Johnson & Hannah L. Freedman, *Known Juveniles Sentenced to Die in South Carolina Between 1865–1892* (2016), (unpublished dataset) (on file with author) (excluding data from individuals whose ages we could not confirm).



Known juveniles sentenced to die in South Carolina, 1865-1972

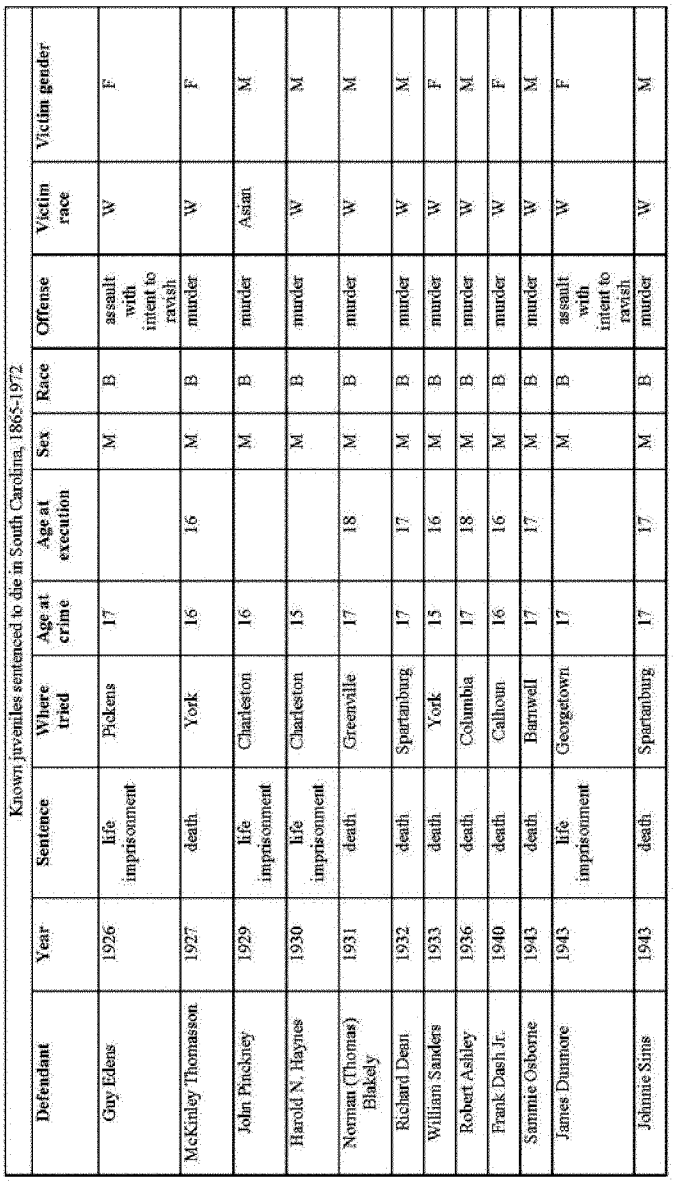
Defendant	Year	Sentence	Where tried	Age at crime	Age at execution	Sex	Race	Offense	Victim race	Victim gender
Amy Spain	1865	death	Darlington	17	17	F	B	Dealings with Union soldiers	-	-
Edward Holmes	1879	death	Union	16	16	M	B	murder	W	F
Boston Singletary	1882	death	Kingstree	17	17	M	B	arson	W	M
Bob Butler alias Jeter	1886	death	Spartanburg	17	17	M	B	murder	W	M
Axey Cherry	1887	5 years	Barnwell	12		F	B	murder	W	
Dock "Doctor" Dargan	1888	death	Bennettsville	16	16	M	B	murder	W	M
Chaney Burt	1888	none	Edgefield	15		F	B	murder	B	M
William Dodson	1888	7 years	Greenville	16		M	B	arson	-	-
James R. McLaurin	1889	death	Bennettsville	16	16	M	B	rape	W	F
Josey (Jasin) Jones	1890	10 years	Orangeburg	12		M	B	murder	B	F
Armistead Jones	1890	death	Orangeburg	15	16	M	B	murder	B	F
Milbry Brown	1892	death	Spartanburg	14	14	F	B	murder	W	F
Wade Haynes	1893	death	Columbia	15	15	M	B	murder	W	F

APPENDIX V cont'd

Known juveniles sentenced to die in South Carolina, 1865-1972

Defendant	Year	Sentence	Where tried	Age at crime	Age at execution	Sex	Race	Offense	Victim race	Victim gender
James Sanders	1896	death	Barnwell	16	16	M	B	murder	B	M
Christopher Cannon	1898	death	Spartanburg	17	17	M	B	murder	W	M
James Kelly	1901	death	Charleston	16	16	M	B	murder	B	M
Oliver Greer	1902	death	Anderson	17	17	M	B	rape	W	F
Tad (Brack) Toland	1908	death	Lexington	17	17	M	B	murder	W	F
Love Robinson	1909	death	York	15	15	M	B	murder	B	F
Charley Logan	1915	death	Abbeville	17	17	M	B	murder	W	F
Israel Good	1916	death	Greenville	17	17	M	B	rape	W	F
Mack Thompson	1920	life imprisonment	Lexington	14		M	B	assault with intent to ravish	W	F
Feetie (Richard) Fogle	1921	death	St. Matthews	16	16	M	B	murder	W	M
Thomas Johnson	1923	death	Bamberg	16	16	M	B	murder	W	F
Reuben Robinson	1924	death	Chester	17	17	M	B	assault with intent to ravish	W	F
Clarence Lowman	1925		Aiken	14		M	B	murder	W	M

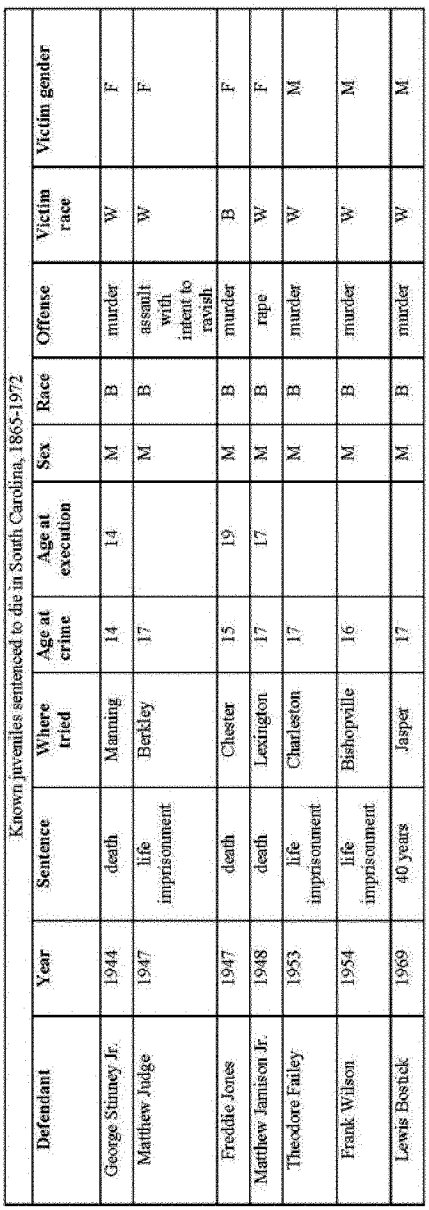
APPENDIX V cont'd



Known juveniles sentenced to die in South Carolina, 1865-1972

Defendant	Year	Sentence	Where tried	Age at crime	Age at execution	Sex	Race	Offense	Victim race	Victim gender
Guy Edens	1926	life imprisonment	Pickens	17		M	B	assault with intent to ravish	W	F
McKinley Thomasson	1927	death	York	16	16	M	B	murder	W	F
John Pinckney	1929	life imprisonment	Charleston	16		M	B	murder	Asian	M
Harold N. Haynes	1930	life imprisonment	Charleston	15		M	B	murder	W	M
Norman (Thomas) Blakely	1931	death	Greenville	17	18	M	B	murder	W	M
Richard Dean	1932	death	Spartanburg	17	17	M	B	murder	W	M
William Sanders	1933	death	York	15	16	M	B	murder	W	F
Robert Ashley	1936	death	Columbia	17	18	M	B	murder	W	M
Frank Dash Jr.	1940	death	Calhoun	16	16	M	B	murder	W	F
Sammie Osborne	1943	death	Barnwell	17	17	M	B	murder	W	M
James Dunmore	1943	life imprisonment	Georgetown	17		M	B	assault with intent to ravish	W	F
Johnnie Sims	1943	death	Spartanburg	17	17	M	B	murder	W	M

APPENDIX V cont'd



Known juveniles sentenced to die in South Carolina, 1865-1972

Defendant	Year	Sentence	Where tried	Age at crime	Age at execution	Sex	Race	Offense	Victim race	Victim gender
George Stinney Jr.	1944	death	Manning	14	14	M	B	murder	W	F
Matthew Judge	1947	life imprisonment	Berkley	17		M	B	assault with intent to ravish	W	F
Freddie Jones	1947	death	Chester	15	19	M	B	murder	B	F
Matthew Jamison Jr.	1948	death	Lexington	17	17	M	B	rape	W	F
Theodore Failey	1953	life imprisonment	Charleston	17		M	B	murder	W	M
Frank Wilson	1954	life imprisonment	Bishopville	16		M	B	murder	W	M
Lewis Bostick	1969	40 years	Jasper	17		M	B	murder	W	M

APPENDIX VI

County-level population averages from 1860 to 1970, including estimated white and nonwhite populations in each county[133]

Average population by county and racial composition, 1860–1970					
County	**Rank**	**Average total population**	**Average nonwhite population**	**Average white population**	**Average % nonwhite**
Charleston	1	1220347 ± 60946	578309 ± 12181	641809 ± 51496	52.21%
Greenville	2	1073439 ± 76678	231577 ± 10635	841833 ± 66430	25.99%
Spartanburg	3	952112 ± 52493	236606 ± 9769	718495 ± 42563	26.95%
Richland	4	939634 ± 74974	366365 ± 20483	573229 ± 54765	46.95%
Anderson	5	652839 ± 28934	176986 ± 5333	475834 ± 26041	30.19%
Orangeburg	6	525506 ± 15219	332960 ± 8779	192374 ± 7231	64.00%
York	7	492088 ± 21439	181530 ± 4267	309230 ± 18809	40.27%
Sumter	8	465538 ± 17476	279382 ± 6135	186141 ± 13626	63.15%
Florence	9	464273 ± 21536	206205 ± 7015	258061 ± 14959	35.90%
Aiken	10	438235 ± 20951	166603 ± 2542	270617 ± 20202	37.15%
Darlington	11	369360 ± 10855	186190 ± 3544	183159 ± 8328	52.04%
Laurens	12	363819 ± 8707	152201 ± 3354	211615 ± 9541	43.94%
Lexington	13	363678 ± 22665	94569 ± 3130	269011 ± 21600	30.50%
Horry	14	326560 ±	75584 ± 4762	250932 ±	25.37%

133. *See infra* Appendix VI (on file with the South Carolina Archives Department) (demonstrating relatively high deviation values because of substantial changes in the state population bases and excluding unavailable population information for countries over the 110-year period which shows these values must be treated as a general estimate of non-white populations).

Average population by county and racial composition, 1860–1970					
County	**Rank**	**Average total population**	**Average nonwhite population**	**Average white population**	**Average % nonwhite**
		22806		18983	
Williamsburg	15	304730 ± 9086	200301 ± 6130	104422 ± 3102	65.72%
Pickens	16	297596 ± 14330	42316 ± 529	255280 ± 13947	16.50%
Beaufort	17	294161 ± 10686	190923 ± 7590	103211 ± 11205	68.06%
Colleton	18	287420 ± 5271	166872 ± 6596	110522 ± 1523	57.03%
Greenwood	19	275955 ± 6855	107946 ± 2587	168007 ± 9054	31.98%
Chesterfield	20	274466 ± 12295	96272 ± 3395	158194 ± 6103	36.47%
Newberry	21	271828 ± 4536	134950 ± 4002	136877 ± 5287	50.44%
Marion	22	266921 ± 4759	142924 ± 2801	123938 ± 2166	53.42%
Lancaster	23	262902 ± 10389	94345 ± 2102	168516 ± 9321	39.01%
Chester	24	261955 ± 4987	133489 ± 3517	125813 ± 4774	51.93%
Oconee	25	259869 ± 8741	41704 ± 948	217978 ± 9020	12.64%
Kershaw	26	254278 ± 7182	128902 ± 3212	125356 ± 5874	52.38%
Union	27	252447 ± 4087	104030 ± 2247	148395 ± 5112	42.40%
Marlboro	28	246192 ± 6866	134192 ± 3937	111445 ± 3524	54.74%
Abbeville	29	244918 ± 6858	127696 ± 7699	117205 ± 1407	49.06%
Clarendon	30	244191 ± 6914	169892 ± 5319	74298 ± 1814	69.12%
Georgetown	31	233630 ± 5876	137723 ± 2919	94901 ± 7034	61.93%
Berkeley	32	227022 ± 11806	128150 ± 2874	98834 ± 11882	47.44%

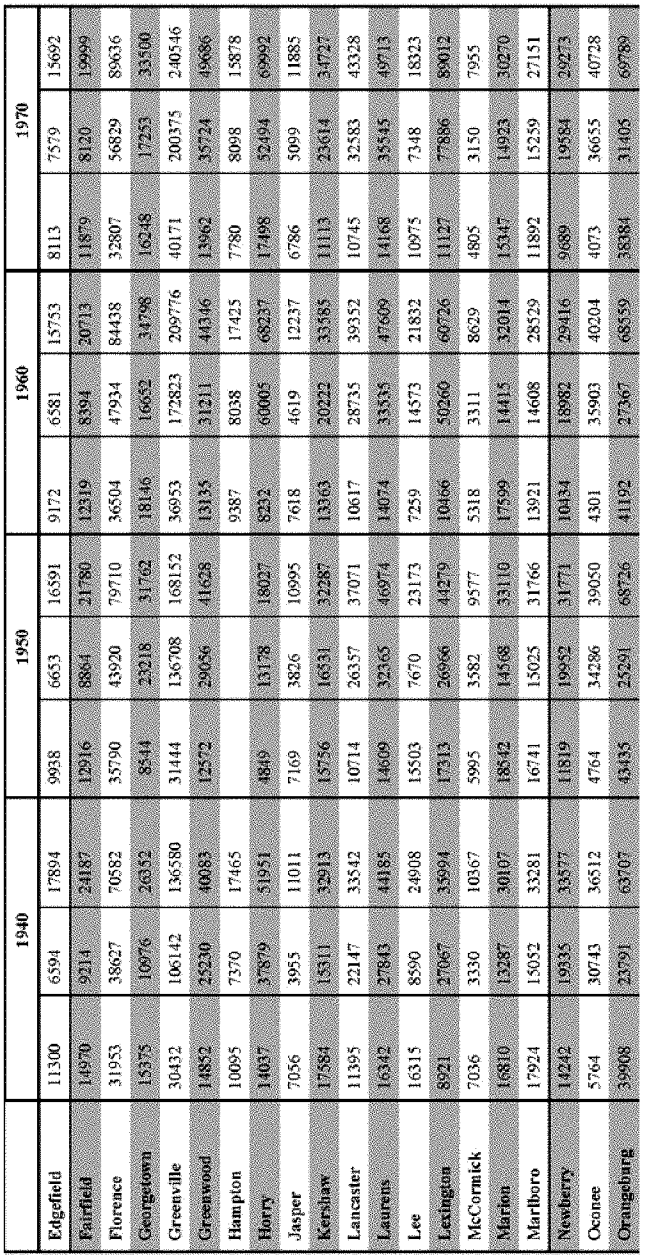
Average population by county and racial composition, 1860–1970					
County	**Rank**	**Average total population**	**Average nonwhite population**	**Average white population**	**Average % nonwhite**
Barnwell	33	222645 ± 8514	136528 ± 6913	86113 ± 2485	59.50%
Cherokee	34	221588 ± 5355	54589 ± 545	166798 ± 5550	19.77%
Edgefield	35	220392 ± 11071	139626 ± 7444	80766 ± 3907	62.56%
Fairfield	36	216426 ± 3343	147439 ± 3972	68984 ± 1038	67.33%
Dillon	37	170988 ± 2435	80510 ± 1177	89388 ± 1787	31.44%
Dorchester	38	153897 ± 5231	80002 ± 729	73883 ± 4931	41.85%
Lee	39	139159 ± 2916	84348 ± 4090	54807 ± 2720	40.03%
Hampton	40	130040 ± 2557	76885 ± 2526	53152 ± 667	38.17%
Bamberg	41	126068 ± 1782	77734 ± 1974	48332 ± 612	47.68%
Saluda	42	121400 ± 2693	55231 ± 2481	66169 ± 516	34.67%
Calhoun	43	89109 ± 2868	62044 ± 2486	27054 ± 631	46.02%
Allendale	44	75259 ± 2170	53188 ± 2301	22070 ± 313	46.54%
Jasper	45	65984 ± 961	42526 ± 307	23458 ± 867	43.18%
McCormick	46	64443 ± 3058	42118 ± 2339	22322 ± 746	43.12%

APPENDIX VII

Average black, white, and total population by county, 1940–1970

	1940			1950			1960			1970		
County	black	white	total	nonwhite	white	total	nonwhite	white	total	nonwhite	white	total
Abbeville	9741	13190	22931	7523	14933	22456	6860	14557	21417	6566	14546	21112
Aiken	20921	28695	49616	20070	35067	55137	21148	59690	81038	21937	69086	91023
Allendale	9409	3630	13040	8512	3261	11773	7184	4178	11362	5825	3867	9692
Anderson	23379	63323	88712	19911	71353	90684	19245	79233	98478	19136	86278	105474
Bamberg	11304	7339	18643	10134	7399	17533	9087	7187	16274	8741	7209	15950
Barnwell	12618	7519	20138	10633	6813	17286	7655	10004	17659	7084	10082	17176
Beaufort	14781	7255	22037	15521	11472	26993	17104	27083	44187	17284	33852	51136
Berkeley	17585	9548	27128	19119	11132	30251	18863	19233	38196	17141	39058	56199
Calhoun	11867	4351	16229	10445	4308	14753	8198	4058	12256	6522	4258	10780
Charleston	39573	61487	121105	68415	96441	164856	78933	137449	216382	79248	168402	247650
Cherokee	7795	25495	33290	7733	27259	34992	7470	27735	35205	7137	29654	36791
Chester	15631	16948	32579	13756	18841	32597	9678	18960	30898	11716	18095	29811
Chesterfield	13701	22262	35963	14132	22104	36236	12507	21210	33717	11076	22591	33667
Clarendon	22576	8923	31499	22840	9375	32215	20130	9360	29490	18900	9704	28604
Colleton	14019	12249	26268	15053	13189	28242	14226	13590	27816	13038	14584	27622
Darlington	22571	22627	45198	23307	26809	50016	23508	29420	52928	20808	33134	53442
Dillon	14111	14910	29625	14939	15991	30930	14229	16355	30584	12227	16611	28838
Dorchester	11439	8484	19928	13476	10125	23601	11003	12480	23383	11480	20786	32276

APPENDIX VII cont'd



	1940			1950			1960			1970		
Edgefield	11300	6594	17894	9938	6653	16591	9172	6581	15753	8113	7579	15692
Fairfield	14970	9214	24187	12916	8864	21780	12319	8394	20713	11879	8120	19999
Florence	31953	38627	70582	35790	43920	79710	36504	47934	84438	32807	56829	89636
Georgetown	13375	10976	26352	8344	23218	31762	18146	16652	34798	16248	17253	33500
Greenville	30432	106142	136580	31444	136708	168152	36953	172823	209776	40171	200375	240546
Greenwood	14852	25230	40083	12572	29056	41628	13135	31211	44346	13962	35724	49686
Hampton	10095	7370	17465				9387	8038	17425	7780	8098	15878
Horry	14037	37879	51951	4849	13178	18027	8232	60005	68237	17498	52494	69992
Jasper	7056	3955	11011	7169	3826	10995	7618	4619	12237	6786	5099	11885
Kershaw	17584	15311	32913	13756	16331	32287	13363	20222	33585	11113	23614	34727
Lancaster	11395	22147	33542	10714	26357	37071	10617	28735	39352	10745	32583	43328
Laurens	16342	27843	44185	14609	32365	46974	14074	33535	47609	14168	35545	49713
Lee	16315	8590	24908	15503	7670	23173	7259	14573	21832	10975	7348	18323
Lexington	8921	27067	35994	17313	26966	44279	10466	50260	60726	11127	77886	89012
McCormick	7036	3330	10367	5995	3582	9577	5318	3311	8629	4805	3150	7955
Marion	16810	13287	30107	18542	14568	33110	17599	14415	32014	15347	14923	30270
Marlboro	17924	15052	33281	16741	15025	31766	13921	14608	28529	11892	15259	27151
Newberry	14242	19335	33577	11819	19952	31771	10434	18982	29416	9689	19584	29273
Oconee	5764	30743	36512	4764	34286	39050	4301	35903	40204	4073	36655	40728
Orangeburg	39908	23791	63707	43435	25291	68726	41192	27367	68559	38384	31405	69789

APPENDIX VII cont'd

	1940			1950			1960			1970		
Pickens	4891	32220	37111	4486	35572	40058	4630	41400	46030	5660	53296	58956
Richland	42359	62472	104843	50468	92097	142565	65172	134930	200102	74838	159030	233868
Saluda	7644	9548	17192	6784	9140	15924	5302	9252	14554	4896	9632	14528
Spartanburg	30473	97260	127733	33678	116671	150349	34712	122118	156830	36656	137068	173724
Sumter	33771	18692	52463	33024	24610	57634	35095	39846	74941	33597	45828	79425
Union	11248	20112	31360	10058	21276	31334	8892	21123	30015	8301	20929	29230
Williamsburg	27269	13739	41011	29614	14193	43807	27216	13716	40932	20888	13355	34243
York	21207	37247	58663	22195	49401	71596	22565	56195	78760	21219	63997	85216